

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 37

CURTIS PUBLISHING COMPANY, PETITIONER,

vs.

WALLACE BUTTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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STATEMENT BY MR. LOCKERMAN

Mr. Lockerman: Please the Court, before addressing my remarks to the jury, I want to point out to Your Honor [fol. 1280] what the legal contention is of the plaintiff in this case, that is, in part. As Your Honor knows, this being a libel action, libel is defined under the laws of this State as being a false and malicious defamation of another expressed in print or writing, tending to injure the reputation of an individual and to expose him to public hatred, contempt or ridicule.

Now, we contend that although that definition of libel includes and refers to the element of malice, that in this case there was no necessity for the plaintiff to offer evidence of actual malice on the part of the defendant for the law itself infers the existence of malice whereas in this case a libel is published, and, that therefore it is not necessary that the jury find that there was any actual malice on the part of the Curtis Publishing Company.

The Court: That is in so far as general damages is concerned but no as to punitive?

Mr. Lockerman: That's correct.

The Court: Yes, sir.

Mr. Lockerman: We point out that the article complained of contains the words "corrupt", "fixed", "rigged", and to "sell out" in referring to the plaintiff, Wallace Butts.

[fol. 1281] Now, we contend that proper definition of the word "corrupt" is that it means depraved, debased, or perverted, and we contend that the proper definition of the word "fixed" means to tamper with in advance, and that the word "rigged" means to arrange, carry out or manipulate by deceptive or fraudulent means, to fool and hoax. We contend that the words "to sell out" means to betray for compensation the cause or associates with whom one is identified, and we think that Your Honor should charge the jury along that line.

We further contend that this article, when it is read in its entirety, that the article complained of in this Saturday Evening Post charges the plaintiff with being corrupt and with rigging and fixing the 1962 Alabama-Georgia football game. We contend that that greatly injured the plaintiff in his profession as a football coach, and that the article therefore, we contend, is libelous per se, that is, that it is libelous on its face as a matter of law.

We feel that the Court should so charge the jury and to further charge the jury that the defendant in this case, Curtis Publishing Company, had the burden of proving the truth of the things it said about the plaintiff, and that if the defendant has not carried that burden and proved the truth of those things by a legal preponderance of the evidence, then the jury must return a verdict for the plaintiff in the amount of damages to which, under all the circumstances, they find that he is entitled.

We further contend that the defendant in this case has filed what is known as a plea of justification, and that under the law that by filing that plea the defendant has the legal burden of proving the words contained in the article which charged the plaintiff with being a rigger and a fixer of the 1962 Georgia-Alabama football game, and accusing him of being a participant in the greatest sports scandal since that of the Chicago White Sox in the 1919 World Series, and that it charges that he was a corrupt person who betrays or sells out his people, and he rigged and fixed the Alabama-Georgia football game as a gambling device in order to restore his financial resources. And further it charges that he was so corrupt and foul that his betrayed players were forced in the game like "rats in a maze and took a frightful physical beating", all of which is alleged in our Paragraph 11 of the petition, the plaintiff's complaint, and we contend that the jury should be charged that nothing short of the defendant proving the truth of those charges by preponderance of the evidence will suffice as a defense.

We further say that under the pleadings in this case and as the pleadings will show that Wallace Butts is asking for general damages in the sum of five million dollars. Of course, we also—the petition, as I will later on point out, shows we ask for an additional five million dollars as punitive damages, but he is asking the general damages for five million dollars to compensate him for the injury to his peace, his happiness, and his feeling as a result of the article published concerning him in the Saturday Evening Post of March the 23rd.

Now, we feel that the jury should be instructed that unless they find that the defendant has proved that this ar-[fol. 1283] ticle was true, then the plaintiff would be entitled to recover general damages without proof of any amount, that it is not necessary for the plaintiff to prove that he incurred any special damages; nor is it necessary that the plaintiff prove that he has suffered any pecuniary or physical harm for the reason that the law presumes that the general damages flow from a libelous publication which injures one in his trade, occupation or business.

We contend that in a case such as this the law doesn't prescribe any measure of damages except to leave the question of damages entirely to the enlightened consciences of impartial jurors, such as the gentlemen that we have in the box, and that the jury should strive to give such damages as, in their opinion, will fairly compensate the plaintiff for the injury done. We feel that the jury should be so instructed.

In addition to asking for general damages, as I mentioned just previously, in the amount of five million dollars, the plaintiff in his petition is also seeking to recover an additional five million dollars as punitive damages under the law to deter the Curtis Publishing Company from repeating the injury to his honor, his reputation, and his integrity in the future.

We contend that under the law of Georgia, there may be aggravating circumstances in a case of this type, either in the act or in the intention of the defendant, and we con-

tend that such aggravating circumstances are present in this case. We say that the defendant has failed to prove the truth of the charges, and in addition to the amount the plaintiff is seeking as general damages that the jury should award to the plaintiff five million dollars as punitive damages to deter the defendant from repeating the injury to his honor, reputation, and integrity, and we think the jury should be so instructed.

Now, on the question of punitive damages, as on the question of general damages, we contend that the law prescribes no set way in which such damages shall be computed, that being left entirely to the enlightened consciences of these jurors.

We contend the jury should be authorized to consider in this connection the wealth of the defendant, and we further contend that the defendant has not sustained the burden of proving the statements by it about the plaintiff as being true, and that the jury is authorized to consider that fact in—authorized to consider that fact that this is an aggravating circumstance as referred to and provided for in the law in determining the amount to be awarded the plaintiff. We think that the jury should be instructed on that subject.

We point out, Your Honor, that evidence has been offered during the trial to the effect that the plaintiff, Wally Butts, through his attorney, prior to the time that the article was published, requested the defendant not to publish the article, stating to the defendant, Curtis Publishing Company, that it was not true, and that after the article was published that the plaintiff demanded a retraction by the Curtis Publishing Company of what it had said about him. Now, that is admitted in the pleadings too, the fact that the request not to publish and the request for retraction were made, and there is no question about that.

[fol. 1285] Now, under Section 105-720 of the Code of Georgia, it is relevant in an action for libel such as this for the plaintiff to prove that he had requested a retraction.

The Court: Is that 105-620 or 105-702?

Mr. Lockerman: Your Honor, it is—

The Court: That's all right; I will find it. I was just in doubt.

Mr. Lockerman: Yes, sir. Proof that he requested the retraction.

Now, we contend that the proof by the plaintiff, and, of course, the admission in the pleadings, that he demanded a retraction but the defendant failed to retract the article may be considered by the jury on the question of malice and bad faith.

We contend that the defendant has failed to prove that the article was true, and that the defendant has admitted that it refused to retract the article after being requested to do so, and we think the jury should be instructed that it is authorized to consider this fact as an aggravating circumstance in arriving at the amount of punitive damages to be awarded the plaintiff.

I want to read to the Court from the case of Cox versus Strickland, which is a libel suit action in 101 Georgia 482, decided by our Supreme Court here in the State of Georgia, [fol. 1286] where, at Page 493, beginning at Page 493, our Supreme Court has this to say:

“The right to publish through the newspaper press such matters of interest as may be properly laid before the public does not go to the extent of allowing the publication concerning a person of a false and defamatory matter, there being no other reason or justification for so doing than the mere publication of news. But false assertions, when they impute the commission of crime, are actionable; and when not based upon any facts legally tending to prove the crime imputed, the publication cannot be said to be privileged. It will not do to say that such a publication was made with reasonable care, however good the motive may have been.

“In popular belief, one man can publish of another what he sees fit, if, by bluff or otherwise, he can avoid any personal consequences on account of such act; the party aggrieved must either submit or go gunning for the publisher, or to retain his place in public estimation as a man of

honor. Generally the libeler is not in evidence; his work is done behind the scene; you cannot always know his motive. Upon the surface he is the embodiment of fairness, of patriotism, yea, sometimes his religious views almost deter him from work he is about, but, patriot as he is, he will do the public a service, and often he strikes a better man than he is, a cowardly blow though it be. Character is defined by Webster to be particular qualities impressed by nature or habit on a person, which distinguish him from others. The libeller would strip him of these. He wishes him to appear, not in his true character, but in a fictitious one, a character that he would give him. We [fol. 1287] can understand why a thief would steal, he is after gain; so forgery is committed, and other crimes; but from a moral standpoint a man who would destroy character must be ranked along with the felon who commits arson, he cannot hope to profit by it; he cannot appropriate that of which he deprived another. Character ought to be protected; the law ought to be enforced to protect it. I could not do better than quote just here from the preface to the letters of Junius: "If the characters of private men are assailed or injured, a double remedy is open to them by action and indictment; if through indolence, false shame, or indifference, they will not appeal to the laws of their country, they failed in their duty to society, and are unjust to themselves; if, from an unwarrantable distrust of the integrity of juries, they would wish to obtain justice by any mode of procedure more summary than a trial by their peers, I do not scruple to affirm, that they are in effect greater enemies to themselves than the libeller they prosecute.'"

SUMMATION TO JURY ON BEHALF OF PLAINTIFF

Gentlemen of the Jury, I have been actually stunned and amazed by the address that Mr. Cody just made to you. Mr. Cody is a fine man. Mr. Cody is a fine lawyer. I respect him very much. I know that in the this case that he

is being persuaded by the Curtis Publishing Company, his client in the matter, in which he necessarily must avoid discussing the real issues. The only reason that he spoke to you first in this case, being the defendant, is because the Curtis Publishing Company came in and filed a plea of what the law refers to as justification in which he claimed, in which the Curtis Publishing Company claimed [fol. 1288] that what it had said about Wally Butts was true. They, therefore, had the burden of proving that those things were true.

I don't believe that in any place in what he has said to you that he has touched in one iota on the burden that he had of proving the truth of these charges that were made as so prominently shown in that editorial in the Saturday Evening Post. He has seen fit to talk to you about anything except the truth of those charges.

Mr. Cody, apparently, Gentlemen, is taking the position that if you will just believe that Wally Butts has bad character, that the Saturday Evening Post can say anything that it wants to about Wally Butts, that it can say anything that it wants about anyone, if in some way they can come before a jury that tries the case and try to create some feeling on the part of the jury that the person that they have charged with being, say, corrupt, and with being a fixer, is of some bad character. I don't believe that you are going to let the Curtis Publishing Company, so far as the Northern District of Georgia is concerned, continue with that type of policy.

Mr. Cody told you about having been at the University of Georgia, and about how Mr. Schroder was at the University of Georgia, and Judge Morgan was at the University of Georgia. He has, of course, referred to the gentlemen that they brought here from the University of Georgia. It seems to me that the Curtis Publishing Company is trying to hide behind the skirts of the University of Georgia, that this great institution that it is. We are [fol. 1289] all proud of the University of Georgia. Mr.

Cody has no single claim to that at all. I am proud of the University of Georgia. I have a son that graduated from there in June. We all are.

Since he talked to you about the University of Georgia and when he was there, I think I likewise have a right to mention to you briefly that I probably have known Wally Butts longer than any man in this case. I was at Mercer University with Wally Butts when he played end on the football team there. He was in some respects a small man in stature, but he had more determination and more power to win than any man that I have ever seen in my life. I would not stand before you in this case today arguing in his behalf if I thought that Wally Butts would not tell you the truth when he raises his hand on this stand and swears to Almighty God that what he is going to tell you is the truth.

After the Curtis Publishing Company brought in the parties from Athens, Wally Butts went back on the stand and he still, with raised hand of telling the truth, swore to you that what he had told you in this case was the truth.

Mr. Cody has not referred to the fine young men that came over here from Athens who know Wally Butts so well. He doesn't want to mention to you, obviously, the fact that those fine young men and the coaches that came over here and testified in behalf of the truth of what Wally Butts has told you as all of us who have been in this case know that they supported the truth of what he said.

[fol. 1290] Mr. Cody did not attack the character of any of those witnesses. He knew that he could not, and they have verified right to the letter everything about the heart of this case that Wally Butts has said.

Mr. Cody tried to cast doubt in your mind as to the integrity and as to the character and as to the honor of Coach Paul Bryant by suggesting that he compelled those two fine young boys who came over here to testify, that he conspired with them and rigged with them to come over here and testify.

I think Mr. Cody knows very well that the brochure that he referred to, a type of brochure of that type is put out at the end of the season and that when young boys who have graduated or rather who have completed their eligibility, outstanding young men of the team have completed their eligibility, that they are carried on the staff as helping in coaching. That brochure is prepared for next year, and I think Mr. Cody knows that, but he wants you to believe that there was a conspiracy on the part of those fine young men and Paul Bryant who come over here and tell you untruths about this case which they did not, and they verified everything to the real heart of this case that Wally Butts has told you.

Gentlemen, Mr. Cody referred, of course, to John Carmichael, and he tried to imply to you that John Carmichael had lied, had told untruths to you on the stand by claiming that John Carmichael had said that he was at the dentist's office on the morning before he went to the office where he found Burnett at his desk. Now, I don't ask you to accept my memory, but I believe if you search your own carefully [fol. 1291] you will remember that John Carmichael said that he thought he went to the dentist; he repeated it several times, "I think to the best of my recollection I was there, but I cannot be sure. It's been a long time ago." And that was what he said. And then the Curtis Publishing Company in its desperate effort in this case to try to case some question on his testimony, go out and get a doctor to come in and say, "No, we don't have any record." The man never did say that he was positively there.

And, speaking of John Carmichael, I wonder if it has occurred to you why, if his testimony wasn't true, why the Saturday Evening Post did not bring and present to you, as we did John Carmichael, this man who is referred to throughout this argument by the name of Milton Flack. Have you seen him? Now, bear in mind that he came to that office on Eleventh Street about 2:00 or 2:30 on the afternoon of the same day that Burnett allegedly made these notes, and that they sat down and discussed the

notes and discussed what was supposed to have been said. Now, if those notes weren't fraudulent, if they weren't fictitious except for the first page and the last page as testified to by John Carmichael, why didn't the Curtis Publishing Company bring that man in here? They know where he is. And I say it is not right to try to cast doubts in your minds about any such thing as that.

Pierre Howard seemed to have been furnishing a great deal of information to the Saturday Evening Post in connection with this matter. He is a local lawyer, and he is a man that the Post paid, oh, I don't know how much it was, five hundred or a thousand dollars; I think it's a thousand [fol. 1292] dollars to Pierre Howard, and they have not brought him in to testify as to the truth as to what they have assumed the burden of proof.

I think you ought to consider those things. I think you ought to give it careful consideration, and I know that you will.

Mr. Cody drew comparisons about his bald head and about whether or not—being types of inaccuracies in papers. He talks about Ricky Nelson. He talks about Dr. Kildare. He won't talk to you about the real heart of this matter, because he knows that it cannot be proven, and he has known it from the beginning, and I feel sorry for him. He had a terrific burden and he can't carry it, and he doesn't want to talk about it. He wants to talk about anything except that, and that is all he has done for two weeks, including specifically today.

Gentlemen, March the 18th, was the blackest day that could ever befall—I mean, to Wally Butts, that could ever come upon any man. That was the day that the Saturday Evening Post that bears the date of March 23 hit the press, or hit the newsstands, I mean, not the press. It had been printed up long before. On that day of March the 18th, Wally Butts became an ashamed, heartbroken form of just a shell of himself. As he told you before, he broke down on the witness stand, that he had been, after it came out, he had been ashamed to run into people or to look

them in the eye for so long, but that he had gotten to the point to where he had the strength to look any man in the eye, and that from here on out he will look them in the eye, and he swore to you that was because of the fact [fol. 1293] that what they had said about him was not true.

Wally Butts had spent thirty-five years as Head Coach, either in high schools at Monroe, starting in Monroe, going up to Male High at Louisville, and over to some other at Lexington, Kentucky, and finally coming to the University of Georgia where he had been for twenty-five years. He had reached the height of his profession. He had gotten every honor, practically, that could be gotten by a coach in the Southeastern Conference or in the United States, for that matter.

The Saturday Evening Post would have you believe that this man's character is bad. I want to read to you the fourth paragraph of the complaint, that is the petition, of course, that was filed in this case, and it alleges this in Wally Butts' petition:

"Plaintiff, during his career, has enjoyed a national reputation as a successful and respected member of the coaching profession, and has been accorded many honors, among which was his election in 1959 as resident of the Football Coaches Association, a national organization of football coaches throughout America. Upon invitation he has coached the College All-Stars, the Blue-Gray All Star game, and the North-South All-Star game. Plaintiff has, during his career, been widely sought as a speaker and lecturer on various aspects of football, and has spoken and lectured at clinics, banquets and other public gatherings throughout the United States. In addition, plaintiff has been approached and offered employment as head football coach by several colleges and professional foot-[fol. 1294] ball teams in the country due entirely to his reputation as successful member and leader in his profession."

And when that suit was filed the Curtis Publishing Company came into this Court and filed its answer to it, and

admitted every word of it. Now, since having done that, the Curtis Publishing Company is trying to contradict what it said in its own pleadings in judicio, here in the courtroom.

If Wally Butts' character is bad, Gentlemen, it is because of the things said against him by this Saturday Evening Post. If people say that he is of bad character, it is because of that, and why do you think we are suing the Saturday Evening Post? We say that they have ruined him, and they did ruin Wally Butts, unless you gentlemen correct this and say what should be said to the world in this case and find, of course, that the Curtis Publishing Company has not proven the burden, has not proven the truth of its charges against Wally Butts.

I want to talk a little bit about the Curtis Publishing Company. Mr. Cody referred to Benjamin Franklin and about the two hundred thirty-six years that the Curtis Publishing Company has been publishing a magazine. Of course, it was a great magazine; it had a very conservative reputation until the new management of editors took over, Mr. Clay Blair, Jr., Mr. Davis Thomas, and the others whose depositions we read to you.

They did not bring one man here from the Curtis Publishing Company or the Saturday Evening Post to put him [fol. 1295] on the stand to testify to anything in support of what they claimed they were going to prove to you. As you know from the evidence, Clay Blair, Jr., when he took over the editorship of this, he wanted to create a different image. He wanted to get away from the image of Benjamin Franklin. He wanted to create his own image. As a matter of fact—

Where are those things, those exhibits?

—when you have those exhibits out you will find that he wanted to get so far away from the image of Benjamin Franklin, that he has taken his facsimile, this image of Benjamin Franklin, which for years and years and years was carried on the Post; he has taken it off; he doesn't want it. He tells you in his sworn testimony in this case

that he has created, he has changed the image of the Saturday Evening Post. He wants to create furor. He wants to make people mad. He wants to be sensational. He has a yardstick, a new yardstick of the image he wants to create in that magazine. He wants to make it a fireside confidential weekly publication and get into the homes of twenty-three million readers in America. He tells you that his final yardstick of the kind of image that he is creating is represented by the number of libel suits that they had at the time that he took his deposition—I forget the date—maybe sometime in May or June of this year or something like that. That is the final yardstick as he measures it, of the type of magazine that they want to publish.

Gentlemen, the Saturday Evening Post apparently has gone into the business of buying libel suits. They bought [fol. 1296] this one. They paid George Burnett five thousand dollars for this libel suit, and they told him, "We will give you two thousand dollars for an affidavit. We want to try to make it appear, in effect, that we got an affidavit from you, and we will give you two thousand dollars just for an affidavit." But, in effect, they said, "If you make it good enough, Mr. Burnett, we will give you three thousand dollars more." And that is exactly what they did. They gave him three thousand dollars more. They bought themselves a libel suit. That is right in line with their policy, the image that they want to create. They want to be sensational.

In this very law suit alone that has been in every paper, every radio station, every television station for months and months and months, and recently hour on the hour, all over the world, they have gotten untold millions of dollars in publicity where the name "Saturday Evening Post" is on the ears and the lips and tongue of all the people in the world.

These reporters here, all over this courtroom are sending this out. That is what they want. You could return a verdict for Wally Butts in this case of ten million dollars, and it would be the greatest merchandising bargain

the Saturday Evening Post ever got. There is no way of telling. They could not have bought the publicity they have gotten in this case probably for fifty or seventy-five or a hundred million dollars, because it is world-wide, and you try to buy space in magazines, daily papers, radio stations, television stations all over the world where your name is mentioned every hour on the hour, such as this has been, [fol. 1297] you can't do it for any amount of money, and they have used Wally Butts for that purpose.

If you should return a verdict in this case, say, for five million dollars, they would think that they had won the greatest victory that could possibly be returned in the case.

Who do they rely on in this case? They rely on George Burnett, an eavesdropper, a man who is always one step ahead of the Sheriff, and he was caught, and he was on probation at that time. It is in the article. It shows it. Not only is he an eavesdropper, but he is a telephone conversation sneak, and that is the kind of man that they ask you to believe in preference to all of these witnesses that we have brought here in proving our case to you.

Gentlemen, there are so many things I would like to discuss with you. I have a limited time, because my fine partner Bill Schroder, is going to make the concluding argument in our behalf on Monday morning, and I want to leave him all the possible time that I can. I know he will cover it, the things that I have not mentioned to you.

I am sorry that I may have appeared to have gotten right emotional about this matter. I am emotional about it. I am mad about it. There are just thousands and thousands of people who are mad about it too, and I believe that in your deliberations and in your final verdict that you are going to return the kind of verdict that will help [fol. 1298] restore Wally Butts as he should be restored in the eyes of the world.

Thank you.

Mr. Schroder: If it please the Court, Gentlemen of the Jury, it's a good feeling to be back where I can discuss this case directly with you again as we did when we first got into it Monday, two weeks ago.

I am going to, because the time is somewhat limited, be forced to skip over and not discuss some matters which I feel confident ought to be discussed, and perhaps you Gentlemen feel that I should discuss, but being limited as I am by the time allotted in which I am to complete the summation, I will necessarily have to skip some topics, but I do not want anyone on the jury to get the idea that because I have not touched upon them that I did not think they were important.

I want to begin by taking up where the Saturday Evening Post Lawyer ended Friday. I sat here for an hour and listened to that argument. I made voluminous notes, and there were several things which were stated in that argument which I think must be dealt with here and now.

Throughout that argument not two minutes were devoted to the merits of the case; not two minutes were devoted to the plea of justification, that is to say, that what is in that article published by the Saturday Evening Post is true. On the other hand, practically fifty-five minutes was devoted [fol. 1299] to a subject that has never arisen in this case in this courtroom until the 'eleventh hour'.

I remember the Saturday Evening Post lawyer stating to you that, in effect, Wallace Butts, because of some testimony given by O. C. Aderhold, President of the University of Georgia, Mr. Bolton, Comptroller, ought not have a recovery. Now, Gentlemen, that is not true. Gentlemen, that is not a fair statement. Part of the evidence in no way can be considered in support of their plea of justification.

Speaking of character evidence, you were told Friday by the Saturday Evening Post lawyer that if you believed Dr. Aderhold lied on the stand, then bring in a verdict for Wallace Butts. I say, again, to you, that is an unfair statement, and it is an unwarranted statement, and it does not apply in this case.

It was told you that the University of Georgia is a third party to this case. That's not so, and I personally resent it.

Mr. Lockerman argued to you immediately after the Post lawyer sat down. Here the Post was attempting to hide behind the skirts of the University. On further thought, it is not the skirts of the University that the Post would hide behind, but rather it is the coat tails of Dr. Aderhold. Mr. Aderhold was not here testifying as a representative of the University of Georgia; he was here testifying as a plain citizen Aderhold. If it ever occurred to me for a single second that he was testifying to what he did testify to as a representative of the University of Georgia, then my reaction would be, I would go home immediately, I would get my diploma and I would send it back to the University of Georgia. I would take this gold watch, which is inscribed "Presented by the faculty to William H. Schroder, First Honor Graduate, School of Law, University of Georgia, 1938", and I would send that back to them. Likewise, with this Phi Beta Kappa key won at the University of Georgia; I would send that back to them.

I would apologize to those four fine youths who came over here and testified as witnesses for the cause of Coach Butts, those fine youths who the Post lawyer would have you believe were being corrupted.

I would apologize to my daughter who is a co-ed at that institution.

No, sir, Mr. Aderhold was over here expressing his own personal views, and I will point out to you in just a moment that character evidence, good or bad, why it has no place here.

It was obvious from Dr. Aderhold's testimony that over the years he has been—he has built up an almost blinding jealousy for Coach Butts. When he became President in 1950, Coach Butts had already produced seven bowl games, and he was "Mr. Georgia"; he was getting the plaudits that Mr. Aderhold thought that he should be getting when he became President. For the next ten years they had but

one bowl game, and obviously there must have been many an argument between the two as to the budget which was being set aside for recruiting purposes.

[fol. 1301] Despite that, in 1959 Coach Butts did produce a championship team. In 1959 Coach Butts was elected the second best coach in the United States. In 1959 Coach Butts was elected President of the American Football Coaches Association, only the third time that single honor has ever been conferred upon a coach of the South, the other two, of course, being William A. Alexander, that great man from Georgia Tech, and Dan McGuggan from Vanderbilt, both of whom have long gone.

I say, why do they bring that in here at the last moment? It is because the Saturday Evening Post does not want to face up to the issues which they made by their pleadings, and what did their pleadings do insofar as this question is concerned? They have filed a paper in this court, an official paper, in which they have admitted that Coach Butts has enjoyed a national reputation as a successful and respected member of the coaching profession, that during his career he has been offered several college and professional football jobs, because of what? Due entirely to his reputation as a successful member and leader in his profession. They have admitted that.

In that article which they published, and I will show it to you in a moment when I get to that portion, they write "careers will be ruined, that's for sure." My question to the Saturday Evening Post lawyer is: How can a career be ruined if there is no career to ruin?

As the man who wrote the article, Mr. Frank Graham, Jr., we had to go to New York to find out what his story was. They wouldn't bring him down here and let him look [fol. 1302] you in the eye. And here is what Frank Graham, Jr., said in New York when his deposition was taken under oath, and this part has been read to you; therefore, it is in evidence. "In my opinion", and I am quoting, "when this article was published it was the death of Wallace Butts in his chosen profession."

Mr. Graham says again, on page 139, "both Curtis Publishing Company and I both knew that when that article was published it would ruin Coach Butts' career."

And Mr. Charles D. Thomas, the senior Editor, we had to go up there and get his testimony too, and they haven't brought him here to look you eye-to-eye and give you his story. Here is what he said up there, and it was read under oath. "I knew"—this is page 33—"that the article being published by the Saturday Evening Post was placing the professional reputation of Butts on the line." He knew it when he published it. Now, if he didn't have one, why was he so swearing?

Mr. Thomas, again, in that same deposition, page 34, "I knew before the article was published the careers of two men, including Coach Butts, would be ruined as a result of the publication." Not as a result of the testimony of Dr. Aderhold but as the result of the Saturday Evening Post article.

And they come in here Friday and they don't want to answer what their own witnesses have already testified to, and they don't want to face up to it. They want to put it in the lap of Dr. O. C. Aderhold, and, incidentally, I asked [fol. 1303] him on the stand had anyone from the Saturday Evening Post ever contacted him before writing the article, and his answer was in the negative.

Gentlemen, obviously they don't want to face up to the issue in this case, but they want to confuse and confound and befuddle the Gentlemen of the jury seated there in that box to such a degree that whatever amount you ordinarily or otherwise would give Wallace Butts would be reduced by that type of evidence.

Evasive, sidestepping the issues all the time, all the while trying to influence your thinking insofar as the amount of money that you would award Wallace Butts because of a malicious, defamatory article they published in the March 23 issue of the Saturday Evening Post.

A backfield composed of those Post officials who will not get on the stand where you can see them, Mr. Clay Blair,

Mr. Thomas, Mr. Roger Kahn, and the author, Mr. Frank Graham, would be unbeatable. They can sidestep and dodge issues better than the four horsemen of Notre Dame could ever sidestep would-be tacklers. Why don't they come in here and tell you they believe the story that they wrote?

The Saturday Evening Post lawyer was talking to you about your rights to determine the credibility of the witnesses, which is your exclusive right, and when you go to determining that you have a right to look at the witnesses on the stand to determine their personal credibility insofar [fol. 1304] as that is apparent from the stand. The Post doesn't even read the deposition of their officials. The Post doesn't even put a single one of them there where you can see them; we have had to do it.

Who is the Saturday Evening Post to start raising some questions about somebody's reputation or somebody's character? This Saturday Evening Post, who less than two years ago made a 180-degree turn from the widely respected, highly regarded Post magazine of the old, with the great Benjamin Franklin on the masthead, and they went into what they have announced as a sophisticated muckraking policy. Do they care anything about the Good Book? Are they familiar with a great verse from Chapter 8 of St. John when he was teaching the scribes and the Pharisees, and they brought a woman caught in adultery before Him, and they said, "Unto the law of Moses we are commanded to stone her." And Christ said, "Let him who is without sin among you be the first to cast the stone at her." And hearing this they went away, one by one, led by the eldest.

Does the good law "Thou shalt not bear false witnesses against thy neighbor" mean anything to the Saturday Evening Post? Does "Judge not lest ye be judged" mean anything to them?

I didn't mean to take up so much of your time on that subject, but I am telling you, Gentlemen, it's been brought in here to befuddle your thinking and to confuse you and to confound you. I think the best evidence of the type of

man that Wallace Butts is, he hasn't hidden away from this courtroom; he's been here every day, and he's been on [fol. 1305] the stand. You have had a chance to look at him, to observe him.

Seated here with him throughout for two weeks has been his lovely wife, Winnie and his three daughters. That is a glowing tribute, as glowing a tribute as were those four boys coming over here, and the trainer, Sam Richwine, and Charlie Trippi and John Gregory coming over here and showing you what they thought of Wallace Butts.

I am now going to discuss the real issue in the case, and I hereby challenge the Saturday Evening Post lawyer to also discuss the real issue in the case.

Now, he made a statement Friday in connection with this topic I am prepared to leave now. He is being directed in this case by the Post, because he wouldn't have made this statement otherwise. He made the insinuation or the innuendo that there was other evidence that he could have introduced but he didn't. That's not fair; that's not professional; that's not ethical.

The only thing, and he knows the only thing that any jury in any case can consider is the evidence that has been produced here in a legal way for their consideration. I don't know what he was talking about; I doubt if he does. But he wanted you, again, Gentlemen of the jury, to forget the real issue in the case and to reduce, as the law calls it, mitigate the dollars that you would otherwise award Wallace Butts.

[fol. 1306] They have plead what they call a plea of justification. They have done that for one purpose and one purpose only, because they know they can never sustain it. They did it so they could get the concluding argument, and that is a valuable asset to any lawyer, to be able to make the final argument to the jury, because the opposition cannot answer him then. They are through. The plea of justification of law says that what they have said of Wallace Butts in that article is true. Well, let's take a look at it.

I will just take the first couple of boards here, being the first two columns. All right, sir, this is the first line in the story.

“On Friday morning, September 14, 1962” this took place. Well, we know that is not so, and they admit it.

“‘Coach Bryant is out on the field’” they say here. Coach Bryant says they had no morning practice, there would be no need to be on the field, and it was in the newspapers and Graham could have found it if he wanted to look for it.

Down here we have got, “‘Hello, Bear.’” The testimony is uncontradicted that they do not refer to each other that way in the presence of each other.

These may be minor, but they are enough, in my mind, if I marked every one of those, to show that this was a very careless, irresponsible job done by the Post in its investigation and in its reporting of the article.

[fol. 1307] Now, Mr. Graham, he is the man who wrote the article, here is what he says right here. “As Burnett listened, Butts began to give Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later.” Mr. Graham, the man, one of the four men they would not bring down here, testified by deposition on page 51, nothing in Graham’s notes which he got from Burnett indicated what was to be used or what was to be done in the football game.

Mr. Graham, again, in his deposition at page 51, “Burnett gave me no record, no information as to the details of the plays and formations.” He says Burnett didn’t give them to him because he didn’t have his notes; he needed his notes to refresh his recollection.

That came from Mr. Graham, not from Mr. Burnett. I say that is not fair journalism; I say that is not true, careful reporting.

Going on down here again on this first column in the whole article, “occasionally Bryant asked Butts about specific offensive or defensive maneuvers.” In Graham’s depo-

sition he says Burnett didn't say that. He said he needed his notes to check it on, and he was going to get his notes and he was going to check it, but he never did get his notes, and he went on and published the article anyway.

Here, by George P. Burnett. He said, "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet." Graham said he told Burnett that, and he put it in [fol. 1308] quotations. Of all people, Burnett says, "I never told him that." The Saturday Evening Post thought that was a mighty important item to put in that story, to induce the reader to the conclusion that this was a fixed and rigged ball game.

Mr. Kahn, the Sports Editor, and Mr. Thomas, the general Editor, both testified by deposition that that was vital information for the defensive team, Alabama, to know, that it was of the utmost importance. Now, they didn't even tell him that. He put it in there on his own.

I can go through this whole set of boards here, column by column. That is simply in illustration. You have seen the witnesses come in here who have been quoted in this article with saying things which would indicate that the article was true, come in and deny they ever made any such quotation, including a Georgia football player who still has another year to play, and without regard to what he might feel might face him when he went back to Athens, he came over here and got on this stand for his old Coach who was coaching him when he was there, and the boy is still there, Mickey Babb. They had him quoted as saying something like this: Taunting him or taunting the Georgia players by saying "You cannot run that old play on us, 'eighty-eight pop'. In effect, we know every play you have got." That was a deliberate misquotation put in that article for one purpose only, like this one about Rakestraw's feet, to lead the reader of the article to the conclusion that what these great Editors said here in the article was true.

[fol. 1309] Sam Richwine, old Sam, I had never seen him before; he is a trainer over there; he is still working there

and in the face of Dr. Aderhold and Bolton. He came over here and stood up and was counted for Wallace Butts. He says, "The quotation attributed to me in there was never made; I don't even know the plays of Georgia's team." And he is quoted as saying, in effect, that the Alabama players knew the Georgia plays during that game. He says it is one hundred percent incorrect, and, in answer to a question put to him by the Court, he says, "The only thing I knew about either team was the physical condition, and I did say, if I said anything to Mr. Bisher, I did say that the physical condition of the team in 1962 was better than it was in 1961."

And last, but not least, Coach Johnny Griffith stated that in three major instances he was misquoted by the Saturday Evening Post article. He was misquoted in one matter which was so important to the Post they made a headline word out of it, "I never had a chance." Johnny Griffith said, "I never made such a statement." They put it in there, again, for the purpose and the only purpose of inducing the reader to go along with this scurulous attack they have made on Coach Butts in this editorial in which they call him corrupt, in which they say he had fixed a game, rigged a game, threw his boys down the river, sold out his school.

These are facts upon which they claim makes that true.

Johnny Griffith again, down at the bottom, denied it. You can go over those Gentlemen. You remember—here is an-[fol. 1310] other one from Griffith here, denied; Johnny Griffith, denial there; Mickey Babb, denial here; Sam Richwine, he denied that. Yet, they file a plea of truth, a plea of justification saying that what they have said in that article and in this editorial is true, and what evidence have they brought here to support that?

They want to run around on the periphery, keeping your mind off the issue.

And who are they to judge a man's character? Mr. Aderhold? Some people don't go to night clubs, I know. Some people may think that's bad. But does that justify anyone writing an article like this? If they were relying on that,

why didn't they put it in the article? If they were relying on that, why didn't they come in here and file a paper admitting that his reputation was good?

Skipping along from the article to what was the information that they never had in their possession when they wrote the article, and that are the so-called Burnett notes. They recognized the importance of having those notes; they wanted those notes; they never got them; they wouldn't wait on them; they never really made any real effort to get them. Furman Bisher said he was never asked to get the notes for them, and he was the man on the ground here. They didn't want the notes; they didn't want to know anything that might deter from that editorial.

They came down here, Gentlemen, knowing that a man by the name of John C. Carmichael was present when the telephone call was intercepted, and Mr. Kahn testified that [fol. 1311] they knew that before Graham came here, and Mr. Graham testified that he knew that before he came here, but they did not purposely, deliberately interview Carmichael, and the reason they didn't was because they evidently came to the conclusion that he would not agree with what Burnett had to say.

That, journalism? That, fair reporting? When you are getting ready, as they say, to kill a man in his chosen profession, when you are getting ready, as they say, to ruin a man's career, they call that reporting, fair reporting, seeking the truth?

What else did they not do? They did not review the film of the game. Now, mind you, Roger Kahn, the Sports Editor, who ought to know more about sports than Mr. Thomas, who was his boss, said, "I thought it would be a good idea to review the film." Mr. Thomas testified, "Mr. Kahn thought it would be a good idea to review the film, but I overruled it; I was his boss." And you know why? Had they reviewed those films with anyone who knew anything about football, they would have known, Number one—well, we won't go all through the Burnett notes again—Number one, how the touchdowns were scored, four of which were

scored because of a man being out of position. They would have known Brigham Woodward commits fast, that not a single pass was ever thrown in his area, which an opposing coach would do if he thought that was so, or someone had told him that was so.

Had they reviewed those films, they, again, would have known that what they were getting ready to write about or [fol. 1312] what they were getting ready to write in that article was highly doubtful. Again, is that good reporting? Is that what the field or the profession of journalism owes you and owes me and owes the people of America when it is getting ready to write an article which it knows and which it states therein that it is going to ruin us, that it is going to kill us in our profession?

Taking the reputation of a man, taking a man's character and assassinating it like they have done is worse than death itself to me, because they still leave the man living with his reputation torn from him. Don't they understand that? Doesn't it mean anything to them? Can you imagine a worse day for any man to be still alive and attend the funeral of his own reputation? It is impossible to conceive of, and they were going through all of this careless reporting, irresponsible reporting, not going for the truth but something merely to lift their sagging circulation. They were libelling for profit to lift their sagging circulation so their advertising revenues would increase, would improve.

They have brought in another thing here, Gentlemen, which I assume the Saturday Post lawyer is going to discuss at some length with you, and that is the—Dr. Rose's letter. I am only going to touch on it briefly, because I really think that is all of the attention it deserves, but you will remember there was a letter written on March 6, which was after this article was put to bed and went to press, it had no influence on the Post when it wrote its article, in which he attempted to explain certain technical matters in football concerning which he had testified he knows nothing, [fol. 1313] to Dr. Aderhold, and, in good faith, because the question came up when Paul Bryant was on the stand, that

man came all the way back here from Mexico City to explain it. He says he didn't sign the letter but his secretary did. Then the Saturday Evening Post steps in with its usual defense and makes the fine educator, that Doctor of Divinity, that man who had his own church for some five or six years, sign his signature, not once, but three times on a separate piece of paper, to do what? What are you going to do with that? They don't believe him under oath? What can they get out of it? They are hurting him in the public eye. It is like asking him to take a lie detector test when he gets off the stand. But there will be some talk about that. That is the typical defense.

There will be some talk about gambling. Now, isn't that a strange thing for them to draw in this man from Chicago and make a lot of hoop-la about him, and the fact that back in 1957 he bet—him owning the Miller High Life franchise in New York and Chicago, I couldn't imagine a greater gold mine, to him betting fifty thousand dollars in '57, and the only year he ever bet that, the fact he bet that, they are trying to say there is gambling in this game because Coach Butts knew him. But he wasn't gambling in the year they are talking about now, and they know that, and there is no evidence to the contrary to that.

I assume Mr. Frank Scoby has been ruined all over again by his being kicked around by the Post in this article by a man who says, "I learned my lesson when I went down there [fol. 1314] and testified against my old bookmaker for the United States Government.

Why bring that in now? You know what they testified to when I went to New York and took their depositions, these same witnesses, Thomas, Kahn, and Graham.

Mr. Thomas, at page 83, "I had no intention of implying there was any betting by either Butts or Bryant." And Mr. Kahn, who wrote the article had this to say, under oath, "I did not imply that the game was fixed or rigged because of any betting angle."

Why bring it in unless it is to muddy the water and to keep your minds away from the issue in the case?

Frank Graham, again, who wrote the article, "I am not suggesting, when I wrote that article, or intimating that either Butts or Bryant bet on the game, either directly or indirectly." I hope they will discuss that with you and explain why they brought it in here in spite of what their own officials had to say their intention was when they published the article. Has that intention changed now? I can't change after the article is published. It is what they are thinking about and what they put in that article when they maligned and killed Wallace Butts that counts.

Coach Bryant and Dr. Rose mentioned these new rule changes, and I am not going to read them to you. I want to identify the two documents for you, why there has been so much concern to Alabama and Dr. Rose. The granning-[fol. 1315] Holt incident had a profound effect upon Dr. Rose, and he was not going to stand for it again, and his coach knew he was not going to stand for it again, and he was very much concerned about not letting it happen again, so much so that was even more important than any other phase of the athletic program to Dr. Rose. These are the new enforcement policies.

It amused me somewhat to hear my opponent stand here before you Friday and again and again and again criticize Wallace Butts, the man that they have killed, by saying that he was critical of Johnny Griffith. Johnny Griffith didn't testify to that. Johnny Griffith testified that Wallace Butts was the man that gave him his first job at the University, put him on the staff where he could finish his education, and also get paid to help do that. He testified that Coach Butts, when he got him back there as an assistant coach, after he had been over to Furman, loaned him two thousand dollars, and that Coach Butts signed his note with him at the bank, co-endorsed it, and on many occasions when the payments would become due, Coach Butts would make them. Critical of Johnny Griffith? Johnny Griffith didn't say so. Maybe it was Dr. Aderhold that said so, but he is not Johnny Griffith.

February the 26th, 1963, five days after the Saturday Evening Post has come in here and bought this libel suit, Wallace Butts wrote Johnny Griffith, "Dear Johnny, I hope you have a great year in football. You and your staff deserve the good breaks, and I hope the ball will bounce the right way for you." Again, they want to cloud the issue. [fol. 1316] They bring in something by Dr. Aderhold to the effect that there was criticism. Johnny Griffith didn't say so, and certainly that letter doesn't sound so. And Johnny still owes him money.

Before this article was published, and this is admitted to be true by the Post, when the word got around about it, I sent them a telegram not to do it because it wasn't true. I sent them a registered mail letter asking them not to do it because it wasn't true. I got an answer to neither one. They went on anyway, and Mr. Clay Blair, the head man of the Post, testified, and you heard him testify, not in person, wouldn't get up there in person, but by deposition that I took, about the call he had from Coach Butts' daughter, Jean, how she wept and she cried and implored him not to print that story because of what it would do to her Dad. No, not the Post. They went ahead. They knew what they were getting into when they did it.

As Mr. Lockerman pointed out to you Friday, that is what they wanted. They wanted a libel suit. The more libel suits they got, the better they like it. And as Exhibit No. 2 will show, this is Clay Blair, this is the man who is building the image or rebuilding or changing the image of the Post. January 15, '63, just a little less than a month before he bought this libel suit, he writes to his staff, he says here, congratulating them on the change of the image, according to like he wants the Post to be, not like Benjamin Franklin wanted it to be, "Your work has not gone unnoticed. We have many press clips commenting on the new vitality in the Post. Joe Culligan has been extremely flattering in his com-[fol. 1317] ments, as have the other directors of the Curtis Publishing Company." Those were the new ones they brought in and the new President they appointed when they decided to change the image of the Benjamin Franklin Post.

Now, listen to this, Gentlemen. "The final yardstick, we have about six law suits pending," and he later identified those law suits as libel suits, "meaning that we are hitting them where it hurts." Proud of his libel suits, proud of the publicity, the free advertising he gets from his libel suits.

Mr. Clay Blair, who wouldn't get on the stand and testify so you could see him, had this to say when his deposition was taken, at page 44, which we read. "I was not being facetious when I used the phrase 'sophisticated muckraking'. I meant it then and I mean it now." Their type of sophisticated muckraking is this article here where they can get a mere germ of an idea that they know will sell and will cause people to get hit where it hurts them, and result in a libel suit with a hundred million dollars worth of free advertising to them, and that is what they want. I will show you why that is what they want.

Mr. Clay Blair, again, "I changed the image of the Post." He says that the March 23 issue—that is the one with Butts' story in it—is a step in the right direction. "This issue takes us twenty-five percent toward the goal of the magazine that I envision."

Gentlemen, if that is just twenty-five percent, that type of story, toward the goal he envisions, what can we look [fol. 1318] for or hope to look for when that is multiplied four times.

He says, Mr. Clay Blair, again, "the Post advertising revenues fell from one hundred six million dollars in 1960 to eighty-six million in 1961 and to about sixty-six million in 1962. I did not like that trend dropping twenty million dollars from a one hundred six in 1960 to eighty-six in 1961 and again to sixty-two million in 1962."

That is when they changed the image. They have got to get those advertising revenues up, and I say that is the worst kind of libel that you can have. A newspaper can print a libel because someone has given it some information that turned out to be inaccurate, but when you go out and buy a libel—and they paid over nine thousand dollars for this story, which will show here in the vouchers, paid nine

thousand dollars for it—and did the reporting job that they did, they knew what they were getting, and they have it. One hundred million dollars of free advertising.

They have got twenty-three million readers. They are proud of it, that they are circulating this new image among twenty-three million readers that they sent that article to from which they have now gotten this free advertising all over the world, as Lickerman said, every hour on the hour. They don't care about Butts. They wouldn't care about you or about me. They are just one step in the direction that they are aiming.

[fol. 1319] Somebody has got to stop them. There is no law against it, and the only way that type of, as I call it, yellow journalism can be stopped is to let the Saturday Evening Post know that it is not going to get away with it today, tomorrow, or any more hereafter, and the only way that lesson can be brought home to them, Gentlemen, is to hit them where it hurts them, and the only thing they know is money. They write about human beings; they kill him, his wife, his three lovely daughters. What do they care? They have got money; getting money for it.

Every man living, and woman living in the United States, I believe, who knows anything about this law suit is counting on you to keep this sort of crowd from going on under the old Saturday Evening Post name which was respectable, going on under that name with this so-called sophisticated muckraking that they are now so proudly publishing all over the country, that that is what they are engaged in.

I am looking to you for my protection. Heavens knows, if you let them out of this case for five million dollars or less, and boy, it's been worth it to them, I may be next, because they are not going to stop with that. You may be next; my wife; my children; yourself. We have got to stop them now, and you are the only twelve in the world that can stop them.

The Court: You have got ten minutes, Mr. Schroder.
[fol. 1320] Mr. Schroder: Thank you, Your Honor. Ten

minutes—twenty-five percent along the way of the magazine they envision.

Gentlemen, this is the Saturday Evening Post that we all knew, loved and respected so much before they came in with the new directors and their new president and their new muckraking. There we have got old Benjamin Franklin up there. He was on all those mastheads up until this one. He is not on this masthead. This article has been introduced in evidence without objection: "Father is a football coach". This same old Saturday Evening Post that we loved so much was proud to write a story about Wallace Butts in its true picture in 1954 with the lovely daughters there seated by him and his other daughter there, here still seated with him. He is still the same Wally Butts to them, although the Post wouldn't have anyone else believe it.

He may walk along the sidewalks scared to look people in the face, because he knows what most of them think about him now, having read what they have read about him.

He was never given a chance, never given a chance until he came into this courtroom to face his accuser, and until this day he has never been given a chance to face the Saturday Evening Post face-to-face. They wouldn't come down here and face him or face you. They have nothing but contempt for us, arrogant though they be.

[fol. 1321] I say, Gentlemen, this is the time we have got to get them. A hundred million dollars in advertising, would ten percent of that be fair to Wallace Butts for what they have done to him? Would a fifty cent assessment on each of the twenty-three million issues which they wrote about him there, would that be a strain or a burden on them? I think it would teach them that we don't have that kind of journalism down here, and we don't want it down here, and we don't want it to spread from 666 Fifth Avenue any further than that building right now.

Here's another magazine, another article, the great old Saturday Evening Post that we loved and respected,

“Georgia plays for keeps,” fine article about Wallace Butts and what they thought about him then. Poor old Wally.

Those will be out with you, Gentlemen, and it will give you an idea as to the degree that the new Post has changed from the policies of the old Post, one hundred and eighty degrees.

My time is up. I have done the best I can. I have lived in agony with this man since I got the first notice that this was what was going to happen, this Post article was coming out. I have seen him deteriorating even since it came out, and I have lived in agony along with him, and it may be that the personal first-hand knowledge that I have had since almost living with him and his family every day, I may have said some things or done some things or conducted myself in some manner that was displeasing to you. All I can say, I have done my best, and if I have done any [fol. 1322] of those things, don't hold it against Wallace Butts.

You know, one of these days, like everyone else must come to, Wallace Butts is going to pass on. No one can bother him then. The Saturday Evening Post can't get at him then. And unless I miss my guess, they will put Wallace Butts in a red coffin with a black lid, and he will have a football in his hands, and his epitaph will read something like this: “Glory, Glory to old Georgia.”

Thank you.

* * * * *

The Court: You may proceed, Mr. Cody.

CONCLUSION OF SUMMATION ON BEHALF OF DEFENDANT

Mr. Cody: Please the Court, Gentlemen of the Jury, my time too is short in which to conclude this case, and I expect to get right down to business. First, I want to reply to one comment made by Mr. Lockerman in his argument to you on Friday. I will try not to touch this subject again after I answer his statement. He said that if Wallace

Butts' character was bad, it was because of the article which the Saturday Evening Post published. If you believe that statement to be true, you ought to find a verdict against the Defendant. If he had any qualms or doubts about the truthfulness of that statement, all he had to do when these close associates and friends of Wallace Butts were on the stand was to ask them when his character became bad.

[fol. 1323] You and I both know that men such as have testified in this case would not come into this court and say that his character was bad purely because of something that was said about him in the Saturday Evening Post. They would be here defending him and I would myself, and I think those men would have been his staunchest defenders had there been any truth in that statement.

The second thing I want to mention, in order to clear the issues in this case, is a statement made by Mr. Schroder where he intimated that the Defendant in this case injected into the case the question of gambling. Nothing could be further from the actual facts. If you will read this article, and you will have it out with you, you will find that no such statement and no such intimation is made in that article charging Coach Butts or Bear Bryant with any gambling.

Here is how it got into the case, and this, too, you will have in your jury room. If you will turn to paragraph 11, subsection (c), of this law suit, this is the one that they filed and which involuntarily we came into this court to answer. They say the Plaintiff is charged in this article with rigging and fixing the Alabama-Georgia football game with Coach Bryant as a gambling device in order to restore his financial resources. If you find any such statement in this article as that which I have just read about any gambling device, well, then, too, you ought to find a verdict against the Saturday Evening Post.

When they injected the issue in this case, we had to come in and defend that charge, and that is where our

[fol.1324] friend Scoby got into the picture and a few others. I will talk about him in a few minutes.

Now, Lockerman said I didn't talk about the Burnett notes in the argument which I made to you on Friday, and Mr. Schroder has mentioned that again today, although he has studiously avoided it himself. Not one word has been mentioned about those notes, and I want to get down to it right now, and here is what is in those notes. They mention players and they mention plays. You will have those notes out with you.

True, they are made by an amateur, and true, some of those notes are hard intelligible, but some are, and Coach Griffith and Coach Pierce and Coach Frank Inman have told you what they thought of those notes and what they meant, and those are the three ranking coaches at the University of Georgia today. They said that those notes mentioned formations, and strange enough they said of the eight or nine formations which Georgia used in the entire 1962 season, they didn't have time to train their team to use them all, but they trained that team to use two particular formations for the Alabama game inasmuch as it was the opening game of the season.

And strange to say, those two formations are mentioned in these notes. They picked that up.

I don't know too much about football, and I am going to say very little about it after I finish with these notes.

[fol.1325] In those notes there is a pass pattern that is mentioned and Griffith recognized it as one which was called by that particular name by Coach Butts. That is that optional left pass business. There is a mention made about Alabama not over-shifting on a certain play and there is mention of quick kicks, and Woodward commits himself fast. I don't know whether you will notice it or not when you get out, but these notes, when that boy Woodward's name is mentioned, it is spelled in the notes W-o-o-d-a-r-d. His name is Woodward. I don't know whether you noticed it or not, but Coach Butts pronounced his name "Woodard".

And he refers to a weak pass defense, anybody except Blackburn, and in the long count with the left half in motion, and Coach Pierce said this was one of Georgia's plays, and Porterfield referred to as a good running back, and then Babb catches everything they throw, and then he talked about something in there about avoiding a penalty on the part of Alabama.

Then we come down to this part of it. Burnett put down the time that call was completed, ten forty, and the telephone records show that the connection was made at 10:25, and the calculagraph, which is the automatic machine used by the Telephone Company, shows the call lasted fifteen minutes and some seconds.

There are some strange coincidences which confirm what is in those notes, but here are two other things I call to your attention and I am going to pass on from those notes. Burnett [fol. 1326] made an explanation of several parts of it. He didn't write down everything he hears, but he did remember this part of it. He picked up some evidence of bitterness against Griffith. I don't know what that is, and you don't either. We never will know, but he says with respect to a certain condition of the Georgia team, he says that is no credit to Griffith. They got two other coaches, two new coaches and then there is another part of the explanation he makes and it is this. Bryant wasn't satisfied with the information that he got, he was trying to get more, and Butts told him he didn't know, but he'd find out, and Bryant said he would call him on Sunday.

Now, you and I don't know what happened in that telephone conversation on Sunday, except that in the conversation that lasted an hour and seven minutes, and it had something to do with this particular game, and nobody will ever know what was discussed in that conversation.

We lawyers have learned to recognize and to evaluate what we call circumstantial evidence. Forget about the notes for just a moment, and let's think about the circumstantial evidence in this case.

I would like to point out to you the conduct of Burnett when this whole controversy arose, and pit it against the conduct of Wallace Butts. We might as well call a spade a spade, because after all that is the crux of this case, and I have been accused of not wanting to talk to you about it.

I saved this part of my time to discuss it with you. [fol. 1327] In the first place, when called into a conference with a bunch of strangers, that is, the University Officials, Burnett promptly agreed that that conference could be taped and what was said be recorded. Secondly, he signed an affidavit after he was requested to do so. He promptly agreed to take a lie detector test and promptly took that test. He gave the University of Georgia Officials permission to look into his background in every respect, and a part of that was his war record, which I might say was a right enviable record, and if there was anything wrong about that record as disclosed by Burnett when he was on this stand, you can bet your life that Mr. Lockerman or Mr. Schroder would have confronted you with any error.

Now, what did Wallace Butts do? When he appeared before the same crowd on the next day, there may have been some slight difference in the personnel of those that were present, but as I recall, they were the same. I could be in error. When he appeared before those University officials, he declined to take a lie detector test. Secondly, though there is some conflict in the evidence, he declined to sign an affidavit.

Dr. Aderhold and Mr. Bolton have both testified that he declined to give them an affidavit. In addition to that, and this was after he employed counsel, he did admit—he did admit that Burnett probably heard what he said he heard, that is the language, and that is as far as they got. He resigned the next day. That, too, has some significance as far as circumstantial evidence is concerned. Later—first I should say at this particular meeting those University offi- [fol. 1328] cials saw in those notes a reference to the fact that Bryant would call him back on Sunday. It is maybe at that time of much significance, it is now, and they tried to

find out from him if Bryant did call him on Sunday afternoon following this September 13th call, and you know what his answer was. He didn't remember the call, and he didn't remember anything that might have been said. Again, that is that call that lasted an hour and seven minutes.

And then the University officials went a little bit further. They made a check of a lot of other telephone calls, and that is where this man Scoby came into the picture, and there were two remarks made by Wallace Butts at that time that evidently riled the University officials some, after getting down to the rock bottom of this thing. He first said that he had never done anything to hurt the University. I am not going to touch on that any more, but he said this, he says, "I have never associated with anyone who was a gambler."

In the meantime, they had done a little checking themselves on this fellow Scoby, and I am going to get to that in just a moment.

And then let me point out to you something else. Schroder has questioned me or the Post as to why they didn't consult with Bear Bryant or Wallace Butts before they published this article. I will tell you way. They would have gotten the same response I got when I cross-examined Coach Butts. He didn't remember going to the office of Communications International on September 13 here in Atlanta, the point [fol. 1329] from which the call was made, the first call. He didn't remember being in Atlanta on September 13th. He didn't know where he was on September 13th. That date was important.

The record in this case shows that he had fourteen telephone conversations with Frank Scoby in Chicago in the month of September, 1962. That is the month of this particular football game, and he does not remember any one of those calls, with one exception, and that in spite of the fact, Gentlemen, that two of those calls were the day before this football game, one on the day of the game and one on the Sunday morning following the game. He did remember something about the one on the day of the game, and I should think that would impress him just a little bit more.

And he said that he called Scoby for this man Sargeant who was from Florida in Birmingham—that is where the game was being played that night—and he put Sargeant on the phone and let him talk to Scoby and that is all he had to do with it.

But the strange thing to me, and it is somewhat irreconcilable, is that all of those calls, including that one on the day of the game, were charged to the University of Georgia, which in itself was not fair and it strikes me as not being entirely honest. I don't know who this fellow Sargeant is, but if a call was made for his benefit, he should have paid for it.

My time is a little bit short, and I want to discuss with you a few miscellaneous comments that I think are important in the consideration of this case.

[fol. 1330] Up until the time that Dr. Rose came into this picture there was no positive evidence that Bryant remembered anything about either of these crucial telephone calls.

Let me read you one or two excerpts from this letter that Dr. Rose wrote Dr. Aderhold. It is a right long letter; I wouldn't read it all. In the first place, he says, "I have spent a great deal of time investigating thoroughly the questions that were raised during our meeting in Birmingham and have talked with Coach Bryant at least on two occasions." You remember that he testified that one of those occasions lasted three hours.

"As best I can ascertain, this is the information I have received. Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14"—he meant 13th—"he called Coach Bryant and told him. There was a question about another one of the offensive plays of the Georgia team that would seriously penalize the Alabama team and bring on additional injury to a player. Coach Bryant asked Coach Butts to check on that play, which he did, and called back on September 16th. It was then that Coach Bryant changed his defenses and invited Mr. George Gardner, head of the officials of the Southeastern Conference, to come to

Tuscaloosa and interpret for him the legality of his defenses. This Mr. Gardner did on the following week.”

He has corrected that Gardner had been there and gone. He didn't come the following week.

[fol. 1331] “The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention.” Now, listen to this: “Coach Bryant informed me that calling this to his attention may have favored the University of Alabama football team, but that he doubts it seriously.” He is hedging on that.

It is a strange thing to me that in trying to analyze all of this conglomeration of evidence, Gentlemen, that Coach Bryant would testify in this case that he didn't remember anything about those telephone calls or the subject matter discussed, and certainly never told Dr. Rose some of the things that are in this letter. He says if he ever had a telephone conversation with Butts on September the 16th—that is that Sunday call again—they probably talked about some tickets. He wouldn't have talked to Butts about any tickets. Butts didn't have anything to do with any tickets. He hadn't been Coach down there since 1960, and all of us know that the ticket situation is handled by managers, business managers for a football team, because it is a big business.

In order to further back up Bear Bryant, one of the tragedies of this case is that Dr. Rose then backs up himself and says that he didn't sign the letter, didn't read it after it was written. I did get him to admit he dictated this letter, and that it was after his conferences with Coach Bryant. Maybe he didn't sign it, but it is his handiwork.

I will tell you this, you will have that letter out with you, together with a bunch of other letters that have been identified and put in the record in this case, including the signature [fol. 1332] on these three documents, which he signed in your presence, and I ask you to judge for yourselves whether or not those signatures are the same. It appears to me to be that way.

Now, let me talk to you a few minutes about this fellow Scoby. He didn't appear here personally. We had to go to Chicago to take his deposition, and the depositions are not entirely satisfactory. They are not as impressive as when you see a man from the witness stand. You can't listen quite as intensely. Sometimes there is an expression on a man's face or tone in his voice that says something that his words don't say, but I have jotted down a few parts of that man's deposition which was read to you. I think it was on Thursday.

That man said that he was the, as Mr. Schroder has said, the beer distributor in Chicago and New York, and up until 1958 was the distributor for a stated brand of scotch whiskey. He said he first met Wallace Butts in 1947, and had seen him quite often since then, eight or ten times a year, and had attended various athletic contests with him, that he had met Butts in Atlanta to discuss some food product, the purpose of that conference being—now, listen to this, and this is what disturbs me, it is almost beside the point and yet it is important—he said the only reason he got interested in that food product was that he wanted to find a job, find employment for some of Butts' football players. That ought to be disturbing to a University official, too, and when we asked him about that food product, he said that he admitted it was a phony—that is the expression he used—and [fol. 1333] the Food and Drug people, Food and Drug Department, that is the Federal Government, kept it off the market.

He says he met Butts several times in New York, paid his expenses after he got there. He said that Butts asked his advice as to how to finance various things, including this small loans business, and Butts asked him to invest in the small loans business and asked him to obtain capital for all three of his businesses, small loan business, the orange grove business, and this concentrated orange juice business, and he said he didn't have enough confidence in any one of them to put any money in it and he didn't hesitate long in telling Butts about it. And all of that occurred two years

ago. This is while Butts was Athletic Director at the University of Georgia.

He says he invested in the neighborhood of forty-three thousand dollars in Continental Enterprises. That is the same company that Butts and Bryant had some money tied up in and lost it. This man said he lost heavily on it himself.

I am not mentioning this subject to embarrass anybody. I am mentioning it to show you that this is more than a casual acquaintance that we are talking about. That is what they would have you believe and that is what Mr. Schroder undertook to reveal to you, but it is more than a casual acquaintance.

And he says—now, listen to this, it is on page 25 of that deposition—after Butts severed his connection as coach at Georgia, he told Butts he wanted him to take over the [fol. 1334] Southeastern section of the country for a new brand of Scotch whiskey and his duties would be to hire salesmen, get distributors, see that it was properly handled, supervise the personnel and be the overall representative, and that his compensation would be a drawing account and a commission, and what that would come to would depend upon his ability to produce, and he said it is still a possibility.

He said that he endorsed Butts' note at the Chicago bank and that there are still fifteen hundred dollars outstanding on that endorsement. He goes into detail as to how many times he has been with Butts, and then he gets down to this crucial part of it, and this is where he said he never bet less than five hundred dollars on a college football game, and that the maximum he would usually bet on one game would be two thousand dollars, and we asked him how many games he would bet on on one Saturday, and his answer was "About ten." You know what that means. Take it in its most favorable light, it means he could bet or did bet as much as twenty thousand dollars on one day, a total of twenty thousand dollars on ten different football games. And you wonder why we mention anything about it, after

charged in this complaint in the language which I quoted to you a few minutes ago?

He said he bet as much as fifty thousand dollars in the season of 1957. Now, the reason he admitted that, he knew we had the record on him, because he had testified in that government case, and like all other gamblers, when that record was closed, there is no other way for us to find out [fol. 1335] about any other bets, so he says he didn't make any more bets, but he has admitted to you in that deposition that he makes three or four trips a year to Las Vegas and gambles out there, and he never has undertaken to hide it from his friends and it was pretty well publicized.

And listen to this. This is on page 75 of that deposition. This is something Mr. Schroder asked him, "During September, 1962, or at any time prior to September, 1962, or at any time prior to September, have you ever had any telephone conversations with Wallace Butts which related in any manner to a forthcoming game to be participated in by the University of Georgia team?" Answer: Well, I may have said, "Well, how do you think you will do?" when he was coaching. I certainly wouldn't say that I haven't asked that question." Now, that indicates one thing to me and only one thing, and it should by inference indicate something to you, and that is that while Wallace Butts didn't have anything to do with betting on any football game himself, and which I say we never charged him with, nevertheless here was another one of his friends taking advantage of the information that he had, trying to get all the information that he had so he could win money as the result of it. That is the only reasonable inference I can draw from it.

Butts said that all he ever asked Scoby was some advice about a business deal or two, but this man didn't confirm that. He said he was asked to put money into it and actually made investigations and then turned them down. No, so [fol. 1336] much for that fellow Scoby. I wish we had him down here and could tell a little more about him.

Now, in what few minutes I have left, I want to say to you that there was one shocking thing stated by Bear Bry-

ant in this case I can't reconcile. He said that when the time came to play this football game on September the 22nd, Georgia surprised him, says that is the surprising statement in this case.

You have as an exhibit in this case the statistics of that game, and you will find, if you will look on the third page, the fact that the total yardage gained by Georgia in the first half—and you don't have to know much about football to understand this—was fourteen yards. That is the total yardage gained in the first half by running with the ball.

And then if you will turn to the last page, you will see the statistics of the game after it was over, that is, the complete game, and that the total yardage gained by Georgia during that entire game by running with the ball was thirty-seven yards. I expect it did surprise Bear Bryant to some extent. He hadn't played a game of football in years where anybody had that sort of an experience with his team. He may have been surprised, but it was for a different reason from what he said.

Even Mr. Schroder doesn't agree with Bryant on that statement. Schroder says that everybody has that play called a pro-set, and that couldn't have surprised anybody, because it is a normal formation in football, and it is one of the eight or nine formations that teams generally use that is true.

[fol.1337] The real help that this information gave to Bryant was to know that of the eight or nine formations that were generally used by football teams, Georgia wouldn't use but two, and that gave him an opportunity to train his team by eliminating about seven other formations for which he would have to train if he hadn't had any information at all.

Now, let me talk to you just a moment about the use of this word "fix".

Judge, I have about—

The Court: You have got twenty minutes.

Mr. Cody: When you take this article out with you, you will see that the heading on it is—they have charged that

this was a fix of one particular football game. You are not supposed to know of your own knowledge what the word "fix" means. The Court has the responsibility and duty to tell you what it means and I assume that it will fulfill that obligation.

I have looked it up, and the Court has, and the word "fix" means to tamper with in advance, and that is what this man has been charged with, and if he tampered with that game in advance, I say that it is corrupt and the use of the word in this article is correct. If he tampered with that game, it is corrupt.

And I want to explain to you or mention something which I think possibly the Court will cover in its charge to you. [fol. 1338] If you believe that this game was tampered with in advance, even with respect to plays, players, formations, or anything of that sort, which might be calculated to affect the result of the game, then the Defendant in this case has proved the truth of this alleged libel, and you would be directed I presume by the Court to find a verdict for the Defendant, if you believe that to be true.

Now, the burden is upon us to prove to your satisfaction that there was information divulged about that coming game which could be calculated to affect the result of that game, and we believe that the furnishing of that information did something that violated the standards of ethics and conduct set by the Southeastern Conference, and contrary to the moral conventions of the people with whom the Plaintiff was working.

Most of the evidence in this case about football is really immaterial. What is material is that certain information was given which tampered with that upcoming game. We do not have to show under the law what the motive was in divulging such information. We do not have to actually show it actually affected the game. The Court will instruct you about that. All we have to show is that if this information was calculated to affect that game, and if it was in fact given, then the plea of justification has been sustained,

and I think you will understand that issue when the Court completes its instruction to you.

And the case boils down to that one fact and that alone, and it is as simple as that, and if you believe that that is what was done, then you ought to find a verdict for the [fol. 1339] Defendant in this case, and I believe the Court, as I said, will so instruct you.

If the information wasn't furnished, you ought to find a verdict for the Plaintiff.

I notice something has been said in this case, Gentlemen, about the absence of witnesses. We could have strung this case out another two weeks. It has been trying to Schroder and Lockerman and me and my associates, just as it has been trying to you and this court. There has got to be an end somewhere to the trial of any case. There is always somebody you could bring into court as a witness that you don't bring, but you just go on and on. I can think of some witnesses that they might have had on this question of character. I know what I would do if somebody attacked my character. I would get my preacher and my friends and my business associates and I would bring them into court and I would ask them to testify in my behalf.

This question of the absence of witnesses is an old lawyers' trick. I remember one statement that the dean of the Atlanta Bar made one time. I am referring to Mr. Reuben Arnold, who died a few years ago. He practiced law in this town sixty-seven years, and he really was the dean of lawyers. I think everybody concedes that. He was trying to give some advice to a young lawyer one time about how to argue a case to a jury, and this young lawyer asked him a few questions about it. He said, "Well, when you go to argue a case, if the law is against you, you talk about the facts. If the facts are against you, you talk about the law." Ed, he said, "if the law and facts are against [fol. 1340] you, you talk about the lawyer on the other side."

That is an old trick of we lawyers. We criticize the other fellow sometimes unconsciously, and sometimes we go too far.

Two weeks is long enough to try any case, and if a lawyer undertakes to cut short a trial after covering the territory that he is required to cover, then he ought to be praised for it and not condemned. I brought enough witnesses into this court to try to give you a clear picture of what this case was all about. You had Dr. Aderhold, Mr. Bolton and Mr. Harold Heckman. You had Bill Bradshaw and you had Mills and you had Mr. Driftmier, Head of the Agriculture Department at Georgia. You had Griffith and Pearce and Inman, those three coaches. Their story covered a wide range and not always the same subject.

Here is what they thought, and I am going to wind up my discussion with you on this point. They thought that something was done which was wrong. They thought something was done which hurt the University, and they had the courage to come into court and to state to you just what they did think and just what they did know. It was not all a matter of opinion.

I hope that in your consideration of this case you will not put your stamp of approval on something which those men say happened, not me—I am just arguing the case—not put your stamp of approval on something which they thought was wrong and which they thought affected the [fol. 1341] University of Georgia and which they thought affected that particular game.

I want to take this opportunity to say what I did in my discussion with you Friday. I thank you for the patience which you have shown in this case. I thank you for the service which you have rendered. The trial of a case before the jury is the greatest asset that we lawyers have. It is the most important function of our system of jurisprudence, and I am sure that everyone connected with this court appreciates the service that you have rendered. And with that statement I want to leave this case in your good

hands. I want you to do what you think conforms to the law as the court gives it to you in its charge, without favor or affection or sympathy toward either party.

Thank you.

* * * * *

After Recess

The Court: Members of the Jury, I don't know how long the charge will be. It might be taken in two parts. If during the charge—I have attempted to correlate the charges, but during the charge, if you should desire to refresh yourselves, just hold up your hand, and we will have an intermission.

CHARGE OF THE COURT TO THE JURY

Members of the jury, this is a civil case, and the plaintiff, as you already know, is Wallace Butts, and the defendant [fol. 1342] is Curtis Publishing Company.

The plaintiff has filed a complaint setting out what he contends the facts in the case to be, and then asks for a judgment.

The defendant came into Court at the proper time and filed what is called an answer to that complaint in which it denies the material allegations in the plaintiff's petition, and contends that the plaintiff is not entitled to recover anything.

Now, the pleadings in the case are not evidence, except insofar as admissions are made in them. They are simply the contentions of the respective parties and make up the issues of fact which you are to pass upon. You may read the pleadings and refer to them as often as you wish in order that you may understand more clearly the contentions of the parties and the issues in the case. The pleadings will be out with you during your deliberations.

The Court is responsible to the jury for the law applicable to the case, and it is the jury's duty to accept the law given in charge by the Court and to apply that law to

the facts in the case. You are the sole judges of the facts, the weight of the evidence, and the credibility of the witnesses.

The Court will not express any opinion about the facts. Any such expression or intimation would not be binding on you, because you should form your own opinion and reach your own conclusion about the facts.

[fol. 1343] I want to leave absolutely to the judgment of this jury the issue that is before you as to what this evidence shows or fails to show. Your authority, however, is not to be exercised arbitrarily. It must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law which I give you.

Now, members of the jury, the plaintiff, Wallace Butts, brings this suit against the defendant, Curtis Publishing Company, for ten million dollars because of an alleged libelous publication by the defendant. In his petition the plaintiff alleges that he has been engaged in the football coaching profession for approximately 35 years, in high school and secondary schools, and from 1939 until 1961 as head coach at the University of Georgia, at which time he became Athletic Director at the University.

The plaintiff further alleges that he has enjoyed a national reputation as a successful and respected member of the coaching profession, and has been accorded many honors such as president of the Football Coaches Association, and has, by invitation, coached the College All-Stars, the Blue-Gray All-Star game, and the North-South All-Star game.

The plaintiff alleges that during his career he has been widely sought as a speaker and lecturer on various aspects of football, and has lectured at clinics, banquets, and other such public gatherings throughout the United States; that, in addition, the plaintiff has been approached and offered employment as head football coach by several professional and college football teams in the country, due entirely to [fol. 1344] his reputation as a successful member and leader in his profession.

The plaintiff further alleges that the defendant, Curtis Publishing Company, is engaged in the publication of magazines and periodicals, the best known and the most valuable asset of such periodicals and magazines being the Saturday Evening Post, which has a vast and impressive circulation.

The plaintiff contends that during the last several years the advertising revenues of the Saturday Evening Post have substantially declined, and that it now shows staggering deficits; that because of these deficits, and in an effort to bolster the sagging circulation and increase advertising revenues, the defendant did publish, through the Saturday Evening Post, willfully, maliciously and falsely, a libelous article concerning the plaintiff, in the issue of the Post of March 23, 1963, said article being entitled "The Story of a College Football Fix", with the sub-title, "How Wally Butts and Bear Bryant Rigged a Game Last Fall."

The plaintiff alleges that prior to the actual circulation of this article on or about March 18, 1963, the plaintiff, through his attorney, notified the defendant by telegram and a letter that the contents of the article were false and advised that the article not be published. A copy of the telegram and letter are attached to the pleadings and will be out with you during your deliberations.

The plaintiff further alleges that on March 18, 1963, pursuant to Georgia law, he requested the defendant to retract [fol. 1345] and correct the defamatory statements concerning the plaintiff in this article, which the defendant refused to do, and refused to reply to this request of the plaintiff. A copy of this telegram is attached to the pleadings and marked Exhibit C, and will be out with you during your deliberations.

The plaintiff contends that the publication of this article is libelous and has caused him extreme mortification and embarrassment in that the article is a direct insult and attack on his honor, character and integrity as a football coach, and contends that his career as a member of the football coaching profession has been ruined and destroyed by this article.

The plaintiff further contends that the statements and insinuations contained in the said article have damaged plaintiff as aforesaid in the following particulars:

(a) Plaintiff is charged in large block letters in the very title and sub-title of the article with being a "rigger and fixer";

(b) In an italicized editorial, plaintiff is charged with being a participant in the greatest and most shocking sports scandal since that of the Chicago White Sox in the 1919 World Series. In the same editorial the plaintiff is relegated to a status of worse than that of "disreputable gamblers," and corrupt person who, employed to "educate and guide young men", betrays or sells out his pupils;

[fol. 1346] (c) Plaintiff is charged with rigging and fixing the Alabama-Georgia football game with Coach Bryant as a gambling device in order to restore his financial resources;

(d) Plaintiff is charged with such a degree of corruptness and foulness that his betrayed players, as a result of plaintiff's alleged deceptions, fixing and rigging, were forced in the fame like "rats in a maze" and "took a frightful physical beating"; and,

(e) Defendant, in a final act of malice, contempt and editorial irresponsibility, closes its article with its definition of plaintiff as a fixer as being one who never leaves open a "chance" by stating "when a fixer works against you, that is the way he likes it."

Now, I have been reading the contentions as set out by the plaintiff in its petition.

The plaintiff brings this action and seeks to recover five million dollars in general damages, and sues for five million dollars in the nature of punitive damages to deter the defendant from repeating this trespass on his honor, reputation and integrity.

The defendant came into Court at the proper time and filed its pleadings in answer to the plaintiff's complaint. The defendant denies, in its first defense, certain insinuations and innuendoes which plaintiff alleges in his complaint resulted from publication of the article, but pleads that the statements in the article complained of, which are of and concern the plaintiff, are true. By this plea the defendant pleads justification.

[fol. 1347] Under the Georgia law, when a defendant files a plea of justification, such as was filed in this case, the defendant admits the publication of the statements contained in the article, and the whole case then proceeds upon the theory that it is admitted by the defendant that the publication is true, and the defendant takes the position that it was justified in publishing these statements.

Members of the jury, the defendant, Curtis Publishing Company, has the burden of proving by a preponderance of the evidence that the statements contained in this article are true, that is to say, that the defendant, Curtis Publishing Company, assumes the burden of proving that the statements contained in the article published in the Saturday Evening Post in its March 23, 1963 issue, which article was entitled "The Story of a College Football Fix" are true.

Now, by a preponderance of the evidence is meant that greater weight of the evidence upon the issues involved, which, while not enough wholly to free the mind from a reasonable doubt, is yet sufficient to incline a fair and impartial mind to one side of the issue rather than to the other.

Now, members of the jury, there are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts in the case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

[fol. 1348] As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply re-

quires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

The article in its entirety will be out with you in the jury room for your consideration.

I charge you that under Georgia law, a written publication which affects one injuriously in his trade or calling, such as the plaintiff Butts' coaching profession in this case under consideration, and contains imputations against his honesty and integrity, and which would, as its natural and probable consequence, occasion pecuniary loss, constitutes a cause of action and is libelous per se, and the right follows to such damages as must be presumed to proximately and necessarily result from such a publication. I charge you that Paul "Bear" Bryant, the Alabama coach and any aspersions upon him are not any issue in this case, and you would eliminate from your consideration any alleged acts on his part. Our concern is only with the plaintiff, Wallace Butts, and references to Bryant in the article may be considered only insofar as they are related to Wallace Butts. Any libel committed against Bryant, if Bryant was libeled, is not a matter for consideration here.

As stated above, this is an action brought by the plaintiff against the defendant for a libel alleged to have been committed by the defendant against the plaintiff.

[fol. 1349] A libel is a false and malicious defamation of another, expressed in print or writing, or pictures or signs tending to injure the reputation of an individual, and exposing him to public hatred, contempt or ridicule.

However, as I have told you previously, the defendant in its plea of justification, contends that the statements in the article are true. I charge you that truth is a complete defense in a civil action for libel. A libel, members of the jury, is a false defamation of another, and therefore, if what is printed is true, then there is no libel.

The truth of the charge may always be proved in justification of the libel. Truth in the law of libel means substantial truth. It is not necessary that every detail of the

article be proven to be accurate, but it is necessary that the truth be substantially portrayed in those parts of the article which libel the plaintiff.

To establish the defense of truth the defendant must prove what is known in the law as the "sting of the libel". The sting of the libel in this case is the charge that the plaintiff rigged and fixed the 1962 Georgia-Alabama game by giving Coach Bryant information which was calculated to or could have affected the outcome of the game. By this I mean, could have caused one team to win or lose, or could have increased the number of points by which the game was won.

If you find that the plaintiff did give Coach Bryant information which was calculated to or could have affected [fol. 1350] the outcome of the game by causing one team to win or lose, or by increasing the number of points by which the game was won, then you must find that the defense of truth has been established. In that event, you must, of course, return a verdict for the defendant.

The article complained of contains the words "corrupt", "fixed", "rigged", and "sell out". The word "corrupt" is defined in part to mean depraved, debased, or perverted. The word "fixed" is defined in part as meaning to arrange, carry out or manipulate by deceptive or fraudulent means, to fool or to hoax one. The word "sell out" means in part to betray for compensation the cause or associates with whom one is identified. You should keep these definitions in mind during your deliberations.

So the issue, members of the jury, for you to determine first in this case is whether or not the defendant has proved to you that the article complained of in the Saturday Evening Post is true. If the defendant, Curtis Publishing Company, has proved to you by a preponderance of the evidence that the statements contained in the article of March 23, 1963, entitled "The Story of a College Football Fix" are true, then there is no libel, and the defendant would be entitled to a verdict.

[fol. 1351] If, on the other hand, the defendant has failed to make out his plea, that is, has failed to prove to you by a preponderance of the evidence that the defamatory statements contained in the article are true, then the plaintiff would be entitled to such damages as you feel proximately and necessarily resulted from the publication. The extent of those damages depends upon the circumstances of the case, such as the malice of the defendant, the offensive character of the libel, the pain caused to the injured party, the number of publications, and the general circumstances of the libel.

Regarding the defendant's plea of justification, which is a plea that the statements are true, unless this plea of the defendant is proved to the satisfaction of you jurors, such a plea cannot and will not defeat the action; but there may be evidence under which, though insufficient to establish it, may disclose facts and circumstances in mitigation, and this may be considered by you, as jurors, to reduce in any degree that you may deem proper the amount of damages which you otherwise would have found.

Thus, a plea of justification may, according to the evidence introduced under it, have one of three effects in this action.

(1) The plea being established, the action is simply defeated;

(2) Failure to establish it, connected with failure to show any reasonable or proper cause for filing the plea of justification, may aggravate the damages; or,

[fol. 1352] (3) The partial or imperfect establishment of it or the production of evidence strongly tending to establish it may mitigate the damages.

Stated in another way, if the defendant proved the truth of the defamatory allegations, that is a complete defense, and this would be sufficient to defeat the plaintiff's claim, and you should return a verdict for the defendant. This is so because the truth is always a defense in a civil action for libel.

If at this point in your deliberations you determine that the defendant has established that the statements contained in the article are true, then you would end your deliberations here and return a verdict for the defendant, Curtis Publishing Company. If, on the other hand, you determine that the defendant has failed to prove or has only partially or imperfectly established the truth, then the plaintiff is entitled to damages, and this brings us to the question of damages and how they are to be evaluated and considered.

The plaintiff in this case sues for general and also for punitive damages. The law of Georgia recognizes both of these types of damages in a libel suit. I shall treat these separately since they are governed by different principles, and, likewise, you are to consider and pass upon them separately.

General damages are such as the law presumes to flow from any tortuous act, and may be recovered without proof of any amount. A tort or tortuous act is the unlawful violation of a private legal right, other than a mere breach [fol. 1353] of contract, express or implied.

In some torts the entire jury is to the peace, happiness and feelings of the plaintiff. In such cases no measure of damages can be prescribed except the enlightened consciences of impartial jurors. The worldly circumstances of the parties, the amount of bad faith in the transaction, and all the attendant facts should be weighed.

Under the law of Georgia, if the publication was libelous per se, and I charge you that this article was libelous per se, and the law will presume that anyone so libeled must have suffered damage. In such case, no measure of damages can be prescribed, except through the enlightened consciences of impartial jurors.

I charge you that the words "libelous per se" in this case mean words of such character that a presumption of the law arises therefrom that a party has been degraded in his business or professional reputation.

As the publication was libelous per se, I charge you that malice is to be inferred. However, the existence of malice

may be rebutted by proof of the defendant which, in all cases, shall go in mitigation of damages.

At this point, I think it is well that I should explain to you the meaning of malice under the law of defamation. Malice, in the law of defamation, may be used in two senses. First, in a special or technical sense to denote absence [fol. 1354] of lawful excuse or to indicate absence of privileged occasion. Such malice is known as implied malice or malice in law. There is no imputation of ill will to injure with implied malice. Secondly, malice involving intent of mind and heart or ill will against a person is classified as express malice or malice in fact.

I charge you that general damages are intended to compensate a party who has been libeled for the actual damages he has suffered, to make him whole, as the cases often say.

I charge you that the law presumes that the plaintiff has a good reputation, and when a defamatory statement is made against him, the law presumes he has sustained injury to that reputation and to his feelings. The law, recognizing the difficulty of proving damages, does not require a defamed person affirmatively to prove the exact amount of damages sustained by him. These are to be determined by you members of the jury in the light of all the facts and circumstances of the case.

The damages awarded must be based upon the injury to his reputation and in his occupation in the minds of those who know him or know about him. A defamed person is also entitled to be compensated for the mental anguish, pain, mortification, and humiliation he has experienced as a result of the publication.

Obviously, there is no yardstick by which you can determine these items with exactitude. In deciding this question of damages, as in all others, you must use your common [fol. 1355] sense and good judgment in determining what sum will fully compensate the plaintiff for the damages suffered. The amount awarded must bear relationship to the injury which you find he has sustained as a result of

the article. You take into account a man's general reputation, his social and business or professional standing in the community, how well-known he is, the nature of the defamatory charge and its tendency to injure such a man in the public estimation of his character, and the extent of its distribution.

When I use the phrase "a man's reputation and standing in the community", it is not limited to his reputation in the immediate area of his residence. Rather, it is his reputation in the community within which he is known. The community may be said to be co-existent with the spread and extent of his reputation.

Wallace Butts is a widely-known football personality. It is conceded that this article was distributed widely in this country and with a substantial circulation. The plaintiff is entitled to rely upon his presumption of good reputation.

I charge you that a person of bad reputation is not entitled to the same damages as a person of good or excellent reputation.

I charge you that a substantial verdict for general damages must be founded upon a finding of substantial injury. If you find that there has been no substantial injury, then the damages may be normal.

[fol. 1356] We now come to the question of punitive damages. Punitive or exemplary damages are of an entirely different nature from general or actual damages. Before you would be authorized to find punitive damages under the Georgia law, you must first determine that the plaintiff, Wallace Butts, is entitled to recover general damages. However, if you decide to award punitive damages, the sum you award need have no relationship to any amount that you may award for general damages. It may be greater or it may be less. That is a matter which rests in your sole discretion. The law of Georgia provides that in every tort there may be aggravating circumstances, either in the act or the intention, and in the event the jury may give

additional damages to deter the wrong-doer from repeating the trespass.

Where it is established that the defendant was inspired by actual malice in the publication of the defamatory matter, the jury, in its discretion, may, but is not required, to award punitive damages. As previously stated to you, actual malice encompasses the notion of ill will, spite, hatred and an intent to injure one. Malice also denotes a wanton or reckless indifference or culpable negligence with regard to the rights of others. The purpose of punitive damages is to deter the defendant from a repetition of the offense and is a warning to others not to commit a like offense. It is intended to protect the community and has an expression of ethical indignation, although the plaintiff receives the award. The plaintiff charges that the column was written and published both with actual malice and in utter and wanton disregard of his rights.

[fol. 1357] The burden of proof to establish the facts of actual malice is upon the plaintiff, Wallace Butts, and this burden he must bear by a fair preponderance of the evidence. I have previously defined to you what constitutes a preponderance of evidence.

Actual malice involves the state of one's mind, and your determination must be made from all the surrounding facts and circumstances.

Further actual malice or wanton and reckless indifference has been established must be determined from all of the evidence in the case.

Here you may consider the libel itself, the very nature of the defamatory matter in conjunction with all the other evidence and the circumstances under which the article was written and published.

A publication may be so extravagant in its denunciation and so vituperative in its character as to justify an inference of malice.

Evidence has been offered during the trial to the effect that the plaintiff, prior to the time that the article was published, requested the defendant not to publish the arti-

cle, stating that it was not true, and after the article was published plaintiff demanded a retraction.

I charge you that under Section 105-720 of the Code of Georgia of 1933, it is relevant in an action for libel such as this for the plaintiff to prove that the plaintiff requested a retraction, proof that the plaintiff did demand a retraction but that the defendant failed to retract the article [fol. 1358] may be considered by you on the question of punitive damages, if you find that the defendant has not established its plea of justification.

You may consider the reliability, the nature of the sources of the defendant's information, its acceptance or rejection of the sources, and its care in checking upon assertions.

In considering the question of malice you may also take into account the plea of justification filed by the defendant, and whether this plea of justification was filed in good faith, and under an honest expectation of being able to establish the alleged justification. You should only consider this plea of justification on the matter of damage if you find the defendant has not established it, and further find it was not filed in good faith by the defendant with any honest expectation of establishing it.

This brings the Court to another matter on the subject of malice when during the trial certain hearsay matter was admitted into evidence. Usually, of course, such hearsay matter is not admissible, but was received in this instance as evidence which might show mitigating circumstances or lack of malice.

I charge you that a defendant may resist or minimize a claim for punitive damages by showing mitigating circumstances, including the sources of its information and the grounds for its belief. A defendant may show that it acted without malice and that there was neither actual malice nor any circumstances from which malice may be inferred. In a word, a defendant is permitted to show that, in publishing [fol. 1359] this article, it in good faith relied upon certain matters which had come to its attention. And if the jury ac-

cepts this as credible, this would go in mitigation of punitive damages.

As you may recall, evidence was introduced on the trial as to the certain tests taken by a polygraph, sometimes referred to as a lie detector. Ordinarily, of course, this evidence would not be admissible in a court of law, but you may consider it only in the light of what credence or credibility the defendant used such test in determining malice, if any, on the part of the defendant.

I charge you that there were various other conversations with third persons and testimony or documents of third persons which merely reported what other persons had said or written. Of course, all of this evidence was hearsay, and there was no opportunity by the opposite party to examine such persons, some of whom were beyond the jurisdiction of the Court.

I charge you that you should dismiss from your minds completely any reference to any investigation by the Attorneys General of Georgia or Alabama, or anyone other than the parties of the charges contained in the article complained of. Neither the fact of any investigations nor the results thereof have any bearing whatsoever on the trial of this case. In arriving at your verdict you must restrict yourselves solely to a consideration of the evidence legally admitted during this trial, and the law given you in charge now by the Court.

[fol. 1360] The hearsay evidence was admitted solely for the single purpose for which it was offered by the parties, to show the absence or presence of malice as that word has been defined to you. It is not received to establish the truth of any of the statements contained in the publication, and it is in no respect to be considered for such purposes. It is for you to say whether or not such information obtained was of such nature as to justify a reasonable mind in believing and relying on them.

In deciding whether or not Curtis Publishing Company was justified in relying upon information by which it seeks to repel a charge of actual malice, you may take into ac-

count the journalistic experience of Curtis Publishing Company and its general experience.

I charge you further that a corporation acts through its agents or employees, and is liable for their acts within the scope of their employment.

It is necessary, members of the jury, that I charge you on the law of damages, but the fact that I charge you on the law of damages carries no intimation, one way or the other, that you are required to award damages for the plaintiff against the defendant.

The Court has not reviewed the evidence in detail. I have restricted myself in this charge to but a few references to the evidence. Counsel in their summations have exhaustively reviewed the evidence with respect to the various issues in the case. There has been a sharp conflict in the testimony in this case, and it is your duty to determine the truth.

[fol. 1361] Members of the jury, I charge you that the term "impeachment" is defined legally to mean efforts which tend primarily to show that the witness is narrating a falsehood or that he is not worthy of belief. The terms "impeachment" and "attack on the credibility of a witness by way of impeachment" are synonymous and means that efforts are being exerted to prove that a witness who has been examined is unworthy of credit. In other words, it calls in question the veracity of a witness.

I charge you that a witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

I charge you further that a witness may be impeached by evidence as to his general bad character.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves. If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other

particulars. And you may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

You are made by law the sole and exclusive judges to the credibility of witnesses. In passing upon their credibility the jury may consider all the facts and circumstances of the case, the witnesses' manner of testifying; their intel- [fol. 1362] gence; their interest or want of interest in the case; their bias or prejudice, if any exists; their means and opportunity of knowing the facts to which they testify; and the probability or improbability of the testimony to which they testify; and also their personal credibility insofar as the same may legitimately appear upon the trial of the case. The manner, conduct and appearance of witnesses on the stand are legitimate matters for consideration by the jury.

During the course of the trial I have passed upon the admissibility of evidence and various motions made by counsel. I wish to emphasize that you are to draw no inference from the Court's ruling with respect to the admission or reject of evidence or the sustaining or overruling of any motion. Where the Court sustains an objection excluding evidence, you are not to assume that the excluded evidence would have been unfavorable to the party who objected, and so, too, you are to draw no inferences that had it been admitted it would have been favorable to the party who offered it. These rulings related solely to matters of law.

If perchance during the trial I have made reference to testimony or in this charge have made reference to any of the testimony that does not accord with your recollection, you must reject that completely. I have no right to invade any function that you have in this case, and as you well know, your function is to decide the facts. Of course, I have made every endeavor to state the facts as I understood them, but disregard my statements completely if they do not accord with your own view.

[fol. 1363] From time to time I have occasion to ask questions of some witnesses. The judge has a right and indeed

a duty to see that the facts are clearly presented, and the purpose of the Court's questions was to clarify certain matters in the case. You are not to draw any conclusions that by reasons of my questioning the witnesses I have any point of view as to the witnesses' credibility or hold any view as to how you should decide the facts in this case. And, as I have told you before, the determination of the facts in the case are to be made by you members of the jury. You are the supreme judges of the facts and none may invade that province.

Under your oaths you are sworn to try this case in accordance with the law in evidence. You should not be actuated by motives of sympathy or prejudice. Your duty is to try the issues fairly and impartially and without fear or favor. You came into the jury box without any preconceived view, idea, or opinion, concerning the right or wrong of either of the parties, and what you know about the issues should have been learned only from the witnesses on the stand and the exhibits in this case, and your final determination of the facts must be based upon that evidence. Remember, you are not responsible for the consequences of your verdict, but you are responsible for its truth.

Now, for your convenience the Clerk has prepared a form of verdict, and I would suggest this, that when you retire to consider your verdict, you elect one of your members as Foreman. Of course, the manner in which you conduct your deliberations is entirely up to you, and I make this suggestion, that you elect one of your members [fol. 1364] as Foreman so that the Foreman may preside over the meeting so that you may conduct an orderly discussion and arrive at a unanimous verdict.

The form of verdict which has been prepared has four questions or issues which you are to determine. The first question concerns the issue of liability, and this, members

of the jury, is the first question or issue which you have to decide. As I have previously stated to you, if you find that the defendant has proved to you its plea of justification in accordance with the rules of law heretofore stated to you by the Court, then it would be your duty to return a verdict for the defendant as to liability. If, on the other hand, the defendant has not carried its burden by proving its plea of justification, then it will be your duty to return a verdict for the plaintiff.

So, on this first question or issue which you are to determine, the form of verdict which has been prepared for you provides as follows: "We, the jury, find in favor of blank". And you will fill in this blank either "Wallace Butts" or "Curtis Publishing Company".

If your answer to the first question on the issue of liability is in favor of Curtis Publishing Company, then you need not consider Questions 2, 3, or 4.

Second, if your answer to Question No. 1 is "Wallace Butts", then you would go further and say "We assess general damages for Wallace Butts in the sum of blank dollars."

[fol. 1365] Third, if your answer to Question No. 1 is "Wallace Butts", and you have found in Question No. 2 an amount, then you would be entitled to go further and say "We find that Wallace Butts is, or is not, entitled to recover punitive damages from Curtis Publishing Company."

And fourth, if your answer to Question No. 1 is in favor of Wallace Butts, and your answer to Question No. 2 is a certain amount, and your answer to Question No. 3 is that he, Coach Butts, is entitled to recover punitive damages, then your verdict would go further and say, "We assess punitive damages in the sum of blank dollars."

I charge you that you cannot award punitive damages without assessing general damages in some amount.

After you have arrived at a verdict, the Foreman should sign that verdict form and date it.

After you have retired to consider your verdict, if there are any matters upon which you desire further instruction or any clarification of instructions, do not hesitate to let the Marshal know of your request in that respect, and you will be brought back into the courtroom for that purpose. You will retire to the jury room to await further instructions.

* * * * *

The Court: All right, sir. Any exceptions on behalf of the Defendant to the charge?

[fol. 1366]

DEFENDANT'S EXCEPTIONS TO THE COURT'S CHARGE
TO THE JURY

Mr. Cody: May it please the Court, the first one is with reference to the Court's charge about the article being libelous per se. We want to protest the record. We have discussed it at pre-trial, and we have called the Court's attention to the Weatherford case, it being our position that the Plaintiff in this case, at the time of this publication, was not in that profession, and, secondly—

The Court: I charged that—I charged that it was libelous per se on the basis of the Winestrof—Dun & Company versus Winestrof.

Mr. Cody: I think I understand the Court's view about it.

The Court: Yes, sir.

Mr. Cody: At one point in the charge you stated to the jury that they take their evidence from the witness stand. Technically, I think that is—

The Court: I said "witness stand and exhibits", I believe.

Mr. Cody: And exhibits, and you eliminated the word "deposition".

The Court: I believe during the trial of the case I in-
[fol. 1367] structed them in regard to the depositions, they would be considered as if the witness had been here.

Mr. Cody: If so, that would cover it.

The Court: I believe that is true. I believe I did it on two different occasions.

Mr. Cody: I wouldn't want any instruction to encompass a disregard of depositions, because the defendant's case, in part, is by evidence produced by depositions.

The Court: I believe I charged the jury on depositions twice. I instructed them twice when depositions were read.

Mr. Cody: I see.

The Court: All right, sir, any further exceptions?

Mr. Cody: And then with reference to requests which have heretofore been made to the Court in writing, we take exception to the absence of the charge to include request No. 3, which deals with what credit should be given to an impeached witness, and we take the position that his testimony shall be disregarded entirely if he has been successfully impeached.

[fol. 1368] The Court: If the jury so sees fit.

Mr. Cody: Yes, sir; unless corroborated by circumstances or other unimpeached evidence.

The Court: I believe I gave them that, Mr. Cody.

Mr. Cody: I see. And then there are one or two Code sections concerning which written request was made. I call attention to the defendant's request No. 5 which has to do with a person testifying in his own behalf is not entitled to a finding in his favor, if that version of the testimony most unfavorable to him shows that the verdict should be against him.

And request No. 6, whenever a party presents himself as a witness and the evidence is contradictory or equivocal, his testimony must be construed most strongly against him.

The Court: Well, No. 5, I didn't think it was applicable to this case, and No. 6, I believe I gave in different wording. I don't always follow the words that the attorneys set up in the pleading—set up in the request to charge.

Mr. Cody: I have some question, Your Honor, about that reference in the charge to the worldly circumstances

[fol.1369] of the parties. We think that that should be considered only under Code section 105-2003.

The Court: What do you mean? You don't think that relevant to the worldly circumstances of the party?

Mr. Cody: Well, not—does Your Honor have Section 105-2003?

The Court: No, sir; but I am familiar with that. The reason I gave that, there were some cases in Georgia to the effect, or I read some cases to the effect that the worldly circumstances and the wealth of the parties should be taken into consideration, and that was the reason, that a party—a hundred dollars punitive damages against one party would be more severe than maybe ten thousand dollars against another party—

Mr. Cody: Yes, sir.

The Court: —because it is according to the wealth and worldly circumstances. We are talking about punitive damages—

Mr. Cody: Yes, sir.

The Court: —and that was the reason I gave it.

[fol.1370] Mr. Cody: I got the impression it was not limited to punitive damages, it had only—but I was afraid that the language that the Court used might be broad enough to encompass other types of damages.

The Court: I meant it to apply only to punitive damages, and I think it was under the punitive damages section which I charged. Do you remember what I made it in connection with, Mr. Cody?

Mr. Cody: No, sir; I don't.

The Court: Do the attorneys for the plaintiff—it was my recollection I was discussing punitive damages. Do you know where it is?

Mr. Cody: Your Honor, I withdraw our exception to that last.

The Court: That disturbs me. I think I meant it as punitive. If I didn't—

Mr. Cody: I will withdraw our exception.

The Court: You withdraw your exception? I meant to refer to it, and I can't find it. All right, sir, any other exceptions?

[fol. 1371] Mr. Cody: No, sir.

* * * * *

Let the jury be brought in.

(Whereupon the jury returned to the courtroom at 10:31 a. m.)

The Court: Mr. Foreman, have you arrived at a verdict, sir?

The Foreman: We have, Your Honor.

The Court: Present the verdict to the Marshal.

Let the Clerk publish the verdict.

VERDICT

The Clerk: Will you stand, please.

"Wallace Butts versus Curtis Publishing Company; verdict: (1) We, the jury, find in favor of Wallace Butts.

"(2) We assess general damages for Wallace Butts in the sum of sixty thousand dollars.

"(3) We find that Wallace Butts is entitled to recover punitive damages from Curtis Publishing Company.

"(4) We assess punitive damages in the sum of three million dollars.

"This the 20th day of August, 1963; Joe B. Dekle, Foreman."

[fol. 1372]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS ON DECEMBER
10, 1963, IN REGARD TO DEFENDANT'S MOTIONS FOR NEW
TRIAL AND JUDGMENT NOTWITHSTANDING THE VERDICT

The Court: And if that be true, and I am looking at it from a practical standpoint, I think you have to, without committing the court in any way—I am just throwing this out, why wouldn't the proper thing—you have alleged to twenty-five or thirty different errors. If the court granted a motion for a new trial because it was excessive, the question of whether the court committed error in those thirty-five or thirty-seven different ways as to the charge, as to the admission of argument, if it was improper, why wouldn't it be proper to let it all go to the Court of Appeals at one time, and then at that time if they say it has got to be retried, the verdict is excessive, perhaps they might pass on these thirty-five or thirty-seven different alleged errors, and if it was error, then on a new trial the court could correct those errors.

Mr. Cody: Well, if Your Honor thinks that errors have not been committed such as those—

The Court: I am not saying they have or have not. You are alleging them.

Mr. Cody: That's right.

The Court: If they have been committed they should be corrected.

A two-weeks-and-three-day trial is cumbersome and expensive for all the parties, for the court as well and for the Government.

[fol. 1373] Mr. Cody: Well, I think Your Honor is losing sight of the fact of many a case has been tried without any error whatsoever and yet an excessive verdict resulted, nobody knows why, and yet it is the duty and responsibility of that court to correct it.

The Court: All right, sir. Suppose it is excessive; let's assume that it is excessive—

Mr. Cody: Yes, sir.

The Court: —and the court grants a new trial, and then we try it again, and the court charges the jury as it did before, and the argument of counsel comes in as it was before, or substantially so, then we still haven't decided whether his argument is improper or the court's charge is improper. That is what I am looking at, looking at it from a practical standpoint, with the idea of expediting it.

* * * * *

The Court: All right, sir. Suppose the court should determine that probably a certain portion of the argument was improper, and therefore the verdict was excessive, and grant you a new trial on that ground, and then it was tried again, and the same charge was given to the jury, and then the verdict was, maybe, not quite as excessive, but you came back and made a motion for new trial after a substantial verdict was rendered, the court, on the [fol. 1374] question of the court improperly charging the jury, we would have to go back again.

* * * * *

Mr. Lockerman: The testimony that they are now complaining about as having not been admitted was, as they stated, ruled out on the ground it was hearsay. They, at no time, made any statement to the court as to the purpose for which the testimony was being offered or what it was expected to prove. Your Honor's ruling was eminently correct as the matter stood when that testimony was sought to be put in.

Now, if they had taken the position then that they are taking now, and if they had explained to Your Honor the purpose for which it was being offered, then undoubtedly Your Honor's ruling would have been possibly different, or could have been, anyway.

I don't think we need to deal with that very long, because in the case of *Maryland Casualty Company v. Simmons*, 2 F. 2d, 29, which is the Fifth Circuit Court decision from this court, from Georgia—I think it is this court—

anyway, it is from the State of Georgia, in which certiorari was denied by the Supreme Court of the United States in 45 S. Ct. 226, 255 U. S. 634. The Fifth Circuit held as follows:

“Exclusion of evidence not ground for reversal in absence of showing as to its nature or statement of what it intended to prove.”

[fol. 1375] Now, certainly in this case there was introduced into evidence the record of the telephone company which showed that a telephone call was made at the date and hour claimed and the telephone number to which it had been, you know, made, so there was proof to substantiate Burnett that a telephone call was made.

Now, they made no point, as I said, about the reason for trying to claim that they should be permitted to show what the telephone operator said over in Alabama. Mr. Cody did recognize that it was hearsay, and, as a matter of fact, before Your Honor ruled on the matter, on the objection, Mr. Cody himself—and the record shows he stated to the witness, “No, don’t go into that.” He recognized as the matter stood then it was hearsay, and there was no—

The Court: Yes, sir; I am frank to say, had I known what was developing, I think the evidence could have been admitted or should have been admitted.

1040

[fol. 1376]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 6

TO: POST STAFF
FROM: Clay D. Blair, Jr.

January 15, 1963

If I—or you—had time, I'd like to congratulate each of you personally. In lieu of this, let me say in this broadcast that you are putting out one hell of a fine magazine. The articles are timely, full of significance and exclusivity. The cover, the layout, type and other visual aspects have improved tremendously. The cartoons are the best being published. The new fiction program bids fair to become one of the great breakthroughs in magazine publishing.

Your work has not gone unnoticed. We have many press clips commenting on the new vitality in the Post. Joe Culligan has been extremely flattering in his comments, as have the other directors of the Curtis Publishing Company. The final yardstick: we have about six lawsuits pending, meaning that we are hitting them where it hurts, with solid, meaningful journalism.

I think you should be very proud of the publication you're turning out.

Double space between each payment. The amount of each check should be shown opposite the payee's name. Do not show Account to be charged for each check. Charges should be summarized.

The embossed total must agree with the total amount shown in each column and be shown directly below the typewritten totals. The requisition must be signed and approved directly below the embossed total. Submit original to Accounting.

THE CURTIS PUBLISHING COMPANY CHECK REQUISITION

DUPLICATE-ORIGINATOR'S COPY
THE SUNDAY EVENING POST - MARCH 9, 1953

Amount of Check	Summary by Charge	
	Account	Amount

21491

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 8

Milton R. Flack ✓
c/o Pierre Howard, Esq. 1324 Healey Bldg.
Atlanta Georgia (SS# will follow)
Research fee & guarantee of exclusivity on:
SECRET SPORTS STORY- Article

✓ 500 00	
----------	--

[Vol. 1377]

B

				x ✓
--	--	--	--	-----

1041

Date Paid	Bank	First Check No.	100
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IN UNITED STATES DISTRICT COURT
 PLAINTIFF'S EXHIBIT No. 9

GS231
 42593

Double space between each payment. The amount of each check should be shown opposite the payee's name. Do not show Account to be charged for each check. Charges should be summarized.

The embossed total must agree with the total amount shown in each column and be shown directly below the typewritten totals. The requisition must be signed and approved directly below the embossed total. Submit original to Accounting.

THE CURTIS PUBLISHING COMPANY
 CHECK REQUISITION

DUPLICATE-ORIGINATOR'S COPY <small>THE SATURDAY EVENING POST MARCH 2, 1963</small>	Amount of Check	Summary by Charge	
		Account	Amount
Frank Graham, Jr. ✓ 201 Congress St BROOKLYN 1, NY # LI4-22-5737 Article: A STORY OF A COLLEGE FOOTBALL FIX	✓ 2,000 00		

1042
 [fol. 1378]

Double space between each payment. The amount of each check should be shown opposite the payee's name. Do not show Account to be charged for each check. Charges should be summarized.

The embossed total must agree with the total amount shown in each column and be shown directly below the typewritten totals. The requisition must be signed and approved directly below the embossed total. Submit original to Accounting.

THE CURTIS PUBLISHING COMPANY CHECK REQUISITION

~~DUPLICATE ORIGINATOR'S COPY~~
~~THE SATURDAY EVENING POST~~ APRIL 5, 1969 - ~~Editorial~~

Amount
of Check

Summary by Charge

Account

Amount

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 10

21491

Furman Bisher ✓
The Atlanta Journal Box 4689 Atlanta 2, Ga.
214-11-7956
Work on Article: THE STORY OF A COLLEGE
FOOTBALL FIX by Frank Graham, Jr.

✓ 1,000 00

STAMP
HERE

[fol. 1379]

D

1043

Date Paid

Bank

First Check No.

147

THE CURTIS PUBLISHING COMPANY
CHECK REQUISITION

2149 Date 3/6/63

Pay To Western Union

Address _____

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBITS NOS. 11 AND 12

TRIPPLICATE - ORIGINATOR'S COPY	Account Number	Amount
To wire money to Pierre Howard 1324 Healey Building Atlanta 3, Georgia in further connection with "Secret Sport Story" (George Burnett and Frank Graham)	09-211-49	\$500.00
EXPS. ACCT'D. FOR TO D. SCHANHE - IN CONNECTION WITH "SECRET"		

Embossed Total _____

Signed _____

FOR ACCOUNTING USE ONLY

Check Date _____

Check No. 970

Approved _____

Bank _____

Do not approve until total is embossed

THE CURTIS PUBLISHING COMPANY
CHECK REQUISITION

2149 Date 3/25/63

Pay To Western Union

Address _____

TRIPPLICATE - ORIGINATOR'S COPY	Account Number	Amount
To wire first payment for rights to exclusive "secret" sports article (G. Burnett with Frank Graham), to: ✓ Pierre Howard, atty. (receiving money 1324 Healey Building in behalf of Atlanta, Georgia Burnett)	09-211-49	\$2,000.00
[Fol. 1380]		

Embossed Total _____

Signed _____

FOR ACCOUNTING USE ONLY

Check Date 3/25/63

Check No. 950

Approved _____

Bank _____

Do not approve until total is embossed

GS235
42594

THE CURTIS PUBLISHING COMPANY
CHECK REQUISITION

21491

Pay To Pierre Howard ✓ Date 3/19/63

Address 132 1/2 Fealey Bldg., Atlanta 3, Ga.

TRIPLICATE - ORIGINATOR'S COPY	Account Number	Amount
Additional payment for Sports article by Frank Graham, Jr., in accordance with contract of 2/26/63 (in behalf of George Burnett) ✓ (No Social Security \$ available at this time)	09-211-49	✓ \$3,000. 00 ✓

Embossed Total

Signed

FOR ACCOUNTING USE ONLY

Check Date

Check No.

Approved

Bank

Do not approve until total is embossed

D

Double space between each payment. The amount of each check should be shown opposite the payee's name. Do not show Account to be charged for each check. Charges should be summarized.

The embossed total must agree with the total amount shown in each column and be shown directly below the typewritten totals. The requisition must be signed and approved directly below the embossed total. Submit original to Accounting.

THE CURTIS PUBLISHING COMPANY
CHECK REQUISITION

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBITS Nos. 14 AND 15

DEDUPLICATE ORIGINATOR'S COPY SATURDAY EVENING POST - APRIL 17, 1963 Editorial	Amount of Check	Summary by Charge	
		Account	Amount

21491

Frank Graham, Jr. ✓
 201 Congress St Bklyn 1, NY - 114-22-5737
 Exp inc on Article: STORY OF A FOOTBALL
 FIX.....\$512.09 ✓

21491

BI RECEIVED
REQUISITION

INSTRUCTIONS: Use this form in place of a purchase requisition when bill has been received prior to issuance of a purchase requisition. Prepare form in quadruplicate. Give a complete description of each item. Retain third copy. Forward first, second, and fourth copies to Supply Division. Use bill Received Order Number when requesting information.

ORDER NO.
68540

fol. 13821

VENDOR
 Fugazy Travel Bureau
 488 Madison Avenue
 New York 22, New York

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL VALUE
2/18	M38091 John Skow ✓ - Idl/Lisbon/Santa Maria/ Lisbon/Madrid/Seville/Madrid/London/Glasgow/ London/Idl. 2/18 - (U.S.Foreign Bases assignment)		583 40
2/20	M38650 Graham, F. ✓ - Idl/Atlanta 2/20		38 59

CHARGE NO. 09-211-49	AMOUNT \$621.99	DIVISION Post Editorial	AUTHORIZED AMOUNT ON SIG.
		REQUESTED BY G. Muller	DATE 3/15/63
		APPROVED BY	DATE 3/15/63
INV. DATE	DUE DATE	DATE TO ACC.	BY
		% DISCOUNT	DISCOUNT AMT
		NET AMOUNT	CREDITOR'S NO.

[fol. 1383]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 16

SOUTHEASTERN CONFERENCE

REDMONT HOTEL

BIRMINGHAM, ALABAMA

FA 2-6173

PRESIDENT

J. WAYNE REITZ

UNIVERSITY OF FLORIDA

GAINESVILLE, FLA.

COMMISSIONER

BERNIE MOORE

SECRETARY

T. A. BICKERSTAFF

UNIVERSITY OF MISSISSIPPI

UNIVERSITY, MISS.

MEMORANDUM

TO: SEC Institutions

SUBJECT: Unnecessary Roughness in College Football

I wish to direct your attention to a memorandum that was sent to all Head Football Coaches by William D. Murray, President of the American Football Coaches Association, and H. O. (Fritz) Crisler, Chairman, NCAA Football Rules Committee (copy enclosed).

At a joint meeting of the Conference Football Coaches and game officials on August 4, 1962, Mr. George Gardner read and discussed this memorandum. Also, stressed the compliance with NCAA Football Rule 9, Sections 1 and 2, Article 1:

Section 1. Disqualifying Fouls

“No player shall strike an opponent with his fist, or deliver a blow with extended forearm, elbow, or locked hands, or kick or knee an opponent during the game or between the periods.”

PENALTY—15 yards. Offenders shall be disqualified.

Section 2. Personal Fouls

“e. There shall be no piling on, falling on, or throwing the body on an opponent; after the ball becomes dead.”

PENALTY—15 yards. Flagrant offenders shall be disqualified.

It is the policy of the Southeastern Conference to follow a strict enforcement program in all of the above areas, as stated in paragraph 7, page 39, of the SEC Constitution and By-laws, and the officials were so instructed.

At a separate meeting with the Head Football Coaches, or their representatives, on August 4, we asked for their cooperation in an all-out effort to eliminate unnecessary roughness in the game of football.

[fol. 1385] I sincerely hope that the entire coaching staff at each member institution will conscientiously cooperate in such a program.

Bernie Moore
Commissioner

enc.
Aug. 27, 1962

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 17

TO: INTERCOLLEGIATE FOOTBALL
COACHES, COMMISSIONERS AND
OFFICIALS

FROM: THE PRESIDENT OF THE FOOTBALL
COACHES ASSOCIATION AND THE
CHAIRMAN OF THE FOOTBALL RULES
COMMITTEE

Re: Unwarranted viciousness and brutality in our college game

In recent years there has been a growing concern about the malicious brutality which appears to be on the increase in our great game of intercollegiate football. At its January meeting the Rules Committee received with alarm reports from many districts of uncalled for viciousness, particularly in the area of striking or delivering a blow with the hand or forearm and "piling on" after the ball has been declared dead.

[fol. 1386] The officers and trustees of the Football Coaches Association shared the concern of the Rules Committee as indicated in the draft of the following statement last June:

"It is reported that in some isolated instances brutal play is being tolerated. It is the unanimous expression of our officers and trustees that the coach is responsible for eliminating brutality in football. Training methods that are aimed at injuring the opponent should be done away with."

After long deliberations and a searching review of the rules it was concluded that the language in Rule 9 quite clearly defined the line between legal action and illegal

practices with willful viciousness to inflict bodily harm to an opponent.

The difficulty did not seem to be in rule construction but rather, first, in a laxness of officials to vigorously enforce the existing rules, and, second, the unwillingness of a few coaches to be worthy of their noble profession by properly instructing and disciplining their boys with regard to brutal play.

The various Conference Commissioners who have jurisdiction over officials will in no uncertain terms direct them to vigorously enforce all rules to stamp out malicious brutality and viciousness. Officials will be instructed not to exercise judgment about intent, but to rule on any overt act. By way of example, they will be ordered to penalize any contact with an opponent on the ground or in a "pile", after the ball is declared dead.

Not long ago a request was made of our fine coaches to help eliminate a developing muckerism, practiced by a [fol. 1387] very limited few, in feigned injuries and false starts. The coaches are to be congratulated on their magnificent response in the destruction of those evils. This is another appeal to our courageous head coaches to enlist their full force of influence to rid our game of inexcusable brutal and malicious play.

All of us, whose good fortune it is to be associated with our grand game, hold a sacred trust to crush any evil practices. We have under our trust the most precious possession of any father and mother, their son. Let us join together in being worthy of our stewardship in the protection, on both sides of the line of scrimmage, of those sons from brutality which will only lead to tragic incidents and rule changes that none of us will like.

William D. Murray, President
American Football Coaches
Association
H. O. (Fritz) Crisler, Chairman
NCAA Football Rules Committee

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 21

February 22, 1963

Mr. Pierre Howard, Attorney
1324 Healey Building
Atlanta 3, Georgia

Dear Mr. Howard:

This is a letter form verification of our agreement in regard to a story which has been given to me exclusively for [fol. 1388] the Saturday Evening Post by Mr. George Burnette. It is agreed that the Saturday Evening Post will through me, as their agent, pay for Mr. Burnette's benefit the sum of \$2,000.00 for having given the full details and story to me; that if this story is published by the Saturday Evening Post as the exclusive revelation of Mr. Burnette and contingent upon the signing of a contract to be furnished by the Saturday Evening Post that we will pay Mr. Burnette an additional \$3,000.00.


It is further agreed that I will present to the Post, for the protection of Mr. Burnette my recommendation that the accepted standard in the industry for royalty and resale rights be adhered to.

Very truly yours,

Frank Graham

1052

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 22

(See opposite) 

THE CURTIS PUBLISHING COMPANY AND DOMESTIC SUBSIDIARIES

Consolidated Balance Sheet

	December 31,	
	<u>1962</u>	<u>1961</u>
Current	<u>Assets</u>	
Cash	\$ 12,507,000	\$ 12,888,000
Marketable securities, at amortized cost	—	353,000
Accounts receivable	22,119,000	22,129,000
Inventories	18,412,000	21,069,000
Prepaid expenses and advances	2,595,000	1,886,000
Total current assets	<u>55,633,000</u>	<u>58,325,000</u>
Investments and advances	3,065,000	2,947,000
Property, plant and equipment	64,625,000	63,980,000
Other, principally goodwill	4,487,000	4,977,000
Total assets	<u>\$127,810,000</u>	<u>\$130,229,000</u>
	<u>Liabilities</u>	
Current		
Bank loans	\$ 22,100,000	\$ 7,600,000
Long-term debt due within one year	2,593,000	1,500,000
Accounts payable	7,432,000	11,097,000
Accrued expenses	9,797,000	5,371,000
Total current liabilities	<u>41,922,000</u>	<u>25,568,000</u>
Long-term debt	17,418,000	14,096,000
Subscription contract deferrals	40,538,000	43,716,000
Total liabilities	<u>99,878,000</u>	<u>83,380,000</u>
	<u>Stockholders Equity</u>	
Prior preferred stock, no par value, additional \$1 dividend cumulative to extent earned		
\$3 cumulative		
Authorized and issued—334,470 shares, stated at	16,724,000	16,724,000
\$.60 cumulative		
Authorized and issued—239,418 shares, stated at	2,394,000	2,394,000
Common stock, par value \$1 per share		
Authorized and issued—3,457,335 shares	3,457,000	3,457,000
	22,575,000	22,575,000
Capital surplus	808,000	808,000
Retained earnings	4,666,000	23,583,000
	28,049,000	46,966,000
Less 15,500 common shares in treasury, at cost	117,000	117,000
Total stockholders equity	<u>27,932,000</u>	<u>46,849,000</u>
Total liabilities and stockholders equity	<u>\$127,810,000</u>	<u>\$130,229,000</u>

The accompanying notes are an integral part of these financial statements.

EXHIBIT "A"

[fol. 1389]

1053

THE CURTIS PUBLISHING COMPANY AND DOMESTIC SUBSIDIARIES
Statement of Consolidated Income

	1962	1961
Net revenue from advertising, circulation and other sources	<u>\$149,284,000</u>	<u>\$176,963,000</u>
Costs and expenses		
Production and delivery	106,591,000	116,492,000
Selling, general and administrative	58,280,000	62,672,000
Depreciation and depletion	5,456,000	5,634,000
Interest	1,673,000	1,169,000
Recoverable federal income taxes	(3,799,000)	—
	<u>168,201,000</u>	<u>185,967,000</u>
Loss from operations	18,917,000	9,004,000
Gain on sale of securities in associated companies	—	4,810,000
Net loss for the year	<u>\$ 18,917,000</u>	<u>\$ 4,194,000</u>

Statement of Consolidated Retained Earnings
For Year Ended December 31, 1962

Balance at beginning of year	\$23,583,000
Net loss for the year	18,917,000
Balance at end of year	<u>\$ 4,666,000</u>

The accompanying notes are an integral part of these financial statements.

OPINION OF INDEPENDENT ACCOUNTANTS

To the Stockholders and Board of Directors
The Curtis Publishing Company

In our opinion, the accompanying statements present fairly the consolidated financial position of The Curtis Publishing Company and its domestic subsidiaries at December 31, 1962 and the consolidated results of their operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. The accounts of two subsidiaries are maintained on a cash basis; however, memorandum entries have been applied to the cash basis accounts in the accompanying statements to state them on the accrual basis. Our examination of these statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

PRICE WATERHOUSE & CO.

Philadelphia
February 18, 1963

THE CURTIS PUBLISHING COMPANY AND DOMESTIC SUBSIDIARIES

Notes to 1962 Financial Statements

Basis of consolidation

The financial statements include the accounts of The Curtis Publishing Company and its domestic subsidiaries. The Company's other subsidiaries, wholly owned and situated in Canada, are Curtis Distributing Company, Ltd. and T. S. Woolings and Company, Limited.

Accounts receivable

Customers	\$ 17,440,000
Less allowance for doubtful accounts	286,000
	17,154,000
Recoverable income taxes	4,136,000
Nonconsolidated Canadian subsidiaries	829,000

\$ 22,119,000

Inventories

Paper and other materials and supplies, stated generally at the lower of cost or market	\$ 12,484,000
Publications in process, manuscripts, etc., stated at cost	5,928,000

\$ 18,412,000

Investments and advances

Nonconsolidated Canadian subsidiaries	\$ 2,043,000
Other companies, at cost	1,022,000

\$ 3,065,000

The Company's aggregate equity in the net assets of its Canadian subsidiaries exceeded the carrying value of its capital investment by approximately \$174,000, based on current rates of exchange at December 31, 1962. No dividends were received by the Company from its Canadian subsidiaries in 1962.

Property, plant and equipment, at cost

Land	\$ 2,333,000
Buildings	38,440,000
Machinery and equipment	102,155,000
Timberlands and wood rights	1,664,000

144,592,000

Less depreciation and depletion

82,909,000

61,683,000

Construction in progress

2,942,000

\$ 64,625,000

At December 31, 1962 the Company was lessee under long-term leases with aggregate annual rentals of approximately \$1,200,000.

Long-term debt

The Curtis Publishing Company

6% subordinated income debentures, due 1986 (less \$635,000 debentures in treasury at par value)	\$ 9,970,000
4½% notes to others, due \$800,000 annually in 1963 and 1964, \$500,000 in 1965 and the remainder in 1966	2,300,000
Instalment purchase contract payable to supplier, due \$11,000 monthly including 4½% interest through July, 1967	616,000

New York & Pennsylvania Co., Inc.

First mortgage 3¼% bonds, due \$375,000 quarterly through October 1, 1965	4,125,000
Notes to banks with interest at ½% over prime rate, due in quarterly instalments beginning October 1, 1963 in amounts equal to 1/40 of the principal to the date the first mortgage bonds are paid in full and 1/20 of the principal thereafter; guaranteed by The Curtis Publishing Company	3,000,000

20,011,000

Less long-term debt due within one year

2,593,000

\$ 17,418,000

Under the terms of the first mortgage bonds, New York & Pennsylvania Co., Inc. mortgaged its property, plant and equipment and assigned the shares of stock representing investments in its domestic subsidiaries. Under the terms of the notes to banks there are certain restrictions relative to the payment of dividends by New York & Pennsylvania Co., Inc., so that at December 31, 1962 consolidated retained earnings are not available for payment of dividends.

Subscription contract deferrals

Subscription contract deferrals represent the unearned portion of gross subscription revenues less related commission expenses stated at estimated amounts allocable to future periods. The balance of such deferrals has been increased by \$1,600,000 at December 31, 1961 with an increase in accounts receivable to reflect the unpaid portion of pay-during-service contracts from independent agencies.

Contingent liabilities

The Company is contingently liable in respect to sundry tax claims, lawsuits, and other matters incident to the ordinary course of business. The eventual liability, if any, is not readily determinable but in the opinion of counsel is not material. At December 31, 1962 the Company was guarantor for \$1,035,000 on obligations of nonconsolidated affiliates.

Stock options

On December 6, 1962 the Board of Directors of the Company adopted a Restricted Stock Option Incentive Plan, subject to approval by the stockholders. Under the terms of the proposed Plan, a maximum of 300,000 shares of common stock will be reserved for issuance under the Plan from time to time. Options under the Plan will be granted by the Board of Directors to officers and other key employees at an option price per share which will be the lesser of (1) 85% of the fair market value on the date of grant, and (2) 85% of the fair market value on the date upon which the option is exercised.

Mr. Culligan, President of the Company, has been granted options for 50,000 shares of common stock at an option price of \$6.8875 per share (95% of the fair market value on the date of grant) exercisable cumulatively as to 20% of such shares in each year commencing January 1, 1963 to July 8, 1967.

Mr. Clifford, Executive Vice President of the Company, has been granted options for 20,000 shares of common stock at an option price of \$6.32 per share (85% of the fair market value on the date of grant) exercisable as to 25% of such shares from May 1, 1963 to January 1, 1964, 50% in 1964, 75% in 1965, and all such shares from January 1, 1966 to October 15, 1972.

Of the foregoing 70,000 shares, 15,500 of the shares under option to Mr. Culligan are available from common stock held in the Company's treasury and the options for the remaining 54,500 shares were granted contingent upon approval of a proposed increase in authorized common stock by the stockholders.

Dividends in arrears

Including the dividends accruing January 1, 1963, the Company is in arrears in payment of cumulative dividends on prior preferred stocks as follows:

	<u>Per Share</u>	
\$3.00 cumulative	\$5.25	\$1,756,000
.60 cumulative	1.05	251,000
		<u>\$2,007,000</u>

Federal income taxes

At December 31, 1962 the consolidated group had unused operating loss carryovers aggregating approximately \$22,380,000 and unused investment tax credits of \$363,000.

[fol. 1392]

Father Is a Football Coach

By *JEAN BUTTS JONES*,
as told to *Furman Bisher*

The author, daughter of Georgia's Wally Butts, reveals what it's like to be raised in a football family. "If I had to start over," she says, "I'd still be the daughter of a coach. But it can be an awful millstone on a girl's romantic life!"



Wally Butts at his Athens, Ga., home with his daughter, Jean, now a coach's wife. "To marry an underprivileged high-school coach!" he exploded, when Jean got engaged. "That's going too far!"

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 24

ABOUT THE AUTHOR

Twenty-two-year-old Mrs. Jean Butts Jones is the daughter of one football coach and the wife of another. Her young husband, Frank Jones, coaches the high-school team in Decatur, Georgia, while her father is the famous Wally Butts, dean of the rugged Southeastern Conference, now in his sixteenth season as head coach at the University of Georgia.

Jean is the "middle" daughter in the Butts family of three girls, and with the possible exception of Wally, she has been the most sports-minded person in the household. As a Georgia

coed she was the only girl in her gym class who could do ten push-ups. In football season she helped the Georgia cause along as a cheerleader.

Jean majored in journalism at college, and after graduation got a job with the Atlanta Journal. In addition to her work as a newspaper reporter, she sometimes speaks at high-school football banquets. In her speeches she takes much the same light, whimsical line as her father, whose Southern humor is famous at after-dinner speeches all over the country.

—The Editors.

WHEN I announced to my family last year that I planned to marry a high-school football coach I had been dating a few months, everyone was pleased except my father, who went up in a puff of smoke. "Marrying any football coach is bad enough," he said in a volcanic mood, "but to marry an underprivileged high-school coach, that's going too far."

My father, Wallace Butts, has been a football coach since 1928, the last sixteen years at the University of Georgia, in Athens. I consider him an authority on matters of football, and on the field he has an extensive reputation as a taskmaster. But he found out you can't coach love, and, to prove it, a few weeks later he marched down the aisle of the First Methodist Church in Athens to give me away to that "underprivileged" high-school coach.

First, let me set the record straight. My husband, Frank Jones, is not an underprivileged coach. His teams at Decatur High School, in a suburb of Atlanta, have won three region championships in a row and twice got to the Georgia state semifinals play-off, each time losing by one point. In two seasons his team lost only one regularly scheduled game. Actually, I think my father was flattered that, after observing a coach's life from the inside for the greater part of my twenty-one years, I should still be brave enough to marry one.

I've heard him say many times, "I know the futile feeling of a high-school coach. I was one myself for ten years, and when I found I was on a dead-end street, I happened to get a college break. But there are still only a hundred good coaching jobs in the country. The field is too limited. You meet a lot of nice people, but you never make any money."

My father is a renowned pessimist, but really, I don't think that coach Wallace Butts or any member of his family has any grounds for complaint. If I had a chance to start over again, I'd still choose to be the daughter of a football coach and the wife of one. I didn't marry

(Continued on Page 170)

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The Butts girls—Jean, Faye and Nancy—visit their dad at the practice field. Jean claims that those "manly beasts" who play college football are afraid to show any interest in a coach's daughter.



FATHER IS A FOOTBALL COACH

(Continued from Page 37)

Frank Jones because he was a football coach, but it didn't hurt his chances any. When I thought about marrying Frank, I remembered something important. Daddy was installing the split-T formation at Georgia, and Frank had coached the split-T several years, so I knew they'd have something in common.

It worked out just beautifully. It's awfully pleasant to sit around and listen to the menfolk talk about over-shifting and the option play and brush-blocking and such. A lot of wives wouldn't appreciate it, but when you're raised in a football family it comes just as naturally as matters of the church come to a preacher's family.

A football family doesn't live or die with each victory or defeat, but winning does improve the atmosphere around the house considerably. It isn't, however, quite so serious as Frank made it out to be just before we were married. His team had lost heavily by graduation, and the material looked rather poor for the 1953 season.

In a very serious mood one day, he said to me, "I'm awful sorry our first year will have to be a losing year." As it turned out, it wasn't, but I still chuckle inside when I think of this coach-husband being so greatly concerned about how many games he would win for his bride.

I got my indoctrination early in the vagaries of the coaching family's life. Here's something they say happened when I was only three years old—I remember little about it myself.

...was coaching at Morehead, in Louisville, Kentucky, at the time. The big game with Manual High was coming up, and already in those days the name of Wallace Butts was becoming synonymous with pessimism. He had been moaning low around the house all week, telling anybody who would listen to him, "Well, if we lose this one, I guess we'll have to pack up and get out of town."

Male High did lose. I was too little to go to the game, and when they came home and I heard the bad news and saw the sorrowful expressions on their faces, I went up to my room in tears. When my mother came up she found me packing my dolls and clothes. I had taken my pessimistic papa at his word. I was getting ready to get out of town.

We have been a rather fortunate family as football fortune goes. There has been none of the gypsy life for us, here one year and there the next, none of the continual moving and living from one job to the next that is the lot of some coaches. But there have been rough times, like 1951. That was one of daddy's hardest seasons. The Georgia squad was inexperienced and slow. Some businesses he had an interest in, including a restaurant in Athens, took a bad turn. Everything went wrong at the same time, except a sophomore quarterback named Zeke Bratkowski. Fortunately, Zeke came through in a spectacular way, and eased the pain of a season that ended with five victories and five defeats.

In 1953, daddy experienced another season of depression, though by this time I was gone from the family circle and had the problems of my own coach on my mind too. Georgia won only three games and lost seven, the worst record in daddy's whole coaching history. But this distressing season had a

positive rather than negative effect. It was plainly evident that Georgia just didn't have the material. Instead of starting a fire-the-coach campaign, Georgia supporters rallied together in the biggest wave of college spirit the state has ever known.

We Buttses have been lucky like that from the start. The game that sent me to my room packing at three was the only one daddy lost to Manual High in three seasons in Louisville, where his record was so impressive that he was hired as an assistant coach at Georgia in 1939, and since that time his teams have won 104 games, lost fifty-two and tied seven. They have played in seven bowl games and won the Southeastern Conference championship three times.

Daddy was born and grew up in Mill-edgeville, Georgia, and in February, 1929, he eloped with his home-town sweetheart, Winifred Taylor. He was just out of Mercer University, where he had been a 165-pound end, and was on his first job at Madison A. & M., in Madison, Georgia. He returned to Mill-edgeville in 1932 to coach at Georgia Military College, a prep school. With the family now increased by two—my older sister, Faye, and myself—we moved to Louisville in 1935. There the third daughter, Nancy, arrived. Then came the final move, back to Georgia and the state university, and here the four Butts women seriously began the process of bringing up father.

There's a tradition, it seems, that football coaches never have sons—they lean predominantly toward the production of daughters. You might think these daughters would have easy access to the manly beasts their fathers coach, but it doesn't work out that way. Being a coach's daughter can be an awful millstone on a girl's romantic life.

A coach's daughter is the last girl in the world a football player is likely to show any interest in, for fear that the other boys will accuse him of playing politics. But if one does happen to be so bold, he is (1) afraid to come around to the house, (2) watching himself like a hawk to keep from violating training rules, and (3) about as much at ease as an escaped convict calling on the sheriff.

On the practice field, you see, my father is as intense as a drill sergeant. He expects his players to work as hard as he is willing to work. The players expect him to be just as tough around home, which is a laugh. We Butts girls always have had him under control, and the tough-taskmaster characterization seems unreal to us.

I have always been a worshiper of the handsome, heroic athlete, but as I grew up, my romantic opportunities with members of the football team were seriously limited by fear of the coach. On bowl trips or away from home, dates came easily with them. But in Athens the players kept their distance, because it meant coming to the house for me or bringing me home.

If they could come around in a group, players were much more at ease, although this didn't always work either. One night I had a little party for some girl friends and their dates, most of them football players. As daddy came in simply to say hello in his most polite manner, one of the boys was so frightened he jumped over a sofa and ran out into the yard to escape.

It hasn't been so hard on Nancy, the youngest, for she has had the benefit of observing her two older sisters. Besides, she's a brash teen-ager who says what she thinks and finches before no one. Daddy has often said that she is his best critic.



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[fol. 1394]

1058

"What do you think about your sister marrying up with a football coach, Nancy?" he asked her, driving to town one day.

"Well, we've had to put up with you," she said, "and it hasn't been too bad."

"How do women go around picking a husband, anyway?" daddy said. "Don't you think she could do better? That fellow wouldn't win any beauty contest, you know."

"Well, look who's talking! You're a good daddy, I'll give you credit for that, but you're no raving handsome beast yourself. Besides, you wouldn't know anything about love and romance, so why don't you leave those things to the women in the family?"

Nancy has had her trying moments, though. A couple of years ago she was beauty queen of the sophomore class at Athens High School, but on the day of her selection she came home in tears. One of the judges had been Bob West, the captain of the football team, and some of the catty numbers around school had been whispering that Nancy won it in a "fix." She was grief-stricken.

Daughters can be a coach's asset in the process of player recruiting. A con-

daughters to be newspaper reporters to get all the people on his side, and marrying them off to football coaches to get all the players." I hope it works, I might add.

Football coaching is a twelve-month grind that hits a peak of pressure in September, October and November. We have always tried to make life around the house as easy and as pleasant for our coach Butts as possible, but it's difficult with daddy. Relaxation never has been a natural thing with him. He works as hard at relaxing as some people do at work.

We did get him off to St. Simon's Island on the Georgia coast last summer, and each morning at the miserable hour of four o'clock we arose to go deep-sea fishing with him. He got sick every time he went out, and we wound up doing most of the fishing. After a few days of these predawn sleep wreckers, we began to investigate. We found out that he really didn't give a hang for deep-sea fishing. He had been showing enthusiasm for it just to please us. That ended the deep-sea excursions and we all resumed our delightful sleep, with which the vacation became a vacation again.

He isn't much for swimming either. Once we gave him two dazzling new swim suits for Father's Day. A bright high-school prospect hit town that same weekend. I asked the prospect if he'd like to go for a swim, and when he said he didn't have a suit with him, daddy gave him both of his new ones.

Once, about five years ago, mother decided that he needed a new hobby that would completely captivate him. She selected golf for him, and gave him a set of the finest new clubs she could find. This was not a good idea, for he doesn't like to do anything he can't do well, and so he played with feverish intent at becoming a good golfer. He was knocking himself out, working on his woods, practicing his irons, haunting driving ranges by day and night. Finally, after six or seven months, mother convinced him he should give it up. It had ceased to be a hobby any more. It had become his master, and he was a slave to his passion for the game.

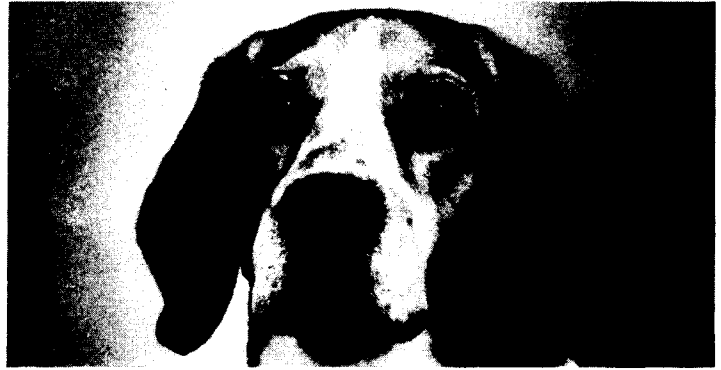
There is no escape for any football coach from the natural hazards of his profession, such as antagonistic alumni, ticket moochers, anonymous telephone callers, dotting parents of players—especially mothers—and sidewalk quarterbacks. In that terrible 1951 season we tried to get him to have an on-and-off switch installed on the telephone or to have an unpublished number, but he wouldn't have any part of it.

"Part of my job is talking to the people who are interested in football at Georgia," he said. "They wouldn't be calling if they weren't interested. I can spot the phones and I can hang up on them, but I'll still give them the chance to call."

Another big problem is last-minute calls for game tickets. Often close friends are just as guilty as anybody. A couple of years ago an old acquaintance who should have known better phoned the day before the Georgia-Georgia Tech game, the state's football World Series, and asked for twenty-two tickets. There not only wasn't an extra ticket at our house, there wasn't one in town. Daddy told the man, an influential Georgia alumnus, that asking for twenty-two tickets was one of the best jokes he'd heard in a long time, but if the man would settle for twenty less, he could take care of him.

Then he came begging to the women in his life. Only Faye had extra tickets

"Gee, boss, I think you're swell..."



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The only man in history who never looked at another woman was named Adam.

-CARL ELLSTAM.

stant battle goes on the year round for the high-school football stars who have college ability. All of us have pitched in to give daddy a hand, though I can't honestly say that we have ever been the lone determining factor.

Once I thought I was going to be, and I threw myself into the case with enthusiasm. The player was a handsome young tackle from Ohio. He played the piano beautifully and he had wonderful manners. Mother thought he was something sensational, and daddy thought so, too, though their perspectives were miles apart.

Finally, the boy smiled across the piano at me, like Liberace, and said he'd come to Georgia if I'd promise to date him. I did my part. I promised, and the tackle came to Georgia, but something happened that was entirely out of my hands. They found out he was ineligible for some reason or other, and the tackle eventually transferred to a school out West.

Many times I've wished I had been born a boy, so I could have played football and helped daddy. I've always done the next best thing. I had an awful scrap with a boy when I was in the fourth grade. He said some things about daddy that weren't nice and I popped him. They sent him to the principal's office and let me go free.

When I was a student at Georgia—Faye and I both attended the university, and Nancy will too—I was a cheerleader. I majored in journalism to help him with his propaganda. Now, on the Atlanta Journal, I'm on the city staff rather than in the sports department, but I do write a series of features each fall weekend about bitter rival Georgia Tech. These pieces take the form of "scouting letters" to daddy.

Right after my wedding, Bobby Dodd, the head coach at Georgia Tech, quipped at a banquet, "Coach Butts is using unfair tactics. He's training his

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[Vol. 1395]

and she'd been planning for weeks to take two friends with her.

"But this is important," daddy pleaded. "This is for —, and it might be bread and butter in our mouths. You don't want to see your poor old daddy cold, hungry and penniless just because you wouldn't let him have two little old football tickets back in 1952, do you?"

"I'll let you have them for twenty-five dollars," Faye said.

"But that's scalping," daddy hollered, "and you know I don't approve of scalping!"

"I don't approve of fathers' taking advantage of defenseless daughters either. I think I'm being quite reasonable. I know of some tickets that are selling for fifty dollars a pair. Twenty-five dollars is my price. Take it or leave it."

Reluctantly daddy dug into his pocket and shelled out the twenty-five dollars; then turned around and let the "influential alumnus" have them for game price. We have never let him forget the time he was ticket-scalped by his own daughter.

Game days are always hectic days at our house, a twelve-room red-brick place on a large, shady block of Highland Avenue in Athens. Every bed is always filled, and relatives and friends drop by in a steady stream from Friday night until late into Sunday morning.

The football Saturday usually begins with daddy arising at 6:30 A.M. He never sleeps very well the night before a game. Mother gets up and has breakfast with him, but there isn't much conversation. Some days he is uncommonly cheerful—this mood usually coincides with games which Georgia has been picked to lose decisively. He'll read the morning paper—he follows the newspapers avidly—then drift away without saying good-by to anybody. We won't see him again until we arrive at the stadium, and then our view of him is no better than any other spectator's.

After the game we never know what to expect. If Georgia has won, usually droves of miscellaneous people show up to offer congratulations. If Georgia has lost, only the people who were invited to dinner show up, and they are customarily full of patronizing condolences.

I can't rightfully say that the family suffers as hard through the actual game as daddy, for he is one of the worst sufferers in the coaching business. For the longest while he had a habit of chewing sprigs of grass during the game, like Nebuchadnezzar, the king of Babylon. His stomach began to bother him, and while daddy thought it was being caused by defeat, his doctor told him it was grass. Then he switched to chewing gum. He breaks up the sticks into little pieces and eats—not chews—them during a game.

While he is having his troubles on the field, his family every so often is having trouble of its own in the stands. The worst of these occasions took place while Georgia was losing a heartbreaker to Alabama, 14-7, at Athens in 1949. Everything seemed to go wrong for Georgia that day, and a very fat man sitting directly in front of me decided it was daddy's fault.

"Let's get rid of Wally!" he hollered. No matter what happened, that was his cry. "Let's get rid of Wally!"

Now I realize, of course, that neither my father nor any other football coach ever will achieve universal popularity, even if he should win them all, but it does grate somewhat on the tender nerves of a loving daughter to hear her

old man attacked like a baseball umpire. All the while this fellow was bellying at my father I'd been eating peanuts and placing the hulls on his hatbrim. When he took his hat off, the hulls fell down his back and inside his coat and in his eyes, and he turned furiously on me.

"Yes, I did it," I told him, "and I'm glad. That's my father you've been shouting at, and we love him. Besides, we like to eat, and we can't if he hasn't got a steady job."

He really was a very nice man. He spent the rest of the afternoon apologizing to us. "It isn't that I don't like coach Butts," he said, "but it's just because I love Georgia so much I hate to see them lose." And I guess that's the way it is with most football fans.

He loves to show up at mother's teas and stand in the receiving line. When I had parties, he always joined in to help with the serving. It gave him a chance to act cute. He has always lavished gifts on us, and I must say that he's much better about sizes than mother.

There seems to be something magnetic about his personality that attracts characters of all types and all descriptions. This is perhaps native in all football coaches, but in coach Butts and family the characteristic appears to be overdeveloped. Even our cooks have been characters, such as the one who had to resign to have her ninth child without benefit of a husband.

For years and years the leading symbol of undying loyalty at Georgia has

while daddy grew furious with the player in the den. He has always maintained that marriage and college don't mix, mainly for financial reasons. Sometimes daddy has been able to restrain romance, but more times than not he has been the loser.

One day in the spring of 1941, this flat-footed, slope-shouldered boy came by daddy's office and told him he was quitting football. "I want to live a normal student's life," he said. "I want to have some time for a girl friend, like the other fellows on the campus."

This set off another explosion by coach Butts. Spring practice opened without the boy among those reporting, and daddy was resigned to losing him. About a week later, though, the boy came sidling into his office and wanted to know if he could rejoin the team.

"I don't know," daddy said. "I'll have to take a vote of the squad to see."

I'm not sure of this, but I've got a hunch that when the boy went out one door, daddy rushed out the other to hold his ballot. And when the players elected to take the boy back, I'm sure it saved daddy from having a heart attack, for the boy was Frank Sinkwich, in daddy's own estimation the greatest player he ever coached.

Another great one was Charley Trippi, the big star of the only perfect season—1946—that Georgia has had in modern times. Trippi, now with the Chicago Cardinals, was a cold-blooded businessman both on and off the field. But he was a tremendous athlete who could do everything well, and that season he was an overwhelming All-American selection.

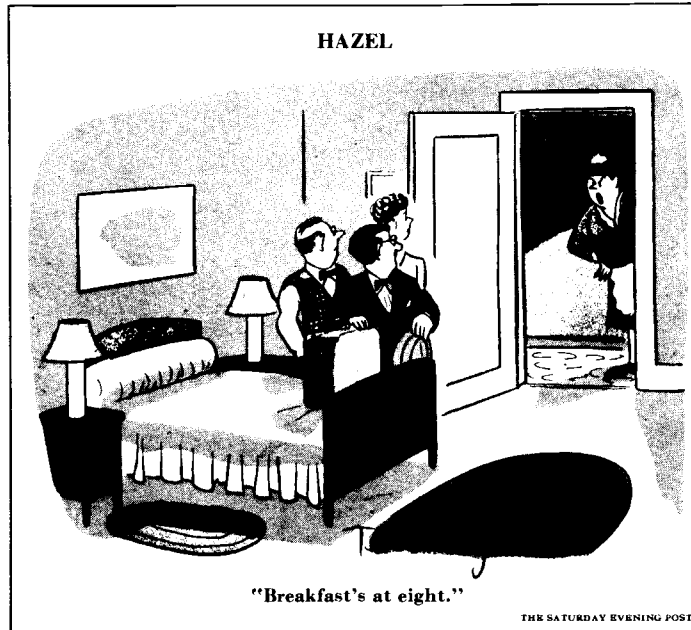
Looking back on it all, I can't contend that I've been especially blessed by being a football coach's daughter. Coaches don't make the best fathers in the world, because you don't get to see enough of them.

The months from September to December you may as well scratch off. If you are with him, he's got his mind on 600 other things and seldom knows you're alive. But I don't care to trade my pessimistic papa in on a new model.

Life in a coach's family, with all its hazards, has given me something extra. We've had our trips to the Rose Bowl, to the Sugar Bowl, to the Orange Bowl; and we've had our parties and rubbed shoulders with celebrities. I got one of the greatest thrills of my life when Joe E. Brown introduced me to some friends in New York as "Miss Butts, whom I met in Atlanta." If I hadn't been the coach's daughter, he'd never have remembered me. Other children envied us and our "connections" and "influence" with the coach, and I always felt the envy was justified. I'd have envied them if they'd been in my place.

As a coach's wife now, I find myself living through many of the same joys and agonies I saw my mother experience. She suffered silently with Georgia, but I die violently with Decatur High School. I'm a nervous bundle of screams and hollers and other assorted noises during a game. In football matters my father's nature dominates me. We're both pessimistic. We both feel that anybody who isn't fur you is agin you. We both hate to lose, passionately. They call him "The Little Round Man" and me "The Little Round Girl."

Eventually, though, I feel that the lady in me will take over and I shall become the exemplary wife of a football coach. I have been exceedingly well trained for the position. THE END



"Breakfast's at eight."

THE SATURDAY EVENING POST

It's still pretty hard on a coach's family in a losing season, though.

As you can imagine, daddy is very sensitive to defeat. After the Orange Bowl game in 1949 daddy just wouldn't budge from his room. Georgia had won the Southeastern Conference championship and had been favored to beat Texas, a three-time loser, on New Year's Day. With no pressure on, the loose Texas team won, 41-28—the only major bowl game daddy ever lost. Daddy was simply crushed. They always throw a big postgame party for the players and coaches at a night club in Miami, but daddy refused to go. While mother dressed in her prettiest evening gown, daddy crawled into bed, and nobody could reason with him.

After a while there was a knock on the door, and when mother opened it, there stood Frank Leahy, of Notre Dame, one of daddy's closest friends, and two Catholic priests. They were so appropriately solemn that it looked as if they had come to administer last rites. Mother started laughing, and then daddy, and then all of us. That broke the spell. Daddy got up and dressed and went off to the party to face the music.

Many of his players think of him only as a football coach. If they could see him around the house, those Georgia Bulldogs would never believe it. While he has never washed a dish in his life and couldn't fry an egg without an instructor, he is otherwise a well-domesticated animal.

been a flap-mouthed Negro waterboy-trainer named Clegg Stark, who doesn't know his own age or how long he has been there. They say that Clegg once was able to throw a football the length of a field. The late Grantland Rice prevailed upon him to demonstrate his mighty arm when Georgia played New York University in New York some years ago. He so amazed the sports writers that several of them wrote at length about the fabulous Negro waterboy from Georgia.

Clegg is held in such esteem by past Georgia football players that they raised a fund to buy him a new house. Then came time for the touching presentation, and old Clegg, wearing his red-and-black Georgia sweater, stood there with his head bowed in humility, occasionally wiping away a dripping tear. Then he stepped forward to make his acceptance speech.

"I sho' do appreciate this from you boys," he said. "But who's gonna pay the tax on it?"

Daddy has had his player characters, too, not the least of whom was a flat-footed, slope-shouldered halfback from Ohio. This player had great talent, but he almost drove daddy wild with his flightiness.

Now, a player's problems are the coach's problems, too, no matter how personal they may be. Romance-stricken Georgia players have come by home many a time to tell daddy they wanted to get married. I've seen the terrified bride-elect sit in the parlor



Locker-room session between the halves of the Georgia-Chattanooga game. The air of gloom was not justified by the final score: Georgia 12; Chattanooga 6.

Georgia Plays for Keeps

By FRED RUSSELL and GUY TILLER

ONE Saturday in 1947, Wally Butts, the exacting drillmaster of University of Georgia football, was attempting to build a fire under a subpar team which had lost the week before to Kentucky by 26-0. After concluding one of the most emotional appeals of his hard-driving career, Wally asked Jules Verne Sikes, then Georgia end coach and now University of Kansas head coach, to check the squad's reaction.

Sikes casually fell in alongside Bob Walston, a freshman halfback upon whom much of Georgia's success depended that day against the Oklahoma Aggies. They strolled toward the players' entrance, through which Georgia players must never walk, but spruik.

"You're all set to give 'em hell, aren't you, Bob?" Sikes asked.

Walston, a cool performer from Columbus, Ohio, looked Sikes straight in the eye, as is demanded of all Georgia players when addressing a coach, and gave the obvious reply, "Yes, sir, Coach Sikes."

Then, before he streaked onto the stadium turf, Walston whirled and said to Sikes, "But if we get near that Aggie goal line, you better send in Coach Butts. He's really ready."

Walston, now an ace Georgia end, wasn't wisecracking about his coach, whom he both fears and respects. None of Wally Butts' strictly disciplined

players would dare take such a liberty. Walston was simply stating a fact. On the day of a game, Coach James Wallace Butts, Jr., is always "up"—so highly keyed, in fact, that he avoids his players as much as possible, for fear that he will cause them to become too taut.

Nor would Walston's idea of inserting Coach Butts in the line-up sound too farfetched to those who have seen Wally, at forty-four years of age, bulldoze one of his huge athletes in demonstrating the proper blocking form.

Butts is a stocky, powerful man, built along the lines of a fire hydrant. He stands only five feet, six inches, but weighs 195 muscled pounds. This coach, whose 1948 Georgia team won the Southeastern Conference championship, is such a fanatic on physical conditioning that until 1942 he held daily wrestling matches with giant freshman coach Quinton Lumpkin, six feet two, 225 pounds. Only Lumpkin's entrance into the Navy stopped the bruising sessions. Then Wally took to doing five miles of road work daily. He's always ready. When Georgia lost to Kentucky again in the fourth game of the current season—this time 25-0—Butts was in shape to carry the ball himself, and probably considered doing so.

Despite a so-so season this year, few coaches can match the success of Wally Butts, whose teams have smashed their way to six bowl games in eight years. He is a hard-driving perfectionist who is either loathed or loved.

Wally Butts has been going hard from his small boyhood in Milledgeville, Georgia, where he was born on February 7, 1905. "Wally's father was, and still is, in the business of felling trees, moving safes, transporting homes to new locations and almost any other type of handy-man job," declares Jere Moore, editor of the local newspaper. "When Wally was knee-high to a cat, he helped his father. He was so busy helping his father that he never had time to get into any mischief or hang around any of the town's joints. When he was a tiny shaver he would spend what few free moments he could squeeze out of his father playing football by himself. He drove himself at a killing pace even then, for his one desire was to be a football star. He finally interested other kids in playing with him, and, although he was one of the smaller boys, he controlled the games. If a big boy picked on a smaller lad, he had to whip Wally. Very few ever achieved that."

When Butts first reported as a kid candidate at Georgia Military College, then a prep school, he was so small that other boys reached over his head into the grab bag of equipment. Butts didn't get a stitch.

PHOTOGRAPHY BY FRANK ROSS

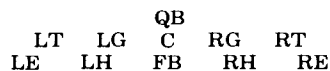
But he turned up the next day in tennis shoes and a pair of faded pants, stuffed and stitched with cotton by his mother. Another little obstacle, having to milk nine of his father's cows every afternoon after practice, didn't stop him from making the team.

Later, as an end at Mercer University, a Baptist school in Macon, Georgia, he became captain in 1927 and was chosen for the All Southern Intercollegiate Athletic Association team. Bernie Moore, present commissioner of the Southeastern Conference, coached Wally at Mercer. Moore later had such All-American flankmen as Gaynell Tinsley and Ken Kavanaugh at L.S.U., but he still ranks Butts as the best he ever saw at the vital assignment of blocking the opposing tackle.

However, Wally's greatest eminence has come as a coach. He has produced six bowl teams at Georgia in the last eight years. Listen to Notre Dame's Frank Leahy, addressing the Athens Touchdown Club in 1947: "I do not say this for home consumption; I have said it in Chicago, in New York and everywhere I have been asked about my fellow coaches. There is no finer coach in college football than Wallace Butts. There are no better drilled or better disciplined football teams in America than Georgia's."

Leahy and Butts are fast friends. They met at a high-school clinic in Texas in 1942. Each was deeply impressed with the other's offense and defense, and they soon became intimates. Butts annually spends a few weeks in South Bend during Notre Dame's spring practice; when Georgia plays a bowl game, Leahy usually is in Butts' room after each daily practice session.

Rival coaches point out that Notre Dame and Georgia pass patterns bear a striking resemblance. It is also significant that Notre Dame and Georgia both are using a new huddle formation this season, in which the players group themselves like this:



After studying the defense, the quarterback turns, faces his teammates—who are looking toward the line of scrimmage—and calls the play. Advantages: It is more orderly than the normal huddle; it is easier to spot a fatigued or injured player; the players do not lean on each other; all can see the lips of the quarterback; and an assistant coach moving up and down the side lines can easily detect confusion among the team or spot any player who might be arguing with the quarterback.

There is at least one coach who says the Butts-Leahy co-operation goes further than huddles, pass patterns, new defensive strategy and cannily designed trap plays. Paul (Bear) Bryant, of the University of Kentucky, declares, "Every time I line up a truly great high-school player to come here, my hottest competition for him comes from Notre Dame. When we sign a boy to a Southeastern Conference grant-in-aid, we send his name to the commissioner, Bernie Moore, and all schools in the S.E.C. get a list of the boys who have signed with other schools. I believe Butts tips off Leahy on the top boys."

Wally Butts started coaching in 1928 at a small Georgia prep school, Madison A. & M. He tested his players' abilities by scrimmaging with the squad regularly until darkness called a halt. After developing a Southern prep championship team at Madison, he went in 1931 to his home town of Milledgeville to coach his own alma mater, Georgia Military College. After running up a record of thirty-seven victories and only three defeats, Wally moved in 1935 to Male High, in Louisville, Kentucky, where, in addition to coaching, he taught history. Here, too, Butts was successful.

His chance to join a college coaching staff came in 1938, when Harry Mehre left the University of Georgia for the University of Mississippi. Despite Mehre's record of defeating Yale five times when Old Eli was famous for more than saddle shoes and crew cuts, plus his feat of losing only twice in ten years to Georgia's traditional state rival, Georgia Tech, the university alumni kept grumbling for a conference championship and a bowl team.

Butts applied for the Georgia head-coaching job. A member of the university's athletic board asked



A characteristic Butts pose at a recent night game. Mentally playing each man's position, the coach chews grass, moans when a player drops a pass, and despairs when the quarterback calls the wrong play.

Wally, "What system do you use?" Butts replied tartly, "I use the color system. I tell the boys simply to go out and knock down everybody not wearing our colors."

Butts did not get the No. 1 job, but he was hired as an assistant coach. Joel Hunt, who had been L.S.U.'s backfield coach, took the top spot, but after a mediocre season and several months of exposing his direct personality to ruffled alumni, Joel was paid off. Butts appealed to the athletic board to grant Hunt a hearing. When this plea was turned down, Wally accepted the head-coaching job himself for 1939.

He inherited a squad short of talent and short of breath. The latter was corrected immediately by a spring-practice grind that started in January and lasted until June, with only Sundays and a few other days off.

"Nobody was in shape when we started," recalls Wyatt Posey, now head coach at South Georgia Junior College, in Douglas.

"But everybody was in shape when it ended. The boys were weeded out from the men quickly. I bet half the original squad quit. They just wouldn't pay the price. That session darn near killed me, but, as trite or silly as it may sound now, it made a man out of me."

The summer following this back-breaking practice stretch was no vacation for Coach Butts and his chief assistant, J. B. Whitworth. Georgia was mired in red ink, but George C. Woodruff, wealthy Columbus, Georgia, alumnus and a former Bulldog head coach, backed up his confidence in Butts with a loan that allowed the athletic association to keep the sheriff away. Butts and Whitworth could entice few of the Southern prep

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Wally Butts, who is a fanatic on conditioning, weighs the team daily before and after practice. He frequently prescribes lighter practice-field work and more milk for a player needing additional pounds.

