

occupation or business. I, therefore, charge you that the article complained of is libelous per se, that is, libelous on its face as a matter of law. I further charge you that, if the defendant does not prove the truth of said charges to your [fol. 113] satisfaction by a legal preponderance of the evidence, you must return a verdict for the plaintiff in the amount of damages to which, under all the circumstances shown by the evidence, you find he is entitled.

* * * * *

13.

In addition to seeking general damages, the plaintiff is also seeking to recover \$5,000,000 as punitive damages to deter Curtis Publishing Co. from repeating the alleged injury to his honor, reputation and integrity in the future. I charge you that under the law of Georgia, there may be aggravating circumstances in every tort, either in the act or in the intention of the defendant. If you find the defendant has failed to prove the truth of the article and if you also find that there are such aggravating circumstances, then you would be authorized to award to the plaintiff, in addition to such such as you may award for general damages, if any, additional damages to deter the defendant from repeating the trespass to the plaintiff.

Ga. Code Ann. § 105-2002 (1956 Rev.)

14.

On the question of punitive damages, as on the question of general damages, the law prescribes no set way in which such damages shall be computed. You should bear in mind that the purpose of such punitive damages is to deter a defendant from repeating the alleged wrong to the plaintiff. You would be authorized to consider in this connection the wealth of the defendant, if such fact appears from the evidence. You may also consider whether or not the defendant has sustained the burden of proving its claim that the statements made of and concerning the plaintiff

were truthful, and if you find that the defendant has not sustained that burden, then you are authorized to consider this an aggravating circumstance.

I further charge you that actual malice is an aggravating circumstance, and upon proof thereof, punitive damages may be awarded to deter the wrongdoer.

Richardson v. Roberts, 23 Ga. 215 (5) (6) (1857);
Atlanta Journal v. Doyal, 82 Ga. App. 321, 331, 60
S.E. 2d 802 (1950).

IN UNITED STATES DISTRICT COURT

PRE-TRIALS AND TRIALS—RULE 10—Filed February 22, 1962

(a) Preliminary pre-trial orders may be entered from time to time, including the time of hearing of motions. No civil case shall be tried however, until a final pre-trial order has been entered by the Court defining the issues to be tried and embracing (by reference or otherwise) all previous preliminary pre-trial orders.

(b) Plaintiff's counsel shall complete all discovery desired within a period of four months after answer is filed or shall apply to the Court for an extension of such time. When discovery is completed and the case ready for [fol. 115] trial plaintiff's counsel shall so certify to the Court and the case (if not already assigned for pre-trial by the Court) will be set down for pre-trial hearing.

(c) At a time not less than fifteen days prior to the date set for pre-trial hearing, plaintiff's counsel must have a pre-trial conference with opposing counsel, at which all of the terms of a final pre-trial order shall be discussed and, within ten days following said conference, plaintiff's counsel shall file with the Court a proposed pre-trial order covering all matters referred to in this Local Rule of Court, the appendix attached thereto, and as further ordered by the Court. Upon request by either party the Court will cause

such preliminary pre-trial conference between counsel to be held at the court house at a time fixed by the Court, at which time a partial or a complete pre-trial order may then be entered. Stipulations may be made by counsel subject to be withdrawn by a time certain, and any stipulation made by counsel will, upon good cause shown to the Court, be permitted to be withdrawn.

(d) The proposed pre-trial order prepared by counsel and submitted to the Court at the time of pre-trial hearing, or prior thereto, shall include among other things the following:

All motions filed but not disposed of; all questions regarding jurisdiction of the Court; whether the appointment of a special master should be made; qualification of the jury and the number of jurors required; documentary evidence to be introduced by each party and objections thereto; amendments to the pleadings; the matter of witnesses; depositions to be put in evidence and objections thereto; citation of authorities by any party regarding evidence, [fol. 116] procedural or substantive law; estimated length of trial and request for special assignments; efforts by counsel to settle the case; form of the verdict and separation of issues for trial.

(e) In negligence suits such other matters shall be covered as contained in appendix to this Rule and by Orders of Court.

(f) The pretrial hearing shall be attended by attorneys who will actually try the case or, upon approval by the court, by some other attorney of record who is authorized to define the issues and to make stipulations. Non-resident counsel may request of the Court a special assignment for pre-trial hearing.

(g) The final pre-trial order shall be made pursuant to Rule 16 of the Federal Rules of Civil Procedure, to Rule 44½ of the Admiralty Rules, to Orders of the Court, and to Local Rules of the Court and all amendments thereto.

(h) The case shall be tried pursuant to such pre-trial order and unless otherwise directed by the Court, no issues in behalf of the plaintiff or defendant will be considered on the trial unless contained in said pre-trial order, but, upon motion timely made by either party the terms of the pre-trial order will be amended in the interest of justice.

(i) The final pre-trial order shall make reference to the charge of the Court to be given on the trial of the case, in so far as the same may be considered at that stage of the case. Requests to charge however, shall be prepared in triplicate by counsel, each request on a separate sheet of [fol. 117] paper and numbered serially, and one copy shall be delivered to the Court and one copy served on opposing counsel at or before the time of opening of the trial, together with citation of authorities in connection therewith.

Approved effective January 9, 1962:

Frank A. Hooper, United States District Judge, Boyd Sloan, United States District Judge, Lewis R. Morgan, United States District Judge.

A True Certified Copy, February 13, 1964.

B. G. Nash, Clerk, /s/ Sammy Godsey, Deputy Clerk.

(Seal)

[fol. 118]

IN UNITED STATES DISTRICT COURT

DEPOSITION OF WALLACE BUTTS—Taken May 3, 1963

Deposition of Wallace Butts, plaintiff, taken by defendant pursuant to the federal Rules of Civil Procedure, pursuant to agreement of counsel, before Walter M. Pratt, Notary Public, at 1607 William-Oliver Building, Atlanta, Georgia, on Friday, May 3, 1963, commencing at 9:30 o'clock a.m.

* * * * *

Q. I asked you in the early part of this deposition if you knew a man by the name of E. C. Lindsey and I believe I recall your answer was that you did not.

A. No. I know no man named E. C. Lindsey.

Q. Do you know any person that goes by the name of E. C. Lindsey?

A. Nobody that goes by that name.

* * * * *

IN UNITED STATES DISTRICT COURT

CONTINUATION OF THE DEPOSITION OF
WALLACE BUTTS—Taken July 16, 1963

Continuation of the Deposition of Wallace Butts, plaintiff, taken by defendant pursuant to the Federal Rules of Civil Procedure, pursuant to agreement of counsel, before [fol. 119] Carl F. Potswald, Notary Public, at 1607 William-Oliver Building, Atlanta, Georgia, on Tuesday, July 16, 1963, commencing at 10:00 o'clock a.m.

* * * * *

Q. Concerning the Pontiac convertible automobile which you purchased in July 1961 from Boomershine Motors, do you have that car now?

A. No.

Q. What happened to it?

A. The car is owned by another person.

Q. Who is the person that owns it?

A. Evelyn Lindsey.

Q. Did she buy it from you?

A. No.

Q. Did you give it to her?

A. I gave her part of it.

Q. What part of it did you give to her?

A. Mr. Cody, the best way I can answer this is to tell you that she had a Buick which was traded in on the deal.

Q. And did she turn the Buick in and get credit on the purchase price, was that credited on the purchase price when you bought the car from Boomershine?

A. No, sir.

Q. Did she turn the Buick over to you?

A. She gave me the cash from the sale of the Buick.

Q. Do you recall how much cash was involved in the sale of the Buick?

A. I think, sir, it was \$900.

Q. Did you pay for the balance of the car you bought from Boomershine?

A. Yes, sir.

* * * * *

[fol. 120]

IN UNITED STATES DISTRICT COURT

PRE-TRIAL CONFERENCE—July 8, 1963

Mr. Schroder: Well, Your Honor, the direct—wait a minute, that is going to bring up another thing. We are going to—whether this answer that has been filed is a plea—really a plea of justification or is a joinder of the general issue, that will determine who goes first. If it is a plea of justification, which I don't think it is, but if it is and is so construed by the Court, I think the defendant has admitted a prima facie case; it is up to him to grab the ball and travel from there.

The Court: I thought we had been over that.

Mr. Schroder: We discussed it in your office at one time when it came up, you know; we were there discussing something else, and there was—

The Court: You mean by justification, the truth, of course?

Mr. Schroder: I am talking about a plea of justification as that term is used in Georgia law and in general law.

The Court: Well, that means they are pleading that it was true.

Mr. Schroder: No—well, yes, sir. In order to plea—enter [fol. 121] a plea of justification, they have to, in effect, admit a prima facie case. Now, a plea of truth is entirely different. That joins the issue. But the burden is still on me. A plea of justification, they admit, number one, that they published an article—

The Court: Yes, sir.

Mr. Schroder: —which was—with malice, which defamed my client and which was false. They have admitted in a plea of justification the complaint and everything in the complaint and every innuendo and insinuation that the complaint says was complained of in that article.

The Court: I don't think they admitted everything in your complaint. I think the substance of their answer is that they say that the article which they published is true.

Mr. Schroder: But that is—that is not a plea of justification, though. Now, I am prepared to argue and I am prepared to submit a memorandum on it, because I know I am on sound ground.

There is a real big difference between a plea of justification and a plea of truth.

The Court: His second defense filed is that the Defendant avers that the statements in the article complained of, which are of and concerning the plaintiff, are true.

[fol. 122] Mr. Schroder: Yes, sir; that is a simple plea of truth.

The Court: Yes, sir.

Mr. Schroder: That joins the issue. I say it is false; he says it is true.

The Court: Yes, sir.

Mr. Schroder: The burden is still on me to prove it is false.

The Court: You mean the allegations in the article?

Mr. Schroder: The burden is on me to prove the allegations of my petition.

The Court: Yes, sir.

Mr. Schroder: Now, that is one thing. But, now, if, as we were talking about the other day, if, in effect, this is a

plea of justification, it admits everything I have said in my complaint, and I have got authorities to substantiate it. He admits a prima facie case, and he proceeds then with the burden of proof, so he puts up his case.

Let me give Your Honor the benefit of just a few authorities on this.

[fol. 123] The Court: All right, sir.

* * * * *

Mr. Cody: This is as plain a plea of justification as can be filed, and that is that they published this article and they state that the article is true, and—

* * * * *

The Court: Mr. Cody, I think this is a plea of justification. If it is not, I will let somebody else correct it, but that is all I can see.

Mr. Smith: Our basic problem is, we think there is a difference between a plea of truth and a plea of justification, and they say it is one and the same.

The Court: I think it is one and the same.

Mr. Smith: Well, that is it; that is it.

The Court: All right, sir. I stand to be corrected.

Mr. Schroder: Well, don't let the record indicate that we have agreed.

[fol. 124] The Court: No; I am not.

* * * * *

IN UNITED STATES DISTRICT COURT

PRE-TRIAL CONFERENCE—July 8, 1963

Mr. Cody: There is no limitation on Cross-examination.

Mr. Schroder: I think there is a Code section on that.

The Court: That is the reason I was bringing it up. I am in doubt.

Mr. Schroder: 38-202: "The general character of the parties, and especially their conduct in other transactions, are irrelevant matters, unless the nature of the case involves

such character—" that is not the one I was talking about. 1804, I believe it is.

The Court: Code Section 13-1804? That's right.

Mr. Schroder: That is the one. I don't see where I have gotten it written down.

The Court: "Where witness called by defendant testifies to his good character from general reputation, it is allow-[fol. 125] able, on cross-examination, for witness to testify to his having heard of specific instances of conduct tending to disprove witness' estimate of defendant's character."

Likewise, you could—

Mr. Cody: That is 1804 you are reading from?

Mr. Schroder: That is 1804?

The Court: Yes, sir; and that is the case—the case is 70 Georgia Appeals 431. "Where witness called by defendant testifies to his good character from general reputation, it is allowable, on cross-examination, for witness to testify to his having heard of specific instances of conduct tending to disprove the witness' estimate of defendant's character." So, likewise, I am assuming—say you put up his bad character, if such. Could Mr. Cody—likewise, would Mr. Schroder be—would it be admissible for Mr. Schroder to question him about acts of good character? I am just guessing.

Mr. Schroder: I would think it would go both ways. Had you known so and so, or have you heard so and so.

Mr. Cody: Oh, yes; you get into hearsay which is inadmissible.

Mr. Schroder: That is what the section says.

[fol. 126] Mr. Cody: Yes; both ways. And by the same token I have that same right of cross-examination when we get into that field if he puts up evidence of good character.

The Court: That is another point that has been bothering me.

Mr. Schroder: We come back to an unfortunate play of words in these decisions, because what we are talking about in a libel suit—

The Court: Is good character.

Mr. Schroder: No; is not the damage to a man's character

but damage to his reputation, and that is entirely different from his character. A character is what he is, and reputation is what other people think he is.

The Court: Well, say reputation. Couldn't you question him in regard, didn't he do so and so? Did you know he contributed so much to the Boys' Club?

Mr. Schroder: Had you known that, would that affect your estimate as to his reputation?

The Court: That's right.

[fol. 127] Mr. Schroder: I think it works both ways, although I admit I am not—I don't have any—

The Court: I have read some of these Georgia cases on that.

Mr. Cody: I think Cox against Strickland in 101 Georgia answers pretty well that problem.

Mr. Schroder: Yes; that is a leading case; no question about it.

The Court: What does it say? I have read Cox vs. Strickland, but not on that.

Mr. Cody: Plaintiff, under the general rule, has the right on cross-examination of going into special facts to ascertain the nature and extent of the knowledge of the witness. Where a plaintiff's character is in issue, he has a right to sustain it by proof of his general character if he can.

The Court: Yes, sir.

Mr. Cody: Now, that covers both sides of it.

The Court: All right. Suppose he puts Coach Butts on the stand. You would not be permitted to ask him any questions in regard to specific acts, would you?

[fol. 128] Mr. Cody: Oh, yes.

Mr. Schroder: I doubt that.

Mr. Cody: You are getting into another field now.

The Court: No, sir.

Mr. Schroder: No, sir; that is the same field.

The Court: That is the same field.

Mr. Cody: On the question of reputation and character, yes; I will answer it as to character; yes.

Mr. Joiner: Your Honor, isn't that Code Section now

confined by the very words of it to cross-examination of witnesses who testify as to the character of other witnesses for the purpose of impeaching the witnesses, and not—

The Court: Here is the first sentence in that Code Section.

“A witness may be impeached by evidence as to his general bad character.” I assume that Coach Butts will go on the stand.

[fol. 129] Mr. Schroder: (Nods head in affirmative.)

The Court: Can the defendant attempt to impeach Coach Butts by evidence of immoral acts or something?

Mr. Cody: On the subject of impeachment, you are getting into a different field. We were not talking about impeachment of a witness when you first raised this point. You were talking about cross-examination of a witness who testified as to good character.

The Court: Yes, sir.

Mr. Cody: That is a different point.

The Court: Well, both of those points I want to raise.

Mr. Lockerman: Let's do talk about the ones you raised, whether or not he can go into specific acts if Butts is put on the stand.

The Court: Or if any witness is put on the stand.

Mr. Cody: I don't think a party can testify as to his own good reputation.

[fol. 130] Mr. Lockerman: I don't either.

The Court: I didn't mean that. Suppose we have got character witnesses on both sides.

Mr. Cody: Yes, sir.

The Court: You would be permitted to question the witnesses about the good character in regard to certain specific acts: had you known this, would your opinion still be the same?

Mr. Cody: Right, right. He has the same privilege with respect to any witness that I put on the stand that would testify to the bad character.

Mr. Lockerman: You could only ask him the general questions as to reputation, the witnesses you put on.

The Court: Have you known Coach Butts? How long

have you known him? Do you know his general character and reputation in the community in which he lives? Is it good or bad? Right there he stops.

Mr. Schroder: No, no. Would you believe him under oath?

The Court: We are talking about reputation now.

[fol. 131] Mr. Schroder: That is what I am talking about.

Mr. Cody: No; you are behind.

Mr. Lockerman: And he stops right there.

The Court: That's right.

Mr. Lockerman: Now, if they testified that his reputation was bad—

The Court: Bad.

Mr. Lockerman: —he can't go into any specific acts.

The Court: That's right.

Mr. Lockerman: Now, we, on the other hand, in cross-examining him, assuming that we did cross-examine him, we could ask him if he knew about good deeds.

The Court: Philanthropic deeds, and enumerate them.

[fol. 132] Mr. Lockerman: That's right. After he testified to that, assuming that he would, whether he did or did not, whether it would make any difference in his opinion as to his reputation. Of course, Mr. Cody cannot go back into this.

The Court: That ends that.

Mr. Lockerman: That ends that.

The Court: That's right; that is his reputation.

Mr. Lockerman: That's right. Now, if, in the testimony of Butts when he is put on the stand and under cross-examination by Mr. Cody—

The Court: Yes, sir.

Mr. Lockerman: —can Mr. Cody ask Mr. Butts anything about specific acts of conduct on his part?

The Court: Now, that is getting into—

Mr. Schroder: Getting into the guts of it.

[fol. 133] The Court: That is getting into the character of it, as to his veracity as a witness.

Mr. Strubing: That's right.

Mr. Cody: That's right. You are getting away from character now.

Mr. Schroder: After all, the Georgia Code Section says that libel is an injury not to character but a libel is an injury to reputation. There is a difference.

The Court: Yes, sir; but what I am driving at, suppose the defendant, in an effort to impeach his character as to his veracity and so forth, can he be asked specific acts?

Mr. Schroder: No more so than we could other witnesses, I don't think. Somewhere there ought to be some authority.

Mr. Cody: There is plenty of it.

Mr. Schroder: Let's have it.

Mr. Cody: 130 Federal, page 24.

Mr. Schroder: 130 what?

[fol. 134] Mr. Cody: Best against Kessler.

Mr. Schroder: Give me the citation, please.

Mr. Cody: 130 Federal, page 24.

Mr. Schroder: Seventh Circuit?

Mr. Cody: Case in the Seventh Circuit.

Mr. Smith: Is that a Federal 2d or—

The Court: Federal?

Mr. Cody: Just Federal.

Mr. Lockerman: Not Federal 2d? Its so long ago.

Mr. Cody: That is a situation where the plaintiff testified in his own behalf, goes to his credibility as a witness. Bear in mind, we haven't come to the question of impeachment yet, because on the subject of impeachment we have got three Code Sections in Georgia, three specific Code [fol. 135] Sections that deal with impeachment. Only some phases of this case come within the provision of those sections.

The Court: All right; what is it? 38-1804. What is the other?

Mr. Schroder: 1804—38-1804.

Mr. Cody: Let me give you the Code Sections on impeachment. 38-1801, 1802, and 1803.

The Court: 38-1801, 1802, and 1803.

Mr. Cody: Let me read you this last section. "A witness

may be impeached by contradictory statements previously made by him as to matters relevant to his testimony and to the case. Before contradictory statements may be proved against him, (unless they are written statements made under oath in connection with some judicial proceedings) the time, place, person, and circumstances attending the former statement shall be called to his mind with as much certainty as possible; and if in writing, the same shall be shown to him, or read in his hearing, if in existence; and to lay this foundation, he may be recalled at any time. When thus impeached, he may be sustained by proof of general good character, the effect of the evidence to be determined by the jury." Now, I want to state to the court here and now in unmistakable terms that a lot of statements have been made in this case in which I expect to apply the rule of impeachment, and when you do and prove previous contradictory statements or any of the [fol. 136] other impeaching qualities referred to in any one of the three Code Sections, specific acts or conduct, when they become applicable, I intend to take advantage of it.

The Court: I am basing this on some of the questions that have been propounded. Say you ask Coach Butts, had he made a statement or did he make a statement that he did call Coach Bryant and make these certain statements which are set out in the allegations—

Mr. Cody: Yes, sir.

The Court: —and he denies them. Then how could any of those specific acts about which you propounded questions in regard to a night at the Phoenix Motel in Lexington, Kentucky, how could that be admissible?

Mr. Cody: Because the jury may not believe him under oath, because he has testified both ways under oath. It's got a lot to do with the case; as a matter of fact, it gets almost down to the guts of the case.

Mr. Schroder: Say that again, please.

The Court: You want me to ask the question again?

[fol. 137] Mr. Schroder: I didn't get the answer except

he says it gets down to the guts of the case. What is the reasoning of it?

Mr. Cody: Suppose he testifies under oath—well, he has already testified by deposition, which is under oath. Suppose there are a lot of misstatements in there.

The Court: Of course, you can question him about his deposition.

Mr. Cody: Well, that is impeachment.

Mr. Smith: What is relevant about his being in the Phoenix Motel?

Mr. Schroder: Well, that is—I can't—I can't answer that at the moment.

The Court: I am not questioning the—what I am saying is—

Mr. Cody: I am not going to disclose my entire case.

The Court: How could that—have you got any authority for how that could be?

Mr. Cody: I have got the authority of this Code Section, when a man testifies under oath.

[fol. 138] The Court: Oh, yes; I know you can show that he made various, certain contradictory statements before, but how can you show that he might have had a woman at the Phoenix Motel, or whatever it might have been, how would that be relevant?

Mr. Cody: It could become relevant in several different points of view. If he won't tell the truth about it, the jury has got a right to say he might not tell the truth about anything. That is how you impeach a witness. In the final analysis—

The Court: Yes, sir; I can see where your proposition is whether he admitted this telephone call or not, or if he did, but I can't see the relevancy of specific acts with some woman, if that is what eventually comes up, and I am basing it on some of your depositions.

Mr. Joiner: Is Your Honor referring to specific acts, are you limiting it now to impeachment?

Mr. Schroder: No.

Mr. Joiner: Or just generally.

Mr. Schroder: The man is on the stand—
 [fol.139] The Court: The man is on the stand, Coach Butts is on the stand; you are questioning him, and you ask him about statements he made to Griffith or whoever it was that he admitted doing this, or if he did, I am assuming that would be relevant, but what about the fact if he spent a night with a woman before the Georgia-Alabama game, how could that be relevant? I am basing it on the nature of the depositions that were propounded.

Mr. Cody: Well, a witness may be impeached by proving the contrary to the facts to which he has already testified.

Mr. Lockerman: Relevant facts only.

The Court: It has to be relevant facts to the issue.

Mr. Cody: A witness may be impeached by disproving the facts testified to by him.

The Court: That's right. I go with you there. That is in regard to the statement, say, he made to Coach Griffith or some other coach; I don't know. How about whether he spent the night in the Tutwiler Hotel with some woman before the Georgia-Alabama Game?

Mr. Cody: I say it is relevant to his competency as a witness, his credibility as a witness.

[fol.140] Mr. Schroder: Under what Code Section?

Mr. Cody: 1803.

Mr. Joiner: Your Honor, you have got numerous statements by this plaintiff to the effect that he has never done anything disloyal.

The Court: Well, I don't know that that is disloyal. I am not willing to take judicial—

Mr. Joiner: Well, Your Honor, I think—

Mr. Cody: I can give you an actual illustration of being disloyal to his team, carrying a woman around with him, with the team, of this character. You don't think that that is material?

The Court: I don't think it is a proper thing to do, but I don't know—I can't see—

* * * * *

Mr. Joiner: Your Honor, on this point of disloyalty, I realize at first it might not seem to be relevant, but it is very definitely relevant to this case for this reason. He had made a number of statements that he has done no act of [fol. 141] disloyalty. Also he has made the statement that he has faithfully carried out the trust that has been given to him in the guidance and education of young men. Now, it is certainly relevant to show in this case, if in fact there is evidence to this effect, that he has betrayed that trust by carrying a woman with him on football trips, that he has been disloyal to the University of Georgia by charging them, without any justification or authorization whatsoever, for the expenses of her room and transportation, and other things. There is no question but that under numerous cases that evidence of similar acts which go to prove motive or intent are admissible. It doesn't make any difference whether they are acts of specific misconduct or acts that are not of specific misconduct. It is a question of motive and intent. They are always admissible.

The Court: How are you going to prove that—say you prove he took a woman to the Georgia-Alabama game and stayed at the Tutwiler Hotel. How is that any evidence of disloyalty?

Mr. Joiner: We can show further it was charged to the University of Georgia, it would be fraud and deceit to the University.

The Court: Well, now, we can't get into trying that case.

Mr. Joiner: It would be an evidence of his intent, and it would refute his statement that he has never done anything disloyal.

[fol. 142] Mr. Schroder: He has got to prove fraud and deceit. As soon as that was brought to his attention, he paid it. That is not fraud. You have got to prove fraud if you are going to do that.

Mr. Joiner: Assuming we are able to prove the fraud.

Mr. Schroder: I still don't think it would be relevant. I might illegally charge parking to the Government or taxi-

fare, when technically I wasn't supposed to do it, and sometimes you have to make refunds. I know, because—

Mr. Joiner: If it is a question of technical error, it should be excluded. If it is shown it was done knowingly and willfully, it is certainly evidence of motive and intent on the part of the plaintiff. He testified his motive and intent on giving this information was nothing disloyal to the University of Georgia, and his motive and intent in this telephone conversation, which presumably they will admit that the telephone conversation took place and that football was discussed, but the motive and intent of the plaintiff in talking to Coach Bryant was not one of the disloyalty.

The Court: We are getting off carrying a woman to the Tutwiler Hotel before the Georgia-Alabama game. I don't know what the rules and regulations are. I imagine they are pretty liberal. I know they are in—what do you call it—proselyting. I know they are there.

Mr. Bondurant: The spelling is a little different, but I think it is close.

[fol. 143] Mr. Strubing: Excuse me.

The Court: I am sorry; I thought it would be well—

Mr. Schroder: You going back to the office?

Mr. Strubing: Going back to Philadelphia.

Mr. Schroder: Good to have seen you.

The Court: I can't—unless you can show me something, I don't believe that those particular acts—I didn't know that was your theory. I thought your theory on that was showing his reputation, and I didn't think that was admissible.

Mr. Cody: There is no question but what it would be admissible on reputation on cross-examination, not on direct examination, of a witness.

Mr. Lockerman: Not cross-examination of Butts.

The Court: If they put his character in evidence, if they do put his character in evidence, then, on what we just discussed, I would be inclined to think they could ask the witness about specific acts.

[fol. 144]

TRANSCRIPT OF PRE-TRIAL CONFERENCE—July 29, 1963

The Court: I will be frank with you, as far as I can see I think it is a plea of justification, but I think it is libelous per se.

Mr. Cody: It might be, but it depends on—it depends on what the evidence is, Judge. If you base it on the man's business at the time the publication took place, I don't know—

The Court: I don't believe, Mr. Cody, I will admit that that case—I don't believe that fact that a man is temporarily out of work, if he has been engaged in something for thirty-five years and he is temporarily out of hazardous occupation for six weeks or two months, I don't think—

Mr. Schroder: I didn't mean it that way. You are absolutely right about that part of it, because you were taking it in its literal sense. What I mean to say was that if the evidence shows he has given up this business, and that is what I claim it will show, and would change the question of whether or not—

Mr. Schroder: There is evidence—

Mr. Cody: —it is libelous per se. A man could spend fifty years in a particular business and get out of it completely, and then somebody comes along and libels him, just because it had something—it had some connection with the business which he was in for fifty years, it doesn't make it [fol. 145] libelous per se. The evidence might be such in this case that it will be libelous per se.

* * * * *

The Court: Well, I think in fairness to both parties I should—I stand to be corrected by the Court above, but I think it is a plea of justification, and I will rule to that effect.

Mr. Cody: Now, Judge, the next—

The Court: If you want me to rule in the courtroom—we have got the records here; you make your points now where you can certainly protect your record.

Mr. Schroder: If it will be understood that I do here and now and will hereafter except to that, there is no need for me to make it any other time.

The Court: It will be in the record; that will be the ruling of the Court.

Mr. Cody: I think the next most important point in this case is whether or not, for any reason, specific acts of misconduct of this Plaintiff are admissible in evidence. I am not talking about the question of character witnesses now [fol. 146] and cross-examination. I think everybody pretty well agrees what the law is on that.

Cox Against Strickland is about as clear as it can be, but there are a half dozen reasons why acts of—specific acts of misconduct are admissible in this case, and I am going to ask Mr. Joiner to speak briefly on that point, because, as I view this case, it is one of the most important points in the case. We have been—we are charged in this complaint with having libeled this Plaintiff ten million dollars, and we have got a right under those circumstances and under the—under the circumstances as alleged in this complaint to bring in certain acts. Some of it are in mitigation of damages, doesn't go directly to the question of liability, and I will let Mr. Joiner, he has a brief before him.

I think we ought to give Mr. Schroder a copy.

Mr. Schroder: That would be nice.

The Court: The only case I can find on that question is the case someone cited here before, and I believe it was Kessler versus Best or Best versus Kessler, an old Federal Court decision back in 133 Federal—not Federal 2d—and I shepardized that case, and I can't find anything on the point; I mean, I can't find where it has been cited.

Mr. Cody: Is that the mitigation of damages case?

The Court: Yes, sir.

Mr. Cody: Here is my point—

[fol. 147] The Court: Have we got the 133 up here?

Mr. Joiner: 130, I believe it is, Your Honor.

Mr. Cody: Let me make one point.

The Court: Let me talk to Professor Kirby at Vanderbilt Law School; maybe he can help us.

The Court: This is Professor James Kirby of Vanderbilt Law School.

Mr. Schroder: Kirby?

The Court: Yes. He is the counselor for the Southeastern Conference, and they have requested that he sit in on the hearing, just have a seat inside the bar.

Mr. Schroder: I have no objection.

Mr. Cody: No.

The Court: There is no objection, Professor.

[fol. 148] The Court: He said he is a special counsel for the Southeastern Conference.

Mr. Schroder: Maybe he can help us; maybe he will bring some law with him.

The Court: I don't know whether these professors of law will do you any good.

Mr. Joiner: Judge, Homer said he didn't think you have the 130 Federal here. I have a copy.

The Court: I have read the case. In that case—

Mr. Joiner: I think you will find, Judge, from reading the cases that we have cited in our memorandum in the light of this petition that there are a good many other reasons other than mitigation of damages.

The Court: What would be other reasons?

Mr. Cody: Well, let me give you—pick up the article. We have got four or five different reasons set forth. Give him the substance of it.

Mr. Joiner: I think the first thing to consider is just briefly the Federal rule on evidence. There are four rules [fol. 149] that have been established by recent Fifth Circuit—by recent decisions of the Fifth Circuit. The first is the question of admissibility as procedural and not substantive. Federal Courts are not required to follow State Law.

Second is that in determining the admissibility of evidence the Federal Court is not bound by State Court rule that is less liberal than another rule which the Federal Court might be free to adopt.

The next rule is the Federal Rule concerning evidence, is one of admissibility and not exclusion. Of course, that comes from a plain reading of Rule 43.

And then the last one, and this is very important, although Rule 43(a) specifies three categories of evidence which shall be admitted in Federal Courts, it does not prohibit the receipt of probative evidence outside these three categories. Those cases are Monarch Insurance Company versus Stack(?), Dallas County versus Commercial Union, and Hamby versus Commercial Union, and Hamby versus Woolworth, all recent Fifth Circuit cases.

The first purpose for which this evidence would be admissible would be in cross-examination of the Plaintiff's character witnesses, if the Plaintiff does offer any character witnesses, and we filed a previous brief on that point. I think we pretty well covered it.

The Court: You covered that.

Mr. Joiner: The second is that specific acts of misconduct may be inquired into on the cross-examination of the Plaintiff in order to test the credibility of the Plaintiff, and, in this connection, the case of Best versus Kessler, which Your Honor has referred to, is pertinent.

Now, in that case—

[fol. 150] The Court: I thought that case was on mitigation of damages.

Mr. Joiner: Yes, sir, Your Honor, it is; but it is also on this point in this sense. The evidence, you will recall in Best versus Kessler was admitted and the objection was not excluding the evidence but was on a charge which limited the evidence to this one ground, the credibility of the plaintiff. There was no objection to the admissibility of the evidence for that purpose, and so the case does not rule specifically on that, but the dictum in the case clearly states that it was admissible for the purpose of credibility of the witness, and also, this, of course, indicates a decision by a District Judge to the effect that it is admissible for the purpose of credibility.

The Seventh Circuit went on to say it is admissible in litigation of damages, and the District Court erred in limiting it to strictly credibility and not allowing it on the mitigation of damages.

Also a recent Fifth Circuit case has some pertinence, the case of Delpit versus Nocuba Shipping Company. Although it is not a libel case, it does deal with some of the same types of misconduct that we are concerned with in this case. This was a case in which—

Mr. Lockerman: What is the citation?

Mr. Joiner: It is in the brief; 302 Fed. 2d. 835.

A longshoreman brought an action to recover for injuries received as a result of the alleged unseaworthiness of a vessel. He was allowed, that is the counsel for the [fol. 151] Defendant, in cross-examining the Plaintiff, to go into his former common law wife and children by his former common law wife, and the Court said, although this testimony may perhaps have had a slightly prejudicial influence, it was properly admitted in an attempt to show an inconsistency with a prior declaration by the Plaintiff and thereby impeach his credibility.

Of course, we would have to have some inconsistency, but it is our position there will be some inconsistencies, and this testimony would be relevant to show the inconsistencies in prior statements of the Plaintiff. That covers that category.

The next one gets into mitigation of damages. We have three separate cases of mitigation of damages. The first is different from evidence for the purpose of showing that the Defendant has a bad reputation. That is Best versus Kessler. The first phase is that such evidence is admissible for the purpose of showing that the Plaintiff is not a man of delicate sensitivity.

In this case the Plaintiff has brought his action, and I am quoting now from the complaint, for the injury to his peace, happiness and feelings. Now, that is a different element of his damages from injury to his reputation. Having tendered this issue, then any evidence which tends to show that the man is not delicately sensitive is pertinent because it shows that he was not injured to the same extent, his feelings were not injured to the same extent as would be true with a more sensitive man. In this case citing the case of Wamsley versus Kopczyński—

Mr. Schroder: Who?

[fol. 152] Mr. Joiner: Wamsley versus Kopczynski, it looks like, and they are talking about this same type of evidence.

“This evidence was potent; it means much viewed in the light of other evidence in the case. Such a character as it was intended to portray is not usually delicately sensitive, nor easily injured to any great extent. The jury might have taken that view, and have determined that mere nominal damages would in their judgment suffice.”

The Court: That is on the question of mitigation of damages?

Mr. Joiner: Yes, sir; but it is a different phase of mitigation than just the reputation itself.

Mr. Schroder: Is that a Federal case?

Mr. Joiner: No; that is a New York case.

Then, there was a Georgia case in 31 Ga. 309, which does not specifically hold such evidence to be admitted for the purpose of showing the man is of not delicate sensitivity, but I believe that the inference is present in that case.

And there is the case, a Southwestern case, and I believe that is a Texas case; also another New York case, and finally a case from the District Court in Massachusetts dealing with an analogous situation, not specific acts of misconduct but acts of prior abuse, giving and taking abuse. That was Mayor Curley, and Mayor Curley had given on any number of occasions, given the type of abuse he was [fol. 153] suing for, and this also received that type of abuse. The Court held that evidence of this was pertinent as bearing on the sensitivity of the feelings of the Plaintiff in the case.

We come down now to the second phase of the mitigation and that is that this evidence is admissible for the purpose of showing the Plaintiff is not a man of integrity. In paragraph 12 of his complaint the Plaintiff states that his action is for a trespass upon his integrity. Integrity is defined by Webster's New International Dictionary as “Moral soundness; honesty; freedom from corrupting influence or

practice; especially strictness in the fulfillment of contracts, the discharge of agencies, trusts and the like.”

In the brief we cite a number of cases that adopt the same definition of integrity.

Now, while the case of Best versus Kessler talks expressly about mitigation of reputation, I think that it has a very definite bearing on this issue of integrity, because the charge there was made with reference to the man's business. He was charged with dishonesty and clandestine activity in connection with the business transactions, and I believe that reading the holding of the case, although the word “Integrity” is not mentioned specifically, would indicate that that case stands for the proposition that such evidence would also be admissible on the question of integrity.

We come now to the question of mitigation in general, showing the man's character or reputation was injured or was not good before the libel. The same thing that you would argue where there was proper damage to an automobile prior to the collision, out of which the case arises. The simple logical argument is that it had previously been damaged, and so the subsequent damage is not as great as it would have been if there had been no previous damage.

[fol. 154] The Court: All that is true, but doesn't the Georgia code limit you on character as to the form of questions?

Mr. Lockerman: Yes, sir.

Mr. Joiner: I think the Georgia code is limited strictly to character evidence for the purpose of impeaching a witness. I don't think it goes any further than that, but even if it does, under the Federal rule we are entitled to the more liberal rule, and the fact that Georgia Courts exclude it would not cause it to be excluded in this case.

The Court: When the Circuit Court of Appeals passes on this case—I am sure they will one way or the other—isn't the question going to be on the substantive law of Georgia?

Mr. Joiner: No, sir. Cite Monarch Insurance Company versus Spach, Dallas County versus Commercial Union Assurance Company—well, those two cases are recent Fifth Circuit cases.

The question of admissibility of evidence is procedural and not substantive, and, therefore, Federal Courts are not, under the case of Erie versus Tompkins, bound to follow State law.

Mr. Schroder: That is a different situation; that is a different thing. This is brought under a statute of Georgia, under a libel law of Georgia. Ordinarily, I think, whether it gets to be a question of whether something is hearsay or not hearsay, the rule you just read I think applies.

[fol. 155] The Court: The only difference in this case and the State Court is that the—it is in the Federal Court by virtue of diversity of citizenship. As I understand the law it is incumbent on me to try a case as it would be tried in the State Court, as far as admissibility of evidence and so forth.

Mr. Joiner: These three cases are directly contrary to that view.

Mr. Cody: That is not correct, Judge. You have got a false impression there.

The Court: Well, some statements that I have read are it is correct. Maybe you have got some recent ones.

Mr. Joiner: These are all leading cases and are cited by Moore as being leading cases on this point.

Mr. Cody: On the definition of libel; yes; that would be true but not as to the admissibility of evidence.

The Court: On recovery of damages?

Mr. Cody: Well, I think on damages it would be substantive law.

The Court: Of Georgia?

[fol. 156] Mr. Cody: Yes.

Mr. Joiner: But this Monarch Insurance Company case, I believe, is the first case which was passed on the points, and it specifically holds that admissibility of evidence is

procedural and not substantive, and Federal Courts and diversity cases—

Mr. Cody: Is that that decision rendered by Judge Wisdom?

Mr. Joiner: Yes; I believe it is.

Mr. Cody: They go into a lot of detail in that case, Judge, about the admissibility of evidence. And also the other rule that in determining the admissibility of evidence in Federal Courts, the Federal Court is not bound by a State Court rule that is less liberal than another rule which the Federal Court would be free to adopt.

And then, of course, under 43(a) the plain reading of the rule itself, and its applicability in diversity cases, is that the Federal rule concerning evidence is one of admissibility and not exclusion, and, therefore, where there is a conflict between a State and Federal rule, the Plaintiff is, under Rule 43, entitled to the benefit of the more favorable rule, and these cases that I cite indicate "More favorable" means "More liberal".

The Court: You mean Federal cases?

[fol. 157] Mr. Joiner: Yes, sir. These Fifth Circuit cases are entitled to be admitted. So, no Georgia case has any pertinency in determining this issue, unless the Georgia case bears on admissibility or unless the Georgia case excludes it and the Federal rule also excludes it. But the very fact it is excluded by a Georgia case would not exclude it in a diversity action in the Federal Court.

The Court: Your contention is that the rules here should be the same as it is in the Kessler versus Best or Best versus Kessler?

Mr. Cody: Right.

The Court: In other words, in that case, as I recall it, had some question about the business dealings and somebody suing somebody for libel; they raised the question in that, hadn't he had an affair with a Spanish actress or something like that?

Mr. Cody: That's right.

Mr. Joiner: Yes, sir.

Mr. Cody: Here is—go ahead.

Mr. Joiner: Another category, which, as far as I am able to determine, is unquestioned in any jurisdiction, on the [fol. 158] laws—on the facts, we have got a difference probably on facts. In Paragraph 11(b) Plaintiff complains the article charges him with being a corrupt person, which it does not. Now, from reading the complaint, the only—

The Court: You admit it is libelous per se?

Mr. Joiner: No, sir; no, sir. I admit it charges him with being a corrupt person—

The Court: All right, sir.

Mr. Joiner: —but on that point, from the case of Morris versus Evans in 22 Ga. App., if mere fraud, dishonesty, immorality or vice be imputed, no action lies without proof of special damages, so to charge a person with being corrupt is not in and of itself libelous per se.

The Court: If it affects him in his business it is, though.

Mr. Joiner: Yes, sir; if it is made with reference to his trade or profession.

The Court: This is made—I mean, the whole article is based on his profession as a coach.

[fol. 159] Mr. Joiner: But this Supreme Court case seems to be right in point on that, unless he is engaged in the profession at the time of the libel.

The Court: I mean, in fairness to you, I am not inclined to—I mean, the interim period of six weeks, the fact that he had resigned from the athletic directorship and so forth, I believe as far as the petition alleges—

Mr. Joiner: I agree with you so far as the petition alleges.

The Court: I think it is libelous per se.

Mr. Joiner: I mean, the petition doesn't show he is not any longer in the profession, but this case does not make any distinction as to time.

The Court: We can check the record in the case to see what the distinction was, but it is apparent from the case that we have the same situation, that a person was out of business for a little while and went right back into business.

The Court: That is the case in the 50 Ga.

Mr. Joiner: No, sir. This case right here, 143 Ga. [fol.160] Mr. Cody: 143, Ga., isn't it?

Mr. Joiner: Yes, sir.

Mr. Cody: The Weatherholt case.

Mr. Joiner: The 5th Headnote covers this point. The Plaintiff in this case was in business and went out of business, and was libeled, and went apparently right back into business, and they said since he was not in business at the time of the libel he could not recover, in the absence of proof of special damages. If he can show special damages—

Mr. Joiner: He is not pleading special damages.

The Court: He is not pleading special damages.

Mr. Joiner: No, sir; but if he can show special damages, that is another question.

* * * * *

The Court: I say, if it could be shown that he did that, and that he used it and he did not repay it under such circumstances, he had to be called on for it, wouldn't your circumstances go into, even at that, would it be admissible. [fol.161] Mr. Schroder: No, sir. I am saying it would not be admissible. It could not possibly be admissible. We are suing, as you read there a moment ago, for the damage they have done to him in his chosen profession.

The Court: Yes, sir.

Mr. Schroder: And that is what the suit is based on.

The Court: Well, if the suit is brought on the basis as a football coach, Georgia Courts have even held that you can be defamatory to a farmer, that that is included—I know it covers football.

Mr. Joiner: But that the issue—

The Court: That is what he has got in his petition, his reputation as a successful coach and leader of the coaching profession.

Mr. Cody: You are assuming, of course, that the evidence will fully justify all of that. Your judgment now as to what you intend to do would be tempered with what the evidence is on that?

The Court: Yes, sir.

[fol. 162] Mr. Cody: You could—because on this particular point it does turn on what the evidence eventually will be.

The Court: What I am saying is this. The fact that he was out of it six weeks and during this six-week interval this article appeared, between February 28 and March 23, I don't think it should affect him as far as—

Mr. Cody: Okay.

The Court: 143 Ga., nevertheless, to the contra—

Mr. Joiner: There might be a difference if the evidence shows he definitely left the athletic field forever prior to the publication of this article.

The Court: Well, I assume you are not going to show that from what the petition says.

Mr. Schroder: That's right.

Mr. Joiner: I think it would be a question.

The Court: If he says, "I got out of the coaching profession, I never intended to go back, and as far as I am concerned I was through with the coaching profession," I think your 143 Ga. might apply, but unless it was—

Mr. Cody: We will hold that part of it in abeyance; I understand Your Honor's ruling.

* * * * *

Mr. Schroder: The petition in this case was deliberately drawn so as to confine it to his reputation in his profession. Misconduct, which you are speaking of, hasn't anything to do with the profession.

Mr. Cody: Look at your punitive damages situation.

Mr. Schroder: Sir?

Mr. Cody: Look at your punitive damage situation.

Mr. Schroder: Like I say, if there is any misunderstanding as to what that means, then we will redraw that part of it. We were tracking the punitive damages statute, or trying to; maybe we did embellish it a little bit.

* * * * *

[fol. 164] HUGH FLEMMING, called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. You are Mr. Hugh Fleming?

A. Yes, sir.

Q. I believe you have been sworn as a witness, have you not, Mr. Fleming?

A. I have.

Q. Where do you reside, Mr. Fleming?

A. At the present time I am residing in Athens.

Q. What is your business connection?

A. I am with Southern Bell Telephone Company.

Q. Were you at one time manager of the Athens branch?

A. I was district manager in Athens until July 1st.

Q. And then you moved to Atlanta?

A. Yes, sir.

Q. Although you still maintain your residence at Athens?

A. Yes, sir.

Q. Mr. Fleming, in response to a subpoena, did you bring with you a toll ticket—

A. Yes, sir.

Q. —of your company with reference to a telephone call, long-distance telephone call that took place on September the 13th?

A. Yes, sir.

Q. Will you let me see that, sir?

A. Those are copies attached.

[fol. 165] Mr. Cody: I'd like to have this identified as Defendant's Exhibit No. 13.

The Clerk: 13; yes, sir. Defendant's Exhibit No. 13 is a toll ticket.

Mr. Cody: Yes.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 13.)

By Mr. Cody:

Q. Mr. Fleming, is this long-distance toll ticket on an IBM card?

A. Yes, sir.

Q. Which would be difficult for a layman to interpret; is that a correct statement?

A. Some parts of it; yes, sir.

Q. Would you be kind enough to tell us what that card discloses?

A. Well, this card indicates that on September the 13th a call was placed to Tuscaloosa, Alabama, to telephone number 752-7441. It shows that it was placed by Wallace Butts and indicates that it was placed to Paul B-r-i-n-c-e.

Q. Is that spelling legible, the latter part of it? Are you having difficulty trying to find out who that is?

A. It appears very legible to me; yes, sir.

Q. Now, Mr. Fleming—

[fol. 166] Mr. Schroder: I didn't hear the answer.

The Court: He said it appeared legible to him. But how was the name spelled?

The Witness: B-r-i-n-c-e.

By Mr. Cody:

Q. Mr. Fleming, what time did that call—what time does that toll ticket show the call was made?

A. This indicates this call was made at 10:29 a.m.

Q. On September 13?

A. Yes, sir.

Q. 1962?

A. My ticket has no indication of the year on it, sir. It was billed during October of '62, but the ticket itself here does not carry the year.

Q. You don't maintain your records back of one year, do you?

A. We maintain them for a period of twelve months normally; yes, sir.

Q. Mr. Fleming, on the back of that card or toll ticket, did you have some symbols indicating the time consumed in that particular call?

A. Yes, sir; we have.

Q. Could you interpret for the jury what that first circular symbol means?

A. Well, the first circular symbol on the back indicates the time that the call was established.

Q. What about the second one?

A. The second one indicates the number of minutes that the call lasted.

[fol. 167] Q. And the third one?

A. Indicates the number of seconds that the call lasted.

Q. How many minutes and how many seconds was it?

A. This shows fifteen minutes and two seconds.

A. Does it—does the toll ticket show who the call was charged to?

A. The call—the ticket indicates the call was billed on a credit card number—card number 543-4531A-K35.

Q. Have you checked your records to see whose credit card that was?

A. No, sir; I haven't.

Q. Do you know that telephone was billed, what telephone number was billed for that call?

A. Yes, sir. This was billed to telephone number 543-4351.

Q. In Athens?

A. Yes, sir.

Q. Do you know whose number that is?

A. Yes, sir.

Q. Whose is it?

A. That is the telephone at the University, the athletic association.

The Court: Did you say the University of Georgia Athletic Association or the University of Georgia?

The Witness: It is the University of Georgia Athletic Association.

[fol. 168] By Mr. Cody:

Q. Mr. Fleming, did you bring with you a toll ticket indicating a call from Tuscaloosa to Athens?

A. Yes, sir.

Q. Will you let me see that a minute?

A. Yes, sir.

Mr. Cody: Will you identify these as No. 14?

The Clerk: Yes, sir. Defendant's Exhibit No. 14 for identification is a toll ticket.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 14.)

By Mr. Cody:

Q. Will you interpret for the jury what this toll ticket discloses? Give us the date of it first.

A. The date shown on this one is September the 16th.

Q. 1962?

A. Again I do not have the year indicated on this ticket.

Q. Yes, sir.

The Court: When was it billed?

The Witness: Frankly, sir, I don't know. This one was billed in Alabama.

[fol. 169] Mr. Cody: That is supplied by another deposition, Your Honor.

The Witness: And I did not have it.

The Court: I was ahead of you.

Mr. Cody: That information is in another deposition.

The Witness: This was a call that was placed to Athens, Georgia, from Tuscaloosa. The telephone Li 6-0262. It shows that it was a personal call to Coach Wallace Butts.

By Mr. Cody:

Q. Does it disclose the length of time that the call consumed?

A. Yes, sir. This one shows the conversation lasted sixty-seven minutes.

Q. And that is September 16?

A. September 16th; yes, sir.

Q. Let me have that just a minute. Would you mind leaving these exhibits with the Court until the completion of this case?

A. Mr. Cody, that would sure be up to the Court. These records should remain in our custody. We have copies of them if they would suffice; I'd like to leave those.

[fol. 170] The Court: Is there any objection to supplant these with photostatic copies?

Mr. Schroder: Of course not.

Mr. Cody: Very well. I have one or two more questions to ask Mr. Fleming.

The Court: All right, sir. They will be substituted with photostatic copies. They will have to remain here and the photostats can be made here.

Mr. Cody: We have photostats. He's made them for us.

The Court: All right, sir, go ahead.

By Mr. Cody:

Q. Mr. Fleming, are these records kept in the ordinary course of business of your company? Is it customary to maintain records of this type in the course of your business?

A. Yes, sir; it is.

Q. Is this the type permanent record that is made in connection with a long-distance call by your company?

A. Yes, sir.

[fol. 171] Mr. Cody: Did I give you a copy of the other one? You have both?

Mr. Schroder: I have two.

Mr. Lockerman: Do you remember what those exhibit numbers are?

Mr. Cody: I think we'd better mark the copies, ma'am. This would be 14.

By Mr. Cody :

Q. On this last exhibit No. 14, Mr. Fleming, what was the—what was the time of that call? When was it established, the connection?

A. This call was just about eight minutes of nine in the evening.

Q. Are the symbols on the back of these toll cards stamped by machine?

A. Yes, sir. They are stamped by a Calculagraph machine.

Q. That is an automatic machine that records the timing?

A. Right.

Q. Did I give you back the first ticket?

Now, let's see if we have the exhibits. This will be No. 13.

The Clerk: There are two of these.

[fol. 172] Mr. Cody: I believe that's all.

Cross examination.

By Mr. Schroder :

Q. Mr. Fleming, of course you have no idea what the content of either one of these telephone conversations consisted of, do you?

A. No, sir; I have not.

Q. Is there any way to find out by the telephone company or from the telephone company?

A. No, sir.

Q. Did you bring with you, Mr. Fleming, records of the following long-distance calls which were charged to the credit card of Coach Wallace Butts? I will read this list off, and you let me know if you brought them in, please, sir. October the 30th to Coach Ray Graves of the University of Florida; December the 14th, Coach 'Rabbit' Smith, Palatka; December 21, John Rauch, who was at

Tulane at the time, or Oakland, I forget; then January the 8th, John Rauch again; January 17th, Bernie Shiverley, coach at Kentucky; January 24, Ray Greaves, coach at the University of Florida, Gainesville; February the 6th—I mean, February the 8th, Coach Shiverley at Lexington, Kentucky; March the 28th, Bowden Wyatt, coach at the University of Tennessee; April 9, Joel Eaves, coach at Auburn University; April 25, Bob Ford, coach at the University of Kentucky; April the 26th, Paul Bryant, coach at Alabama; May 8, Bob Woodruff, coach at the University of Tennessee in Knoxville; May 16, Coach Walker of South Carolina; May 16, Dean Griffin, Denver, Colorado; May 16, Paul Bryant, Tuscaloosa; May 17, Paul Bryant, Tusca-[fol. 173] loosa; June—I mean, August 20, Paul Bryant from Tuscaloosa; August 24, Corbett, head coach at LSU; September the 9th, John White of the New York Giants; September the 13th—you have that one? September the 14th, Coach Michaelson at Pittsburgh in Pittsburgh, Pennsylvania? I said that one has been produced, September 13 Bryant at Tuscaloosa. I believe that is the one he has. September the 14th, Coach Michaelson at Pittsburgh University in Pittsburgh, Pennsylvania; September the 18th, Clyde Earhart in South Carolina; September the 22nd, R. Guepe, coach at Vanderbilt University; September the 26th, Guepe, coach at Vanderbilt University; September 22nd, Guepe at Vanderbilt University; September the 22nd, five days after the Georgia-Alabama game, Bryant in Alabama; October the 4th, Paul Bryant, Tuscaloosa, Alabama; October 4th, Weems Baskin, South Carolina University at Columbia; October 8, Bryant's secretary, Tuscaloosa, Alabama; October the 10th, Coach Howard at Clemson College; October the 15th, Ford, coach at the University of Kentucky; October the 16th, Ray Graves, coach at the University of Florida; October 18, Peterson coach at Florida State University; October the 19th, Jordan, coach at Auburn; October the 23rd, Bryant, Tuscaloosa, Alabama; October 25, Paul Bryant, Tuscaloosa, Alabama; October

25, Ray Graves, University of Florida; October 25, Mr. Ford, coach at the University of Kentucky in Lexington; October the 30th, Coach Walker, Charlotte, North Carolina; October 30th, Coach Howard at Clemson College, South Carolina; October 30, Paul Bryant, Tuscaloosa, Alabama; October 31, Howard at Clemson College; November the 8th, Ray Graves, coach at the University of Florida; November the 14th, Paul Bryant, Tuscaloosa, Alabama; November 14, Coach Walker, Charlotte, North Carolina coach; November the 15th, Paul Bryant, Tuscaloosa, Alabama; November 19th, Howard at Clemson College, South Carolina; November the 21st, Marvin Bass at the University of South Carolina, November 29, Coach Bobby Dodd, Georgia Tech; November 30, Shiverley, Lexington—I will stop there. Did you bring any of those other records?

A. No, sir; I don't have those.

Q. All right, sir. Your answer is you don't have them with you?

A. I don't have them with me is right.

The Court: Did you subpoena them?

Mr. Schroder: No, sir, I didn't subpoena them.

The Court: All right.

Mr. Schroder: I thought they were going to have all the ones here that were there. I didn't understand what was in the subpoena, what was called for by the subpoena. I have never seen the subpoena.

The Court: Do you want it?

Mr. Schroder: Yes, sir. But—he is going to have three or four days; would it be too much trouble if I give you this list?

[fol. 175] The Witness: I can get them; yes, sir.

Mr. Schroder: I'd appreciate it very much.

The Court: All right, sir.

Mr. Schroder: You are here in Atlanta, are you, Mr. Fleming?

The Witness: I am in Atlanta. These are in Athens, but I can get them.

Mr. Schroder: Would it be all right if I have this reproduced and given to Mr. Fleming to get me these calls that I have listed here?

The Court: Yes, sir.

Mr. Schroder: Thank you, sir. I will do that within tomorrow, Your Honor. That's all.

The Court: Anything further from Mr. Fleming?

Mr. Cody: Nothing further.

[fol. 176] The Court: All right, sir, you may step down. Can Mr. Fleming be excused except insofar as obtaining those other records is concerned?

Mr. Schroder: Yes, Your Honor.

Mr. Lockerman: Wait just a second.

Mr. Schroder: I believe I subpoenaed you to bring some records from another area here.

The Court: That's all right—

Mr. Schroder: Can he give those to me so he would not have to come back tomorrow to identify them?

The Court: I thought you wanted him to come back with these other records.

Mr. Schroder: Not as a witness necessarily, but to deliver them.

The Court: He would have to identify the other records, would he not?

Mr. Schroder: Bring them all back tomorrow; is that right?

[fol. 177] The Court: All right, sir.

Mr. Cody: Let me ask Mr. Fleming one more question.

The Court: All right, sir.

Redirect examination.

By Mr. Cody:

Q. On these toll tickets, Mr. Fleming, the Calculagraph record that appears on the back as to the time element, is that when the parties start talking or when the first effort is made to try to get the call through?

A. The time of the call you are speaking of now?

Q. Yes.

A. It is stamped at the time you start talking.

* * * * *

GEORGE BURNETT called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. You have been sworn, Mr. Burnett?

A. Yes.

Q. Your name is Mr. George Burnett?

A. Yes, sir.

Q. Where do you live, Mr. Burnett?

[fol. 178] A. 3550 Durden Drive in Atlanta.

Q. How long have you lived in Atlanta?

A. Since December, 1957.

Q. Mr. Burnett, I show you what has been identified in this case as the Defendant's Exhibit No. 12. Will you take a look at that, please, sir, and hold it just a minute. Is that a record which you personally made?

A. Yes, sir.

Q. That your handwriting?

A. Yes, sir.

Q. How many pages are there to that Exhibit?

A. Seven.

Q. Do you remember the circumstances under which that Exhibit was made?

A. Yes, sir.

Q. Will you explain that to the jury?

A. On September the 13th I was in an office on Eleventh Street, in Atlanta of the Institute of Oral Hygiene. I was attempting to call to business associates by contacting them through an office of the Communications International

which is located in the Rhodes-Haverty Building, and as I kept dialing the number, it was busy. Knowing that they had two lines coming into the office, I continued every twenty or thirty seconds to try to get in, and after four or five attempts there was some funny noises and electronic sounds, and the next thing I heard was an operator's voice talking to someone. It was evident it was into an open circuit, because you could hear the background noises. And I heard the operator say, "Coach Bryant is out on the field but is on his way to the phone," and asked a party she identified as Coach Butts, "Do you want to hold or do you [fol. 179] want him to return the call?" Coach Butts said, "I will hold." And within a matter of a minute a man's voice came on the line; the operator identified him. He said, "Hello, Wally." And Coach Butts said, "Hello, 'Bear.'" And they started talking.

I realized very quickly at the outset that this was a football talk, and Coach Butts began giving information to Coach Bryant about plays that Georgia was using, both offensively and defensively.

Mr. Schroder: Just a moment, Your Honor.

The Court: Just a minute.

Mr. Cody: Don't go into that.

The Court: I don't believe there is any objection made, but I will—

Mr. Schroder: Yes, sir; there is an objection made, and I would like for the jury, to be instructed.

The Court: What was the objection?

Mr. Schroder: That there were certain plays given over the phone, I think before he can identify a play, there is a conclusion on his part.

[fol. 180] Mr. Cody: Yes, sir.

The Court: Yes, sir; I think it is a conclusion, and I sustain the objection to it.

Mr. Cody: I stopped him.

The Court: All right.

By Mr. Cody:

Q. How long had they talked before you started taking notes, Mr. Burnett?

A. Probably a minute or a minute and a half.

Q. What was the first statement, if any, that you recall that was made by either party?

A. To each other?

Q. Yes.

A. They said, "Hello."

Q. What's that?

A. They said, "Hello" to each other.

Q. What next?

A. Coach Bryant's first statement was, "Do you have anything for me?" And Coach Butts said, "Yes." And then they started talking.

Q. Look at your notes there, Mr. Burnett; you can refresh your recollection. Will you explain to the jury, if this does refresh your recollection, as to what was said, explain to the jury what you heard, and in doing so you can refer to your notes.

A. Well, as I have said before, I don't remember the exact words of those notes now. I do know the first page [fol. 181] I wrote 'Bear' Bryant's name down and Wally Butts' name down, and the words that Reismueller was the greatest in history. I do know—I do recall that Coach Butts told Coach Bryant that Reismueller was the best they ever had at Georgia in the history of Georgia.

Q. Do you know—did you know at the time whether or not Georgia had any such player as that?

A. No, sir; I did not.

Q. Do you know whether or not the spelling on your memorandum there is correct?

A. I wrote it as it sounded; I don't know.

Q. You wrote it R-e-i-s—

A. Yes, sir.

Q. —m-u-e-l-l-e-r?

A. Yes, sir.

Q. Turn to the next page, Mr. Burnett. Does the reference to Rakestraw mean anything to you or bring back any recollection of what was said about him?

A. He—this was written not actually as it was said. He said, “Rakestraw goes to the right, evidently is a man in motion.” I don’t remember; I wrote: “Rakestraw to the right.”

Q. I am not asking you to explain the method of play; I am just trying to get you to explain to the jury if you remember what was said about Rakestraw.

A. That this one play that Rakestraw went to the right and on an optional left pass, if they can block the man on the corner, if not, they would keep running. If they can block the man on the corner, they keep running; if not, they pass.

Q. You were writing what you heard?

A. I was writing as I could get the words.

[fol. 182] Q. Do you understand what that means?

A. Yes, sir.

Q. Take the next note that you have.

A. Well, he said—I wrote down “Well-disciplined ball club—added two coaches.” It was said at this time that this was of no thanks to Johnny Griffith, “we have added two coaches.” What that meant I had no way of knowing.

Q. What did it mean to you?

A. It didn’t mean anything to me actually. I asked one of my associates—

The Court: That would be hearsay.

Mr. Cody: Don’t go into that.

The Witness: Sorry.

By Mr. Cody:

Q. Did you know that Georgia had added two coaches?

A. No, sir.

Q. I believe you said that the order in which these pages are clipped together now are not necessarily the order in which you made these notes?

A. That is right.

Q. You don't remember the words in which they were taken?

A. No; I don't. I know that this was the first page because I wrote the two parties' name on it, and I wrote the last page because this was the end of the conversation [fol. 183] where I wrote the time and the date and the last note.

Q. Turn over to the next page, the first item.

A. You want me to read it?

Q. Is that an abbreviation of what was said? If it is, tell the jury what the entire conversation was on this point or any other one in the notes.

A. I don't remember all of the incidental conversation pertaining—as I said, I was writing these as they were talking, therefore I missed some of the conversation as I was writing. It said, "On side guard pulls on sweep."

Q. Do you remember anything else that was said about that?

A. No, sir.

Q. What about the next item?

A. "Don't overshift." Whether this was in relation to the fact of the on side guard pulling, I don't recall; it came immediately after this.

Q. What about the next item?

A. He made the remark that Woodward—

The Court: Who made the remark?

The Witness: I'm sorry; Coach Butts told Coach Bryant that Woodward commits himself fast on pass defense, and he was the safety man; I wrote this one, "Woodward commits fast—safety man."

By Mr. Cody:

Q. There is a dash after the word "fast"?

A. Yes, sir.

Q. Anything else said about that?

[fol. 184] A. No, sir.

Q. What about the next item?

A. As I wrote it, it says, "Weak defense, anybody except Blackburn." He made the remark the pass defense was weak, pass to anybody and anybody's direction except Blackburn, that he was strong on pass defense.

Q. Did you know that Georgia had a player by the name of Blackburn?

A. No, sir; I do not.

Q. Do you know anything about the Georgia team?

A. No, sir; I had not followed the Georgia team by names, and I didn't know the people involved.

Q. Have you ever seen Georgia play?

A. No, sir.

Q. Do you know very much about football yourself?

A. Yes, sir.

Q. You play in high school?

A. Yes, sir.

Q. Play anywhere else?

A. Freshman year of college, just on the squad my freshman year, and the war broke out.

Q. Did you later learn there was a Blackburn on the Georgia team?

A. No, sir; I don't remember that I ever learned there was anybody named Blackburn on the team. It still doesn't mean anything to me.

Q. Turn to the next page, Mr. Burnett. What is the next item?

A. It says, "Baer slot right, split right end out."

Q. Does that mean anything to you?

A. I have since been told—

[fol. 185] Mr. Schroder: Your Honor—

Mr. Cody: Don't go into what anybody told you.

The Court: I sustain the objection.

By Mr. Cody:

Q. Did you know at the time what that meant?

A. "Slot right" was a term I wasn't acquainted with.

Q. I notice you spelled "Bear" B-a-e-r?

A. I wrote it as I heard it.

Q. Is that what it sounded like to you?

A. That is what it sounded like to me.

Q. Did you find out later who that referred to?

A. Yes, sir; I was told—

Mr. Schroder: Same objection.

The Court: Sustain the objection. Don't lead him into hearsay, Mr. Cody.

By Mr. Cody:

Q. Let's go to the next item, Mr. Burnett.

A. The next one says "Long count, left half in motion." I wrote this, and I cannot recollect what it was in reference to, whether—I did not draw a line after the first one I read. Evidently this was all part of sequence as I was writing.

Q. Were you trying to write down everything you heard?

[fol. 186] A. I was trying to catch as much of it as I could; yes, sir.

Q. What about that next item?

A. It says, "Best since Trippi," and I wrote the word "Porterfield." He made the remark that Porterfield was the best back since Trippi.

Q. Did you know Porterfield?

A. No, sir; I knew—

Q. Did you know Georgia had a player by that name?

A. No, sir; I did not.

Q. This is still all in your handwriting.

A. Yes, sir; it is.

Q. I say "handwriting"; it is your—

A. It is a combination of printing and writing. I print more than I write.

Q. Turn over to the next page, Mr. Burnett. What is the next item?

A. It says "Baer on a hook on goal line."

Q. Did that mean anything to you?

A. No, sir; it didn't. I wrote it; he said that when they are on the goal line that "Baer" goes on a hook, and I didn't have the slightest idea what he meant on a hook.

Q. What about that next item?

A. "Slot to right ends normal (3 yards)." He made the remark this was the formation they used until they get down to the—close to the goal line, that they play a slot to the right and the ends are normal, split out about three yards.

Q. Did that mean anything to you?

A. Well, the "ends out 3 yards" did. As I say, the "slot" is—was new to me; I didn't understand what a "slot" was.

Q. What about the next item?

[fol. 187] A. It says, "Right halfback on fly," and then it says, "Left halfback, quarterback gives to left half, left guard pulling blocks on corner."

Q. What does all that mean, if you know?

A. Well, to me it meant a—

Mr. Lockerman: Your Honor, I don't think that—

Mr. Cody: I withdraw that.

The Court: I don't think, Mr. Cody, what his interpretation was is admissible. I sustain the objection.

Mr. Cody: I withdraw that.

By Mr. Cody:

Q. Was anything else said on that subject other than what you wrote down on that item?

A. I don't recall specifically.

Q. Now, turn over to the next page; take the first item there.

A. "Slot or wide slot till goal line."

Q. Do you remember anything else that was said on that subject?

A. This is where he said they used this slot or a wide slot until they get down to the goal line.

Q. What about that next item?

A. "Can't quick kick." I wrote there just the three words. This was in response to a question. Coach Bryant asked

him, "How about quick kicks?" And he said, "Don't be worried about—" Coach Butts said, "Don't be worried about [fol. 188] quick kicks; they haven't got anybody that can."

Q. Let's get to this next item.

A. You want me to read it?

Q. Read that.

A. "Slot right, right half on fly, screen to him."

Q. Do you remember anything that was said amplifying that statement?

A. He just made that statement.

Q. What about that next item?

A. I wrote down "29-0 series" and "Baer catches everything they throw." He put this in the form of a statement to Coach Bryant, "You remember my old 29-0 series." They used that. And "Baer catches everything they throw," he referred to it as their 29-0.

Q. Turn over; anything else you heard with reference to that particular item?

A. No, sir.

* * * * *

Direct examination (Continued).

By Mr. Cody:

Q. Mr. Burnett, I will return these notes to you. Do you recall where we were when we adjourned?

The Court: The Court Reporter can read it back.

Mr. Cody: I remember now.

By Mr. Cody:

Q. Turn over to the next page, Mr. Burnett. Read that item.

[fol. 189] A. It says, "Slot right, left end out 15 yards."

Q. Do you remember anything that was said about that other than what you wrote down?

A. No, sir; I don't remember anything else other than that.

Q. What about the next item?

A. The next item says, "Drop end off, contain with tackle." This was a Georgia defensive play. I wrote down "Georgia (defense)" and drew an arrow from "Georgia," that Georgia drops the end off and contain with a tackle.

Q. What about the next item?

A. You want me to read it as it is?

Q. Read it.

A. It says "Give Wally ring Sunday," and then I wrote "641 Athletic Office, 10:04 a.m., September 13, 1962, Jackson 5-3536."

Q. Let's back up there just a minute. Who was going to ring who Sunday?

A. Coach Bryant asked Coach Butts, "Will you be home, 'Wally?'" And he said, "Yes, I will." And he said, "I will give you a ring Sunday." And he said, "All right." And they hung up.

Q. What is this "641"?

A. The operator stayed—I stayed on the line. I didn't hang the phone up immediately, and the operator came on and asked me—asked—

Mr. Lockerman: Your Honor, please, I don't think that he ought to go into any conversation.

Mr. Cody: Don't go into that.

[fol. 190] The Court: Yes, sir; that would be hearsay; I sustain the objection.

The Witness: I asked the operator to what number—

Mr. Lockerman: I don't think he ought to go into that conversation, Your Honor.

Mr. Cody: Don't go into that.

The Court: I sustain the objection.

By Mr. Cody:

Q. This "10:40 a.m.," that is the time?

A. This was the time the call was completed. I looked at my watch and wrote down the time.

Q. And the date?

A. And the date.

Q. September 13, 1962?

A. Yes, sir.

Q. What is that number at the bottom?

A. This is the number I was trying to get, Jackson 5-3536 was the Communications International Office.

Q. Before we get off of this particular call, Mr. Burnett, who was it doing most of the talking?

A. Coach Butts was.

Q. Do you recall whether or not this information was or this discussion was in question-and-answer form?

A. Some of it was; yes, sir.

[fol. 191] Q. And some not?

A. Some not.

Q. Was it given with some hesitation or reluctance?

Mr. Lockerman: Your Honor, please, I don't think he ought to try to interpret—

The Court: Yes, sir; that is a conclusion; I sustain the objection.

By Mr. Cody:

Q. What did you do with the notes, Mr. Burnett? What happened after this conversation took place as far as you were concerned?

A. I hung up the phone and sat there for about twenty or thirty seconds, and then I picked the phone up and called the Communications International Office, and it was answered by Mr. Milton Flack.

Q. What did he say?

A. And I asked Milton—

The Court: That is hearsay; I will let him state he called Milton Flack, but anything he might have asked him would be hearsay.

By Mr. Cody:

Q. What number did you call him at?

A. Jackson 5-3536.

Q. That is the one you had been trying to get?

A. Yes, sir.

Q. How long had you known Wallace Butts?

A. I didn't really know Coach Butts. I had met him on [fol. 192] one occasion. I had never actually—I didn't actually know him.

Q. Did he have some connection with the same company for which you work?

A. He was on the Board of Directors.

Q. When did you have occasion to contact Bob Edwards, if you did?

A. This wasn't until January the 4th that I talked to him about this.

Q. Who is Bob Edwards?

A. He is a division manager for our company.

Q. Where does he live?

A. In St. Simons, Georgia.

Q. Did he go to the University of Georgia, if you know?

A. Yes; he did.

Q. Was he a football player?

A. He played football; I don't know how much football he played with Georgia.

Q. Did you contact him about these notes? Did you tell him about this conversation, and, if so, tell me—tell the jury what you told Bob Edwards.

A. On the 4th of January we had just had a two-day—

Mr. Schroder: If it please the Court, I think any conversation between this witness and some third party would be pure hearsay.

The Court: Yes, sir; I sustain the objection.

[fol. 193] By Mr. Cody:

Q. Did you later meet with Bob Edwards and Coach Griffith?

A. Yes, sir.

Q. Where?

A. At the Biltmore Hotel.

Q. When was that?

A. On Thursday, January the 7th, during the week of the Coaches' conference.

Q. Did you—what did you do with the notes on that day?

A. Gave them to Coach Griffith.

Q. Have you had the notes since that day?

A. No, sir; not until right now.

Q. You know what he did with them?

A. Turned them over to the Athletic Association.

Q. You have had—you have had no control, no possession over those notes since?

A. No, sir.

Q. Up until today?

A. That's right.

Q. Mr. Burnett, did you—did you later have a meeting with the University officials?

A. Yes, sir.

Q. About what date was that?

A. It was about—not quite—about a week after I met with Johnny Griffith. This was one, as I remember right, Thursday, the following week, about the twenty-fourth of January.

Q. I am not trying to pin you down to the exact date, but I want to get it as close as I can. About the 24th of January?

A. About the 24th of January.

Q. That would be 1963?

A. Yes, sir; this year.

[fol. 194] Q. Do you know if they had the notes with them at that meeting?

A. Yes; they did. I was shown the notes at that time.

Q. Who was at that meeting?

A. It was in the office of Mr. Cook Barwick, and present with Mr. Barwick was Dr. Aderhold and—who is president of the University, and a Mr. Bolton, who is on the athletic committee and Bob Edwards and myself.

Q. Mr. Barwick, the gentleman sitting at this table?

A. Yes, sir.

Q. Was that the only meeting you had with the University officials?

A. No, sir; I had subsequent meetings after this, two or three, if I remember right.

Q. Do you know the purpose of that meeting?

A. Do I know—

Q. Yes.

A. —or did I know?

Q. Did you know the purpose of it?

Mr. Schroder: If the Court please, if he knew the purpose it would have to be told to him by some other party.

The Court: Yes, sir; I think that would be a conclusion also; I sustain the objection.

By Mr. Cody:

Q. When was the second meeting that you had with the University officials?

[fol. 195] A. About a week later in Mr. Barwick's office, approximately a week or ten days later.

Q. At that first meeting did you or not sign an affidavit?

A. No; I did not on the first meeting.

Q. Did you give them permission to take a lie detector test?

A. Yes.

Q. When were you first asked to take—to make an affidavit?

A. At that same meeting.

Q. And that was given subsequent to the meeting?

A. Yes, sir.

Q. Where were you—did you sign it in Mr. Barwick's office?

A. Yes, sir.

Q. What did you say the date of the second meeting was with the University officials?

A. About a week or ten days, as I remember, after the first time I met them.

Q. Were you requested at that meeting—

A. Yes, sir.

Q. —to take a lie detector test?

A. I was.

Mr. Lockerman: Your Honor, please, I don't think he ought to go into the conversation at that meeting.

The Court: You can ask him whether he made an affidavit at that meeting; I sustain the objection.

[fol. 196] By Mr. Cody:

Q. Did you take a lie detector test at that meeting?

A. Not at that meeting.

Q. When was that?

A. I took the lie detector test during the first week of February about 4:30 in the afternoon.

Q. Who gave you that test?

A. A Mr. McManus or McMain.

Q. Did you go to him in response to the request that had been made of you?

A. Yes, sir.

Mr. Schroder: That request would be hearsay.

The Court: Yes, sir; I sustain the objection.

By Mr. Cody:

Q. After the affidavit was signed, Mr. Burnett, who did you give it to?

A. Mr. Barwick.

Q. Getting back to this telephone conversation for the moment of September the 13th, did you hear any mention made of any ticket sales?

A. No, sir.

Q. What about rule changes?

A. No, sir.

Mr. Schroder: What was that last question?

Mr. Cody: Rule changes.

[fol. 197] Mr. Schroder: Oh.

By Mr. Cody:

Q. Did you hear any mention made of any financial investments?

A. No, sir.

Q. Did you hear any mention made of a concern called Commercial Enterprises Incorporated?

A. No, sir.

Mr. Cody: I believe that is all for the moment, Your Honor.

The Court: All right, sir. Go ahead, Mr. Schroder.

Mr. Schroder: Please the Court, would it be out of order for me to inquire as to your idea of adjournment—for adjournment today?

The Court: If it is all right with counsel and the jury, I think we can run to 4:30 unless you—I am here, I can conduct it as long as you wish. We'll go ahead; we will run for twenty-five or thirty more minutes.

Mr. Schroder: Whenever it will be, I will not finish today.

The Court: I presume Mr. Cody will have some further questions on direct. If we don't finish with him, that is all right. We will go ahead right now.

[fol. 198] Cross examination.

By Mr. Schroder:

Q. Mr. Burnett, on September 13, 1962, it is your testimony, is it not, that you were in the office there on Eleventh Street of a concern known as Oral Hygiene, Inc.?

A. No, sir; Institute of Oral Hygiene.

Q. Institute of Oral Hygiene, Inc.?

A. No, sir; it was not a corporation.

Q. Who was your—was anyone associated with you in that business?

A. John Carmichael and Mr. Milton Flack.

Q. To what extent was John Carmichael an associate of yours in that business?

A. He was—he had an exclusive sales contract with a company called Sterilray, Incorporated, to merchandise a toothbrush sterilizer, an electronic toothbrush sterilizer.

Q. Was he the one that put the money into the business there known as the Institute of Oral Hygiene?

A. Yes; he was. Yes; he was.

Q. At the time he made his investment in that business, is it or not true that you and he were employees or associated with Foundation Life?

A. Yes.

Q. And the two of you took a leave of absence from Foundation Life to go into this sales agency handling the sterile toothbrush?

A. Yes.

Q. How long had you all been in that business after you left Foundation Life before September 13, 1962?

A. About two months at the most.

[fol.199] Q. You have referred to the fact that a man named Milton Flack also had an interest in the Oral Hygiene—Institute of Oral Hygiene?

A. His interest was because he was the president of the Sterilray Corporation with which we had a sales contract.

Q. Did he have an office there in the space on Eleventh Street?

A. No; he did not.

Q. Did anyone—any gentleman or any man have any office space there other than you and John Carmichael?

A. No.

Q. On September 13, 1962, you say that you arrived at that office in the morning?

A. Yes.

Q. Was Mr. Carmichael at the office that morning?

A. No; he was not.

Q. Was he customarily at that office before you arrived?

A. Most of the time, yes.

Q. And when you got there on this particular morning you missed him and you tried to reach him over the telephone?

A. Yes; I did.

Q. You tried him at his home?

A. I recall I did.

Q. And you then tried him at this downtown International Communications office space in the building across the street here?

A. Yes.

Q. You did not know at that time that Milton Flack was in that office?

[fol. 200] A. No; I did not.

Q. Did you know where Milton Flack was at that time?

A. No; I did not.

Q. It was your idea, though, that you were calling only John Carmichael?

A. Either John or Milton. We check in with each other at that phone.

Q. You had no intention, then, of calling Carmichael only when you called the office of Communications International?

A. I was trying to locate either Mr. Carmichael or Mr. Flack to find out where Mr. Carmichael was.

Q. It was Mr. Carmichael you were looking for?

A. This was my intent; yes, sir.

Q. And your testimony is that in your efforts to dial the Communications International office you became connected in with this telephone conversation that you have talked about on direct examination.

A. Yes.

Q. Was there anyone in the office there at the time that you dialed the number?

A. No, sir; there wasn't.

Q. John Carmichael came in later?

A. Yes; he did.

Q. Did you ever get in touch with John Carmichael over any telephone, or did he just come into the office there where you were?

A. He just came into the office.

Q. After the telephone conversation was over and the parties had hung up, the parties hung up that you were listening to?

[fol. 201] A. Yes.

Q. And you said the line stayed open?

A. Yes.

Q. And you did have a conversation with the telephone operator?

A. Yes.

Q. You later, shortly after you hung up, I believe, the testimony is that you telephoned Communications International again?

A. Yes.

Q. Now, the notes that you were discussing with Mr. Cody that you say you took at the time this telephone conversation was being listened in on by you, you discussed the contents of those notes later with Mr. John Carmichael?

A. Yes; I did.

Q. And after your discussion of those notes and with what you had heard between the two parties on the phone with Carmichael, you then later on in the afternoon discussed those with Mr. Flack?

A. Yes, sir.

Q. You discussed them first with Carmichael alone?

A. Yes.

Q. And then later in the afternoon you ran into or Mr. Flack came by; is that correct?

A. He came by the office.

Q. And you at that time talked about them in the office of both Mr. Flack and Mr. Carmichael?

A. Yes, sir.

Q. All right, sir. After talking with Mr. Flack and Mr. Carmichael, the three of you decided to just forget the whole thing?

[fol. 202] A. This is right. It was Mr. Carmichael's advice that we forget about it.

Q. Did Mr. Flack advise you also to just forget about the whole thing?

A. Yes; he agreed with Mr. Carmichael.

Q. All right, sir. And you did proceed to forget about the whole thing?

A. I tried to; yes.

Q. You took the notes, as you called them, to your home and hid them away?

A. I just put them in a box in a dresser drawer.

Q. And you did not, or did you, discuss anything about this with anybody from September the 13th until—with some other party until, I think you said, January the 4th?

A. I don't recall discussing it with anyone or mentioning it to anyone.

Q. Don't you think you would have recalled it if you did?

A. I think I would have.

Q. There is nothing magic about January the 4th; you are recalling you discussed it at that time?

A. What do you mean "magic"? I don't understand.

Q. There is nothing about January the 4th that would make you remember discussing it on that day—

A. That fact that we—

Q. —and yet not before that?

A. The fact that we had a meeting at the office, Mr. Schroder, and at the end of the meeting I was sitting in the office with Mr. Edwards, and we got into general conversation with each other, being close friends; I distinctly remember that day.

Q. All right, sir.

[fol. 203] A. I don't recall discussing this with anyone else in between.

Q. All right, sir. Now, you have indicated that in this conversation that you were listening to some reference being made to a telephone call that was to be placed by the two parties, or shall we say by one of the parties to the other party on a following Sunday—

A. Yes, sir.

Q. —September the 16th?

A. Right.

Q. That is all that you remember? Certainly your notes don't show anything about what was to be said at that conversation, do they?

A. No. Mr. Schroder, several times in the conversation Coach Bryant would ask questions, and Coach Butts said "I don't know." And a couple of times Coach Bryant said "Can you find out?" And he said, "I will try." And they ended up the conversation with—by him saying, "Will you be home Sunday, Wally?" And he said, "Yes." He said, "I will give you a call then."

Q. Do you remember having made the statement that you did not hear Coach Bryant tell Coach Butts that Coach Bryant wanted to wait until after Coach Butts had seen the last week scrimmage before renewing the conversation next Sunday?

A. That wasn't mentioned.

The Court: What are you reading from, Mr. Schroder?

Mr. Schroder: A statement that was made.

[fol. 204] The Court: In the deposition?

Mr. Schroder: It was a statement that was made by—a statement made by the witness before Gene Cook. He said the statement was not made, so I don't have any problem. It would have been a previous contradictory statement if he said no, he didn't say it.

The Court: We don't want to get into Mr. Cook.

Mr. Schroder: Mr. Cook's report has nothing to do with this case; I understand that.

The Court: Go ahead.

Mr. Schroder: That report has nothing to do with this trial, even mentioning it. That is the reason I didn't identify it.

The Court: All right, sir.

By Mr. Schroder:

Q. It is your testimony today, Mr. Burnett, that there was nothing said in the telephone conversation to which you were listening that would even intimate that Coach

Butts was to be called by Coach Bryant after Coach Butts had had an opportunity to observe the last week of scrimmage?

[fol. 205] A. Well, all I know, Coach Bryant asked him would he be home on Sunday, and Coach Butts said he would, and he said, "Fine, I will give you a call then." And that is all I heard him say about the telephone call.

Q. Your answer to my question, then, would be there was no intimation of that?

A. Of a scrimmage, no.

Q. Thank you, sir. In the conversation that you say you overheard between Coach Butts and Coach Bryant, was there any mention made of gambling?

A. No.

Q. Was there any mention made of either party betting on the outcome of the game?

A. None at all.

Q. Was there any mention made about how many points one team might be favored over the other to win by?

A. No, sir.

Q. Was there any mention made about betting on odds?

A. No, sir.

Q. As a matter of fact, did either Coach Bryant or Coach Butts say anything in that conversation that you say you overheard to indicate that what they were discussing was to be done or not done in the Georgia-Alabama game coming up the following Saturday?

A. You will have to say that again; I don't understand what you are saying.

Q. In this conversation that you were listening in on, I want you to state to the jury and to the Court whether or not either Coach Butts or Coach Bryant, in relation to anything they might have been talking about, said that this [fol. 206] was to be done or used or that this was not to be done or not used in the forthcoming game between the University of Georgia and Alabama?

A. Well, Mr. Schroder, Coach Bryant asked the question at the onset, "Do you have anything for me, Wally?" and Coach Butts proceeded to give plays of the team—

Mr. Schroder: If the Court please—

A. (By the witness) —of the plays that would be used.

Mr. Schroder: Just a moment. The answer is not responsive, and it is a conclusion when he says he gave plays. Plays definitely are a conclusion by the witness as to what—

Mr. Cody: He hasn't finished.

The Court: Aren't you asking for an interpretation yourself, Mr. Schroder, which I have previously ruled out?

Mr. Cody: I think he ought to let him answer the question, Your Honor, and not stop him in the middle of an answer.

Mr. Schroder: I have no objection to him answering the question.

The Witness: Coach Butts proceeded to give the plays that I was—that I wrote down at the time, and at no time in the conversation did Coach Bryant ever mention any—[fol. 207] thing about Alabama plays, and the two teams were playing each other a week later.

By Mr. Schroder:

Q. The question, Mr. Burnett, is simply this—well, let me ask you this. Do you remember when your deposition was taken in the office of your lawyer, Mr. Howard?

A. Yes, sir.

Q. On June 3, 1963?

A. Yes, sir.

Q. Being present were myself and Mr. Lockerman and Mr. Smith for Coach Butts, and Mr. Bondurant for the Post?

A. Yes, sir.

Q. You remember at that time this question being asked you?

A. I don't remember the particular question.

Q. I haven't asked it.

The Court: He is going to relate the question to you.

By Mr. Schroder :

Q. Question: "Was there anything said by either party directly that what they were talking about was to be done or not done in the Alabama-Georgia game, or did you just conclude that?" Do you remember giving this answer—

A. I imagine I probably concluded it. They didn't—he didn't say they were going to do this Saturday in the Alabama game, no.

Q. In other words, what you have stated is a conclusion on your part?

[fol. 208] A. I imagine so; yes, sir.

Q. Was there anything at all in the conversation that you say you overheard which does not appear in your notes that you attach any significance to, or do your notes contain—when you say "plays"—

A. There were things—

Mr. Cody: Your Honor, that calls for a conclusion. He has testified to the facts as he knows them.

The Court: I believe Mr. Schroder asked him in his question, was there anything that he remembered that wasn't in his notes that he could testify to.

Mr. Schroder: That's right.

Mr. Cody: He has already testified the thing—

The Witness: There are a lot of things I can't testify because I can't remember them in detail.

The Court: Just a moment.

The Witness: I'm sorry.

The Court: I think he is entitled to go further and ask him is there anything further in his notes—not in his notes [fol. 209] to which he can testify. I think that is proper cross-examination.

Mr. Cody: Anything else besides what he has testified to; yes. I didn't direct my objection towards that.

The Court: What did you direct your objection to?

Mr. Cody: He said, was there anything in the notes—in the conversation that he heard other than what is in those notes. That is the substance of his question. He has al-

ready testified to things that have taken place in the conversation.

The Court: Yes, sir; but I don't know whether he has testified to everything.

Mr. Cody: He hasn't. Now, if he will ask him—if his question is directed towards what else—

The Court: I think that is what his question was. Ask your question again, Mr. Schroder.

By Mr. Schroder:

Q. Mr. Burnett, you say that you made certain notes of what you consider to be significant that was discussed in the telephone conversation that you were listening in to; is that correct?

[fol. 210] A. No, sir; not exactly. I was taking notes, Mr. Schroder, as they were talking. What was significant and what was insignificant at the time I had no way of knowing. I was writing the notes as fast as I could, but not taking shorthand, abbreviating when I could. There were things that were said as I was writing that I didn't catch all of it and didn't write down.

Q. Will you now, please, sir, state to the Court and jury what you remember being discussed between the two parties that is not included in your notes?

A. Other than what I have already testified to I can't remember.

Q. You have testified today to everything you remember?

A. That I can possibly remember.

Q. That you remember hearing in that telephone conversation?

A. That I can remember; yes, sir.

Q. When you were discussing this on January the 4th, over three months after September 13, 1962, did you at that time have in your possession the notes which you have in your hand there now?

A. No; I did not.

Q. You did not then when you were talking to Bob Edwards about them have the notes with you?

A. No.

Q. Have you ever shown those notes to Bob Edwards?

A. Yes; I did.

Q. When did you show them to Bob Edwards?

A. Just prior to going down to see Mr. Griffith, Coach Griffith.

[fol. 211] Q. You went down to see Coach Griffith at the request of Bob Edwards?

A. Yes.

Q. You went down to see Coach Griffith on January the 14th, 1963.

A. No, sir; it was—I think it was around the 14th. It was during the week of the Coaches' Conference, 17th or 18th; it was during that week; it was in the second week after I had talked to Bob.

Q. Well, if I stated the meeting took place on January 4, 1963, at the Biltmore, according to the information of others, you would not say I was wrong, would you?

A. No, sir; as I say, I don't remember the exact dates. They were during the week of the Coaches' Conference, the second to the last day.

Q. My point is really not as closely connected with the date of January 24th as it is with this. You did not show those notes which you have in your hands now, or any copy of those notes to Bob Edwards until within—until a matter of two weeks after you first talked to him about it on January the 4th?

A. This is right.

Q. In the Saturday Evening Post article—before I—let me withdraw that question, please. When Frank Graham, Jr. was in Atlanta, you met him, did you not?

A. Yes; I did.

Q. Did he hold himself out as being a representative of the Saturday Evening Post when you were talking with him?

A. I was introduced to him as a writer representing the Post; yes, sir.

[fol. 212] Q. Well, you knew when you were talking to him who you were talking to?

A. Yes, sir.

Q. When you were talking to Frank Graham, did you have your notes with you?

A. No; I did not.

Q. You were talking to him purely from recollection?

A. Memory; yes.

Q. Memory. Now, he was here in February, 1963?

A. Yes, sir.

Q. About February the 21st?

A. Right.

Q. Did you tell him you didn't have your notes?

A. Yes.

Q. Did you make it plain to him you were speaking solely from your memory?

A. Yes, sir.

Q. When he was here, was there an agreement reached as to what you were selling your story to the Post for?

A. No, sir; I wasn't selling my story to the Post.

Q. Well, did you receive money for it, sir?

A. Later I did.

Q. Was it understood when he left here that he was to pay money for it?

A. Not to me; no, sir.

Q. Did you receive money for it?

A. Later; yes, sir.

Q. How much money did you receive for it?

A. Five thousand dollars.

[fol. 213] Q. To your knowledge did you ever send to Frank Graham the notes that you are holding in your hand there before he wrote his article and the Saturday Evening Post published that article?

A. No; I did not.

Q. The article, therefore, was published without the benefit of your notes?

A. That is true, as far as I know.

Q. The first sentence in the article, relying upon your memory, I believe, is an error in that it starts out with even the wrong date for this alleged interception of the telephone conversation, does it not?

A. I don't know, Mr. Schroder; you will have to read the first sentence.

Q. The first sentence is: "On Friday morning, September 14, 1962, an insurance salesman in Atlanta, Georgia, named George Burnett picked up the telephone and dialed the number." That is not true?

A. No; it was Thursday, January the 13th.

Q. Yes, sir. You mean September?

A. I mean, September the 13th.

Q. At the—do you know whether Mr. Graham asked to look at any film of the game while he was here?

A. No; I don't.

Q. Did you, in a discussion did you hear any discussion between him and anyone else in your presence about his sports editor wanting him to check the film?

A. No, sir.

The Court: Aren't we getting into hearsay here? Now, I excluded hearsay over here. If you are going into the con-[fol. 214] versation with others I am going to let Mr. Cody get back into it.

Mr. Schroder: Your Honor, this is Mr. Graham of the Saturday Evening Post.

The Court: Yes, sir; I know it is Mr. Graham, but any conversation with Mr. Graham—

Mr. Schroder: Would be inadmissible against the Post? That is their man talking.

The Court: You can question Mr. Graham, but this is hearsay insofar as Mr. Burnett is concerned. Go ahead. There is no objection.

Mr. Schroder: Burnett is not a party. This is the Post's agent making the—

The Court: Go ahead; there is no objection.

Mr. Schroder: All right.

By Mr. Schroder :

Q. At the time that Mr. Graham was in Atlanta, on how many occasions did you see him?

A. Three times.

[fol. 215] Q. That would have been some—about February the 21st?

A. 22nd.

Q. 22nd? Have you seen Mr. Graham since February 21st or 22nd?

A. I saw him on February 23rd also.

Q. That was the same trip, though, that he was here?

A. Yes, sir.

Q. Have you seen Mr. Graham since he left Atlanta—

A. No, sir.

Q. —on that trip?

A. No.

Q. Have you talked with Mr. Graham at all since he was here on that trip?

A. No, sir; I have not.

Q. Did Mr. Graham submit to you or did anyone in connection with the Saturday Evening Post submit for you to correct this article that they published in March, March the 23rd?

Mr. Cody: Your Honor—

The Court: Yes, sir.

Mr. Cody: —he is getting into a subject that is not covered in direct examination, and I think the rule of this Court, the Rules of Civil Procedure provide that cross-examination is limited to the subject matter of direct examination.

[fol. 216] The Court: I am assuming he is going into this for the purpose of punitive damages.

Mr. Schroder: Yes, sir; it is.

The Court: And I think it is a question of whether or not there would be any negligence or disregard in checking the article. I will let him ask that question. Overrule the objection.

By Mr. Schroder :

Q. Did you hear the last question? Do you remember what it was?

A. Was I asked about the article prior to it being published? Is that it?

Q. Did anyone connected with the Saturday Evening Post send to you a copy of the article before it was finally published by the Saturday Evening Post?

A. No.

Q. Did anyone connected with the Post talk with you about the accuracy of the statements appearing in the article that were attributed to you?

A. No.

Q. The Post article has been read previously today. Now, I want to ask you about this which appears right in the first column which has been attributed to you, and I want to ask you if you told Mr. Frank Graham that this was so, and to put it in the article. This is quoting you; I am in the first column, quote: "Butts also said"—now, [fol. 217] this is relating what you told Graham you overheard on September the 13th, 1962. "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant that he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." Did you tell Mr. Graham that you heard Coach Butts make that statement to Coach Bryant?

A. No, sir; I didn't.

Q. That is an inaccurate quotation, a misquotation on his part that he has attributed to you?

Mr. Cody: Your Honor, he is arguing this case now, and I want to—

The Court: I think you can ask him did you tell him that.

Mr. Cody: And I want to, again, insist on my objection that he is getting into a subject matter that was not covered by the direct examination, and I think the Rules provide he is limited.

The Court: I think he can cover that.

Mr. Cody: I understand Your Honor's ruling, but I want to make my objection.

[fol. 218] Mr. Schroder: To make the record perfectly clear on this, Your Honor, I intend to prove by this witness and others that the article is replete with misquotations and inaccuracies, and I am doing that for the sole purpose of showing how reckless the Saturday Evening Post was in publishing this article.

The Court: What he is objecting to is arguing the case, Mr. Schroder. I think you can ask him did he tell him that, and I think his answer was no. But your other question, I think, was properly objectionable. Go ahead, sir. I will permit the line of questioning. I think it is proper.

Mr. Schroder: As I understand, then, the record does show that Mr. Burnett did not say to Graham the quotation that Graham put in the article that related to the position of the quarterback's feet.

The Court: Rakestraw.

Mr. Schroder: Rakestraw.

The Court: All right. Was there any mention of Rakestraw in the conversation as you purportedly heard it?

The Witness: Nothing about the feet; no, sir. This I [fol. 219] didn't know anything about. I didn't say anything to Mr. Graham about Mr. Rakestraw's feet.

By Mr. Schroder:

Q. Now, in the article published on March 23, in the second column on page 81, the following appears: "Burnett knew—" I am quoting from the article— "Burnett knew, too, that Butts recently had been involved in a disastrous speculation in Florida orange groves." Did you say that to Mr. Graham?

A. Mr. Schroder, I don't recall using those words, "it was a disastrous speculation." I made the remark that I knew Coach Butts had been in an orange grove speculation in Florida that didn't prove too successful. Now, I don't know I used the word "disastrous" or not.

Q. The word you used was "had not been too successful"?

A. Right.

Q. But you did not tell him that it was "a disastrous speculation?"

A. I may have; I don't remember using the word "disastrous."

Q. On page 82, column 2, at the bottom, the following I will quote from the article. "Griffith—" meaning Johnny Griffith "—went to University officials, told them what he knew, and said that he would resign if Butts was permitted to remain in his job." Did you give that information to Frank Graham?

A. No. I told Mr. Graham that at the time Coach Griffith was given the information in the hotel and shown the notes, that he made the remark that "we knew something had happened," that somebody had given away their plays; "sold them out" is the words.

[fol. 220] Mr. Schroder: Your Honor, that is not responsive to the question.

The Witness: I am getting to it. You asked me about what Coach Griffith said, Mr. Schroder. Coach Griffith made the remark to Bob Edwards and I, said if something like this was allowed to happen in football he wanted out of it and he would resign, and that he was going to take this to the athletic officials, and if it wasn't straightened out he would resign.

By Mr. Schroder:

Q. Let me ask you if you remember this question being asked you when your deposition was taken and you were under oath at that time too, weren't you?

A. Yes; I was.

Q. All right. Question: "The same article in the Post states this on page 82: 'Griffith went to University officials, told them what he knew, and said that he would resign if Butts was permitted to remain in his job.' Do you know where the writer of the article, Frank Graham, got

that piece of information?" Your answer: "No, sir; I don't."

A. The answer is I don't; I don't know where he got it as far as going to the officials was concerned, Mr. Schroder.

Q. Is that your explanation of the answer you gave a moment ago?

A. Is what?

Q. Is what I just read, is that a true answer?

A. I said I don't know that Mr. Griffith told the officials this; no. He made the remark—

Q. The question—

A. He made the remark to Mr. Edwards and I if this [fol. 221] were allowed to continue in football he was going to get out of it.

Q. Was Mr. Graham present when he said that?

A. When Mr. Griffith said it?

Q. Was Mr. Graham, the author of the article, present?

A. I told him this.

Q. That Griffith was going to resign?

A. No, sir; Mr. Griffith had stated if this could happen in football he wouldn't have any part of it.

Q. Did you hear Mr.—did you tell Mr. Graham Mr. Griffith went to University officials and told them what he knew and said he would resign if Butts was permitted to stay on?

A. No, sir.

Q. That is the simple question I asked you to start with.

A. All right, sir.

Q. All right, sir. It was your information—do you know of anyone else supposed to have overheard this conversation?

A. Which conversation, the telephone or the one with Johnny Griffith?

Q. The telephone conversation?

A. No, sir; I don't.

Q. Did you say anything to the Saturday Evening Post about this being the story of a college—I mean, a fixed football game?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post that this was a rigged football game?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post about this game having been thrown?

A. No, sir.

[fol. 222] Q. Did you say anything to the Saturday Evening Post about this having been a sell-out?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post about Coach Bryant and Coach Butts being corrupt men?

A. No, sir.

Q. When you met with Mr. Cook Barwick seated here the first time, the statement which you made in his presence and in the presence of those others that you have identified here, that statement was recorded, was it not?

A. Yes; it was.

Q. That is the first time you had met Mr. Cook Barwick, was it?

A. Yes, sir.

Q. That was the first time you had met Mr. Aderhold?

A. Yes, sir.

Q. And the other gentleman named Mr. Bolton?

A. Yes, sir.

Q. That was the first time you had indicated any knowledge at all of the matters that you have testified here to today to any one of those three?

A. Yes; it is.

Q. Mr. Barwick asked you some questions, numerous questions at that time, didn't he?

A. Yes, sir.

Q. One of those questions was: Did you have any sort of record, wasn't it?

A. Yes; he did.

Q. And you answered him that you did not, didn't you?

A. That's right.

Q. But you told him to go ahead and investigate?

[fol. 223] A. Yes, sir.

Q. And later it turned up that there was a record, wasn't it?

A. Yes, sir.

Q. And that is when you testified a moment ago or at some time during the proceedings that they begin questioning you about that or what was in the article, excuse me, started questioning you about that, and you became alarmed or became frightened, and said, "Am I on trial?"

A. That is what is in the Post article.

Q. Yes, sir.

A. Yes, sir.

Q. That is all true, isn't it?

A. Yes, sir.

Q. Was there any reason for your denying that you had any record when you first talked to the University of Georgia people and Mr. Barwick about this matter?

A. Other than I didn't want to get involved in it if I didn't have to. I wasn't under oath; I was just answering direct questions.

Q. You don't mean by that you are free with the truth when you are not under oath?

A. I am not indicating anything of the kind.

Q. The reason you said you didn't have a record, you didn't want to get involved and weren't under oath?

A. I didn't say "involved". I didn't want to get—start public announcement about some problems that I had had that I have since paid my debt on.

Q. Your friend, Milton Flack, did he get paid anything in connection with this story by the Saturday Evening Post?

A. I don't know.

[fol. 224] Mr. Cody: Your Honor, I think that that—that would come from someone else.

The Court: He can state if he doesn't know; that is a proper answer.

Mr. Schroder: If the Court please, I have the voucher issued by the Saturday Evening Post, if there is any doubt about it.

Mr. Cody: Go ahead.

The Court: He can ask Mr. Flack or whoever.

By Mr. Schroder:

Q. You don't know?

A. I don't know the particulars involved in any payment to Mr. Flack; no; something about him getting some money to not talk about the story.

Q. All right, sir. The lawyer who was representing you and probably—is Mr. Pierre Howard still representing you?

A. Yes, sir.

Q. He was paid a fee by you?

A. Yes; he was.

Q. A thousand dollars?

A. That's right.

Q. Do you know what that was for? What did you pay him a thousand dollars for?

A. For legal advice and legal fees.

[fol. 225] Q. In connection with this story?

A. In connection with the work he was doing for me.

Q. In connection with this story?

A. Representing me in the things I knew were going to come from this; not from the story, no; not for any part in the story. This was legal fees.

Q. Did you owe him any fees for any services that he had rendered you before you got involved with him in this so-called story?

The Court: How could that be admissible here?

Mr. Cody: I think he knows, Your Honor.

Mr. Schroder: I have him on cross-examination.

The Court: You have him on cross-examination; I don't think that is admissible unless you can show me a reason why it should be. I don't think it should be. I mean, something that might have taken place before, some contract he might have in some other case, I don't think that would be admissible.

Mr. Schroder: The contention is and can be proved that the thousand dollar payment was for services rendered in this story and this story alone which I indicated at the outset, if it please the Court, and I am so contending, this was sort of what we lawyers call on a contingent basis. "I will pay you a thousand dollars now and if your story, [fol. 226] after I get to talking to you, is reproduced, I will then pay you three thousand dollars."

The Court: I thought we were on Mr. Pierre Howard's fee.

Mr. Schroder: We are. He was in the middle of this representing both parties.

The Court: He can testify as to what he paid Mr. Howard.

Mr. Schroder: That is all I was asking.

The Court: He testified five thousand dollars. Anything else?

Mr. Schroder: About payments, no, sir; nothing further with him on payment.

The Court: All right, sir.

By Mr. Schroder:

Q. The Saturday Evening Post article makes the statement that you did record all that you heard in connection with the telephone conversation that you were listening in on; that is inaccurate, is it not? On page 81, the bottom, column 1, "Some of the jargon stranger still, but he recorded all that he heard."

A. No, sir; I have already testified that I didn't—couldn't get it all written down. There were some other [fol. 227] things, and I was abbreviating and making sentences short as I was copying it down.

* * * * *

By Mr. Schroder:

Q. During the examination yesterday, Mr. Burnett, we were referring, I believe, to the fact that the office there

on Eleventh Street of the business known as the Institute of Oral Hygiene was—the business owned by John Carmichael?

A. Yes; it was.

Q. And you had known John Carmichael for how many years before you went to work for him?

A. Approximately two years.

Q. About two years?

A. Yes.

Q. And during the time that you knew Mr. Carmichael and before you left and went with him to the Institute of Oral Hygiene he was with you at the Foundation Life?

A. Yes, sir.

Q. Was he your boss at the Foundation Life?

A. He was my district manager.

Q. That is what I meant; he was your superior?

A. I reported to him.

Q. You and John Carmichael were fairly friendly or good friends?

A. Yes, sir.

Q. The office there on Eleventh Street had—did it have a private office in it?

A. Yes; it had one—one private office which was Mr. Carmichael's office.

Q. Now, it was in Mr. Carmichael's office, was it not, that you were listening in on this telephone conversation?

[fol. 228] A. Yes, sir.

Q. You were seated at Mr. Carmichael's desk?

A. Yes, sir.

Q. Now, during the course of this listening in by you on this telephone conversation, did Mr. Carmichael come in?

A. No; he did not.

Q. You are sure that he did not come in before you were through?

A. Yes, sir.

Q. Could you see the—you were in the private office, you say?

A. Yes; I was.

Q. Did you see into and through the agency room which was immediately adjacent to that office?

A. No; I could not.

Q. Would it be your testimony, then, that Mr. Carmichael could not have been in the agency room, being a place that you could not see?

A. I didn't hear anyone come in. He did not come in the private office, and I would have heard him, I am sure, come in the front door. He did come in subsequently with a paper sack with two cups of coffee in it.

Q. You and Carmichael—this was how long after you say that you finished?

A. Some, approximately an hour to an hour and a half.

Q. You and he have talked about this incident on many occasions?

A. Not on many occasions.

Q. On several occasions?

A. Several; yes.

Q. And you do know that he has since told you that he was in the office when you were?

[fol. 229] A. No; he has not told me this.

Q. But you know he has told this?

A. Yes, sir.

Q. But your testimony is that he was not there?

A. That is right.

Q. And you say now that it was an hour or an hour and a half after that?

A. Approximately.

Q. It could not have been thirty minutes?

A. It could have been anywhere from thirty minutes to an hour and a half.

Q. All right, sir. When you were on the telephone and heard these two voices, you knew at that time that you were listening to two people talk on their telephones and that you were not intended to be listening, didn't you?

A. I realized that.

Q. But you did continue to listen in anyway, didn't you?

A. That's right; that's right.

Q. The testimony, I believe, yesterday by you indicated that the party being called was not at that time near the phone but was out on the field?

A. That is what I heard a female voice say.

Q. That Coach Bryant was out on the field?

A. This was the words that she used.

Q. Well, don't—this was in the morning that you were listening in on this call?

A. Yes; it was.

Q. Well, don't you know, as a matter of fact, that there was no practice in the morning, football practice?

A. I don't know as a matter of fact when they practiced, Mr. Schroder.

Q. Well, this was the coach that you were talking about, [fol. 230] that you have just referred to, wasn't it?

A. Yes, sir.

Q. And the field was the practice field, was it not?

A. I have no idea.

Q. Didn't you at one time say it was the practice field?

A. I don't recall. I said the practice field; I may have used the word "practice field"; I don't remember.

Q. Well, you are a former football player; you know what the word "practice field" means, don't you?

A. Yes.

Q. That is where football players, during football season, practice, isn't it?

A. This is true.

Q. When Carmichael and you had your discussion about what you say you overheard, the remark was made, was it not, that, "well, if there's anything wrong about this, let's bet on the outcome?"

A. No; this remark was not made.

Q. When was the remark made about betting on the game?

A. The only remark about betting was made, said, "If you are going to bet, which way would you bet?"

Q. All right, sir, I will buy that. Who made the remark, "If we want to bet on the game, which team would we bet on?"

A. I don't recall. As I remember, Mr. Carmichael said to me, "How would you know if they were going to go for

a high score or a low score with this intimation if you were going to bet on it?" There was never any serious discussion by any of the three of us about betting on the football game.

[fol. 231] Q. And that was because you told them that you wouldn't know yourself which way the teams were going?

A. No, sir; I didn't say this.

Q. What did you say, sir?

A. The three of us agreed on this; I don't know which one prefaced it first, but the three of us agreed who would know.

Q. Who would know? And that was based upon what you say that you heard one coach tell the other on the telephone?

A. That's right.

Q. All right, sir. And insofar as the three of you were concerned, you were the only one that heard—overheard anything that was said on that telephone?

A. That's right.

Q. The first time that you discussed this incident with your lawyer, Mr. Howard, was when?

A. On the 21st of February.

Q. On the 21st of February, 1963?

A. '63.

Q. That was in the morning or in the afternoon?

A. In the late afternoon.

Q. The Saturday Evening Post representatives were in Atlanta on that very day, were they not?

A. Yes; they were.

Q. As a matter of fact, they had come in on the—on February the 20th, hadn't they?

A. I have no idea when they came in.

Q. But Mr. Howard told you they were here?

A. Yes; he did.

Q. You knew they were here?

A. Late that afternoon when I went to his office and told him what had happened.

[fol. 232] Q. They were already here when you first—
when you say you first told him—

A. Yes.

Q. About the incident?

A. Yes.

Q. Do you know what they were here for?

A. Haven't the slightest idea.

Q. They didn't discuss it with you while they were here?

A. No; they did not.

Q. Did you talk to them at all?

A. With whom?

Q. The Saturday Evening Post people.

A. Yes; I did.

Q. What did you all talk about?

A. About the story and what I had overhead, and the fact that I was a little disturbed at my last meeting in Mr. Barwick's office, and that I decided I wanted this story told and told in the way it happened, and my story about my bad checks, as is in the Post article, to be told before I was maligned.

Q. Then they were here to get your story?

A. I have no idea why they were here, Mr. Schroder.

Q. Did you discuss anything with them other than your so-called story? Did you discuss business with them of oral hygiene?

A. Mr. Schroder, when I went to Mr. Howard's office and told Mr. Howard what had happened—

Mr. Schroder: If the Court please, may he answer my question?

[fol. 233] The Court: I think we can clarify it a little bit. He is talking one thing and you are talking another. Why don't you ask him when he first told him?

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. When did you first talk to the people from the Saturday Evening Post?

A. Friday evening, about 7:00 or 7:—about 7:00 o'clock Thursday evening on the 21st, about 7:00 o'clock, at their motel is the first time I met the Post people and told them the story.

Q. And their motel was here in Atlanta?

A. Yes, sir; it was.

Q. And did you discuss with them business in general, or did you discuss with them just this so-called story?

A. I discussed with them just this story.

Q. All right, sir.

Examination.

By the Court:

Q. How did they know you knew about the story? How did they know about the story?

A. Mr. Howard told me that Mr. Beddow and the Saturday Evening Post people were in town and this would be some people to talk to who would be willing to listen to a story if I wanted to give them one. I decided, Judge, on his advice that it was time for me to get this story out before people were trying to malign me totally in a different way, and he said he knew they were in town [fol. 234] and would be willing to listen, and he called them and made an appointment for me, and we went to the motel.

Q. May I clarify something? Had you talked to Mr. Howard before?

A. No, sir.

Q. How did he know what you knew about this story?

A. He didn't until I walked into his office.

Q. That afternoon?

A. Yes, sir. He had heard the story from Mr. Carmichael before, but I didn't know he had heard the story.

The Court: I didn't connect it up. I didn't mean to interrupt your line of questioning.

Mr. Schroder: I thank you for the help.

Cross examination (continued).

By Mr. Schroder :

Q. The people that you talked to at the motel were Frank Graham, Jr.?

A. Yes; that was one of them.

Q. Who subsequently wrote the story?

A. Yes, sir.

Q. Supposedly based on information that you gave him?

A. Yes, sir.

Q. Also present in Atlanta that time with Mr. Graham was the Saturday Evening Post lawyer in Birmingham representing the Post in the libel suit that Coach Bryant [fol. 235] had filed against them maybe a month before this?

A. That's right.

Q. His name was Mr. Beddow? He was over here?

A. Yes, sir.

Q. With Mr. Graham?

A. Yes, sir.

Q. There was also from Birmingham a private investigator who was working on the Byrant against the Post lawsuit in Birmingham that had been filed some months before all this came up, a Mr. Bodecker?

A. I met a Mr. Bodecker; I didn't know who he was or his connection.

Q. He was with Mr.—

A. He was with Mr. Beddow.

Q. He was with Mr. Beddow, the Birmingham lawyer?

A. Right.

Q. And you stayed there in the room at the, I believe you said, the Heart of Atlanta Motel?

A. Yes; it was the Heart of Atlanta.

Q. And that was Mr. Frank Graham's room?

A. I don't know whose room it was.

Q. Well, you stayed there with these gentlemen for some minutes or some period of time that evening?

A. About an hour to an hour and a half, as I recall.

Q. And you then met with Mr. Graham again the following day?

A. Yes; the following morning at Mr. Howard's office.

Q. And how long did you meet with them on that occasion?

A. We were together about another hour or two in Mr. Howard's office.

[fol. 236] Q. Did you see Mr. Graham later that afternoon?

A. No, sir; I don't recall seeing him at all that afternoon.

Q. Did you see anyone else hired or working for the Post that afternoon?

A. No; I did not.

Q. That would have been the 22nd?

A. Right.

Q. Then the next day did you see Mr. Graham?

A. I saw Mr. Graham the next morning very briefly again in Mr. Howard's office.

Q. In Mr. Howard's office?

A. Right.

Q. That was the 23rd?

A. That was the 23rd.

Q. And I believe your testimony yesterday was that you have not, since the 23rd, seen Mr. Graham?

A. Well, this is true, but the afternoon of the 23rd I drove him to the airport and spent some three and a half hours at the airport waiting for his plane and talking with him.

Q. All right, sir. He had not written any story then to your knowledge, had he?

A. No.

Q. Since you last saw him on February 23rd at the Atlanta Airport, have you seen him or talked with him in any—with respect to anything?

A. I have not seen him and I don't recall that I have talked with him. I have received a letter from him, but I have not talked with him or seen him.

Q. Did your letter pertain to this story before or something he was putting in the story before he published it?

A. No, sir; he was forwarding to me a letter from a [fol. 237] television station in Indiana regarding an article; this was after the article was published.

Q. Your testimony is, then, that you have had no communication with Frank Graham other than the letter that you have just told us about since he left here February the 23rd?

A. That is true.

Q. I don't know whether I asked you this yesterday or not, but have you had any communication of any sort with anyone else employed by the Saturday Evening Post after February the 23rd and before this magazine was published in this issue of March 23?

A. No, sir.

Mr. Schroder: If it please the Court, the article has been tendered and, I believe, admitted in evidence.

The Court: Yes, sir.

Mr. Schroder: This witness has already testified yesterday about a quotation that he did not give the author which the author indicated in the article that he did give to him, and in order to make it photographic, so to speak, for the jury, I have had that article, the entire article blown up, and I would like the permission of the Court to have it unraveled and placed here where they can—

The Court: You mean you are—

[fol. 238] Mr. Schroder: I will state in my place it is authentic.

The Court: You are just going to blow it up?

Mr. Schroder: I had it blown up by the Atlanta Blueprint Company.

Mr. Cody: I don't think it is proper, Your Honor; the article itself is in evidence; I don't know.

The Court: Would you object to it being demonstrative?

Mr. Cody: I don't know what he is apt to do with it.

Mr. Schroder: This is the article forming the basis of this libel suit. There are inaccuracies in it, and I think it ought to be here where the jury can see it when the witnesses testify on the stand about the manner in which they

have been misquoted, where the jury can see right here in front of them what the misquotations are, what the inaccuracies are, and have it vividly clear here before it or rather than have them memorize it or pass out copies to them.

Mr. Cody: I think that is entirely improper, Your Honor, what he is undertaking to do.

[fol. 239] The Court: I don't know whether it is or not.

Mr. Cody: He is undertaking to re-emphasize some errors they made in the article.

The Court: Of course, the whole gist of the whole case is whether or not the facts, statements contained in the article are true.

Mr. Cody: That's true. Well, he has pointed out—he has pointed out and has a right to point out any error in the article, but not to emphasize it or re-emphasize it. He has already pointed out certain errors. It is already in evidence.

The Court: I will let him do it. Let me see it. I don't know what you have got there, but—

Mr. Schroder: That is the last of it. I will hand Your Honor the first one.

The Court: Sir?

Mr. Schroder: Please hand His Honor that.

The Court: I brought my copy this morning.

[fol. 240] Mr. Schroder: In the first column—this is the first column, and each column is on separate cardboard.

The Court: Where are you going to put those, Mr. Schroder?

Mr. Schroder: Well, insofar as this one is concerned I would show this to the witness and have him mark this entire paragraph here where it reads—where it reads, "Butts also said Rakestraw tipped off what he was going to do," and on down to the bottom.

The Court: Of course, that can't go out with the jury.

Mr. Schroder: I understand that; the article itself will be out with the jury.

The Court: Yes, sir.

Mr. Cody: It's already in evidence. I don't know what—

The Court: Well, he wants it where the jury can see it instead of passing it around. I will let it in. I will let you demonstrate with it, but it is not going out with the jury.

Mr. Schroder: I understand that, sir.

[fol. 241] The Court: All right, sir. Are you through with this witness?

Mr. Schroder: I was going to ask him to step down here, if he will.

By Mr. Schroder:

Q. Yesterday you testified—can you see this all right, sir?

A. Uh huh (affirmative).

Q. That this quotation which I shall now read to you, "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." Is that what I have just read, was that—that is a quotation that the author said you said to him. Did you tell the author that?

A. No; I didn't.

Q. I see. Will you mark that with a pencil, please?

A. Mark it in what way?

Q. With a parenthesis and put your initials there.

A. What am I signing to?

Q. You don't have to sign it.

A. Initialling it means what?

The Court: You just go ahead and initial it, Mr. Burnett.

The Witness: All right, sir.

By Mr. Schroder:

Q. Just what I read, make it kind of heavy, will you. [fol. 242] In the article there is a quotation appearing on

the second page near the bottom of the second column on that page which reads, quote, and this purports to be something that you told the author that Johnny Griffith in turn had told you at the meeting you attended with Johnny Griffith at the Biltmore, the quote that is attributed to you reads, “‘We knew somebody had given our plays to Alabama,’ Griffith told him,”—“him” being you—“and maybe a couple of other teams we played to, but we had no idea it was Wally Butts.”

The Court: Didn't you go over that yesterday?

Mr. Schroder: Not what I am going to ask him now.

Mr. Cody: It is purely repetitious, Your Honor.

Mr. Schroder: Not what I am going to ask him now.

Mr. Cody: It is repetitious, Your Honor.

The Court: Let me ask—let him ask his question, and don't you answer until after I rule on it.

The Witness: All right, sir.

[fol. 243] By Mr. Schroder:

Q. You know, do you not, as a matter of fact that Johnny Griffith has denied telling you that?

The Court: That is not a proper question anyway, Mr. Schroder. I don't think Mr. Griffith's testimony is in evidence yet, and I don't think—

Mr. Schroder: I will wait until—

Mr. Cody: He is going to testify.

The Court: My recollection yesterday was that he went into an explanation as to what he said; well, you heard the testimony; I don't want to repeat it.

Mr. Cody: I want to make one other point, Your Honor, for the record.

The Court: All right, sir.

Mr. Cody: I think I know the purpose for which he is undertaking to emphasize this evidence. We have been over this question at pre-trial procedure. There's been no such documents as any—enlargement of a portion of this article, but to—

[fol. 244] Mr. Schroder: Well, that is the article, Your Honor, that he himself has introduced.

The Court: I am going to let you put that in, Mr. Schroder; I have already ruled on that. What I was concerned with was the question you were repeating.

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. Let me ask you this, Mr. Burnett. These notes that—

Mr. Schroder: Have they been introduced in evidence yet? Are they up here?

Mr. Cody: Your Honor, I'd like to get these notes introduced. I've been carrying some of them around and I am afraid I will lose them.

The Court: All right, sir.

Mr. Cody: Those two telephone calls that were identified yesterday—let me have those right there.

The Court: What is the number?

[fol. 245] The Clerk: No. 12.

Mr. Cody: 12, 13, and 14.

The Court: All right, sir, any objections to the notes which have been tendered?

Mr. Schroder: I do not want to give the Court the impression if I say that I have no objection that I am admitting that they are authentic.

The Court: You are not admitting what is contained in the evidence, but you have got no objection to the notes—

Mr. Schroder: That is, they have been identified.

The Court: All right, sir.

Mr. Cody: I'd like, while we are on the subject, I'd like to introduce in evidence the notes; they have already been identified by exhibits number, the two toll tickets that were identified yesterday by Mr. Fleming.

Mr. Schroder: I have no objection.

[fol. 246] The Court: All right, sir, what are their numbers?

The Clerk: 13 and 14.

The Court: All right, let 12, 13 and 14 be admitted.

(Whereupon Defendant's Exhibits Nos. 12, 13 and 14 were admitted into evidence.)

The Court: Is that over objection?

Mr. Schroder: No, sir.

The Court: All right, sir.

Mr. Schroder: No, sir.

The Court: All right, without objection.

By Mr. Schroder:

Q. In connection with these notes that have been identified and admitted in evidence as Defendant's Exhibit 12, your testimony yesterday was that every time that you heard the man that you described as Coach Butts talk to the other party, Coach Bryant, he always referred to him [fol. 247] or called him "Bear" throughout the conversation?

A. One time at the beginning he said "Coach" and most of the time he called him "Bear".

Q. Did he ever call him "Paul"?

A. I don't recall; he may have, Mr. Schroder.

Q. But your recollection today, and as you have indicated on your notes there, was that he was calling him "Bear" certainly a greater majority of the time?

A. Most of the time; yes.

Q. When he wasn't calling him "Coach"?

A. Yes.

Q. You testified yesterday, I believe, that the second notation on Page 1, reading "Reismueller, greatest in history," that that was said by Coach Butts in this form, he is the greatest in the history of the University of Georgia?

A. He said he was the greatest lineman they have had in the history of the University; yes, sir.

Q. And the lad was what, a sophomore?

A. I don't know.

Q. You didn't know then that he had never even played in a varsity game?

A. No, sir.

Q. You being a former football player—turn to Page 2, looking at the last note, reading, “well-disciplined ball club”; what in your experience as a football player does that mean, “well-disciplined ball club”?

A. Well, Mr. Schroder, it means exactly what it says. It was a well-disciplined ball club.

Q. I don't understand it myself; would you amplify it a little bit, clarify what it means to you.

A. Well, Mr. Schroder, a well-disciplined ball club means one that responds well, I imagine, to instruction, and listens and doesn't fool around with horseplay, and attends to [fol. 248] business. I imagine this is what being disciplined means.

Q. I see. And the statement was made that the Georgia team in September, 1962, was, as described here, a well-disciplined ball club?

A. Yes, sir. But you are taking it out of context. It was part of a statement. He said, “They have a well-disciplined ball club, but this is no thanks to Johnny Griffith, because they had added two coaches.” This is one entire statement.

Q. Yes, sir. But I was referring to the discipline part without regard to who was responsible for it being disciplined or who might be responsible for it not being disciplined.

A. I appreciate that.

The Court: Let's don't argue between witness and counsel. Let's go ahead with the evidence.

By Mr. Schroder:

Q. The notation on the top of Page 3, “On side guard pulls on sweep”; what position did you play when you were in football?

A. I played guard.

Q. What, to you, is a sweep?

A. An end run.

Q. That is around the end?

A. Yes.

Q. A sweep around the end?

A. Yes, sir.

Q. Now, what was the "on side guard pulls" mean?

A. That means that the guard on the side on which you are running pulls out to lead interference. If you are going to run to the right, the right guard pulls; if you are [fol. 249] going to run to the left, the left guard pulls.

Q. When you say "leading interference", leading the way for the ball carrier to go around the end?

A. Yes, sir.

Q. The next note reading "don't overshift". I recall you saying that that had to do with some defensive maneuver.

A. No, sir; I didn't say that.

Q. Well, I'm sorry; I didn't mean to misquote you. What was it you said?

A. I said I wrote this down by itself. I don't recall whether it had anything to do with the play above or not. The statement was made by Coach Butts to Coach Bryant, "Don't overshift," telling him not to overshift.

Q. Not to overshift what, offensively or defensively?

A. His defense.

Q. His defense?

A. His defense.

Q. Of course, you don't know that overshifting is a principal part of every defense of every team?

A. I don't know what?

Q. Overshifting is a principal part of every defense of every team that plays football?

A. Overshifting?

Q. Yes.

A. No; I don't know that overshifting—

Q. You don't—

A. —is a principal part of defense. I'm sorry.

Q. And you are a football fan?

A. Yes; I am a football fan. If you overshift you are in trouble, Mr. Schroder.

Q. Explain that to me, please, sir.

A. You shift yourself out of position, I imagine.

[fol. 250] Q. Well, not what you imagine; I mean, just tell me about this overshifting and how it gets you into trouble.

A. Well, you can overshift on a spread formation and they will go the other way on you, and you are in trouble.

Q. What is a spread formation?

A. When the teams are all spread out, the offense is all spread out.

Q. You mean great distances are between the offensive players?

A. That's right.

Q. And your description of overshifting is that if you overshifted in that sort of a situation and they went the other way, you would be in trouble?

A. Yes, sir.

Q. You don't know that the basic defense of Georgia is overshifting, an overshift, as is Alabama's?

A. No; I don't.

Q. You don't?

A. I don't know that.

Q. Page 4 of your notes, you have "Best since Trippi, Porterfield." Who is Trippi?

A. Charlie Trippi is a former Georgia great football player who was one of the coaches last year.

Q. Are you familiar with his playing days at the University of Georgia?

A. Yes; I am. I remember reading about Charlie Trippi.

Q. Was he considered to be a right fair country ball player?

A. A pretty good country football player.

Q. He was an all around player playing both offense and defense?

[fol. 251] A. Yes; he played in the days when they played football.

Q. There is a note here which you discussed briefly yesterday reading, "Can quick kick", and if I recall correctly, and you correct me if I misquote you, that was in connection with a question asked by Coach Bryant, that is to say, you say you heard the question asked by Coach Bryant of Coach Butts, "Well, what about the quick kicking?" And Coach Butts says, "You don't have to worry about that, because they don't have anybody that can quick kick."

A. That's right.

Q. That is a fair representation—repetition of what you said?

A. Yes, sir.

Q. Well, don't you know that Georgia has a quick kicker?

A. No; I don't.

Q. You don't know that they do quick kick?

A. No, sir; I don't.

Q. The opening part of this article by the editors up here in the top side, referring to the Chicago White Sox scandal, did you discuss anything with Mr. Graham about how—what you said you heard reminded you of any such thing as the Chicago White Sox scandal in 19—when they threw the 1919 World Series?

A. No; I did not.

Q. Did you all discuss that topic at all?

A. No, sir; did not.

Q. The first time you testified—the first time you talked to your friend Bob Edwards, you testified yesterday it was January the 4th?

A. That's right.

[fol. 252] Q. You testified yesterday that you did not find your notes until two days before you had the meeting at the Atlanta Biltmore?

A. That's right; the day before, as a matter of fact.

Q. Then—

A. A day or two before.

Q. Then you did not at any time show your notes to Bob Edwards before you found them on the day before

you met at the Biltmore, the day that you met being January 24?

A. I couldn't have shown them to anybody, Mr. Schroder, until I found them.

Q. That's right.

A. And I found them about two days before we met at the Biltmore, and I met Mr. Bob Edwards that morning and showed him the notes.

Q. You met on January 24; that would have been January the 22nd?

A. No, sir; that was about January the 17th. The 24th is when I met with Mr. Cook Barwick in his office.

Q. No, sir; I don't want you to be in error.

A. I don't want to be in error.

Q. All right, sir.

A. We—we met on the 14th—on the 4th and about two weeks later is when I met with Johnny Griffith. I don't remember the exact dates.

Q. It was January the 25th. I am not supposed to testify, but I don't want you to get in error.

A. I don't want to be in error.

The Court: I thought the Coaches' Convention was the 17th of January; am I in error?

[fol. 253] Mr. Schroder: If that is what the testimony is.

The Court: That is what the testimony was, is my recollection.

Mr. Schroder: It is in error. All I can say, Your Honor, is that there were a lot of depositions in this case.

The Court: They would know. It was my impression there was a convention out here at the Biltmore Hotel on January the 17th. I could be in error.

Mr. Schroder: I think that is a week earlier.

The Witness: It was during the week of the Coaches' Convention, Your Honor; it was on a Thursday, the last part of the week of the Coaches' Convention.

Mr. Schroder: I will bring it out by some other witness. I will state for the record that it was January the 24th, Thursday.

By Mr. Schroder:

Q. If it was January 24 that you met with Coach Griffith, it would have to have been January 22 or 23 that you first got hold of your notes?

A. Right.

Q. And you could not, therefore, have shown them to [fol. 254] your friend Bob Edwards before that time?

A. This is true.

Q. All right, sir. Now, the—

Mr. Schroder: Your Honor, just a minute, please. The deposition, please, Mr. Smith. I didn't bring it up here with me; 25.

Mr. Smith: Page 25?

By Mr. Schroder:

Q. Mr. Burnett, your associate, Mr. Flack, had made several efforts to sell or peddle this story, had he not?

A. I don't know of several efforts; I know of one, Mr. Schroder.

Q. You know of one, and that was the only one you know of is the one involved with Phil Rizzuto in New York?

A. That's right. That was approximately two weeks before—

Mr. Cody: Your Honor, I don't think it is proper—

The Court: I didn't hear that, the first.

Mr. Cody: I don't think it is proper for this witness to testify about what somebody else did. You get into that with another witness.

[fol. 255] Mr. Schroder: All right, sir; will you hold this witness subject to recall, Your Honor?

The Court: What was the testimony?

Mr. Schroder: It had to do with an associate of his—

The Court: Mr. Flack; I got that part of it, but sell it to who?

Mr. Schroder: Phil Rizzuto was one, and others. Mr. Cody properly pointed out I can bring it out by Mr. Flack, but I want this witness held to put back on the stand.

The Court: This witness will be here all during court.

Mr. Cody: You needn't worry about that part. I think it would be better to bring it out and you can bring Mr. Burnett back to the stand.

The Court: Yes, sir.

By Mr. Schroder:

Q. At any rate, you did, did you not, Mr. Burnett, promised Mr. Barwick and the group in his office that you would not sell the story, didn't you, Mr. Barwick sitting right here?

A. You are referring again to the Phil Rizzuto—
[fol. 256] Q. Yes.

A. Yes, sir; I did, when I reported it to him.

Q. You promised him you would not sell the story, didn't you?

A. Well, yes, sir.

Q. Did you ever go to him and tell him that you were going to sell it or had sold it?

A. I didn't sell the story, Mr. Schroder.

Q. You got paid for it, didn't you?

A. Subsequently, but I did not give the story in the beginning with the intention of doing it for selling it.

Q. Did you ever ask Mr. Barwick to relieve you of the promise you made to him that you would not give the story for money or sell it or whatever else you did?

A. No; I did not.

Mr. Schroder: That's all, Your Honor.

Examination.

By the Court:

Q. Mr. Burnett—

A. Yes, sir.

Q. During the entire conversation which you allegedly overheard over the telephone, did you ever hear the word "Rakestraw" used?

A. Yes, sir; he used it as I have it here in the notes, Your Honor, when he said Rakestraw was—went to the right in describing a play; he used the name of Rakestraw.

Q. That was the only time?

A. The only time, and he said when Rakestraw goes to the left, an optional left pass, if they can block the man on [fol. 257] the corner he keeps running; if they can't they pass. That is the only time in my notes or that I recall hearing the name Rakestraw used.

The Court: I just wanted to clarify that.

Mr. Schroder: All right, sir.

The Court: Anything further from this witness, Mr. Cody?

Mr. Cody: Is he through? You through with him?

Mr. Schroder: Yes; yes, sir.

The Court: Yes, sir.

Mr. Cody: I have a few questions, Your Honor.

Redirect examination.

By Mr. Cody:

Q. Mr. Burnett, yesterday Mr. Schroder asked you if you had the notes, meaning the notes you have in your hands now, if you had those notes before you when you had this discussion with Mr. Graham who was then representing Saturday Evening Post.

A. Yes, sir.

[fol. 258] Q. And you said that you did not have them before you?

A. No; I did not.

Q. Where were those notes at the time?

A. In Mr. Barwick's office, Mr. Cook Barwick's possession with the athletic board. I say "in his possession"; to my knowledge he had them.

Q. You had previously turned them over to the University officials?

A. Yes, sir; I had.

Q. Then you—in your discussion—

Mr. Schroder: Don't lead him.

By Mr. Cody:

Q. In your discussion with Mr. Graham, you were speaking from memory?

A. Yes, I was.

Q. Who was—who was present, Mr. Burnett, at this first meeting that you had in Mr. Barwick's office?

A. Mr. Barwick—

Mr. Schroder: Your Honor, we have been all over this, I believe. I have got notes about this.

The Court: Didn't we go over this yesterday, Mr. Cody?

Mr. Cody: We touched on this meeting, but I didn't get the personnel of those present.

[fol. 259] The Court: Go ahead. If you've covered it, we'll stop you.

By Mr. Cody:

Q. Go ahead; state briefly.

A. Mr. Barwick, Dr. Aderhold, Mr. Bolton, Bob Edwards and myself.

Q. Did Mr. Bolton and Dr. Aderhold at that time make known who they were?

A. Yes, sir.

Q. Did you at that time know that a tape recording was made of that conference?

A. Yes, sir. They asked my permission, and I gave it.

Q. Was that the meeting at which they asked you to make an affidavit?

A. Yes, sir.

Q. And to—

Mr. Schroder: We have been all over this, Your Honor.

The Court: Yes, sir.

By Mr. Cody:

Q. Mr. Schroder asked you a few minutes ago about some of your conversation with Mr. Carmichael. Did I

understand you to say in response to one of his questions that Mr. Carmichael is the one that told Mr. Pierre Howard about this story?

A. Yes, sir.

Mr. Schroder: Wait a minute; whoa, whoa! That would [fol. 260] be pure hearsay. That was not answered; anyway, if it was, it would be pure hearsay.

Mr. Cody: He didn't object to it.

The Court: I believe I asked it; I believe that's correct. I didn't know how he knew about it. I don't want to go into any hearsay on it. I didn't know I was eliciting hearsay.

Mr. Schroder: May I move it be removed?

The Court: I think it is a minor detail.

By Mr. Cody:

Q. Mr. Burnett, what did Carmichael tell you, if anything, about keeping his name out of this?

Mr. Schroder: If the Court please, that would be hearsay.

The Court: Yes, sir. I sustain the objection. Mr. Carmichael will be here, won't he?

Mr. Cody: I didn't subpoena him, Your Honor. They didn't have his name on the list of witnesses they gave me. Maybe he does. That's all we have of this witness.

* * * * *

[fol. 261] J. D. BOLTON called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Your name is Mr. J. D. Bolton?

A. Yes, sir; that is correct.

Q. What is your position with the University of Georgia, Mr. Bolton?