

on page 9?

A Yes.

MR. KRAMER: No further questions.

THE COURT: Any redirect?

MR. TOPKIS: Just a little, your Honor, if I may.

REDIRECT EXAMINATION BY MR. TOPKIS:

Q Commissioner, you testified a few minutes ago, I believe, that during the time that the AFL and the NFL did not have a common draft there was competition particularly between the stronger clubs in each league rather than between each league; did I understand you correctly?

A Yes.

Q And you testified further, I believe, that it was your opinion that had that situation continued some of the weaker teams would have failed?

A Yes.

Q Which teams did you have in mind?

A During the 1955 season -- pardon me -- during the 1965 season I do not believe that any one of the American Football League teams showed a profit. There were many large losses in that league. Of the National Football League teams operating at that time, a number lost money and profits were very minimal for those who did not lose.

Q It would have been your expectation in consequence that but for the common draft, all the AFL teams would have gone under; is that what you are telling?

A No. I said I feel that some of the teams in that league would have failed and some of the teams in the National Football League would have failed, because of the escalating costs.

Q And which teams would you have expected to survive among the AFL teams?

A The stronger financial teams.

Q Which ones were those?

A As long as he had someone to play in his team, I feel that Mr. La Marr Hunt could have afforded to continue a football team for some time.

MR. TOPKIS: It is almost within the scope of judicial notice, I should think.

THE COURT: You think aright.

Q Any others, Commissioner, or --

A I would think that as long as he had someone to play with, Mr. Bud Adams in Houston could have afforded a football team.

Q But it is your view that the competition between the two leagues was too much for some of the teams to stand? Is that what it comes down to?

2 A Vary definitely.

3 Q Now, you testified, I think that the clause pro-
4 viding for compensation in the event of a free agent moving
5 to another club was added in '61 or '62. Prior to that time,
6 there was no such clause?

7 A That is correct.

8 Q Prior to that time there were a great many movements
9 of players from one team to another in the NFL, or were they
10 relatively --

11 A That was prior to my role as Commissioner, and I'm
12 really not conversant with these specific records.

13 Q You were then with the Los Angeles Rams?

14 A For three years, yes, as manager.

15 Q During those three years, were there any players
16 who played out their options and went to other clubs?

17 A Not to my recollection.

18 Q And, conversely, did the Rams have join them players
19 from other clubs who were free agents and then signed with
20 the Rams?

21 A No.

22 Q Do you recall any instances of any players playing
23 out their options in the period 1955 to 1961, let us say,
24 with other teams and moving to other teams, or can you recall
25 any?

1
2 A Yes. There were such cases, in both the AFL and
3 the NFL.

4 Q Can you give the Court an idea of the number of
5 instances?

6 A They would have been quite limited.

7 Q Quite limited?

8 A Yes.

9 MR. TOPKIS: Thank you very much. May I have just
10 a moment to confer, your Honor?

11 THE COURT: Yes.

12 MR. TOPKIS: We have no further questions.

13 Again, our thanks, Commissioner.

14 THE COURT: Anything further? Take your time.

15 RECROSS EXAMINATION BY MR. HOYNES:

16 Q Mr. Rozelle --

17 MR. HOYNES: Your Honor, may I, just briefly --

18 THE COURT: Certainly, Mr. Hoynes.

19 Q (Continuing) Mr. Rozelle, how many players currently
20 are on the active roster of a National Football League team?

21 A Forty.

22 Q And in your testimony you mentioned your opinion
23 that had the leagues not merged, that is, the National and
24 the American Football Leagues, had they not adopted a common
25 draft, there would have been economic failures in some of

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the cities. I take it that such economic failure would have worked to deprive the fans in those cities of the pleasures of major league professional football; is that not true?

A Yes.

THE COURT: Anything further?

MR. KRAMER: It is not proper recross, but I wonder if I might --

THE COURT: Certainly. We worship substance above form.

MR. KRAMER: Thank you, your Honor.

THE COURT: Provided it is substance.

BY MR. KRAMER:

Q Plaintiff's Exhibit 13 is the Standard Player Contract for major professional football operations, and I notice that at the bottom of the backside of that contract there is something called "Club Rules and Regulations."

Do you see that, Mr. Rozelle?

A Yes.

Q I am going to read Rules 5 and 7 to you, because there has been testimony about similar rules in baseball.

"5. Players must wear coats and neckties in hotel lobbies, public eating places and on all public conveyances."

And, "7. Players shall not write or sponsor magazine

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or newspaper articles or endorse any product or service or appear on or participate in any radio or television program without the consent of the club."

My question is, do you recall when those two rules were adopted?

A Prior to the time I became Commissioner is the only time period I could put on it.

Q And they have been in it continuously, to the best of your knowledge, since the time --

A Yes.

Q -- since the time you have been Commissioner?

A Yes.

THE COURT: Is there anything at all further?

REDIRECT EXAMINATION BY MR. TOPKIS:

Q Commissioner, within your knowledge, has any professional football player ever been disciplined either by his club or by the Commissioner's office for talking with a lady in a hotel lobby?

A Not to the best of my knowledge.

Q And, Commissioner, am I right in believing that within the last five years there has been a remarkable increase in the television revenues derived by professional football?

MR. HUGHES: Your Honor, I object to the form of

that question.

MR. TOPKIS: I will ask for the specific --

THE COURT: You are withdrawing it?

MR. TOPKIS: Yes, if I may, your Honor.

THE COURT: Yes.

Q Commissioner, can you tell us what was the revenue derived by professional football from radio and television in 1969?

A I will have to do some figuring.

THE COURT: Yes. Take your time.

MR. TOPKIS: Gladly.

THE COURT: Just let us know when you're ready.

Would you like a piece of paper? Don't spoil that nice envelope. Here: Give him a pad of paper. Here. Take this one. All right.

A I would first like to have the question clarified, if I may. Are you referring to the basic contract the clubs operate under for the regular season or are you referring to that amount plus any amounts for post-season games?

Q I am referring, if I may, to the totality.

A First I would like to explain that we had a number of contracts, some old contracts, the AFL had negotiated with one network as well as contracts the NFL had with another network, and we had a number of post-season games. I would estimate in 19 --

MR. HUGHES: Your Honor, before the answer is given I would like to make an objection. This is improper redirect. There was nothing like this gone into on cross-examination.

THE COURT: That is very true. All I can do is give you ample opportunity to respond to it, but possibly I have been encouraging this by my letting you feel free and easy about these things. At any rate, the question is proper. I will allow the answer and afford counsel ample opportunity to meet it either today or some other time.

A I would estimate it for the regular season contracts and all post-season game contracts, including conference championships, Super Bowl, All Star games, in the area of \$37 million.

Q That's for '69. Now, are your contracts signed for the 1970 season?

A No.

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Rozelle-redirect

Q Going back to 1965, Commissioner, can you give us a comparable figure?

MR. HUGHES: Both leagues?

MR. TOPKIS: That is right, comparable figure.

THE COURT: Only if you can.

A It would be an estimate, and quite a general one.

MR. TOPKIS: Could I ask, then, your Honor, that the witness be directed to furnish us by letter, or whatever informal technique may be deemed appropriate -- I am sure we can work it out --

THE COURT: The only difficulty with that is you can't cross-examine the letter and they would be entitled to propound questions on the figures submitted.

MR. TOPKIS: I don't want to bother the Commissioner --

THE COURT: But you are asking him.

MR. TOPKIS: I do think I must press my request, if I may.

THE COURT: No one is throttling you.

MR. TOPKIS: I know that, your Honor, not in this courtroom. May I then request that the Commissioner be requested to furnish Mr. Hughes and myself --

THE COURT: May I suggest -- I hate to interrupt you, but may I suggest in the light of the splendid

1 cooperation between counsel and with a sense of fair
2 play that has never been exceeded, I don't care what
3 enterprise, football, baseball, we have our own fine stand-
4 ards and the lawyers have exemplified it at its best, during
5 the recess, talking with the Commissioner, both sides,
6 and find out what you want. I am sure the Commissioner will
7 be glad to oblige. Fix a time when it is convenient for
8 him to return and we will proceed.
9

10 Does that sound at all plausible, Mr. Hughes?

11 MR. HUGHES: Your Honor, I certainly wouldn't
12 seriously question the Commissioner's statement of what
13 the figures were. I assume that he is now being asked to
14 get information with reference to the National League and
15 to the American League before he had anything to do with
16 the American League. Isn't that what the inquiry is? I
17 would think we would have to know how he went about getting
18 the information for the American League because he has, as
19 far as I know, had no competence up to that point to give
20 us that kind of figure. My objection, of course, pervades
21 this whole line of inquiry because of the basic and continuing
22 objection as to relevance. I don't know whether and to
23 what extent this kind of information is regarded as having
24 any confidentiality or not. I am not questioning the
25 Commissioner in that regard.

1
2 THE COURT: I understand.

3 Commissioner, would you like to consider the
4 issue of confidentiality in the release of this kind of
5 material?

6 THE WITNESS: We have constantly with congressional
7 al committees and others, your Honor. We would certainly
8 appreciate it.

9 THE COURT: The figure you have already given,
10 does that bother you in having had to answer it this way?
11 Would you have liked --

12 THE WITNESS: I would have preferred not to
13 have answered it, but I answered it.

14 THE COURT: Judge?

15 MR. GOLDBERG: Your Honor, may I say this? It
16 is not our desire to penetrate this curtain, but the
17 figure is important and it is quite relevant in relation
18 to the Commissioner's testimony about his concerns about
19 whether or not a club was in distress or would be in distress.
20 That is the point of the inquiry. I was going to suggest,
21 if I may, and perhaps Mr. Hughes would agree, the
22 Commissioner is an outstanding authority in the whole
23 football scene. Perhaps it would save his time and the
24 Court's time and all counsel if he gave his best estimate;
25

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Rozelle-redirect

1 if he would like to do it in confidence, give it to your
2 Honor so that your Honor could evaluate the confidentiality
3 character of this. This would not be objectionable.
4
5 But this is the basic thrust of the testimony. In other
6 words, many factors enter into failing. Television revenues
7 are shared, and he has talked about two periods, and this is
8 relevant in relation to what he answered in response to
9 questions. But it is not our desire to use this except
10 as pertinent to our lawsuit, and we would be quite satis-
11 fied if he gave his best estimate, which is based upon a
12 profound knowledge of the sport, the game and studies,
13 and gave it to your Honor and then you could determine,
14 as you have reserved other confidential aspects, later as
15 to whether or not to reveal it.

16 Many of these figures are published in the broad-
17 casting magazines. I don't know how accurate the broad-
18 casting magazines are.

19 THE COURT: Very well. Suppose, then, that we
20 do this and don't hesitate to give me the benefit of your
21 reactions to it, gentlemen: The Commissioner will be
22 good enough to gather the material, after you find out
23 exactly what material they want. I don't see any sense
24 in getting into the last detail. If you can get these
25 general figures you ought to be satisfied with that.

1 Would you think there is a possibility of getting
2 that together and coming tomorrow morning and continuing
3 with your testimony tomorrow morning?
4

5 THE WITNESS: I have 26 club presidents coming
6 in for our spring meeting. It starts tomorrow morning
7 and I am missing the meeting of head coaches that I started
8 yesterday with my testimony this morning. I certainly
9 want to cooperate, but when these people have come in from
10 all over the country and I am obligated to preside over
11 the meeting, it would make it quite difficult.

12 THE COURT: What time is the meeting?

13 THE WITNESS: Ten o'clock.

14 THE COURT: And it undoubtedly will last all
15 day?

16 THE WITNESS: It will last through Thursday.

17 THE COURT: If we promise to hold you no more
18 than a half hour or so, and put you right on at ten o'clock,
19 I don't want to start this business of the Judge has power
20 and all that. I don't believe in exercising that in a
21 case where a person like yourself finds himself enmeshed
22 in answering challenges here and there, I want to suit your
23 convenience, but the first question is, there is no doubt
24 you can get this material together this afternoon?

25 THE WITNESS: Yes, your Honor.

1 THE COURT: If we didn't have a Judge's meeting
2 I would have you come back this afternoon, but I can't.
3 Come back tomorrow morning at ten. Counsel I know will
4 come right to the point on both sides tomorrow.
5

6 What do you think, Mr. Hughes?

7 MR. HUGHES: Your Honor, that is satisfactory
8 so far as it goes, but I think your Honor should be aware,
9 and the Commissioner should be aware and counsel for the
10 plaintiff should be aware that the presentation of these
11 figures just in and of themselves may pose issues that will
12 require us to go into the whole financial picture and
13 dig much more deeply. We could be at this -- I am simply
14 not prepared to commit myself to this wholesaling of this
15 kind of a subject. Maybe we will and maybe we won't.
16 I repeat, this was all improper redirect and now we are
17 off on another enormous issue or what could be the makings
18 of an enormous issue.

19 As far as it goes, it sounds satisfactory, but
20 I am not saying that it is going to be totally satisfactory
21 to get some kind of a letter.

22 THE COURT: No, no. There is no letter. I am
23 asking the Commissioner to be good enough to come in tomorrow
24 morning at ten o'clock, resume his testimony only with
25 respect to the figures that are desired. I will decide

1 after a preliminary conference with counsel maybe half an
2 hour before or a quarter of an hour before ten o'clock
3 as to how it is going to be handled, whether we will
4 receive it in open court or whether we will receive it
5 as an exhibit, mark it in evidence and then leave it to me
6 to decide whether or not it is to be kept in confidence.
7

8 You may cross-examine either in open court or
9 in the robing room, whichever I think the situation calls
10 for, and if you find that you can not complete your
11 examination in a short period of time, this witness will
12 have to come back. That's all there is to it.

13 MR. HUGHES: Your Honor, I want to be sure that
14 everyone understands that whatever form it takes for the
15 Commissioner to elicit what he has been asked about, I am
16 afraid that when that information is testified to that it
17 will not suffice for our purpose, we will want to go into
18 the whole financial picture of these clubs and leagues as
19 of that time and as of the current time.

20 THE COURT: Would you be satisfied, gentlemen,
21 if we treated this at a later stage of the proceeding?

22 MR. TOPKIS: Yes, your Honor.

23 THE COURT: I know your proper request that all
24 the proof be in before the --

25 MR. HUGHES: Your Honor, at a conference

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Rozelle-redirect

1 before your Honor we were told that the plaintiff's case
2 was going to take a day or maybe less than a day. Now
3 we have moved along, we have gotten into these areas which
4 we earnestly felt were entirely irrelevant, and as we move
5 along we get further into these areas, and I submit that
6 our arguments about relevance are sound and I submit that
7 this plaintiff should rest when he has completed his
8 case and it is not satisfactory to us to fragment the case
9 by having him rest and then come back during our case.
10

11 THE COURT: Juege, I don't want to cut you off,
12 but would you give me a couple of minutes to think about
13 this and then I won't say anything that is likely to bring
14 a torrent of reaction? Would you be good enough?

15 MR. GOLDBERG: Certainly.

16 THE COURT: A few minutes recess.

17 (Recess.)

18 End 7
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Rozelle-redirect

THE COURT: Gentlemen, won't you take your seats.

The suddenness of the question dealing with finances prompted my reaction that it had a relevancy, and I still think so, slight however, and the issue really is whether or not it warrants the expenditure of time and effort to develop this particular phase, whether on balance this effort and time and cross examination and proper preparation for cross warrants all of this activity in that regard.

Now, I will hear argument on it and I will make my ruling right now.

Mr. Justice Goldberg, you were about to talk when I asked you to be good enough to hold your fire for a little while.

MR. GOLDBERG: Your Honor, may I just say a preliminary word and not with acrimony about what Mr. Hughes had to say about our schedule for trial.

We did have discussions. It was my fervant hope that we could complete our case in short order. If the entire conversation were recorded, that would have depended upon stipulations and also, very frankly, about not making objections such as we did not make when Mr. Kramer arose today. And your Honor said that we do not want to exalt form before substance. I am very much of the same mind. I did not expect to call the Commissioner. He is a busy

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man. I do not quarrel with your Honor's ruling when we put Mr. Miller on the stand and asked him whether he was familiar with the rules. Objection having been interposed, your Honor made a ruling, as you were obligated to do. I had not anticipated that we would have that type of objection, but surely Mr. Hughes has to represent a client. I do not quarrel with that. And that explains why we have had to proceed as we did.

Now, on the merits of the relevancy of this testimony. Mr. Kramer, in his examination, brought up the circumstances of the failure of some clubs for financial reasons. That being so, it is entirely appropriate that we probe the reason. The Commissioner answered in his opinion that some of the clubs would not have been able to survive. We have, therefore, the duty and obligation and right to examine into the circumstances as to what the factors were that might have led to it and what the factors were and are that militate against that.

Television is an important factor. That is why we asked the question.

For myself, I would have been quite content -- I know the difficulty of recalling a year; the Commissioner is a preeminent authority in football; he studied the records of the two leagues, and while he was not with one of

1
2 them, in the careful performance of his duties and in the
3 negotiation of these new contracts, he obviously had had
4 to go backward and look at what was negotiated in prior times
5 for both leagues. So our line of inquiry is to develop
6 this important factor in reference to testimony that was
7 elicited by our brothers on the other side.

8 THE COURT: Mr. Hughes.

9 *Benji*
X →

10 MR. HUGHES: Your Honor, first, may I address my-
11 self to Justice Goldberg's indication that in some way or
12 other he is taken by surprise that we should interpose any
13 objections. Certain things ought to be made transparently
14 clear. The plaintiff wanted an early trial. The plaintiff
15 deliberately chose an early trial. Its counsel did say
16 that they expected to take a day and no more.

17 To say that on the fifth day of the trial our
18 interposing objections, very valid objections, somehow or
19 other has impeded the efficacy and acceleration and speed
20 of their case seems to me to be very specious indeed.

21 Now, they are good lawyers. They knew that if all
22 of this had appeared to be relevant to them and the time
23 when they were preparing for trial, they could have taken
24 the very liberal pretrial procedures that the Federal Rules
25 provide. They could have taken the Commissioner's deposition.
They could have done all kinds of things to get the kind of

2 testimony that they now are seeking to elicit at the tail end
3 of this trial.

4 Moreover, when we talk about objections, there
5 have been very, very few objections on our part during the
6 progress of this trial.

7 And as far as cooperation is concerned, we have
8 furnished them with an enormous amount of data at their
9 request and at some difficulty and at some interfering with
10 our own preparation.

11 Now, when it comes immediately to the problem at
12 hand, what are they really doing? They are really trying
13 to impeach their own witness, the Commissioner. They were
14 the ones that got into this. They brought out the fact
15 that -- the Commissioner testified that in his opinion
16 certain of these clubs would have gone under in both leagues
17 had they not had the merger. That was a subject that they
18 went into.

19 Now, what do they want to do? They want to go
20 into the amount of television receipts for the purpose of
21 showing that with those receipts somehow or other they could
22 have whacked it all up and bailed these clubs out.

23 Well, in the first place, you can't impeach your
24 own witness that way, and in the second place, if they
25 try to do that and create that impression, we have got to

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1
2 have the operating statements of all these clubs to be able
3 to show that no matter how you whacked it up, they still
4 would have gone under, and that is where we are and that is
5 where we are headed if this thing is allowed to continue.

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6 END THE COURT: Is there anything further?

7 MR. KRAMER: Your Honor, I have been silent and
8 have not joined in the objections --

9 THE COURT: Yes. Everybody takes great pride in
10 remaining silent. A lawyer should be like a baseball player:
11 eager to get up at bat.

12 MR. KRAMER: I have been trying antitrust cases
13 all my life --

14 THE COURT: Certainly, and it is nice to have you
15 with us.

16 MR. KRAMER: I can't tell you how much I agree with
17 Mr. Hughes, for this reason: We get into these side-show
18 issues, and you are never done. So in this instance I
19 would like to emphasize my agreement with Mr. Hughes.

20 THE COURT: Is there anything further?

21 Gentlemen, thank you very much. My initial reaction
22 has been sustained as a result of the argument here. I find
23 that while this is slightly relevant, it does not warrant
24 the expenditure of time and the necessity of affording
25 counsel for the defense an opportunity to go into this

1 from A to Z. That would be a terrific undertaking, especi-
2 ally since they were not put on notice that this would come
3 to the fore.
4

5 Accordingly, I sustain the objection, and I order
6 stricken from the record the last question put to the wit-
7 ness dealing with the 1969 figure, and the answer given by
8 the Commissioner to that particular question is also stricken.
9 They are stricken and disregarded, both the question and the
10 answer.

11 Now, is there anything further of this witness?

12 MR. GOLDBERG: No, your Honor. I would like to
13 ask that all the testimony elicited with respect to the
14 financial situation of football be stricken from the record.

15 THE COURT: Mr. Hughes?

16 MR. HUGHES: Your Honor, they were the ones who
17 injected the subject. I submit the record ought to stand as
18 it is.

19 THE COURT: The record stands. Motion denied.

20 MR. GOLDBERG: May I say an additional word?

21 When you elicit testimony, your Honor, you elicit
22 it on the basis that you may develop the whole testimony.
23 The Commissioner is an impartial witness. He is here under
24 subpoena. He is not a witness for the plaintiff or for
25 anybody else. He has testified according to his best

view, and I respect his view.

I think that this subject was developed by questioning on all sides. I think I said by Mr. Kramer. It was Mr. Hoynes who further proceeded.

If we are to have a record which contains reference to the financial situation of clubs relating to the operation of the reserve clause, it is my simple view that the record ought to be complete, and I do not think we ought to have a partial record for your Honor's enlightenment.

THE COURT: Thank you, Justice Goldberg.

The ruling stands.

Is there anything further from this witness?

MR. TOPKIS: Just one final question, your Honor.

THE COURT: You are sure it is not another one akin to the one before?

MR. TOPKIS: I think it calls for a yes or no answer.

THE COURT: All right.

BY MR. TOPKIS:

Q Commissioner Rozelle, do the teams of professional football share radio and television revenues equally?

A No.

Q Do they share television revenues equally?

A They share the regular season television contract

1
2 income equally.

3 Q And post-season?

4 A Most of the post-season television income goes
5 either directly to the competing players or directly or
6 indirectly to their pension plan.

7 Q I see. So that to the degree that the clubs
8 derive revenue from television, it is on a shared basis?

9 A Yes.

10 MR. TOPKIS: Thank you. We have no further
11 questions.

12 THE COURT: Anything further?

13 MR. HUGHES: No, your Honor.

14 THE COURT: Mr. Kramer?

15 MR. KRAMER: No, your Honor.

16 THE COURT: Commissioner, may I ask a question,
17 which really is of slight significance, and I must apologize.

18 Have you ever had any legal training? Yes or no.

19 THE WITNESS: No. Considerable lay training, your
20 Honor.

21 THE COURT: Strike that.

22 Did you ever have legal training?

23 THE WITNESS: No, your Honor.

24 THE COURT: That is the way. Very good. You
25 handled yourself very well. I compliment you.

1
2 You may step down.

3 (Witness excused.)

4 THE COURT: What else is there?

5 MR. TOPKIS: Your Honor, we have a stipulation
6 which has been excuted relating to the so-called Celler
7 report. It has been signed by both sides. It has not been
8 dated, but if someone would be good enough to tell me to-
9 day's date. --

10 THE COURT: Today is the 25th.

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

13 THE COURT: Certainly.

14 MR. TOPKIS: Your Honor, I offer this so-called
15 stipulation No. 2 with the annexed book.

16 MR. HUGHES: No objection, your Honor.

17 THE COURT: Mr. Kramer?

18 MR. KRAMER: No objection, your Honor, to the
19 stipulation going in.

20 MR. TOPKIS: It refers to the book but is not
21 physically attached to it. It would have been awkward
22 to have the stipulation physically attached to the book.

23 (Plaintiff's Exhibits 15 and 15-A received in
24 evidence.)

25 THE COURT: Is there anything else, gentlemen?

2 MR. TOPKIS: Your Honor, we have no further wit-
3 nesses, in view of your Honor's having told us that we would
4 be off this afternoon, and perhaps if we could have a moment
5 at the side bar --

6 THE COURT: I will be delighted to see you in the
7 robing room.

8 Mr. Hughes, is there anything else in open court?

9 MR. HUGHES: No, sir.

10 THE COURT: Would you do me the honor of joining
11 me for a few minutes in the robing room?

12 Mr. Clerk, will you announce an adjournment in
13 this case until tomorrow morning at 10 o'clock?

14 (Adjourned to May 26, 1970, at 10 o'clock a.m.)
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<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Alvin Ray Rozelle	448	480	488	

EXHIBIT INDEX

<u>Plaintiff</u>	<u>Identification</u>	<u>m In Evidence</u>
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