

2 MR. TOPKIS: Thank you very much.

3 MR. HOYNES: Your Honor, while we are concerned
4 momentarily with production here, I have received the
5 document that I indicated to you I expected to receive from
6 my office. It is the report that Dr. Clark presented into
7 evidence in the Milwaukee Braves Wisconsin trial. I would
8 like to deliver this now, if I may, to the plaintiff. This
9 is the Arthur D. Little report.

10 THE COURT: Would you be good enough to mark that
11 for identification, Mr. Clerk.

xxx 12 (Defendant Feeney et al Exhibit U marked for
13 identification.)

14 THE COURT: Then there was another one.

15 MR. TOPKIS: This is entitled "Opportunities
16 For Promoting Major League Baseball."

xxx 17 (Defendant Feeney et al Exhibit V marked
18 for identification.)

19 REDIRECT EXAMINATION BY MR. HOYNES:

20 Q Dr. Clark, both yesterday and today in certain
21 of his questions Mr. Topkis asked you whether or not you
22 had prepared figures comparing baseball players' salaries
23 to the salaries of those people at the top or peak of
24 their profession in other callings, and the substance
25 of your answer was that you had prepared salary information

1
2 for other callings and for major league baseball players.

3 Would you elaborate on that and explain to
4 the Court, if you will, why you think it is appropriate
5 to consider major league baseball players as an employment
6 class?

7 A Well, major league baseball players are the
8 ones who are trained in the minor leagues and go through
9 their training period and arrive in the major leagues and
10 stay for various lengths of time. But they do constitute
11 the profession of major league baseball. That is the
12 employment group, major league baseball.

13 The minor league time spent there is primarily
14 of a training nature. The person is being supported
15 essentially through the minor league operation's deficit
16 that the clubs meet, but he definitely is not a major league
17 ballplayer until he arrives in this part of the major league
18 organization.

19 Q Does the salary information in any of the other
20 categories that you listed on Page 3 of your report, Defend-
21 ant Feeney Exhibit S, does that salary information include
22 information for trainees in any of these other occupations?

23 A If you take teachers, it doesn't include prac-
24 tice teachers or teachers going to school before they get
25 the certificate. In the case of accountants, it would

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not include accountants in training at the schools and the same way throughout. Actually, in industry there would be a limited amount of training -- of salaries paid to people who were in training who had been employed and were being trained on the job.

Q That might be, for example, the total manufacturing group?

A Yes.

Q Would the inclusion of that amount of training figures in the total manufacturing salaries have any appreciable or significant effect on the average salary?

A I don't think so.

Q Thank you.

Dr. Clark, I believe you testified a few moments ago -- pursuant to a stipulation, actually, that we entered into with the plaintiff's attorneys -- that 109 players in 1969 were at the minimum salary level, then \$10,000, and if I recall your testimony correctly you said that approximately 80 players were at the minimum salary level in 1970.

A The beginning of 1970, yes.

Q The beginning of 1970. All right.

Does your salary study indicate to you the length of time a typical major league player remains at that minimum salary level?

1 A Well, if a first-year player is on the roster
2 at the beginning of the year and stays on the roster
3 throughout the year, the experience is that he would be
4 increased the next year. The only situation I would see
5 in which he would still be at the first-year level is if he
6 went down after a few weeks and spent some more time in the
7 minors and when he came up again the next year back to the
8 majors again from the minors, he might again be at the
9 minimum. But if he sticks with a club, there is a pro-
10 gression upwards.

12 Q So that assuming for the moment that the 109
13 players in 1969 that you referred to all stayed on the club
14 throughout the year, you would not expect any or only an
15 insignificant number of those 109 players to be included
16 in the 80 players that are at the minimum salary in 1970?

17 A In fact, there would be very few. You know
18 that each year a substantial number of new players do come
19 to the major leagues, and we had a disappearance rate for
20 20 clubs of an average of 74. So you would expect with four
21 extra clubs somewhere a slightly larger number than that
22 would be brought up each year.

23 Q So the figure of 80 is consistent with that
24 information?

25 A It is consistent with that and they would be the

new first-year people primarily.

Q And to refresh all our recollections, Dr. Clark, what does your study reveal about the rapidity with which player salaries increase as they stay on the major league roster from year to year?

A After the first two or three years, if they really prove themselves the salaries go up rather quickly.

Q Could you perhaps refer us to the portion of your study that contains that information, again just to refresh our recollection?

A On Page 5, where we take the average salary experience of players who have different length careers. If you have one of the players, for example, who actually lasts beyond the five-year period, there is a very sharp increase in the average salary level from that point on.

Q And the study that is explained at the bottom of Page 1 of your report is also relevant there, is it not?

A Yes. This referred to the experience of players who were on the roster for a four-year period and a five-year period and the fact that there was a very substantial increase in their salaries during that period.

Q What was the order of magnitude of that increase?

A Over the four-year period it was 94.1 per cent, and over the five-year period 129.4 per cent.

2 Q Thank you. During your testimony this morning
3 you referred to some Bureau of Census figures which I
4 believe indicated roughly 50 per cent of the baseball
5 revenues were expended in the form of salaries of one form
6 or another, and in explaining what sort of salaries were
7 included, you mentioned a number of items including major
8 league players' salaries, the salaries of all of the people
9 associated with the major league operation, and people
10 associated with the minor league operation. My recollec-
11 tion of the answer was that you did not mention minor league
12 players in that calculation.

13 A That figure would include minor league players
14 as well.

15 Q It would include major and minor league players
16 and all the other personnel associated with professional
17 baseball?

18 A Yes.

19 Q Mr. Topkis asked you several questions before
20 the recess which were designed to indicate that the reserve
21 clause has not succeeded in establishing an ideal level
22 of equality in competition. Reference is constantly made
23 to the Yankee years and to the fact that in the last five
24 years two clubs have each won two pennants which indicates --
25 three clubs have won two pennants, indicating three clubs

1 have won 60 per cent of the pennants in those five years.

2 Let me ask you, Dr. Clark, what you think the
3 record of organized baseball would be or major league
4 baseball would be over the last few years and, indeed,
5 over the history had there been no reserve clause at all?
6

7 A I think it would have been more unequal than it
8 was. I think we have established the fact that Los Angeles
9 and New York are particularly attractive areas, and clubs
10 in those areas, those two cities, had a distinct advantage
11 in attracting players and unquestionably would have attracted
12 the best players.

13 Q Is it probable that that difference would be
14 an extreme difference?

15 A Yes.

16 Q And is it possible that it would be a difference
17 great enough to distort or destroy league play as we now
18 find it?

19 A I think it is entirely possible.

20 Q So that notwithstanding the fact that an ideal
21 level of competition has not been maintained, we do find
22 that after this long experience and with the constant
23 tinkering and adjustments that baseball has made to its
24 rules that looking at baseball as it is today there is a
25 sufficiently healthy level of competition so that the

continuation of league play is assured?

MR. TOPKIS: I object to the question. It is leading.

THE COURT: It is leading, but in the light of all the testimony that has been adduced on that score I think it is not improper. I am going to allow it.

MR. HOYNES: Your Honor, Mr. Topkis --

MR. HUGHES: He has allowed it.

MR. HOYNES: Mr. Topkis' testimony on the subject --

THE COURT: Did you hear my ruling?

MR. HOYNES: I understand it.

THE COURT: The moment a lawyer gets something going for him, adopt it.

MR. HOYNES: I am not going to complain, your Honor.

THE COURT: Then don't complain. Get the answer. The moment you ask something, Mr. Topkis with his sharp mind--it is something to behold--is going to ask something else and it will all be destroyed. Let's have the question, Mr. Court Reporter.

(Question read.)

A I think there has been an improvement and that if improvement continues there very definitely should be

a continuation of league play.

Q Dr. Clark, on Page 25 of your report, which is Defendant Feeney Exhibit S, there is a chart about which Mr. Topkis questioned you. He asked, I believe, whether the four asterisk entries which represent the expansion clubs all in a lost position in that report included the payments which the expansion clubs had made to the other clubs in the two leagues for the privilege of obtaining the players and entering into the baseball business.

I believe your answer to that question was yes. Would you like to expand on that answer?

A The figures here with an asterisk by it and the total income picture -- I am just trying to remember what his specific question was.

Q It has been testified to, I believe, that the two National League expansion franchises paid \$10 million each to obtain the players and the other rights of membership in the National League and that the American League payments were something over \$5 million each. Mr. Topkis' question seemed to be referring to the sum of those payments and appeared to ask whether or not those payments were taken as expenses in the year 1969, and reflected in the income level or loss level for those expansion clubs as shown in that exhibit.

1 I believe your answer to that question was
2 yes, and I am trying to elicit from you whether or not
3 that answer was entirely accurate.
4

5 A The \$10 million referred to in the exhibits
6 we looked at of Arthur Andersen --

7 Q Plaintiff's Exhibit 7. Do you want to look at
8 it?

9 A Yes. On Page 2 under "Other income and expense,
10 there is a figure in the right-hand column under 1969 of
11 \$10,677,000 representing amortization of player contracts.

12 Q That is for all clubs in both leagues?

13 A Yes, that is for all clubs in both leagues.
14 Which would include, of course, in addition to some amortiza-
15 tion by the four expansion clubs, amortization of part of
16 the purchase cost of the Cincinnati club and of the Washington
17 club, which also changed hands not too long ago, and to my
18 understanding the Yankees are still amortizing part of their
19 cost.

20 So the \$10,677,000 does not apply entirely to
21 the four expansion clubs. It would be a lesser figure than
22 that.

23 Q So that some figure less than \$10 million
24 represents that portion of the franchise cost to the four
25 new clubs which was taken as an expense in the year 1969?

2 A Yes.

3 Q Since the total amount of those payments
4 was over \$30 million, the bulk of it remains to be taken
5 into account in future years, is that correct?

6 A That is correct, yes.

7 Q And referring again to your report at Page 16,
8 there is another charge the bottom line of which represents
9 the net margin on games after player development cost and
10 expenses have been accounted for.

11 THE COURT: Player replacement expenses.

12 Q Player replacement expenses have been accounted
13 for.

14 In computing those figures and the percentages --
15 I refer, for example, to the 1969 figure of 3.7 per cent
16 as the net margin on games after player replacement expenses--
17 did you include as an expense item any of these amortization
18 of player cost amounts that were included in the chart
19 on Page 25 and that we have been just been discussing?

20 A I did not.

21 Q So that those items, that player amortization
22 item, is not in any way involved in the computations that
23 result in the percentages contained on Page 16?

24 A That is correct. In fact, the only non-cash
25 item on this page --

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THE COURT: Which page?

THE WITNESS: On Page 16.

A -- would be depreciation and amortization and stadium improvement. The part, that is, of the total 7.2 per cent. In other words, included in the 7.2 per cent in the right-hand column under 1969, the seventh figure down, there would be a small amount of amortization or depreciation which does not represent a cash expenditure in that year, but all of the rest of the expenditures are cash expenditures as of that year.

Q I take it, however, that the portion of the expenditure that you have just referred to as amortization does represent cash expenditures for construction of stadium or stadium improvements in previous years which is being expensed over a period of time and this is the portion of the expense for the years in question?

A That is correct. To get the precise amount of that, on Page 1 of the Arthur Andersen --

Q Plaintiff's Exhibit 7.

A In the right-hand column, per cent of operating revenue, the sixth item under operating expense, there is a 2.4 per cent item which is described as depreciation and amortization of stadium and stadium improvements.

That would be for 1969 the non-cash expenditure.

Q And for 1969 that figure is --

A 2.4 per cent.

Q And in dollars?

A In dollars, \$3,011,000.

MR. HOYNES: So that the record may be clear, your Honor, Dr. Clark has referred, I think, on two or three occasions to Page 1 and Page 2 of Plaintiff's Exhibit 7.

Actually that is Page 1 and Page 2 of a portion of that exhibit, the portion of the exhibit which is entitled "Combined statement of income for 1965-1969." It is the third item in the exhibit and it does appear in two pages numbered Page 1 and Page 2. So it is to that particular item of Plaintiff's Exhibit 7 that Dr. Clark refers when he mentions Page 1 and Page 2.

I have no further questions.

THE COURT: Mr. Kramer, anything further from you?

MR. KRAMER: No, your Honor.

THE COURT: Anything further from you, Mr. Topkis?

MR. TOPKIS: No, your Honor.

THE COURT: Then the testimony of this witness is complete and I am sure he will be glad to learn he doesn't have to return.

(Witness excused.)

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THE COURT: Announce a recess until 2:15.

THE CLERK: The Court will recess until 2:15.

All rise.

(Luncheon recess.)

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4550

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2
3 MR. HUGHES: Your Honor, I noticed as we
4 were picking up loose ends that our Exhibit D is still Exhibit
5 D for identification, and I now offer it in evidence.
6 That is your letter.

7 MR. TOPKIS: No objection, your Honor.

8 THE COURT: Received. Mark it in evidence,
9 Mr. Clerk.

10 (Defendant Feeney Exhibit D received in evi-
11 dence.)

12 MR. HUGHES: Your Honor, it is the letter in
13 which counsel asserts they are making no claim for damages
14 for any business of Mr. Flood.

15 THE COURT: Yes.

16 MR. HUGHES: Your Honor, at this point the
17 defendant's clubs and the defendant presidents of the leagues
18 rest.

19 MR. KRAMER: If your Honor please, the defendant
20 Bowie K. Kuhn rests.

21 MR. TOPKIS: I suppose that leaves it up to
22 us, your Honor.

23 May I have a document marked, please?

24 (Plaintiff's Exhibit 33 marked for identi-
25 fication.)

MR. TOPKIS: Your Honor, there has just been

marked for identification as Plaintiff's Exhibit 33 a graph showing the annual consumer price index 1958 to May, 1970, based on the Department of Commerce figures.

MR. HUGHES: And you represent that that is an accurate graph based on the figures?

MR. TOPKIS: I do, indeed.

MR. HUGHES: No objection.

MR. KRAMER: No objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 33 received in evidence.)

MR. TOPKIS: And now, your Honor, as our first rebuttal witness the plaintiff will recall Mr. Marvin Miller.

MR. HUGHES: Your Honor, excuse me. Perhaps Mr. Miller can be sworn and then I think Mr. Hadden would like to make one statement. I don't want to interrupt the swearing.

M A R V I N J. M I L L E R, recalled by the plaintiff in rebuttal, being first duly sworn, testified as follows:

MR. HADDEN: May it please the Court, the statement I wish to make is that as the Court will recall during the testimony of Mr. Kauffman there was reference to a lease commitment which was embodied in a letter which we did