

GEORGIA PLAYS FOR KEEPS

(Continued from Page 29)

sensations to join a losing Georgia team, so they headed into Pennsylvania and Ohio on a campaign that was Sherman's march to the sea in reverse.

Paul Jenkins, then coaching at Wally's old stand, Male High, tipped Butts about a halfback in Youngstown, Ohio. Paul could not remember the boy's name. The entire sports world found it out two years later, when Fireball Frankie Sinkwich started leading Georgia out of the gridiron swamps. To make certain that Sinkwich did not get homesick, Butts brought along Frankie's buddy, George Poschner, who developed from a fourth-string halfback on the freshman team into an All-Southeastern end.

Wally's first Bulldog team in 1939 was not a success from a victory standpoint, losing to Furman, Holy Cross, Kentucky, New York University, Auburn and Georgia Tech. But the freshman team, liberally sprinkled with Pennsylvania and Ohio boys, went undefeated and was hailed as a point-a-minute whirlwind.

Butts' coaching record since 1939 is among the nation's best. His fabulous freshmen of 1939 won the Orange Bowl bid as juniors and trounced Texas

Christian University, 40-26. Georgia wrecked unbeaten Georgia Tech, 34-0, in 1942 to win the Southeastern Conference championship for the first time in history. This brought an invitation to the Rose Bowl, where U.C.L.A. was toppled, 9-0.

In 1943 Butts opened practice with a squad of seventeen-year-olds and 4-F's. With no reserve military unit at Georgia, Butts' 1943-44 record of thirteen victories and seven defeats is an often overlooked high light of his career.

Charley Trippi returned from the service in time to spark the 1945 team to an Oil Bowl triumph over Tulsa, 20-6. Then Georgia went undefeated and untied in 1946, for the first time since the 1896 team won four games without a loss. Trippi and a sophomore quarterback, John Rauch, set the pace as the Bulldogs squeezed past North Carolina, 20-10, in the Sugar Bowl.

Without Trippi, Georgia dropped four games in 1947, but played Maryland to a 20-20 deadlock in the Gator Bowl at Jacksonville. Last year Butts had his third S.E.C. title-winning team. He suffered his first bowl loss, though, when Texas won out in the fourth quarter at the Orange Bowl, 41-28.

Georgia isn't playing four of the highest-ranked teams in the Southeastern this year—Tulane, Vanderbilt, Tennessee and Mississippi—and, although protests by Butts that he has the worst material in the conference are

exaggerated, the Bulldogs are not probable contenders for the championship. However, Butts went into this season with a record—including bowl games—of seventy-nine victories, twenty-seven losses and three ties in ten years at Athens.

Except for the morning of the Georgia-Georgia Tech game, when he adopts an aggressive, coldly calculating attitude, Butts continuously moans that he cannot possibly win the next game. He has to this day never admitted having better material than even one opponent. Carter (Scoop) Latimer, who should have known better, once allowed himself to be a silent audience while Butts' tears splashed all over a Greenville, South Carolina, hotel room. Georgia's 1946 team was undefeated and favored to scatter little Furman all over Greenville. But, after listening to Wally, Latimer returned to his sports desk on the News and pounded out a column predicting that Furman would score an upset victory. The score: Georgia 70, Furman 7.

After one late-September scrimmage this year, Butts made, among others, the following characteristic remarks to newspapermen: "There is not an end on the field who can block a tackle. . . . Our quarterbacks are a joke. . . . We can't possibly develop a running game without better blockers at guard. . . . I'll probably get fired after this season. . . . I could run better than most of

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our backs, and I'm an old man. And I'll be much older before poor ole Georgia finishes this season."

Despite his excitement and temper displays at practice, Butts is at his quietest—though churning inside—on the morning of a game. Then his greatest concern is about the weather. "Some mornings he has made me call the weather bureau ten times, though they told me the same thing every time," reports Louis Trousdale, a former aide. "Coach always wants a dry track."

Butts' concern over the weather is understandable. The Bulldogs always fill the air with forward passes. Georgia gained 2101 yards on aeriels in 1942, when Sinkwich's heaves alone accounted for 1392 yards, and Lamar (Race Hoss)

Davis set a national record by averaging 28.5 yards per catch. The Georgia kid team in 1943 produced Johnny Cook, a seventeen-year-old whose tosses netted 1007 yards. In 1945, Reid Moseley, a Bulldog end, led the nation in most yards for a receiver, 662. Georgia set another conference mark in 1946 when twenty-three passes were fired for touchdowns and Trippi and Rauch completed 54.4 per cent of their tosses. Rauch gained more than 1300 yards in both 1947 and 1948 on passes.

Bo McMillin, former Indiana coach who now directs the professional Detroit Lions, explains it this way: "When Wally was on the All-Star coaching staff with me in Chicago, he drew up a few of his intricate

pass patterns. Another member of the staff said he doubted the plays would work because he did not believe four receivers could get out in the open on almost every pass play. Wally said that if his poor little boys down in Georgia did it, he couldn't understand why a bunch of All-Stars couldn't. We did, and we beat the pros."

Butts points out quite truthfully and without the slightest hint of modesty that Georgia's three great All-American backs, Sinkwich, Trippi and Rauch, all were fine passers when they left Athens, but none was a good passer when he first enrolled.

Ed Danforth, sports editor of the Atlanta Journal, discussing this fact, says, "Sinkwich couldn't even throw

30



What kind of man is STALIN?

IS Joseph Stalin a ruthless dictator—or merely "good old Joe," a prisoner of his Politburo comrades? Does he mean what he says about Russia's plans—or is he bent on Sovietizing the world? Can we come to a working understanding with him—or must millions continue to fear the oft-threatened "frightful collision" between Soviet Russia and the capitalist world?

There is probably no living American who, by face-to-face contact with Stalin, is better qualified to answer these questions than Lt. Gen. Walter Bedell Smith, former United States Ambassador to Russia. General Smith has written the inside story of his experiences during his three years in Moscow. This extraordinary personal document—which will appear exclusively, in this country, in The Saturday Evening Post and The New York Times—will be presented to Post readers in a series of eight articles. In the first of these, General Smith tells the story of a historic, two-hour talk with Stalin. Watch for this remarkable feature . . .



Walter Bedell Smith

in next week's POST

[Fol. 1400]

a spiral. Bill Hartman, the backfield coach, and Butts labored long to develop his ability to pass. What I think finally spurred him on to becoming the finest passer in the South was the fact that the opposition was playing practically an eight-man line against him in every game.

"About Trippi, he had more natural ability than the other two. He could throw mechanically, but he was not naturally talented at picking out pass receivers. When Trippi first came to Athens, he threw with his weight improperly distributed, and he threw a ball that was difficult to catch.

"But, to my mind, Rauch is the crowning achievement of the intensive coaching by Butts. John came to Georgia as a runner and had never played the T formation. Wally was suffering a wartime shortage of material and decided that Rauch was the best quarterback prospect. Then he worked daily all summer in 1945 to develop Rauch into a passer. John became the finest passer in the Southeastern Conference last year."

The boys, none of whom had been sizzling high-school stars, agree with Danforth.

"I owe everything I accomplished in football, and a lot more, to Coach Butts," Sinkwich declares. "I had to learn the hard way"—Sinkwich once went on strike against practicing daily—"but he taught me to become part of a team. He and Bill Hartman taught me to pass. I never would have been effective as a runner if I had not learned to throw."

Sinkwich was paid \$20,000 for his first season with the Detroit Lions and became the most valuable player in the National Professional League in 1944.

Trippi is even more emphatic. "Coach Butts is such a perfectionist that he would improve any boy," Charley says. "He alone made me an All-American. People ask why I returned to Georgia instead of entering pro football when I was discharged from the Army. I know what many of them think"—that Trippi was rewarded handsomely by Georgia alumni—"but I shook hands with Coach Butts in his office the day I left to enter the service and I told him then that I would come back and play for him if he needed me, even if I was in the Army ten years. If it hadn't been for Georgia and Coach Butts, I never would have had a chance at an education . . . and the opportunity to play college or pro football."

Trippi signed a four-year contract with the Chicago Cardinals, calling for \$100,000. In the spring, he coaches the Georgia baseball team.

Rauch, who is now in his first pro season with the New York Bulldogs, says, "Coach Butts spent more time with me individually than most coaches spend with entire squads. He taught me the T offense and he taught me how to pass. I'm grateful that I was picked on some All-American teams, but they should have picked Coach Butts."

Butts draws criticism from some sources—mostly supporters of rival teams—for bringing in so many boys from the North. His stock answer to such talk is, "I don't care where the boy comes from, how he spells his name or whether he is Croatian or an Australian. All I ask is that he be loyal to Georgia, be proud of that red jersey, and try like hell to get the ball over the goal line."

The mass migration of Northern athletes to Georgia dates from 1939. Since Sinkwich and Poschner, there have been few Georgia freshman teams with-

out a boy from the Youngstown, Ohio, neighborhood. Contacts through these boys and their coaches naturally have led enterprising Georgia talent scouts to other Ohio towns.

Pennsylvania boys started heading to Athens at the behest of the late Harold Ketron, a Georgia alumnus who owned a soft-drink bottling plant at Wilkes-Barre. A former Bulldog football player, Ketron met and admired Coach Butts. So he began to scout high-school prospects in the Wyoming Valley, one of the nation's richest beds of football talent. Trippi, George Young, Andy Dudish, Joe Tereshinski and several others were the trail blazers Ketron sent down as the Bulldogs established a coal-country beachhead.

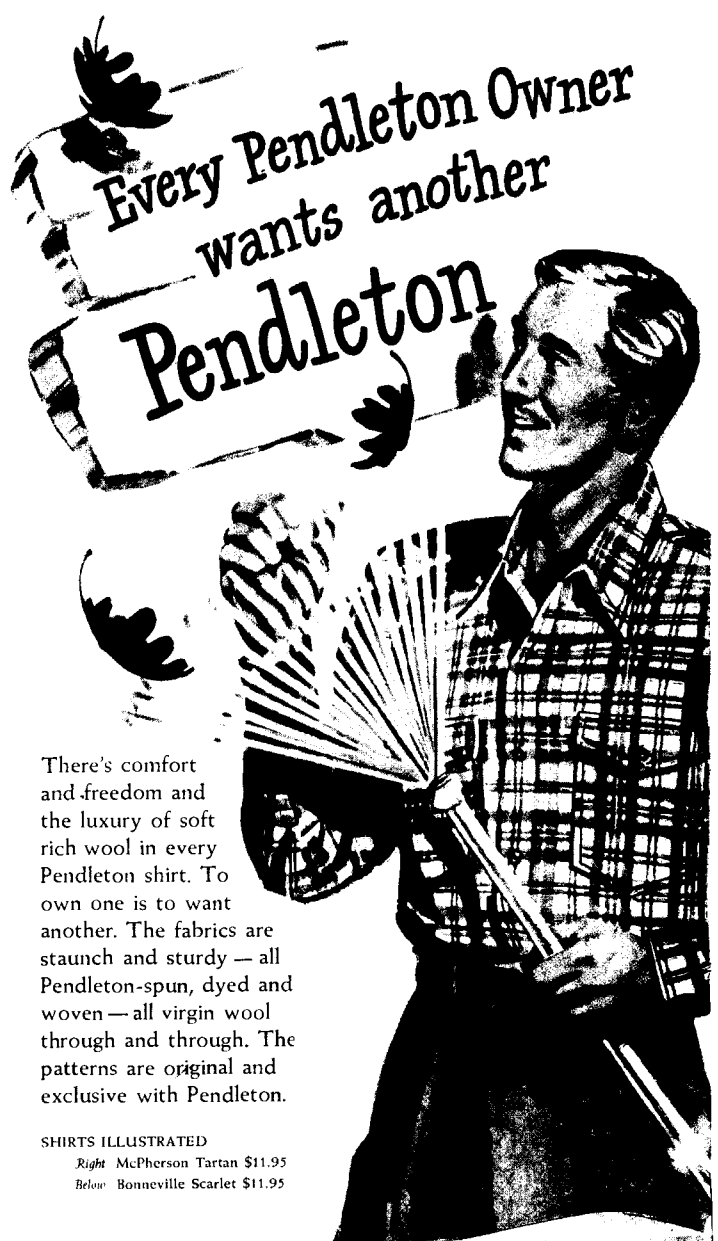
This year, however, Georgia's freshman team includes twenty native sons. "Northern high-school boys usually are older and therefore stronger and more mature," Butts says, "but the improved high-school coaching in Georgia and the establishment of a full four-year course in all Georgia high schools have strengthened football in the state. There are more fine prospects coming up this year than ever before. It will not be long before our squad can be composed almost entirely of Georgia boys."

Butts, whose four principles of winning football are, in the order of their importance, discipline, conditioning, fundamentals, and pass patterns, is definitely a two-sided personality. Away from football, he is a quiet person whose rare speech is heard in a soft drawl. Despite his strength, his handshake is firm only when compared to a wet shaving brush. He uses no profanity, refuses to touch a cigarette, and imbibes only to the extent of an occasional social drink. His eyesight is poor, but he complains that he does not have time to have glasses properly fitted. Today he's still using a pair that he borrowed last summer from a friend in Chicago to read a menu. He forgets where he last deposited his raincoat, perhaps it was San Francisco, and he buys from four to six hats each year because he cannot remember where the last one is parked.

Such absent-mindedness vanishes at the drop of a halfback. Wally cannot sleep during the football season. He drives himself, as he does his players, to the verge of, but never over, the breaking point. He has student managers keep a record of every play used in scrimmage. Then he memorizes this information to determine which halfback runs which play best, after what sequence a particular play is most effective, and which defensive man makes the tackles on each play. He also insists on regular time trials for the players to see if any have gained or lost speed.

Grades of every member of the varsity and freshman squads are checked periodically, and he orders tutors for those who lag behind in the classrooms. His players must weigh daily before and after practice. He frequently prescribes lighter practice-field work and more milk for a player he thinks needs more pounds. All the single players live in one dormitory, and their specially prepared menus are checked by Wally.

Butts is aggressively independent in seeing that his athletes get the best keep. When overcrowded dormitories threatened to bring a university regulation of four boys to a room, Wally objected strenuously, announcing that if necessary he would install the football players in Athens hotels. This prompted a student to quip, "Why



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doesn't the university get up a football team of its own and play the athletic association some Saturday? They would beat us, but it would be interesting."

Some players who have served under Butts declare that their love of football was killed by the driving pace at Athens. One ex-Bulldog says, "He is not patient enough with young boys. Too much skull husting goes on. He has made stars out of mediocre high-school players, I'll admit, but I think he has ruined many others by driving them too hard and making them quit. I quit because I didn't get any pleasure out of football."

Probably the most consternation Butts ever caused among his players was when he broke into tears following the Georgia team's great second-half comeback to beat Alabama, 21-10, in 1942. One of the Northern boys on the squad later described it as "the most unbelievable thing I ever saw. It was like watching one of these Confederate monuments weep."

Such a forceful, demanding, dedicated person as Butts is either loathed or loved. On his 1941 team, Frank Sinkwich played, wearing a mask to protect a fractured jaw, and George Poschner with a broken arm in a cast covered with soft rubber. In a later season, Johnny Rauch was to wear a mask to shield a shattered cheekbone. All three begged to play.

Georgia football players are allowed no drinking water during practice or games. When there are substitutions, the men must sprint on and off the field. Nor do Georgia teams sit or sprawl on the ground during time-outs. They stand erect.

In Wally's first season as head coach in 1939, Georgia lost to N.Y.U., 14-13. That set Butts to thinking about extra-point specialists. Since then, the Bulldogs have never lost a game through inability to convert. They have won three by such a margin and tied two. "Too much is at stake on that extra point," Butts says. "We try to develop a boy who does nothing else. We don't want to risk him to injury by playing him during the regular game."

Leo Costa did play twenty-eight seconds in his opening game as a sophomore in 1940, but after that he did nothing but kick extra points. Since time is out when the conversion is tried, Costa finished his career in the Rose Bowl with a total of only twenty-eight seconds' official playing time. Yet he had scored in every game Georgia had played for three years, since no team ever kept Sinkwich and Company from scoring at least one touchdown.

Coach Whitworth, who once kicked an Alabama field goal in the Rose Bowl, is the extra-point instructor. To cure the kicker from watching the flight of the ball, much as a golfer raises his head to watch a drive, Whitworth makes the specialists pick up blades of grass before they look up. Costa always contended that he never saw one of his kicks split the uprights. By the end of the season there is a bare spot in front of each goal post at Athens, where Georgia kickers snatch up the grass after each boot, practice or game.

Billy Bryan kicked twenty-nine conversions in 1944. Then came George Jernigan, the Springfield, Tennessee, rifle. Jernigan was the conference's fourth-leading scorer in 1946 with a record number of conversions, forty-seven. He missed only five. The year before, he kicked thirty-seven out of forty-four.

Whitworth didn't come up with a specialist in 1947 and 1948. Joe Geri,

his best kicker, was also one of the best ball carriers. Geri kicked twenty-four out of twenty-eight two years ago, and last season was the S.E.C.'s highest scorer with thirty-six extra points in forty attempts, plus nine touchdowns. This year Butts and Whitworth have another boy who does nothing for his bread and butter but sock that extra point. His name is Wayne Haskins, a 136-pound Lewisburg, Tennessee, sophomore whose right arm was permanently damaged in a hunting accident. Butts, who is extra sympathetic to any crippled person, because his youngest daughter Nancy once suffered paralysis, gave Haskins a scholarship. At first the boy only knew how to kick wearing G.I. shoes.

"He'll make it," Coach Whitworth emphasizes. "He's a game little rascal and he's finally got used to those shoes with the cleats."

Butts' daughter Nancy is twelve. He is the father of two other girls, Winifred Faye, nineteen, and Martha Jean, seventeen. "They all look like their mother, thank goodness," he exclaims. Mrs. Butts is the former Winifred Faye Taylor, a home-town girl whom Wally married in 1929.

Most football fans, including hundreds of rabid Georgia alumni, see Wally only when he is on the banquet circuit or at civic-club meetings. Here he is a showman. He wails about poor Georgia's inferior material, brags about the fine players other schools are getting; then, after this bit of sabotage, tells delightful stories.

"Sinkwich never would have done anything without my coaching," he lulls his listeners. "Why, in 1941 he ran the same play wrong three times against Florida. I yanked him out of there, gave him the devil and told him what he was doing wrong. Then I let him go back in there. On the first play he ran for a touchdown. That's what great coaching will do." Before the crowd can react to such shameless egotism, Butts adds, "Oh, yes, that's what great coaching will do. He ran the darn play wrong again. But he scored."

Wally Butts is a controversial and a contradictory figure. He has on three occasions kicked outstanding players off the squad for smoking, then turned around and restored their scholarships

in order that they might finish their education. But they never played another minute of football. In one such case of a war veteran, Butts attempted to sell the press the idea that the boy had quit football because of ulcers. The boy spilled the beans.

Wally's first contract at Georgia has never expired. The athletic board keeps adding years and dollars to his original pact, and he now has ten seasons to go at what is estimated to be a salary of \$17,500. He will, of course, say the figure is much lower.

Butts never misses an opportunity to low-rate his prospects, as he did in 1946 when the Washington Touchdown Club honored him and Trippi. Gen. Maxwell D. Taylor, then West Point superintendent, told the Washington audience that football would be de-emphasized at Army.

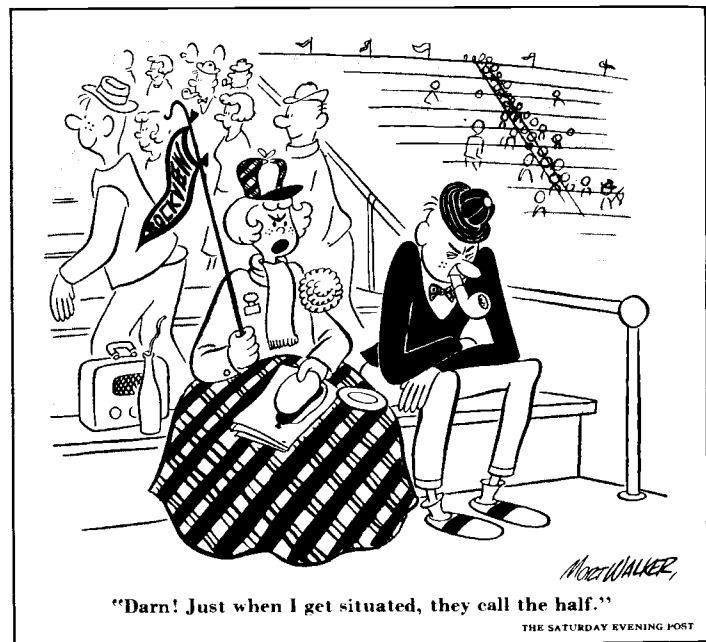
When Butts arose to speak, he turned to General Taylor and said, "I don't blame you, general. If I had lost Blanchard, Davis and Tucker, I'd de-emphasize football too. In fact I am just losing Trippi, and I think Georgia might be better off to quit entirely."

Nobody expects Butts to change his ways. He will continue, during the progress of a game, to chew grass, moan when a player drops a pass, throw his arms heavenward when the quarterback calls the wrong play, and frantically wave on the ball carrier when he breaks into the open field.

His players will be disciplined to the point of permanency. Spec Landrum, now an assistant coach at Atlanta's Roosevelt High, tells how indelible an impression Butts makes on his players. "Allen Bloodworth played for Coach Butts at Georgia Military," Spec relates. "Bloodworth later played for Mercer, then became a businessman at Macon. One day he saw Coach Butts walk onto the practice field at Mercer. Coach Butts then was at Georgia and had absolutely no connection in any way with Bloodworth. But when he saw Butts, Bloodworth quickly ground out his cigarette."

Later joked about it, Bloodworth said, "I knew Coach Butts wasn't in charge of me any more, but I had been one of his boys and I was afraid that he might think he was still in charge. I'd never smoke in front of him."

THE END



[fol. 1402]

[fol. 1403]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 26

October 22, 1962

Mr. J. D. Bolton
Academic Building
The University of Georgia
Campus

Dear J. D. :

I enjoyed riding to the game with you and Kathryn.

By way of explanation, I did not get back to your car because I was sick at the game—a nervous stomach or something related. Red Leathers came by the press box, to see Harry Mehre and I caught a ride with him.

I was sorry I did not make a better contribution to recruiting but did not feel up to the occasion.

I was sorry about the game. Our first drive was great to watch. The Bulldogs will be alright if all of us "Keep the faith".

Sincerely,

Wallace Butts
Director of Athletics

WB:dm

1068

[fol. 1404]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 27

April 27, 1962

Mr. J. D. Bolton
Academic Building
The University of Georgia
Campus

Dear J. D.:

I think it an unfair deal for you to turn down my expense account to General Neyland's funeral.

He is one of the outstanding men developed in the Southeastern Conference. If I had not gone to the funeral, Johnny had planned to send two members of the coaching staff and their expenses would have been paid by the University of Georgia.

Sincerely,

Wallace Butts
Athletic Director

WB:dm

[fol. 1405]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 28

October 22, 1962

Coach Johnny Griffith
Head Football Coach
The University of Georgia
Campus

Dear Johnny:

I had to leave today (Sunday) for Hattiesburg, Mississippi. I am sorry I did not see you.

Do not worry too much—everything will be alright.

Our first drive was great.

Sincerely,

Wallace Butts
Director of Athletics

WB:dm

1070

[fol. 1406]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 29

February 26, 1963

Coach Johnny Griffith
Head Football Coach
The University of Georgia
Campus

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".

Sincerely,

Wallace Butts

WB:dm

GEORGIA VERSUS ALABAMA

STORY

THE STORY OF A COLLEGE FOOTBALL FIX

A SHOCKING REPORT
OF HOW WALLY BUTTS AND
"BEAR" BRYANT RIGGED
A GAME LAST FALL

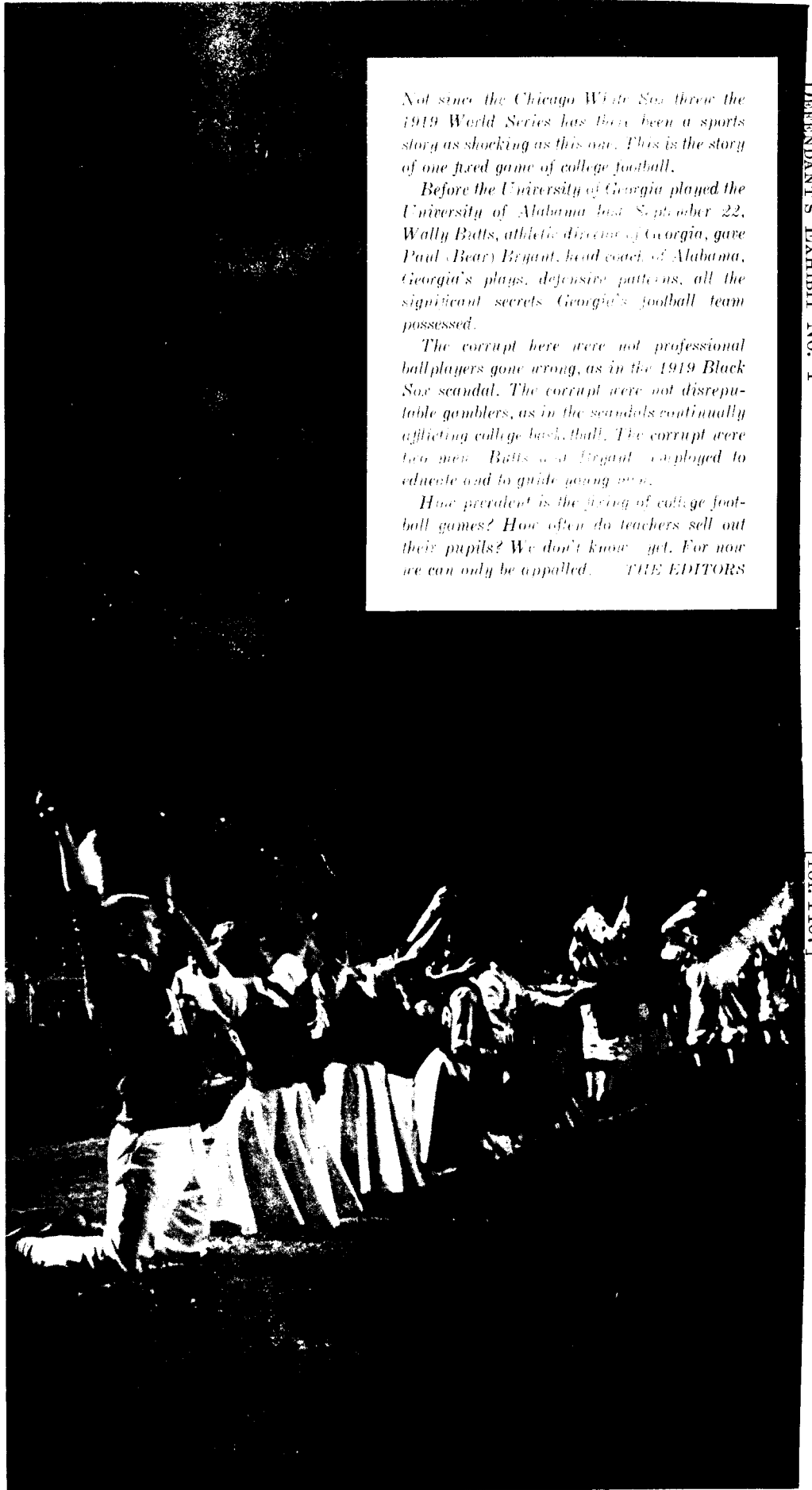
By FRANK GRAHAM JR.

Not since the Chicago White Sox threw the 1919 World Series has there been a sports story as shocking as this one. This is the story of one fixed game of college football.

Before the University of Georgia played the University of Alabama last September 22, Wally Butts, athletic director of Georgia, gave Paul (Bear) Bryant, head coach of Alabama, Georgia's plays, defensive patterns, all the significant secrets Georgia's football team possessed.

The corrupt here were not professional ballplayers gone wrong, as in the 1919 Black Sox scandal. The corrupt were not disreputable gamblers, as in the scandals continually afflicting college basketball. The corrupt were two men: Butts and Bryant, employed to educate and to guide young men.

How prevalent is the fixing of college football games? How often do teachers sell out their pupils? We don't know yet. For now we can only be appalled. THE EDITORS



On their knees, Alabama cheerleaders plead for touchdown. Team scored five.

IN UNITED STATES DISTRICT COURT
DEFTENDANT'S EXHIBIT No. 4

[Vol. 14071]

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On Friday morning, September 14, 1962, an insurance salesman in Atlanta, Georgia, named George Burnett picked up his telephone and dialed the number of a local public-relations firm. The number was Jackson 5-3536. The line was busy, but Burnett kept trying. On the fourth or fifth attempt he had just dialed the final number when he heard what he later described as "a series of harsh electronic sounds," then the voice of a telephone operator said:

"Coach Bryant is out on the field, but he'll come to the phone. Do you want to hold, Coach Butts, or shall we call you back?"

And then a man's voice: "I'll hold, operator."

Like most males over the age of four in Atlanta, George Burnett is a football fan. He realized that he had been hooked by accident into a long-distance circuit and that he was about to overhear a conversation between two of the colossi of Southern football. Paul (Bear) Bryant is the head coach and athletic director of the University of Alabama, and Wallace "Wally" Butts was for 22 years the head coach of the University of Georgia and, at the time of this conversation, the university's athletic director. Burnett ("I was curious, naturally") kept the phone to his ear. Through this almost incredible coincidence he was to make the most important interception in modern football history.

After a brief wait Burnett heard the operator say that Coach Bryant was on the phone and ready to speak to Coach Butts.

"Hello, Bear," Butts said.

"Hello, Wally. Do you have anything for me?"

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. Georgia's opponent was to be Alabama.

Butts outlined Georgia's offensive plays for Bryant and told him how Georgia planned to defend against Alabama's attack. Butts mentioned both players and plays by name. Occasionally Bryant asked Butts about specific offensive or defensive maneuvers, and Butts either answered in detail or said, "I don't know about that. I'll have to find out."

"One question Bryant asked," Burnett recalled later, "was 'How about quick kicks?' And Butts said, 'Don't worry about quick kicks. They don't have anyone who can do it.'"

"Butts also said that Rakestraw [Georgia quarterback Larry Rakestraw] tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off. And another thing he told Bryant was that Woodward [Brigham Woodward, a defensive back] committed himself fast on pass defense."

As the conversation ended, Bryant asked Butts if he would be at home on Sunday. Butts answered that he would. "Fine," Bryant said. "I'll call you there Sunday."

Listening to this amazing conversation, Burnett began to make notes on a scratch pad he kept on his desk. Some of the names were strange to him—tackle Ray Rissmiller's name he jotted down as "Ricemiller," and end Mickey Babb's as "Baer"—and some of the jargon stranger still, but he recorded all that he heard. When the two men had hung up Burnett

still sat at his desk, stunned, and a little bit frightened.

Suddenly he heard an operator's voice: "Have you completed your call, sir?"

Burnett started. "Yes, operator. By the way, can you give me the number I was connected with?"

The operator supplied him with a number in Tuscaloosa, Alabama, which he later identified as that of the University of Alabama. The extension was that of the athletic department. Burnett then dialed Jackson 5-3536—the number he originally wanted. This time the call went through normally, and he reached a close friend and former business associate named Milton Flack.

"Is Wally Butts in your office now, Milt?" Burnett asked.

"Well, he's in the back office—making a phone call, I think. Here he comes now."

"Don't mention that I asked about him," Burnett said hurriedly. "I'll talk to you later."

Through some curious electronic confusion, George Burnett, calling his friend Milt Flack, had hooked into the call Wally Butts was making from a rear office in Flack's suite. He was the third man, the odd man. But he was not out.

Putting the pieces together

In the next few hours Burnett tried to piece together what he knew of Georgia football. Butts, a native of Milledgeville, Georgia, had joined the university coaching staff as an assistant in 1938. A year later he was named head coach. For 20 years he was one of the most popular and successful coaches in the South. Then prominent University of Georgia alumni abruptly soured on him, and on January 6, 1961, he was replaced by a young assistant coach named Johnny Griffith. Butts, fired away in the position of Georgia's athletic director (which he had held along with his coaching job for some years), was outspokenly bitter about his removal from the field.

Burnett knew, too, that Butts recently had been involved in a disastrous speculation in Florida orange groves. Butts had lost over \$70,000 because, as someone put it, "you couldn't grow *cactus* on that land." One of his partners in the deal was also an associate of Milt Flack at a public-relations firm called Communications International, the office Burnett had been trying to call when he hooked into the Butts-Bryant conversation.

That afternoon Burnett told Flack what he had overheard. Both of them, though only slightly acquainted with the high-spirited, gregarious Butts, liked him, and they decided to forget the whole thing. Burnett went home in the evening and stuffed his notes away in a bureau drawer. He felt a great sense of relief. The matter, as far as he was concerned, was closed.

Eight days later, on September 22, the Georgia team traveled to Birmingham to play Alabama before a crowd of 54,000 people at Legion Field. Alabama hardly needed any "inside" information to handle the outmanned Bulldogs. Bryant, one of the country's most efficient and most ruthless coaches—he likes his players to be mean, and once wrote that football games are won by "outmeaning" the other team—had built a powerhouse that was in the middle of a 26-game winning streak. Alabama was the defending national champion, combining a fast-charging and savage-tackling defense with an effective

attack built around a sensational sophomore quarterback named Joe Namath. The Georgia team was composed chiefly of unsensational sophomores.

Various betting lines showed Alabama favored by from 14 to 17 points. If a man were to bet on Alabama he would want to be pretty sure that his team could win by more than 17 points, a very uncertain wager when two major colleges are opening the season together and supposedly have no reliable line on the other's strengths and weaknesses.

Bryant, before the game, certainly did not talk to the press like a man who was playing with a stacked deck.

"The only chance we've got against Georgia is by scratching and battling for our life," he said, managing to keep a straight face. "Put that down so you can look at it next week and see how right it is."

The game itself would have been enjoyed most by a man who gets kicks from attending executions. Coach Bryant (he neglected to wear a black hood) snapped every trap. The first time Rakestraw passed, Alabama intercepted. Then Alabama quickly scored on a 52-yard pass play of its own. The Georgia players, their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating.

"The Georgia backfield never got out of its backfield," one spectator said afterward. And reporter Jesse Outlar wrote in Atlanta's *Sunday Journal* the following day: "Every time Rakestraw got the ball he was surrounded by Alabama's All-American center Lee Roy Jordan and his eager playmates."

Georgia made only 37 yards rushing, completed only 7 of 19 passes for 79 yards, and made its deepest penetration (to Alabama's 41-yard line) on the next to the last play of the game. Georgia could do nothing right, and Alabama nothing wrong. The final score was 35-0, the most lopsided score between the two teams since 1923.

It was a bitter defeat for Georgia's promising young team. The 38-year-old Johnny Griffith, who was beginning his second season as head coach, was stunned. Asked about the game by reporter Jim Minter, he said: "I figured Alabama was about three touchdowns better than we were. So that leaves about fifteen points we can explain only by saying we didn't play any football."

Quarterback Rakestraw came even closer to the truth. "They were just so quick and mobile," he told Minter. "They seemed to know every play we were going to run."

Later other members of the Georgia squad expressed their misgivings to Furman Bisher, sports editor of the *Atlanta Journal*. "The Alabama players taunted us," end Mickey Babb told him. "'You can't run *Eighty-eight Pop* [a key Georgia play] on us,' they'd yell. They knew just what we were going to run, and just what we called it."

And Sam Richwine, the squad's trainer, told Bisher: "They played just like they knew what we were going to do. And it seemed to me a lot like things were when they played us in 1961 too." (Alabama walloped Georgia in 1961 by a score of 32-6.)

Only one man in the Georgia camp did not despair that day. Asked by reporter

George Burnett of Atlanta: He overheard critical long-distance call.



Wally Butts, former athletic director of Georgia: He gave away Georgia plays, defense patterns.



Head coach Paul (Bear) Bryant of Alabama. He took plays for his defending national champions.



[fol. 1408]



Solemnly Wally Butts leads a Georgia football team in locker-room prayer.



Downcast coach Griffith slouches near bench as Georgia team is slaughtered.

THE FOOTBALL FIX

John Logue about Georgia's disappointing performance, ex-coach Wally Butts nodded wisely and set him straight. "Potential is the word for what I saw," he said. "Unlimited potential."

The whole matter weighed heavily on George Burnett. He began to wonder if he had done the right thing when he had put the notes aside and kept his mouth shut. Now 41 years old, he was still struggling to support his large family. Among his five children were a couple of boys who played football. "How would I feel," Burnett asked himself, "if my boys were going out on the field to have their heads banged in by a stronger team, and then I discovered they'd been sold out?" He began to wake up at night and lie there in the dark, thinking about it.

In one sense Burnett knew it would be easiest to keep the notes in the drawer. While every citizen is encouraged to report a crime to authorities, the penalties against the man who talks are often more severe than those against the culprit. Burnett wasn't worried about physical retaliation. But there might be social and economic ones. Football is almost a religion in the South; the big-name coaches there are minor deities.

Butts no longer had his old-time stature, but many people were still intensely loyal to him (and he was a director of the small Atlanta insurance agency where Burnett worked). Bear Bryant was a national figure who had made impressive records at Texas A&M and Kentucky, and had more recently transformed Alabama from pushovers to national champions.

Burnett, protective toward his family, fearful of challenging deities, was troubled by a drive to do what was right. But what was right? To talk? To create furor, perhaps even national scandal? Or should he remain silent, ignoring wrong? That was a safe course, but one that might sit heavily on his conscience for all the rest of his days.

Living in his private misery, he thought about his past. Burnett himself had played high-school football in San Antonio, Texas, where he was born. During World War II he became a group navigator aboard a Martin B-26. On January 14, 1945, when his plane was shot down over Saint-Vith, Belgium, he was the only survivor. He lost part of his left hand, and spent the rest of the war in a German prison camp. Articulate and personable, he was now the division manager of the insurance agency.

On January 4 of this year he sat in his office with Bob Edwards, a longtime friend who was also an employee of the agency. Burnett knew that Edwards had played football with Johnny Griffith at South Georgia, a junior college.

"You know, Bob," Burnett said, after they had talked business for a while, "there's something that's been eating me up for a long while. I was going to tell you about it at the time, and then I decided to keep quiet. But I think you should know this, being a friend of Johnny Griffith."

After Edwards heard the story of the phone call, he asked if he could report it to Griffith. Burnett, still reluctant to get seriously involved, told Edwards to go

ahead but to try to keep his name out of it. Powerful men in Georgia might be offended if Wally Butts was hurt, and Burnett did not want to jeopardize his own career just when things were beginning to break nicely for him.

But like so many others, Burnett found that there is no such thing as a little involvement. Griffith pressed to meet him, and nervously Burnett agreed. In the middle of January he met with Edwards and Griffith in the Georgia coach's room at Atlanta's Biltmore Hotel. Simultaneously a general meeting of the Southeastern Conference coaches was taking place at the Biltmore.

The Georgia-Alabama game had been forgotten by most of the coaches and athletic officials present. A popular topic of conversation was a late-season game between Alabama and Georgia Tech, in which Bryant's long winning streak had been broken.

Alabama, a five-point favorite, had trailed 7-6 with only a little more than a minute to play. Then Alabama made a first down on the Georgia Tech 14-yard line. Since Bryant had a competent field-goal kicker, the classic strategy would have been to pound away at the middle of Tech's line, keeping the ball between the goalposts and, on third or fourth down, order a field-goal try. (Alabama had defeated Georgia Tech on a last-minute field goal in 1961.) Instead, Bryant's quarterback passed on first down. The pass was intercepted, and Georgia Tech held the ball during the game's waning seconds, thus scoring last season's greatest upset.

During the January conference at the Biltmore, Bryant was frequently kidded about that first-down pass.

Away from the bars and the crowds, in Griffith's room the talk was only of Georgia-Alabama. Griffith listened grimly to Burnett's story, then read his notes. Suddenly he looked up.

"I didn't believe you until just this minute," he told Burnett. "But here's something in your notes that you couldn't possibly have dreamed up . . . this thing about our pass patterns. I took this over from Wally Butts when I became coach, and I gave it a different name. Nobody uses the old name for this pattern but one man. Wally Butts."

Suspicious confirmed

Griffith finished reading the notes, then asked Burnett if he could keep them. Burnett nodded.

"We knew somebody'd given our plays to Alabama," Griffith told him, "and maybe to a couple of other teams we played too. But we had no idea it was Wally Butts. You know, during the first half of the Alabama game my players kept coming to the sidelines and saying, 'Coach, we been sold out. Their linebackers are hollering out our plays while we're still calling the signals.'"

Griffith has since spoken of his feelings when he had finished reading Burnett's notes, and Burnett and Edwards had left. "I don't think I moved for an hour—thinking what I should do. Then I realized I didn't have any choice."

Griffith went to university officials, told them what he knew and said that he would resign if Butts was permitted to

Head coach Johnny Griffith of Georgia's beaten Bulldogs: "I never had a chance."

remain in his job. On January 28 a report reached the newspapers that Butts had resigned. At first it was denied by Butts and the university. A few days later it was confirmed with the additional news—that Butts would remain as athletic director until June 1 so that he could qualify for certain pension benefits. Rumors flooded Atlanta. One of the wildest was that Butts was mysteriously and suddenly ill and had entered the state hospital at Athens. This was quickly scotched when Georgia University officials maintained that Butts merely went for the physical checkup required for his pension records. Shortly afterward he was seen in Atlanta at a Georgia Tech basketball game.

But if Butts was seen publicly, events involving him remained closely guarded secrets. Burnett was asked to come to the Atlanta office of M. Cook Barwick, an attorney representing the University of Georgia. There he met Dr. O. C. Aderhold, the university president. Burnett's story was carefully checked. He then agreed to take a lie-detector test, which was administered by polygraph expert Sidney McMain, in the Atlanta Federal building. Burnett passed the test to everybody's satisfaction.

Phone-company check

Next an official of the Southern Bell Telephone Company checked and found that a call had been made from the office of Communications International to the University of Alabama extension noted by Burnett on his scratch pad. This information corroborated Burnett's statement that the call had been made at about 10:25 in the morning and had lasted 15 or 16 minutes.

"I jotted down the time when the call was completed," Burnett said. "It was 10:40. This is an old navigator's habit, I guess. For instance, I know that I was shot down over Saint-Vith at exactly 10:21, because when the bombardier called 'Bombs away!' I looked at my watch and wrote down the time. A few seconds later we got hit."

University officials still nursed reservations about Burnett's story because of the fantastic coincidence that had enabled him to overhear Butts's call. Then, during one of the many conferences he attended in attorney Barwick's office in the Rhodes-Haverty Building, a second coincidence, equally odd, cleared the air. Barwick placed a call to Doctor Aderhold at the university. Suddenly, Barwick and Aderhold found themselves somehow braided into a four-way conversation with two unknown female voices. The two men burst into nervous laughter. Burnett's story gained a little more credence.

February 21 was a painful day for George Burnett. He was summoned once more to Barwick's office, because Bernie Moore, the commissioner of the Southeastern Conference, "wanted to ask some questions." On Burnett's arrival he found not only Moore but Doctor Aderhold, two members of the university's board of regents, and another man identified as Bill Hartman, a friend of Wally Butts.

From the start, Burnett sensed a mood of hostility in the air. The ball was carried by one of the members of the Georgia board of regents, who confronted Burnett

with a report that he had been arrested two years before for writing bad checks and that he was still on probation when he overheard the conversation between Butts and Bryant.

"Is there anything else in your past you're trying to cover up?" the regents official demanded.

Burnett was frightened and angry. "I didn't realize that I was on trial," he said. He went on to say that he had nothing to hide, that he had given university officials permission to look into his background, and that he had taken a lie-detector test, signed an affidavit that his testimony was true and permitted his statements to be recorded on tape. His notes had been taken from him and placed by Barwick in the safety-deposit vault of an Atlanta bank.

"I was arrested on a bad-check charge," Burnett admitted. "I was way behind on my bills and two of the checks I wrote—one was for twenty-five dollars and the other for twenty dollars—bounced. I was fined one hundred dollars and put on probation for a year. I think that anybody who is fair will find I got into trouble because I've always had trouble handling my financial affairs and not because I acted with criminal intent."

Burnett was shaken by this meeting. He felt that he had been candid with the university but that he had also angered many friends of Wally Butts. He signed a paper at the officials' request which gave the university permission to have his war records opened and examined. He cared about his reputation. He was proud to have been a navigator.

"Doctor Aderhold was always very kind to me at those meetings," Burnett said later, "but I didn't like the attitude of some of the others. I began to feel that I'd be hurt when and if these people decided to make this mess public. That's when I went to my lawyer, and we agreed that I should tell my story to *The Saturday Evening Post*."

Now the net closed on Wally Butts. On February 23 the University of Georgia's athletic board met hastily in Atlanta and confronted Butts with Burnett's testimony. Challenged, Butts refused to take a lie-detector test. The next day's newspapers reported that he had submitted his resignation, effective immediately, "for purely personal and business purposes."

"I still think I'm able to coach a little," Butts told a reporter that day, "and I feel I can help a pro team."

The chances are that Wally Butts will never help any football team again. Bear Bryant may well follow him into oblivion—a special hell for that grim extrovert—for in a very real sense he betrayed the boys he was pledged to lead. The investigation by university and Southeastern Conference officials is continuing; motion pictures of other games are being scrutinized; where it will end no one so far can say. But careers will be ruined, that is sure. A great sport will be permanently damaged. For many people the bloom must pass forever from college football.

"I never had a chance, did I?" Coach Johnny Griffith said bitterly to a friend the other day. "I never had a chance."

When a fixer works against you, that's the way he likes it. THE END



Butts and Bryant meet as friends, exchange warm greetings before the Georgia-Alabama game at Legion Field, Birmingham, Alabama, in 1960.

Fol. 14101

1074

[fol. 1411]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 11


April 2, 1963

I, M. H. Blackshear, Jr., Deputy Comptroller General, hereby certify that the attached document is a true and correct copy of an original document on file in the Office of the Comptroller General, Ex Officio Industrial Loan Commissioner, this 2nd day of April, 1963.

(Signed) M. H. BLACKSHEAR, JR.

1076

[fol. 1412]

(See opposite) 

Wallace Butts
Statement of Financial Position
July 17, 1961

ASSETS

Cash on Hand and in Bank	4,825.00
Marketable Securities	52,662.00 (1)
Real Estate (2 houses and 3 lots)	20,000.00
Investments in Closely Held Corporations	93,500.00 (2)
Residence and Furniture	90,000.00 (3)
Automobiles	8,300.00 (3)
Cash Surrender Values of Life Insurance (Approx.)	<u>80,000.00</u>
Total Assets	<u>349,287.00</u>

LIABILITIES AND NET WORTH

Liabilities:		
Notes Payable - National Bank of Athens	34,500.00	
Notes Payable - Citizens & Southern National Bank	6,799.00	
Notes Payable - Bank of Gray	7,500.00	
Loans Against Cash Surrender Values of Life Insurance	65,000.00	
Mortgage Payable - Residence	13,500.00	
Note Payable - First National Bank and Trust Co.	<u>16,000.00</u>	143,299.00
Net Worth:		
Wallace Butts, Net Worth		<u>205,988.00</u>
Total Liabilities and Net Worth		<u>349,287.00</u>

(1) Includes 7,000 shares of Continental Enterprises Stock, and 1,300 shares of Georgia International Life Ins. Co. Stock

(2) Orange River Groves, Inc. - \$78,500.00 (Notes Receivable and Stock)
Hollywood Estates, Inc. - 15,000.00

\$93,500.00

(3) Fair Market Values

Prepared From Information Furnished:

Wallace Butts
Wallace Butts

Thomas L. Williams CPA
Thomas L. Williams, Certified Public Accountant



~~Paul Drets~~

Bear Bryant

Wally Butts

16718



Reismueller

Greatest - in - History

Big straw to Rt

Optional LEFT Pass

IF can Block man on
corner keeps Running

Well Disciplined Ball

club -

Added Two Coaches

an Side guard pulls
on Sweep -

Don't over shift

Woodard commits
Fast - Safety Man

^{weak}
Defense

any body except
Blackburn

Baer / slot Rt

SPLIT Rt Endout

Long Count

Left Half in

motion

Best since Trippi

Porter Field

Baer on a Hook
on Goal Line

Slot or Wide Slot
till Goal Line

Slot to Rt

Can't Quick Kick

Ends Normal (3rd)

Slot Rt - Rt Half On
Fly
Screen to him

Rt half Back on Fly -
Lt. Half Back

G. B. Gives to L.H.
L.G. Pulling Blocks on
Corner -

29-0 Series
Baer catches Everything
they Throw

Compliments H. E. KNIGHT

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PHONE 622-4353

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[fol. 1415]

Slot Rt

Lt End out 15 yds

Drop End OFF
GA. → contain w/ tackle

(Before)



walky-

Give Ring Sunday

-641 - 9th hole

OFF

10-40 AM - Sept. 13-1962

Ta. 5-3536 Compliments H. E. KNIGHT

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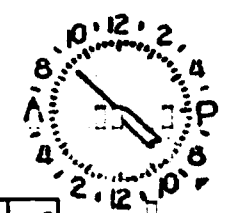
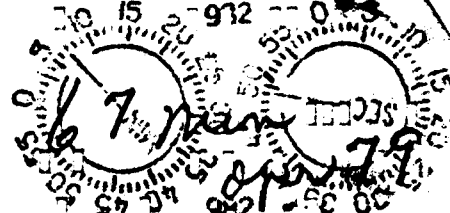
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REPORT

UNITED STATES DISTRICT COURT
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[fol. 1418]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 19

Athens, Georgia
March 26, 1963

Mr. James H. Therrell
Assistant Attorney General
For the State of Georgia

After viewing the alleged notations made by George Burnett while listening to an alleged telephone conversation between Wallace Butts and Bear Bryant on September 13, 1962, it is my opinion, as one of the coaches of the University of Georgia football team, that if such information was given to Coach Bryant before the opening game of the season, it conveyed vital and important information with respect to the offensive and defensive plays, patterns and formations that could have been of value to the University of Alabama football team and could have affected the outcome of the game on September 22, 1962.

(Signed) JOHN W. GREGORY
John W. Gregory

[fol. 1419]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 20

Athens, Georgia
February 23, 1963

Dr. O. C. Aderhold, President
The University of Georgia
Chairman of the Athletic Board

Dear Dr. Aderhold:

During the past two years, I have developed business interests. I find that I am having to devote more time to these interests. It is for this reason that I submit my resignation as Athletic Director of the University of Georgia, effective February 29, 1963.

I am grateful to you and the members of the Athletic Board for your cooperation through the years.

Yours very truly,

(Signed) WALLACE BUTTS
Wallace Butts
Athletic Director

1084

[fol. 1420]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 21

UNIVERSITY OF ALABAMA

UNIVERSITY, ALABAMA

Office of the
President

March 6, 1963

Dr. O. C. Aderhold, President
The University of Georgia
Athens, Georgia

Confidential

Dear Dr. Aderhold:

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. As best as I can ascertain, this is the information that I have received.

Coach Butts has been serving on the football rules committee, and at a meeting held last summer the Rules Committee the defenses used by Coach Bryant, L.S.U. and Tennessee were discussed at length and new rules were drawn up that would severely penalize these three teams unless the defenses were changes, particularly on certain plays.

Coach Butts had discussed this with Coach Bryant and the two were together at some meeting where Coach Butts told Coach Bryant that the University of Georgia had plays that would severely penalize the Alabama team and not only would cause LeRoy Jordan, an Alabama player, to be [fol. 1421] expelled from the game, but could severely injure one of the offensive players on the Georgia team.

Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14 he called Coach Bryant and told him. There was a question about another one of the offensive plays of the Georgia team that could 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 16.

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 the following week. The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention.

Coach Bryant informs me that calling this to his attention may have favored the University of Alabama football team, but that he doubts it seriously. He did say that it prevented him from using illegal plays after the new change of rules.

I have checked into other matters that were discussed and can find no grounds for Mr. Bisher's accusations, and as I understand it he has now decided for lack of information to drop the matter.

Dr. Aderhold, this continues to be a serious matter with me, and if you have any additional information I would appreciate your furnishing me with it as I am not only anxious to work with you but to satisfy my own mind.

[fol. 1422] Thanking you for coming to Birmingham to meet with me and for sharing this information, I am

Most cordially yours,

(Signed) FRANK A. ROSE
Frank A. Rose
President

FAR/mhp

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 34

The following portion of the Constitution and By-Laws of The National Collegiate Athletic Association was introduced in evidence without objection and admitted as Defendant's Exhibit No. 34:

Section 6 (a) of Article III which is as follows:

"Section 6. Principles of Ethical Conduct.

(a) Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics, and students competing in intercollegiate athletics shall deport themselves with honesty and sportsmanship at all times to the end that intercollegiate athletics, as a whole, their institutions and they, as individuals, shall stand for the honor and dignity of fair play, and the generally recognized high standards associated with wholesome competitive sports. (Adopted: 1/11/52)."

[fol. 1423] Also the following paragraph of the Official Procedure Governing The National Collegiate Athletic Association Enforcement Program, which was likewise introduced as a part of Defendant's Exhibit No. 34, which was admitted without objection:

"Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen."

[fol. 1424]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21,491

CURTIS PUBLISHING COMPANY, Appellant-Appellee,
versus
WALLACE BUTTS, Appellee-Appellant.
(AND REVERSE TITLE)

Appeals from the United States District Court for the
Northern District of Georgia.

PRINTED SUPPLEMENTAL RECORD ON APPEAL

[fol. 1425]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPELLANT'S ADDITIONAL DESIGNATION OF PARTS OF RECORD
TO BE PRINTED—Filed April 30, 1964

In accordance with Rule 23 of the Rules of this Court, Appellant hereby designates the following portions of the supplemental record in this case, which were forwarded to the Clerk of this Court in connection with Appellant's Appeal from the denial of its Motions for a New Trial Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure:

1. Defendant's Motion for a New Trial Pursuant to Federal Rule of Civil Procedure 60(b), with Exhibits A, B and C (filed February 28, 1964).

2. Entire deposition of Dr. Frank A. Rose, taken in the case of *Paul Bryant v. The Curtis Publishing Company*, No. 63-166, in the United States District Court for the Northern District of Alabama, Southern Division, on January 8, 1964.

3. Entire deposition of Dr. Frank A. Rose, taken in the case of *Paul Bryant v. The Curtis Publishing Comany*, No. 63-166, in the United States District Court for the Northern District of Alabama, Southern Division, on January 17, 1964.

4. Entire deposition of Mrs. Marian H. Park, taken in the case of *Paul Bryant v. The Curtis Publishing Company*, No. 63-166, in the United States District Court for the Northern District of Alabama, Southern Division, on January 8, 1964.

[fol. 1426] 5. Order of the District Court denying Defendant's Motions for New Trial pursuant to Rule 60(b), Federal Rules of Civil Procedure (filed April 7, 1964).

6. Notice of Appeal from denial of Defendant's Motions under Rule 60(b), Federal Rules of Civil Procedure (filed April 10, 1964).

Submitted by:

Welborn B. Cody, Attorney for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303. Jackson 2-7420.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DESIGNATION BY APPELLEE OF ADDITIONAL MATTERS TO BE
INCLUDED IN THE RECORD—Filed May 4, 1964

Appellee, as authorized by Rule 23(a) of this Court, designates the following additional matter to be printed in the record in this action, in addition to the portions of the supplemental record in this case which were designated by [fol. 1427] Appellant as transmitted to the Clerk of this Court by letter from counsel for Appellant dated April 29, 1964:

1. Plaintiff's Response to defendant's Motions for New Trial under Federal Rule of Civil Procedure 60(b), filed in the office of the Clerk of the United States District Court, for the Northern District of Georgia, on March 6, 1964.

Respectfully submitted

William H. Schroder, Allen E. Lockerman, T. M.
Smith, Jr., Attorneys for Wallace Butts, Appellee.

Of Counsel: Troutman, Sams, Schroder & Lockerman,
1605 William Oliver Bldg., Atlanta, Georgia 30303.

1090

[fol. 1428]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 8311

WALLACE BUTTS, Plaintiff

versus

THE CURTIS PUBLISHING COMPANY, Defendant.

DEFENDANT'S MOTIONS FOR NEW TRIAL PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 60(b)—Filed February 28,
1964

I.

Defendant, having recently discovered evidence, which, although in existence at the time of trial, could not have been discovered by the exercise of due diligence, and which bears directly on the crucial issue in this case and is so significant that it would probably change the result if a new trial were granted, hereby moves this Court pursuant to Rule 60(b) (2) of the Federal Rules of Civil Procedure to vacate the judgment entered against defendant in this action and to grant a new trial for the following reasons:

1. As more specifically set forth in paragraphs 2 through 11 hereof, it is now established that the testimony of two key witnesses of plaintiff, given in the trial of this action, was false in that:

[fol.1429] (a) Dr. Frank A. Rose, in a deposition taken in an action then pending in the United States District Court for the Northern District of Alabama, entitled Paul Bryant v. Curtis Publishing Com-

pany, Civil Action No. 63-166, has, under oath, recanted and contradicted his testimony in this action that he dictated the letter dated March 6, 1963, to Dr. O. C. Aderhold (Exhibit D-21), a copy of which is attached hereto and made a part hereof as "Exhibit A", hastily, because he was catching the 8:40 A. M. flight to Washington, D. C. in order to attend a meeting of the American Council on Education.

(b) Dr. Frank A. Rose's testimony in this action that Exhibit D-21 was a hastily dictated, error-laden letter, has been shown to be false by the testimony, under oath of his secretary, Marian Park, given by deposition in said Bryant action, and corroborated by her shorthand notes contemporaneously made, that Exhibit D-21 was the fifth in order of thirty-two (32) letters "slowly and thoughtfully" dictated by Rose on the morning of March 5, 1963, and by a typed draft of a letter from Rose to Aderhold, dated March 5, 1963, found in the files of Rose, which is substantially but not entirely the letter identified as Exhibit D-21.

(c) The trial testimony of both Dr. Frank A. Rose and Paul Bryant that Bryant at no time remembered the telephone call to Butts of September 16, 1962, has been shown to be false by a letter from Bryant to Rose, dated February 28, 1963, which Rose has admitted, [fol. 1430] under oath, in the aforesaid deposition that he received. In said letter Bryant stated he remembered said telephone call "very well", as well as the subject matters of the call.

2. At the trial of this cause, defendant contended that the allegedly libelous statements contained in an article published in its publication THE SATURDAY EVENING POST entitled "The Story of a College Football Fix" were true and that in fact Wallace Butts, Athletic Director and former football coach of the University of Georgia, had given information on Georgia football plays to Paul Bry-

ant, Athletic Director and football coach of the University of Alabama, immediately prior to the September 22, 1962, Georgia-Alabama football game.

3. Defendant introduced uncontradicted records of the Southern Bell Telephone Company which established that Butts and Bryant prior to the football game between the University of Georgia and the University of Alabama, were participants in a fifteen-minute telephone conversation on Thursday, September 13, 1963, and a sixty-seven minute telephone conversation on Sunday, September 16, 1962.

4. Defendant then called George Burnett, a witness who testified that he overheard the telephone conversation on Thursday, September 13, 1962, and that during said conversation Butts in fact gave information on Georgia football plays to Bryant.

5. Defendant then called J. D. Bolton, Comptroller of the University of Georgia, a witness who testified that during the course of the University of Georgia's investigation, Butts, when confronted with the evidence of George [fol. 1431] Burnett, said: "No doubt the guy heard what he said he heard."

6. In their testimony at trial, both Butts and Bryant refused to admit that they had engaged in said telephone conversations, and thus that no information concerning Georgia football plays had passed from Butts to Bryant.

7. As further proof of the fact that Butts had indeed given information concerning Georgia's football plays to Bryant, defendant produced Exhibit D-21, the letter dated March 6, 1963, from Dr. Frank A. Rose, President of the University of Alabama, to Dr. O. C. Aderhold, President of the University of Georgia, wherein Rose stated that Bryant admitted that Butts had given him information on Georgia football plays during the two telephone conversations.

8. Plaintiff then called Rose as a witness in an effort to explain away the damaging effect of Exhibit D-21.

9. The recently discovered evidence which is the basis for this motion completely repudiates the trial testimony of both Bryant and Rose on the following points:

a. At trial, Rose testified that Exhibit D-21 was not an accurate representation of Bryant's statements because the letter was dictated hurriedly on the morning of March 6, 1963, and was not corrected by anyone since Rose had to catch an 8:40 A. M. airplane to Washington, D. C. for a meeting of the American Council on Education. Rose's unequivocal testimony was:

"A. . . . I told Dr. Aderhold that I would be unable to give him an immediate report of my conversation [fol. 1432] with Coach Bryant, as I had to go to New York City to attend a meeting of the National Foundation for Infantile Paralysis, would be gone most of the week, which I was. I returned on Thursday evening, was tied up in conferences all day Friday, and then had to leave again Monday morning to go to Washington for a meeting of the American Council on Education, and I wrote to Dr. Aderhold that morning before I left.

* * * * *

"Q. There was identified here yesterday a document, Exhibit No. D.21, being a letter to Dr. O. C. Aderhold, dated March 6, 1963, signed Frank A. Rose, from the office of the President, University of Alabama. The original at the moment is not available. I want to ask you some questions about that, if you recognize it as a letter from you to Dr. Aderhold—

"A. Yes, sir.

"Q. —or a copy of a letter?

"A. This is a copy of the letter I dictated to my secretary on the morning of March the 6th, before I left to go to Washington. I had to catch a plane at 8:40

and hurriedly dictated this letter. I did not have time to read it after dictating it. She signed it, was to confer with Coach Bryant and ask him if this was a good interpretation of the conversations that we had. Coach Bryant was out of the City, and she signed it and sent it on to Dr. Aderhold." R. 1415-1416.

* * * * *

[fol. 1433] "Q. Is it your testimony—is it your testimony or is it not that you dictated the letter and your secretary signed it before you saw the letter written? Is that right?

"A. Yes, sir. And she was to check it with Coach Bryant to see if this was a good representation of our discussion.

"Q. Did she check it?

"A. No, sir. He was out of town, and I had told her to get it off that day, and she went ahead and sent it." R. 1457-1458.

Subsequent to trial, the deposition of Rose (filed contemporaneously herewith and made a part hereof) and his secretary, Marian Park, were taken in the action brought by Bryant referred to above. At said depositions, Rose and his secretary testified that Exhibit D-21 was not dictated on March 6, 1963, and Rose admitted that he was incorrect in testifying at trial that he had to catch an 8:40 A. M. airplane for Washington, D. C. on March 6, 1963:

"Q. Now, you stated previously in your testimony in Atlanta that the letter was dictated in a hurry on the morning of March 6th as you had to catch an 8:40 plane to Washington; is that correct?

"A. That's what I stated, but I didn't have my date book there with me previous to leaving here." Dep. 90.

* * * * *

"A. Well, on checking my calendar before leaving here to go to Atlanta, I looked at March 6th and saw Washington there on my calendar, and took it that

that was the destination. The plane leaves here in the [fol. 1434] morning at 8:40 to go to Washington and New York and other places. But I am not positive that this was where I went; I am not positive that I dictated the letter that morning. Now, also, in my testimony, I said on Monday, Monday is the 4th. But, I didn't have my date book with me at the trial to check out the dates, and as I told you, I was going through two crises at that time as far as the University was concerned, and all I did was quickly refer to my calendar and saw that Washington was on March 6th; but, that meeting probably had been changed to our Friday meeting in Washington, which I met with Mr. Bennett, or it could have been that I went to Washington. I don't know, but during that period, during the period of January—of February, March, April, May, June, I took many trips to Washington, and over the State of which there are no records. Nothing on my calendar to designate that, because many of them were confidential trips to try to work out some of these problems that we have here at the University.

“Q. Doctor, is it fair to say that you cannot state, under oath, that you went to Washington on the morning of March 6th?

“A. I am saying that I am not sure.

“Q. And that when you said under oath in Atlanta that you did that, that it may be incorrect?

“A. It could be incorrect because I didn't have my date book. But, to me it is immaterial. I dictated the letter to my secretary hurriedly. I told her to check with Coach Bryant. I left this office to go somewhere, and during the interval, she typed the letter and tried [fol. 1435] to get in touch with Coach Bryant. He was out of town. She went ahead and mailed the letter. I didn't sign it, I didn't read it before it went out, and I left this office and I don't know exactly where I went. My calendar said March 6th I went to Washington.

“Q. Let's go back for a moment.

When did you dictate the letter?

“A. I am not sure when I dictated the letter.

“Q. Now—

“A. I thought looking on my calendar in August that I dictated the letter on Monday morning, March 6th; but, March 6th was Wednesday morning, and all I did was look at March 6th in August before I went over to Atlanta. I saw Washington there, and I thought that was the morning that I dictated the letter and went to Washington. On checking my secretary’s notes, she had there that I dictated the letter on Tuesday morning. She states that she could be in error, that it could have been Monday morning. But, apparently now it looks as though I dictated the letter on Tuesday morning and left to go somewhere.

“Q. And Tuesday would be March 5th?

“A. Yes, sir.” Dep. 91-93.

“Q. Am I correct that it is now your best recollection that the letter was dictated on Tuesday, March 6th [5th]?

“A. I don’t have any recollection about it at all. I don’t know when it was dictated. Now, my secretary’s notes show that it was dictated Tuesday, March 5th, in the morning. She said, and Mr. Bennett says that I left here on Tuesday morning. No one knows where I was going. I have no record of it. This is not unusual, because during this period I made many confidential trips. Sometimes I would tell Mr. Bennett and [fol. 1436] sometimes I wouldn’t tell him.

“Q. It is true your expense records show no trips for March 4, 5, and 6?

“A. There is no expense record for any of these confidential trips.

“Q. I understand that, but I am asking, do your records show any trips, not whether you made any trips, but do your expense records show any trips for March 4, 5, and 6?

“A. I don’t think so.” Dep. 104.

After a court order was secured in the Bryant case requiring Rose to answer the vital question as to his whereabouts on March 5, 1963, he testified at a subsequent deposition on January 8, 1964, a copy of which is filed contemporaneously herewith and made a part hereof:

“Q. —you were asked this question: ‘This trip that commenced on the morning of March 5, do you have any idea how long it took’, and I believe you answered, ‘No, sir, I don’t. I cannot tell you exactly.’

“‘Q. Do you know how you traveled’, and you answered, ‘No, sir.’

Now, you previously answered you did not know where you went on this occasion, is that correct, sir?

“A. Now, where are you on here, what page?

“Q. 138.

“A. 138.

“Q. The last—

“A. Yes.

“Q. —complete answer on that page.

“A. I am not sure where I went.

[fol. 1437] “Q. I want to pick up there, if I may.

“A. All right.

“Q. Do you have any recollection, Dr. Rose, of where you went on that date on March 5th?

“A. Mr. Embry, I don’t know what legal term or what a lawyer means by ‘recollection.’ If you are talking about a guess, I can make a guess. I have done everything I can from checking my notes, notebook, my wife’s notebook and talking with members of my staff trying to ascertain exactly where I went that day.”
Dep. 2-3.

Rose’s secretary testified in her deposition in the Bryant case (a copy of which is filed contemporaneously herewith and made a part hereof), that Exhibit D-21 was dictated slowly and thoughtfully and was the fifth letter in a series

of thirty-two which took almost one hour and a half to dictate. (Dep. pp. 11-13). Rose's correspondence file contains a carbon copy of an apparent earlier draft of Exhibit D-21, dated March 5, 1963 (a copy of which is attached hereto and made a part hereof as "Exhibit B"), which differs slightly from the March 6 letter Dr. Aderhold received, and yet Rose's secretary testified at her deposition in the Alabama case that no draft was prepared:

"Q. Do you recall whether Mr. Bennett made any changes in the letter?

"A. I know of no changes that were made in the letter.

"Q. Anyone make any changes in the letter?

"A. No, sir." Dep. 18.

* * * * *

"Q. The letter was typed up in final form?

"A. Yes, sir. Now, right here I notice I made two sentences here. Occasionally he will dictate long in-[fol. 1438] volved sentences and I will cut it down into two shorter sentences and I may have done that in this first paragraph.

"Q. You would do that when you transcribe the letter?

"A. Yes, sir.

"Q. As you read from your notes, part of your secretarial job is to make slight changes necessary in grammar?

"A. Yes, sir.

"Q. No first draft or anything shown to anyone on this letter?

"A. No, sir.

"Q. You are absolutely certain?

"A. Yes, sir." Dep. 20.

When Mrs. Park read her stenographic notes of the March 6 letter at her deposition, they corresponded more nearly to the March 5 draft than to the actual letter of March 6. (Dep. pp. 7-10).

b. At the trial, Bryant denied that he had made the statements attributed to him in Exhibit D-21. He testified that he was unable specifically to recall either of the two telephone conversations in question and therefore did not remember what matters he and Butts had discussed. In regard to the Sunday, September 16, 1962, call, Bryant testified:

“Q. It is also related or set forth in the article that on Sunday, September 16, 1962, you and Coach Wallace Butts had another telephone conversation, which, I believe the Post states, was initiated by you. You familiar with that general statement as it appears in the Post? [fol. 1439] “A. I am familiar with it, but I do not remember whether or not I made the call, but according to the telephone company’s records, again, the call was made.” R. 540.

* * * * *

“Q. Has it occurred to you to check up on the length of this telephone conversation you had with Coach Butts on September the 16th?

“A. It has.

“Q. How long was it?

“A. According to the record I got, sixty-seven minutes.

“Q. And you don’t remember anything about it?

“A. I don’t remember when or which one. Insofar as the football game, my vivid memory, I went over the notes up there this morning. Outside of that I hadn’t even looked at them since the game or the movie.

“Q. You put this call in to Coach Butts, didn’t you?

“A. I don’t know.

“You don’t remember whether you—

“A. I don’t know the call was placed.

“Q. You don’t remember whether you—don’t remember anything that was said?

“A. I remember plenty of things that were said sometime, sir. I don’t even know the call was made. I

am not sure all these notes weren't made after the call was made." R. 593-594.

* * * * *

[fol. 1440] "Q. As a matter of fact, you called him on September 16; that is your evidence, isn't it?"

"A. I don't know that I called him. According to the telephone records somebody called him, and I supposed—I probably did, but I don't know that, sir." R. 600.

Furthermore, in addition to the three excerpts from the evidence of Bryant given at the trial, in three other instances he testified that he did not remember the telephone call in question. (R. pp. 560, 582-583 and 602.) Rose testified that he had interrogated Bryant on several occasions between February 24, 1963, and March 6, 1963, and that Bryant was never able specifically to recall either of the telephone conversations or what was discussed. Concerning the Sunday call, Rose stated under oath:

"A. Coach Bryant told me that night that he didn't remember calling Coach Butts back.

"Q. Well, where did you get—where did you get the date September 16th, and who from?"

"A. He told me that he could have called him back, and then I checked our records and there was a call to Athens, and I asked him if he could have made that call, and he still couldn't remember whether he made that call or not." R. 1436-1437.

However, a recently discovered letter, dated February 28, 1963, written by Bryant to Rose, states that Bryant remembered very well calling Butts on a Sunday in the middle of September and discussing the new interpretation of the piling-on rule and two pass "routes". This letter, which is attached hereto and made a part hereof as "Exhibit C", was discovered by defendant on October 2, 1963, pursuant to a Notice to Produce in the Bryant case. It in part provides as follows:

“We were able to find a record of only three calls from me to the person in Athens. The first was on September 9th; the second on September 14th; and the third on September 16th.

* * * * *

“I like to think that these calls were fruitful so far as our program is concerned; *particularly, the one the middle of September on a Sunday, because I remember very well that this gentleman discussed in detail with me the new interpretation of the piling on rule and warned us to warn our team to be very careful or either we might lose a good player early like LeRoy Jordan or some other aggressive defensive man. On that particular date, we also discussed at length some coaching points on some pass routes that although we were using we had had very little success with.*” (Emphasis added).

Despite the fact that Rose admitted he received the said letter, dated February 28, 1963, from Bryant prior to March 6, 1963 (Rose-Alabama Deposition, pp. 81-82), he still maintained throughout his testimony at said deposition that Bryant reported to him throughout Rose’s investigation of the matter and even more recently that he had no recollection of the Sunday call:

“Q. Did you also, in the course of this meeting, ask him [Bryant] if he had called Mr. Butts on September 16th, 1962?

[fol. 1442] “A. Yes, sir.

“Q. What was his answer?

“A. And he did not recall whether he had made that call or not, but stated that he could have made the call, that there had been several calls made to Coach Butts and to other coaches and that he could look that up and find out whether he had made that call or not.” Dep. 43-44.

“Q. Now, did he give you any explanation as to why he might have called Mr. Butts back on the 16th?”

“A. He said that the only reason that he could, and he didn’t recall that he had called him back, that he could have called him back, would have been that Coach Butts did not understand some of the questions that he was raising, and was to try to think about it or find out what he was talking about, and that he was to try to get in touch with him; but, he didn’t recall whether that had been done, or whether that was it or not.” Dep. 53.

* * * * *

“A. . . . that he [Bryant] doubted seriously that he had called Coach Butts back, though there was a telephone charge to that.” Dep. 85.

* * * * *

“A. . . . it was during the period of February 24th to March 6th, that I talked to Coach Bryant on those [fol. 1443] two other occasions, but I am not certain. But, I think it was, because I was away from the office an awful lot immediately following that.

“Q. Now, during those subsequent conversations, did Mr. Bryant tell you that he had found there had been a call charged to him to Coach Butts in Athens?”

“A. I believe he said that there had been a call charged to the Department, but that he did not recall talking to him specifically himself on that particular time.

“Q. Did he state to you at that time whether he knew what was discussed in that subsequent call on September 16th?”

“A. No, sir, except he went over what you and I have gone over that they could have talked about, these rule interpretations, the Butt blocking and Head blocking, and so forth and so on.

“Q. In other words, what he said was there is a call, I don’t know whether I made it or not, I don’t know

what I talked about, if I did make it, but what I might have talked about was rule interpretations, ticket sales and Continental Enterprises?

"A. Yes, sir. That's pretty much it.

"Q. How, did he later—strike that.

And was that the state of your information at the time you decided to write Mr. Aderhold?

"A. Yes, sir.

"Q. In other words, up to the time you wrote Dr. Aderhold, Coach Bryant had never informed you that they had made a call on September 16th; is that correct?

"A. That's correct.

[fol. 1444] "Q. And he never told you what he talked about on those dates, because he didn't remember what he talked about; is that correct?

"A. That's correct." Dep. 88-90.

* * * * *

"Q. Now, when you—you remember when you gave your deposition in the Butts case on May 27, 1963?

"A. Yes, sir.

"Q. You were asked about that deposition in Atlanta, and you stated at that time, that is at the time you gave the deposition, you did not know for certain if Bryant had called Butts on September 16th, or what had been talked about?

"A. Yes, sir.

"Q. Now, is that correct, that at that time you gave your deposition you did not know for sure that Bryant had called Butts or what was talked about?

"A. I wasn't certain. I thought at that time that he had called, but I wasn't certain.

"Q. Were you certain at the time you gave your testimony in Atlanta in August of this year, or of last year?

"A. I thought so, and I am still not certain today.

“Q. In other words, you are not certain today that Coach Bryant called Coach Butts on September 16, 1962, or what they talked about?”

“A. No, sir, because Coach Bryant said he is not certain.” Dep. 120.

* * * * *

[fol. 1445] “Q. Did Coach Bryant tell you, before this letter was written, that he did not know whether he had made the September 16th call to Coach Butts?”

“A. He said he didn’t remember it, but he said he could have done it.

“Q. Did he also say he didn’t remember what was discussed?”

“A. Yes, sir.

“Q. Am I correct in understanding that is what he has told you up to the present time?”

“A. That is what he told me just recently again.

“Q. But, he doesn’t remember the calls and he doesn’t remember what was said?”

“A. All he remembers is that they talked many times about all of these things, but that he doesn’t remember specifically.

“Q. Either the call or what was talked about?”

“A. Yes, sir.” Dep. 132-133.

* * * * *

“Q. Coach Bryant ever admitted to you that he did call Coach Butts on September 16, 1962?”

“A. No, sir.

“Q. Did he ever admit to you what he talked about on that date, September 16, 1962?”

“A. No, sir, but he did tell me that he could have called him and this could have been what they talked about; but, he didn’t know for sure.” Dep. 137.

10. Therefore, on the crucial issue of whether Butts gave Bryant information on Georgia football plays, plaintiff was able to override Bryant’s admission in Exhibit D-21 that

[fol. 1446] Butts had in fact given him such information, by means of Rose's characterization of Exhibit D-21 as a hasty, error-laden letter and Bryant's total lack of recollection concerning the telephone calls, when, in fact, defendant's newly discovered evidence establishes that Bryant did specifically recall receiving information about football plays from Butts during one of the telephone calls, that Exhibit D-21 was a careful and thoughtful letter, and that someone reviewed the draft of such letter dated March 5 prior to its becoming the crucial letter of March 6.

II.

Plaintiff, having filed a document on January 30, 1964, repudiating his prior consent for a reduction in the jury's verdict, defendant hereby moves this Court pursuant to Rule 60(b) (3), (4) and (6) to vacate the judgment entered against defendant in this action and to grant a new trial for the following reasons:

1. On January 14, 1964, the Court entered an order granting the defendant's motion for a new trial "unless the plaintiff, Wallace Butts, within twenty (20) days after the service of this order, shall, in a writing filed with the Clerk of the United States District Court for the Northern District of Georgia, remit all the punitive damages awarded above the sum of \$400,000."

2. On January 20, 1964, the plaintiff, Wallace Butts, filed a document entitled "Consent of Wallace Butts to Remit" pursuant to which he stated that he remitted all punitive damages awarded above the sum of \$400,000.

3. The Court, on January 22, 1964, set aside the previous judgment of August 20, 1963, for the plaintiff in the amount [fol. 1447] of \$3,060,000 and entered a new judgment in the amount of \$460,000, based upon the plaintiff's "having filed with the Clerk of this Court a writing remitting all of the punitive damages awarded above the sum of \$400,000."

4. Subsequent to the filing of defendant's notice of appeal on January 24, 1964, the plaintiff filed a document on January 30, 1964, praying that the Court of Appeals restore the original award of \$3,060,000, as the plaintiff had "yielded to the mandate of the District Court and remitted in writing" all punitive damages awarded by the jury above the sum of \$400,000.

5. As the plaintiff by the aforesaid document filed January 30, 1964, either revoked his consent for a reduction of the verdict by \$2,600,000 filed January 20, 1964, or is maintaining by such pleading that his consent was never voluntarily given for such reduction, the judgment entered by the Court on January 22, 1964, should be vacated, since no valid consent to a reduction of the jury's verdict has been filed by the plaintiff pursuant to the Court's order of January 14, 1964, that portion of the Court's order of such date granting the defendant's motion for a new trial should be allowed to become operative.

A hearing upon these motions is respectfully requested.

Welborn B. Cody, Attorney for Defendant

[fol. 1448] *Duly sworn to by John J. Runzer, jurat omitted in printing.*

[fol. 1449]

EXHIBIT "A" TO DEFENDANT'S MOTIONS FOR NEW TRIAL

Deft's. Ex. 21

Case 8311

Admitted Aug. 15, 1963

University of Alabama
University, Alabama

Office of the
President

March 6, 1963

Confidential

Dr. O. C. Aderhold, President
The University of Georgia
Athens, Georgia

Dear Dr. Aderhold:

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. As best as I can ascertain, this is the information that I have received.

Coach Butts has been serving on the football rules committee, and at a meeting held last summer of the Rules Committee the defenses used by Coach Bryant, L. S. U. and Tennessee were discussed at length and new rules were drawn up that would severely penalize these three teams unless the defenses were changed, particularly on certain plays.

[fol. 1450] Coach Butts had discussed this with Coach Bryant and the two were together at some meeting where Coach Butts told Coach Bryant that the University of Georgia had plays that would severely penalize the Alabama team and not only would cause LeRoy Jordan, an Alabama player, to be expelled from the game, but could severely injure one of the offensive players on the Georgia team.

Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14 he called Coach Bryant and told him. There was a question about another one of the offensive plays of the Georgia team that could 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 16.

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 the following week. The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention.

Coach Bryant informs me that calling this to his attention may have favored the University of Alabama football team, but that he doubts it seriously. He did say that it prevented him from using illegal plays after the new change of rules.

I have checked into other matters that were discussed and can find no grounds for Mr. Bisher's accusations, and as I understand it he has now decided for lack of information to drop the matter.

[fol.1451] Dr. Aderhold, this continues to be a serious matter with me, and if you have any additional information I would appreciate your furnishing me with it as I am not only anxious to work with you but to satisfy my own mind.

Thanking you for coming to Birmingham to meet with me for sharing this information, I am

Most cordially yours,

(Signed) FRANK A. ROSE
Frank A. Rose
President

FAR/mhp

EXHIBIT "B" TO DEFENDANT'S MOTIONS FOR NEW TRIAL

COPY

COPY

COPY

March 5, 1963

Confidential

Dr. O. C. Aderhold, President
The University of Georgia
Athens, Georgia

Dear Dr. Aderhold:

I have spent a great deal of time investigating thoroughly the questions that were raised at our meeting in Birmingham. I have talked with Coach Bryant on at least two occasions and as best as I can ascertain this is the information that I have received.

[fol. 1452] Coach Butts has been serving on the football rules committee and at a meeting held last summer of the rules committee the defenses used by Coach Bryant, L. S. U. and Tennessee were discussed at length and new rules were drawn up that would severely penalize these three teams unless the defenses were changed, particularly on certain plays.

Coach Butts had discussed this with Coach Bryant and the two were together at some meeting and Coach Butts had told Mr. Bryant that the University of Georgia had several plays that would severely penalize the Alabama team and not only would cause LeeRoy Jordan, an Alabama player, to be expelled from the game but could severely injure one of the offensive players on the Georgia team.

Coach Bryant asked Coach Butts to let him know what the plays were and on September 14 he called Coach Bryant and told him. There was a question about another one of the offensive plays of the Georgia team that could seriously penalize the Alabama team and bring additional injury to

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a player. Coach Bryant asked Coach Butts to check on that and he would call back on September 16. This he did.

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 the following week. The defenses were changed and Coach Bryant was grateful to Coach Butts for calling this to his attention.

Coach Bryant informs me that calling this to his attention may have favored the University of Alabama football team, but that he doubted it seriously. He did say that [fol. 1453] it prevented him from using illegal plays after the new change of rules.

I have checked into other matters that were discussed and can find no grounds for Mr. Bisher's accusations, and as I understand it, he, too, has decided for lack of information to drop the matter.

Dr. Aderhold, this continues to be a serious matter with me, and if you have any additional information I would appreciate your furnishing me with it as I am not only anxious to work with you, but to satisfy my own mind.

Thanking you for coming to Birmingham to meet with me and for sharing this information, I am

Most cordially,

Frank A. Rose
President

FAR/mhp

[fol. 1454]

EXHIBIT "C" TO DEFENDANT'S MOTIONS FOR NEW TRIAL

University of Alabama
 Department of Athletics
 University, Alabama
 February 28, 1963

1961

The Crimson Tide National Football Champions

Dr. Frank Rose
 President
 University of Alabama
 University, Alabama

Dear Dr. Rose:

We were able to find a record of only three calls from me to the person in Athens. The first was on September 9th; the second on September 14; and the third on September 16th. He must have telephoned me some during that period because I am sure we talked more than that. As a matter of fact, over the years, I have talked with him by phone some eight or ten times per year. I might add, I have done the same thing with other coaches, Duffy Daugherty, Bud Wilkinson, Darrell Royal, and Bobby Dodd, for instance.

There were two additional calls made to Athens; one from our Publicity Department on September 11 and one by an Assistant Coach on September 27.

I like to think that these calls were fruitful so far as our program is concerned; particularly, the one the middle of September on a Sunday, because I remember very well that [fol. 1455] this gentleman discussed in detail with me the new interpretation of the piling on rule and warned us to warn our team to be very careful or either we might lose a

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good player early like LeRoy Jordan or some other aggressive defensive man. On that particular date, we also discussed at length some coaching points on some pass routes that although we were using we had had very little success with. This man over the years had had tremendous success with the passing game; in particular, these two routes and after leaving these coaching points we began to use the two particular passes often, including one for the clutch Touchdown against Tennessee in Knoxville the third week in October.

Again, I want to say that I have for years discussed football; ours, his football with this man and like to feel that I would still have that privilege because I have a great deal of respect for his knowledge of the game, particularly the passing game.

Respectfully yours,

(Signed) PAUL BRYANT
Paul Bryant
Director of Athletics

PB:mp

[fol. 1456]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTIONS FOR NEW
TRIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)—
Filed March 6, 1964

In response to defendant's motions for new trial filed on February 28, 1964, plaintiff, Wallace Butts, respectfully shows:

I.

All of defendant's allegations relating to certain so-called "recently discovered evidence" are specifically denied and, at most, constitute a continuation of defendant's manifest design to trifle with this Honorable Court.

1. To argue, as defendant does, that the evidence in question "would probably change the result if a new trial was granted" is untenable and ridiculous. Said evidence and particularly the letter from Paul Bryant to Dr. Frank A. Rose dated February 28, 1963 and attached to defendant's motions as Exhibit 3, actually sustain the fact that at no time has Wallace Butts ever acquainted Paul Bryant with any plays or formations to be used by a University of Georgia football team against the University of Alabama. Arguments are supposed to be supported by fact. The facts are dead against defendant, and defendant knows it.

Furthermore, the purported significance attached by defendant to this so-called "recently discovered evidence" cannot be reconciled with defendant's action in paying Paul Bryant \$300,000, tax free, to dismiss his libel suit growing [fol. 1457] out of this identical Saturday Evening Post article when *at that very time* defendant had all of this "recently discovered evidence" in its possession.

2. The scurrilous and unwarranted assertion that the testimony of witnesses Paul Bryant and Dr. Frank A. Rose given at the trial of this case "was false" is specifically

denied and is absolutely unsupported. To thus falsely, inexcusably, and publicly accuse two innocent individuals is just another manifestation of defendant's proudly admitted editorial policy of "sophisticated muck-raking".

3. To say under oath, as defendant has in its said motions, that this alleged "recently discovered evidence" (as weak and irrelevant as it is) "could not have been discovered by the exercise of *due diligence*" is entirely and patently false. Defendant states on page 11 of its said motions that the aforementioned innocuous letter from Paul Bryant to Dr. Rose, dated February 28, 1963, "was discovered by defendant on October 2, 1963 pursuant to a Notice to Produce in the Bryant case". Defendant gives no reason or excuse for not using the same type process to obtain access to this letter prior to the Wallace Butts trial by exercising the same "due diligence" it boasts it used prior to the date scheduled for the Paul Bryant trial. This, for sure, clearly demonstrates that defendant exercised about as much "due diligence" in this regard as it did in attempting to ascertain the truth before it published its libelous article in the March 23rd issue of the Saturday Evening Post.

II.

Defendant's second ground in its motions for new trial is as equally lacking in merit as the first and all allegations [fol. 1458] contained therein, being purely legal conclusions, are expressly denied.

The substance of defendant's argument is this: Plaintiff's unconditional "consent" to the remittitur, i.e. the reduction in the amount of the punitive damages award, is no consent at all because plaintiff later decided to file a cross-appeal and ask the Court of Appeals to reinstate the original award or increase the amount by which the Trial Court reduced such award. But, defendant argues, one cannot file a cross-appeal in such a situation. Thus we find ourselves in the anomalous position of defendant contending that

what it says is an invalid and illegal cross-appeal taking precedence over and thereby nullifying a perfectly valid and legal remittitur. We respectfully submit that if, as a matter of law, plaintiff cannot cross-appeal after accepting a remittitur, then the proper forum to urge this point is in the Court of Appeals and not here.

Wherefore, having fully responded, plaintiff prays that said motions be summarily dismissed.

Troutman, Sams, Schroder & Lockerman, William
H. Schroder, Allen E. Lockerman, T. M. Smith,
Jr., Attorneys for Plaintiff.

1605 William-Oliver Bldg., Atlanta 3, Georgia.

[fol. 1459] *Duly sworn to by William by H. Schroder,
jurat omitted in printing.*

[fol. 1459a]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 8311

[Title omitted]

DEFENDANT'S ADDITIONAL MOTION FOR NEW TRIAL PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 60 (b)—Filed
March 23, 1964

Because of the drastic change in the law of libel and the constitutional restrictions placed upon an action for libel brought about by the Supreme Court's recent decision, on March 9, 1964, in the case of *New York Times Company v. Sullivan*, 32 U.S. Law Week 4184 (March 10, 1964), the defendant hereby moves this Court, pursuant to Rule

[File endorsement omitted]

60 (b) (6) to vacate the judgment entered against defendant in this action and to grant a new trial for the following reasons:

1. The verdict and judgment in this case awarded plaintiff damages for injury to his reputation as a football coach on account of statements made by defendant concerning plaintiff's actions while acting as Director of Athletics of the University of Georgia. The Director of Athletics of the University of Georgia is a public official: *Page v. Regents of University of Georgia*, 93 F.2d 887 (5th Cir., 1937) (reversed in 304 U.S. 439 upon other grounds).

2. Said *New York Times Company v. Sullivan* case held that the constitutional guarantees provided by the First and Fourteenth Amendments prohibit a public official from recovering *any* "damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false, or with reckless disregard of [fol. 1459b] whether it was false or not."

3. The following portions of the instruction given by the Court to the jury constitute error in that the Court stated that general damages could be recovered by the plaintiff without the plaintiff being required to prove the existence of "actual malice" on the part of the defendant:

"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." R. 1624.

"As the publication was libelous per se, I charge you that malice is to be inferred. However, the exist-

ence 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 of lawful excuse or to indicate absence [fol.1459c] 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.” R. 1630.

4. Applying the constitutional standards enunciated in the said *New York Times Company v. Sullivan* case, the proof presented in the instant case to show actual malice on the part of the defendant lacks the “convincing clarity”, which such constitutional standards demand, and thus such evidence cannot sustain the judgment entered for the plaintiff. There was no evidence introduced in the instant case to prove that the statements made in the article defendant published in the March 23, 1963 issue of “The Saturday Evening Post” concerning plaintiff were made with knowledge on the part of the defendant that they were false, or with a reckless disregard of whether they were false or not. On the contrary, plaintiff proved in his own case that the Post editors responsible for the publication of the story—Blair and Thomas, R. 1024—were satisfied of the truthfulness and accuracy of the story. R. 1038, 1137-1138.

Therefore, the instant case was clearly tried upon unconstitutional assumptions, the correct principle unfortunately not being announced until after the trial by the Supreme Court’s landmark decision in the *New York Times Company v. Sullivan* case. As Mr. Justice Goldberg recognized in that case, “we are writing upon a clean slate.”

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A hearing upon this Motion is respectfully requested.

[fol. 1459d] Welborn B. Cody, Attorney for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303, Jackson 2-7420.

Certificate of Service (omitted in printing).

[fol. 1460]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 8311

WALLACE BUTTS, Plaintiff,

versus

CURTIS PUBLISHING COMPANY, Defendant.

OPINION AND ORDER—APRIL 7, 1964

Defendant, on February 28, 1964, under Rule 60(b) (2), Federal Rules of Civil Procedure, 28 U.S.C.A., filed a motion for a new trial upon the ground of the discovery of new evidence, contending that such evidence conclusively demonstrates the falsity of the testimony of two of the plaintiff's witnesses, Dr. Frank A. Rose and Coach Paul Bryant, and strongly supports the defense of justification. The motion is also based upon alleged conduct of plaintiff in attempting to avoid the conditions on which defendant's motion for a new trial was denied and a judgment in plaintiff's favor was granted.

Thereafter, defendant filed an additional motion for a new trial pursuant to Rule 60(b), Federal Rules of Civil Procedure, because of a change in the law of libel and the constitutional restrictions placed upon an action for libel

by virtue of the United States Supreme Court decision of March 9, 1964, in the case of *New York Times Company v. Sullivan*.

Even though a final judgment had been entered in the case at hand and an appeal from such judgment has been perfected by the filing of a notice of appeal, this District [fol. 1461] Court retains jurisdiction to consider and deny such motions under Rule 60(b). See *Ferrell v. Trailmobile, Inc.* (5 C.A., 1955), 223 F. 2d 697.

The gist of Part I of the first motion is that there is substantial variance between the testimony of Dr. Rose and Coach Bryant in their testimony at the trial of this case and depositions which were later given by Dr. Rose and his secretary, Mrs. Marian H. Park, in an action pending in the Northern District of Alabama in the case of *Paul Bryant v. Curtis Publishing Company*, Case No. 63-166, which testimony by deposition was taken on January 8, 1964.

In attempting to sustain its plea of justification, the defendant introduced at the trial of this case a letter dated March 6, 1963, written by Dr. Rose, as President of the University of Alabama, to Dr. O. C. Aderhold, as President of the University of Georgia. The letter concerns certain telephone calls relating to conversations on new football rule changes which had transpired between Coach Bryant and plaintiff Butts. At the trial, Dr. Rose in his testimony, in attempting to explain the contents of the Aderhold letter, stated that the letter was hurriedly dictated on the morning of March 6, 1963, and signed by his secretary, Mrs. Park, as he (Dr. Rose) was attempting to catch an early morning plane for Washington, D. C., to attend a meeting of the American Council on Education.

In the depositions taken in the *Bryant* case, defendant shows that Dr. Rose did not go to Washington, D. C., on the date of March 6, 1963, nor was the letter hurriedly dictated as there was a previous draft of the Aderhold letter, dated March 5, 1963, which draft was substantially the same as the contents of the March 6, 1963, original letter mailed and received by President Aderhold.

[fol. 1462] The defendant further asserts that Dr. Rose, in his testimony at the trial testified that Coach Bryant told him he did not remember the call of September 16, 1962, to Coach Butts in Athens, Georgia, although he could have made it, and even though Rose had interrogated Bryant several times between February 24, 1963, and March 6, 1963. However, by a recently discovered letter, dated February 28, 1963, written by Bryant to Rose, Bryant, in this letter, informed Rose that he remembered the call to Butts in the middle of September very well, and that although Rose admitted receiving the letter dated February 28, 1963, prior to March 6, 1963, Rose still maintained throughout his testimony in said deposition that Bryant reported to him through all the investigation that he had no recollection of the Sunday, September 16, 1962, telephone call to plaintiff Butts.

Defendant contends that on the issue of the letter (Exhibit D-21) plaintiff was able to explain away the contents of the letter by means of Rose's characterization of Exhibit D-21 as a hasty, error-laden letter, and Bryant's total lack of recollection concerning the telephone call, when in fact the newly discovered evidence establishes that Bryant did recall the Sunday telephone call and that the letter was not a hasty, error-laden letter, but was a careful and thoughtful letter, and that someone received the draft of such letter dated March 5, 1963, prior to its final draft on March 6, 1963.

The phrase "newly discovered evidence" refers to evidence of facts in existence at the time of the trial of which the aggrieved party was excusably ignorant. In the case of *Chemical Delinting Company v. Jackson*, 193 F. 2d 123, 127, the Fifth Circuit Court of Appeals has held:

[fol. 1463] "The motion must show that the evidence was discovered since the trial; must show facts from which the court may infer reasonable diligence on the part of the movant; must show that the evidence is not merely cumulative or impeaching; must show that

it is material; and must show that such evidence will probably produce a different result.”

See also *King v. Leach* (5 C.A., 1942), 131 F. 2d 8.

The evidence clearly shows that the letter from Bryant to Rose was in existence in the latter part of February, 1963. The evidence further shows that the draft of the letter from Rose to Aderhold was in existence prior to March 6, 1963. Under the liberal discovery rule provided by the Federal Rules of Civil Procedure, the defendant could have obtained all of this evidence which it now has available prior to the trial of this case in August, 1963. No facts have been shown by the movant here from which this Court may infer reasonable diligence on its part.

Even assuming the evidence could not have been produced at the trial in August by due diligence—inferences not fairly conveyed by the record—the evidence now presented tends merely to affect the weight and credibility of the evidence of Dr. Rose and does not constitute a proper basis for a new trial. See *English v. Mattson* (5 C.A., 1954), 214 F. 2d 406, 409; *Grant County Deposit Bank v. Greene*, 200 F. 2d 835.

After considering the “newly discovered evidence” presented in the motion at hand, and from this Court’s review of all the evidence presented at the trial of the case, even if all the testimony entered at this hearing on the motion [fol. 1464] had been presented at the trial in August, this new evidence affecting the credibility of Dr. Rose would not have changed the verdict in this case. See *Chemical Delinting Company v. Jackson*, *supra*, and *English v. Mattson*, *supra*.

The second ground advanced by the defendant for a new trial under Rule 60(b) is to vacate the judgment entered against the defendant and to grant a new trial because after the plaintiff had filed his written consent to the remittitur (this consent still being on file) that, to the defendant’s motion for a new trial, the plaintiff has filed a notice of cross-appeal. The question of the cross-appeal

and the merits thereof are not for decision by this trial Court, but is a matter to be considered on appeal. See *Woodworth v. Chesbrough*, 244 U.S. 79, 61 L. Ed. 1005.

The thrust of defendant's additional motion for a new trial under Rule 60(b) is based upon the recent decision of the United States Supreme Court, rendered on March 9, 1964, in the case of *New York Times Company v. Sullivan*. The Supreme Court's ruling in the *Times* case, speaking through Mr. Justice Brennan, held:

"The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

The contention of the defendant is that the *Times* case is controlling for the case at hand, and that under this motion the previous judgment should be vacated and a new trial [fol. 1465] granted. In order that a prior decision of a court shall govern, such prior decision must be in point, and as a test in determining whether the adjudicated case is a precedent, such case should be measured by a similarity to the second case in its controlling facts. See *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 97 L. Ed. 54.

In the *Times* case, the Supreme Court held actual malice must be proved to recover general damages in actions of libel brought by public officials against critics of their official misconduct. However, the concurring opinion of Justices Goldberg and Douglas stated:

"Purely private defamation has little to do with the political ends of a self-governing society. The imposition of liability for private defamation does not abridge the freedom of public speech."

In the present motion at hand, the defendant contends that plaintiff's action comes under the *Times* ruling in that plaintiff was a public official, and that the verdict and judgment was awarded plaintiff as damages for injury to his reputation as a football coach on account of a publication made by the defendant concerning plaintiff's actions while acting as Director of Athletics at the University of Georgia. In the trial of the case, movant defended the action by entering a plea of justification, and no defense was made or evidence introduced concerning Butts' position as Athletic Director or as a public official. Georgia law provides under certain conditions communications concerning the acts of public men in their public capacity and reference therewith to be deemed privileged. Georgia Code Annotated, Section 107-709(6). Just where in the ranks of government employees the "public official" designation extends, the Supreme Court in the *Times* case did not de-[fol. 1466] termine.¹ The decision did determine that Sullivan, as an elected city commissioner of Montgomery, fitted into the category of public officials.

Under Georgia law, members of the Board of Regents of the University System are public officials. Georgia Sessions Laws, 1931, Pages 7, 45. The evidence presented at the trial shows that plaintiff was Director of Athletics at the University for some two years prior to February, 1963, at which time he resigned. The article complained of was published in the defendant's issue of March 23, 1963. The Board of Regents at both the University of Georgia (located at Athens) and the Georgia School of Technology (located at Atlanta) control the athletic programs of the

¹ In Footnote 23 of the majority opinion, it was stated: "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included. Cf. *Barr v. Matteo*, 360 U.S. 564, 573-575. Nor need we here determine the boundaries of the 'official conduct' concept. It is enough for the present case that respondent's position as an elected city commissioner clearly made him a public official,"

two institutions, but the details are handled at each institution by an athletic association composed of faculty members and alumni, and each is incorporated to facilitate such business transactions as improvement of athletic grounds and equipment at the two institutions. The schedule of athletic contests for each year is approved by the faculty and by the Regents. The separate athletic associations at both institutions are wholly under the control of the Regents and are their agents. For further details of the athletic setup, see *Page v. Regents of University System of Georgia*, 93 F. 2d 887, 891-892. As was stated in the *Page* case, the "coaches" are also members of the faculty. [fol. 1467] Plaintiff Butts was Director of Athletics at the University. The Athletic Director, along with the various coaches in the Athletic Department, were employed by the separate incorporated athletic association. However, the defendant seeks by this motion to extend the category of "public officials" to one employed as agent by the University of Georgia Athletic Department. Even if plaintiff was a professor or instructor at the University, and not an agent of a separate governmental corporation carrying on "a business comparable in all essentials to those usually conducted by private owners"² he would not be a public officer or official. Under Georgia law, the position of a teacher or instructor in a State or public educational institution is not that of a public officer or official, but he is merely an employee thereof. *Regents of the University System of Georgia v. Blanton*, 49 Ga. App. 602(4); *Board of Education of Doerun v. Bacon*, 22 Ga. App. 72. To hold plaintiff, an employee of the University Athletic Association, a public official would, in this Court's opinion, be extending the "public official" designation beyond that contemplated by the ruling in the case of *New York Times Company v. Sullivan*, supra.

If it were conceded that plaintiff Butts was a "public official", the case of *New York Times Company v. Sullivan*

² See *Allen v. Regents of the University System of Georgia*, 304 U.S. 439, 451.

would not permit the vacating of this Court's previous judgment, as the ruling in the *Times* case does not prohibit a public official from recovering for a defamatory falsehood where he proves "actual malice"—that is, with knowledge that it was false *or with reckless disregard of whether it was false or not*. (Italics supplied.) In the trial of this case, there was ample evidence from which a jury could [fol. 1468] have concluded that there was reckless disregard by defendant of whether the article was false or not. See the Court's ruling on defendant's motion for a new trial dated January 14, 1964. *Butts v. Curtis Publishing Company*, 225 F. Supp. 916.

For the reasons stated above, the defendant's motions under Rule 60(b) to vacate the judgment entered against the defendant are denied.

This the 7th day of April, 1964.

Lewis R. Morgan, United States District Judge.

[fol. 1469]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed April 10, 1964

Notice is hereby given that Curtis Publishing Company, the defendant above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order of the Honorable Lewis R. Morgan, United States District Judge for the Northern District of Georgia, Atlanta Division, dated and filed on April 7, 1964, denying defendant's Motions under Rule 60(b) of the Federal Rules of Civil Procedure, to vacate the judgment entered in this case and to grant a new trial.

Welborn B. Cody, Attorney for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303, JA 2-7420.

Clerk's Certificate (omitted in printing).

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[fol. 1471]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

No. 63-166

PAUL BRYANT, Plaintiff,

vs.

THE CURTIS PUBLISHING COMPANY,
a corporation, Defendant.

STIPULATION

It Is Stipulated and Agreed by and between the parties through their respective counsel that the deposition of Dr. Frank A. Rose, may be taken before Carmen Zegarelli, Commissioner, at the University of Alabama, Tuscaloosa, Alabama, on the 8th day of January, 1964.

It Is Further Stipulated and Agreed that the reading of and signature to the deposition by the witness is waived, said deposition to have the same force and effect as if full compliance had been had with all laws and rules of court relating to the taking of depositions.

It Is Further Stipulated and Agreed that it shall not be necessary for any objections to be made by counsel to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of trial or at the time said deposition is offered in evidence, or prior thereto.

[fol. 1472] It Is Further Stipulated and Agreed that notice of filing of the deposition by the Commissioner is waived.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION
No. 63-166

PAUL BRYANT, Plaintiff,

vs.

THE CURTIS PUBLISHING COMPANY,
a corporation, Defendant.

Tuscaloosa, Alabama
January 8, 1964

Before: Carmen Zegarelli, Commissioner.

Appearances:

Mr. William S. Pritchard and Mr. Winston B. McCall, of the firm Pritchard, McCall & Jones, Frank Nelson Building, Birmingham, Alabama, appearing for the Plaintiff.

Mr. James Runzer of the firm Pepper, Hamilton & Scheetz, 123 South Broad Street, Philadelphia, Pennsylvania; and Mr. Roderick MacLeod, Jr., of the firm Beddow, Embry & Beddow, 2121 Building, Birmingham, Alabama, appearing for the Defendant.

Mr. James J. Bennett, University of Alabama, Tuscaloosa, Alabama, appearing for Dr. Frank A. Rose.

[fol. 1473] I, Carmen Zegarelli, Court Reporter and Notary Public, State of Alabama at Large, Acting as Commissioner, certify that on this date as provided by the Federal Rules of Civil Procedure of the United States District Court and the foregoing stipulation of counsel, there came before me at the University of Alabama, Tuscaloosa, Alabama, beginning at 9:30 a. m., Dr. Frank A.

Rose, witness in the above cause, for oral examination, whereupon the following proceedings were had:

Mr. MacLeod: We have the usual stipulation, that it is not necessary to state objections except as to the form of questions, and any other objections can be made at the time the deposition is used at the trial?

Mr. Pritchard: We will so stipulate, except we reserve the right to object and seek a ruling by the court as to any question that we deem would be improper in a deposition at any time prior to the trial and including the time of trial.

Mr. MacLeod: All right.

Mr. Runzer: Has the witness been sworn?

The Reporter: Yes, sir.

DR. FRANK A. ROSE, being duly sworn, was examined and testified as follows:

[fol. 1474] Examination.

By Mr. Runzer:

Q. Dr. Rose, as you are aware, you have had your deposition taken at least once before and I am here to ask you a great deal of questions about some matters we are concerned with.

If you don't understand anything I say, or you don't hear me or you feel I am going too fast, I want you to tell me that and stop me, because we all have lots of time, although I understand that you have to leave at 1 o'clock for an appointment in New York. We have plenty of time, and we don't want you to get confused or misinterpret anything I say. I want you to stop me at any point if you don't feel it is clear to you.

A. Yes, sir.

Q. It is also understood that you are under subpoena for this deposition and because of a previous commitment, we will adjourn at 1 o'clock, and if examination is not complete, we will continue it.

Mr. Pritchard: We do not make any such agreement as that. We want you to complete your examination now.

Mr. Runzer: Off the record.

(Off the record discussion.)

Mr. Pritchard: Let's quit talking, all of this speech making, let's ask the questions and get the answers down, that's the purpose of the deposition, you know.

Mr. Runzer: Are you finished? I said it is understood [fol. 1475] that we will adjourn at 1 o'clock if we are not through, because you have a previous commitment, and meet again Wednesday of next week at this office at 10 o'clock; is that understood?

A. Yes, sir.

Q. And you are still under subpoena to appear here at that time, and place?

A. Yes, sir.

Q. Give us your full name, please?

A. Frank A. Rose.

Q. What does the A stand for?

A. Frank Anthony Rose.

Q. Your address?

A. President's Office, University, Alabama.

Q. Your home address?

A. President's Mansion, University, Alabama.

Q. And you are the President of the University of Alabama?

A. That's correct.

Q. And you have been since what year, sir?

A. Since September 5, 1957.

Q. And prior to your employment here, where were you employed?

A. President of Transylvania College at Lexington, Kentucky.

Q. What is your educational background?

A. I graduated from Transylvania College in 1942, and Transylvania Seminary in 1946, and did Graduate Work at the University of London in 1950.

Q. You are known as Dr. Rose, do you have a PhD Degree, sir?

A. No.

Q. Is that an Honorary Degree?

A. I have five Honorary Degrees from five Universities and Colleges.

[fol. 1476] Q. But, your only degrees are from Transylvania College and Transylvania Seminary; is that correct?

A. Yes, sir.

Q. Did you get any degree from the University of London?

A. No, sir.

Q. What type of work did you do at the University of London?

A. Graduate work in Philosophy.

Q. Now, you recall back in February, 1963, you received a phone call from the President of the University of Georgia?

A. Yes.

Q. You recall the date of that?

A. No, sir. It was a few days before February 24th, I believe it was. Let me check just a minute.

Q. Let the record show the witness is referring to a calendar book?

A. It was a few days prior to Sunday, February 24th.

Q. By a few, you mean two or three days?

A. I think it was more than that, because he wanted to meet on, I believe, on a Friday, and I couldn't meet on Friday because I had agreed to go to the Alabama Press Association Meeting in Montgomery on Friday, the 22nd. So, we agreed we would meet on Sunday, February 24th.

Q. Are you certain that he asked you to meet on Friday, the 22nd?

A. Well, he wanted to meet on another date and I am pretty sure that was Friday the 22nd. That is the reason I couldn't attend, because of my commitment, and it may have been he wanted to meet on Saturday, but I was going

over to Lake Martin with my family on Saturday, February 23rd.

[fol. 1477] Q. Where were you when you received this telephone call?

A. I was here in this office.

Q. And Dr. Aderhold state where he was?

A. No, he did not.

Q. I want you to tell me exactly what Dr. Aderhold told you that day?

A. I don't know that I could tell you exactly, but I can give you pretty much the meaning of the conversation.

Mr. Pritchard: I am going to interpose an objection there at this point that that is totally irrelevant and immaterial in this cause, and I want that to appear in the record.

Mr. Runzer: You certainly have the right to make your objection.

Mr. Pritchard: Thank you for your courtesy. Go ahead with your examination, if you will.

Q. Will you answer the question, please?

A. Yes. He called and asked if I could see him one day that week, and I think it was on either Friday or Saturday, but I think it was Friday, the 22nd.

I explained to him that it would be impossible because of commitments that I had, but I did inform him that I could see him on Sunday morning, February 24th. He said, well, that he would be over and meet with me in Commissioner Bernie Moore's office. I asked him what was the nature of the meeting. He said it was confidential, but that he would like to say that it might involve an ethical matter.

Q. Who suggested Mr. Moore's office as a place of the meeting?

A. He did.

[fol. 1478] Q. Did he indicate to you that Mr. Moore would be present at the meeting?

A. Yes, sir.

Q. Did he indicate that anyone else would be present at the meeting?

A. No, sir, he did not. It was my understanding that no one else was to be present.

Q. Is that something he told you or was that the understanding you carried away from the conversation?

A. When he said it would be a confidential meeting, it was my understanding that Commissioner Moore, Dr. Aderhold and I would be the only ones there.

Q. Did he ask you to bring anyone else to the meeting?

A. No.

Q. And gave you no indication of what it was except that it was an ethical matter?

A. That he would say it might be called an ethical matter.

Q. Have we now exhausted everything that you discussed in that telephone conversation?

A. Yes, sir.

Q. What time was the meeting set for?

A. 9 o'clock Sunday morning.

Q. Dr. Aderhold ever call you before to set up a meeting?

A. No, sir.

Q. So, this would be an unusual occurrence for you?

A. Yes, sir.

Q. Now, the meeting was held where?

A. Was held in Commissioner Moore's office in the Redmont Hotel.

Mr. Pritchard: It wasn't there, was it?

[fol. 1479] Mr. Runzer: Just a moment. It is only fair if you don't know a specific fact or don't remember, it is agreeable for you to say so.

A. Wherever Commissioner Moore's office is, I think it is the Redmont Hotel.

Q. In Birmingham?

A. Yes, sir.

Q. Between the day of the telephone call and the time of the meeting, did you discuss Dr. Aderhold's phone call with anybody?

A. No, sir.

Q. When did you leave Tuscaloosa to go to Birmingham for the meeting?

A. I left about 7:30 Sunday morning, February 24th.

Q. Did you drive down there?

A. Yes, sir.

Q. Drive yourself or someone go with you?

A. I think I drove myself.

Q. And did you go straight to the meeting?

A. Yes.

Q. And who was present when you arrived at Commissioner Moore's office?

A. When I first arrived, no one was present. I went down and sat down in the lobby and waited and then Commissioner Moore came in and I waited until he had time to open up his office and then went up and just a few seconds after I arrived there, Dr. Aderhold and Mr. Cook Barwick came into the meeting.

Q. Just a moment.

Let's go back a moment. You were in the lobby and Commissioner Moore came in?

A. Yes, sir.

Q. Did you have any conversation with him in the lobby?

A. No.

[fol. 1480] Q. Did he see you?

A. No, I don't think so.

Q. You waited a few moments for him to open his office?

A. That's right.

Q. What floor is his office on?

A. I can't recall.

Q. Is it upstairs?

A. Yes, it is upstairs.

Q. Did you ride up on the elevator with him?

A. No; I rode up on the elevator by myself.

Q. You went in, and sat for a few minutes; you said for a few minutes you and Commissioner Moore were there by yourselves; is that correct?

A. No. By the time I got my hat and coat off, Dr. Aderhold and Mr. Barwick came in.

Q. In the interval before Dr. Aderhold and Mr. Barwick arrived, did you have any conversation whatsoever with Mr. Moore?

A. I may have had conversation, but as far as talking about this matter, it wasn't discussed until Dr. Aderhold and Mr. Barwick came in.

Q. Do you recall now what that conversation with Mr. Moore was?

A. No, sir.

Q. All right.

A. I am not even sure that there was a conversation.

Q. Now, I assume then Dr. Aderhold and Mr. Barwick also took their coats and hats off?

A. Yes.

Q. And does Mr. Moore's office have an outer room and inner room?

A. Yes, sir.

Q. And did you proceed from the outer room into the inner room?

[fol. 1481] A. Yes, sir.

Q. Was there any conversation in the outer room at all prior to the meeting?

A. I don't recall. There may have been greetings, but I am sure that's all there was to it.

Q. Now, all four of you went into Mr. Moore's inner office?

A. Yes.

Q. Is that his personal office, do you know?

A. Yes.

Q. As opposed from the secretary's office?

A. Yes.

Q. Now, did Mr. Moore sit in his usual seat behind his desk?

A. I am not sure. I think he sat over to the side of his desk.

Q. Did Mr. Barwick and Dr. Aderhold sit together?

A. Yes. Well, they sat adjoining one another over to the side. I sat directly in front of the desk and took notes from the outside of the desk. Commissioner Moore, I think, was sitting over here (indicating).

Q. That would be in the left side of the desk as you face it?

A. I am sorry, I can't tell you all of those details. He would have been in my left.

Q. And Dr. Aderhold and Mr. Barwick would have been to your right?

A. Dr. Aderhold sat over there and—

Q. And also would be to your left, sir?

A. To my left (indicating).

Mr. Runzer: Off the record a minute.

(Off the record discussion.)

Q. All right, continue please.

[fol. 1482] A. Mr. Barwick sat next—between Dr. Aderhold and me.

Q. Now, who opened the meeting?

A. I believe that the first thing that was said was Commissioner Moore informed all of us that he had received a telephone call from Mr. Furman Bisher, one of the Sports Writers of one of the Atlanta papers telling him that he knew of the meeting and would like to be informed after the meeting was over of our discussion that we had had. And Commissioner Moore asked how he knew of the meeting and he did not comment.

And, at that time, I looked at Dr. Aderhold, because it had been my feeling that it was a confidential meeting and Dr. Aderhold, I think, may have been a little surprised about it, too. And, Mr. Cook Barwick said, I am sure that the finger must point to me, as I represent Mr. Furman Bisher as his personal attorney, but I do not represent him in the case for the Saturday Evening Post. This had to do with the first suit that Coach Bryant had filed against the Saturday Evening Post and Mr. Bisher for an article

under the title of Speaking Out or something to that effect, that the Saturday Evening Post carried. And this upset me a great deal, because we had had over problems with Mr. Bisher and he had written some very difficult things about the University of Alabama and made some insinuations that were unjust and this disturbed me that he would know that we were going to be in this meeting, which Mr. Cook Barwick assured all of us that he had not discussed this meeting with Mr. Bisher.

Q. Now, at this point, am I correct in assuming that you still did not know what the subject matter of the meeting was?

A. No, sir.

Q. You say no, sir; you mean that I am correct in saying that?

[fol. 1483] A. I did not know what the subject of the meeting was; yes, sir.

Q. What was the next thing that was said?

A. Then, I believe that Dr. Aderhold proceeded to inform me the purpose of the meeting.

Q. What did he tell you, sir?

A. Well, I can give you, in essence, what he said to me, and that was that there had been a telephone call to Coach Bryant from Coach Butts in which it had been overheard by a man by the name of Burnett in which Coach Butts had given to Coach Bryant some of the plays and pattern plays of the University of Georgia prior to the Alabama-Georgia Football Game in September, 1962. And, that they had talked with Mr. Burnett about the matter and felt that Mr. Burnett was telling the truth. I was led to believe either by word or by insinuation that Mr. Burnett was a reputable man. There was no doubt that he had heard everything that they had told me regarding plays, two or three players, and other things relating to the game.

Q. Let me stop you there for a moment. What was your personal reaction upon hearing this?

A. Well, I was tremendously shocked and greatly disturbed because I had a lot of confidence in Dr. Aderhold.

I had a lot of confidence in just meeting Mr. Cook Barwick and being—although I must say I had some reservations about him after he informed me of his relationship with Mr. Furman Bisher and the fact that Furman Bisher knew about the meeting that we were having.

Q. Now, is it at his point that you began to take notes as you told us before?

A. I began to take notes when Dr. Aderhold began talking.

Q. Do you still have a copy of those notes?

A. No, sir, I do not.

[fol. 1484] Q. Now, going back a moment. You say you have given us the essence of the conversation because I assume you don't recall the exact words at that time?

A. No, sir, and I don't think any man could.

Q. All right.

Well, trying to distill it down, would it be fair to you to say that you were told that it had been overheard that Mr. Butts gave Mr. Bryant information about the Georgia team which might have been of some value in preparing for the Georgia-Alabama game?

A. That's right.

Q. And as you said, you were shocked or stunned by this information?

A. Yes, sir, very much so.

Q. Did Dr. Aderhold or Mr. Barwick go into any of the details of the exact information that was allegedly passed?

A. Yes, sir. They gave me essentially the information that I read later in this Saturday Evening Post article.

Q. Have you ever compared the so-called Burnett notes with the information that was given you by Dr. Aderhold and Barwick that day?

A. No, I haven't.

Q. Are you generally familiar with the contents of the Burnett notes?

A. Yes, sir.

Q. And would it be fair to say then that the information they gave you paralleled the information that is contained in the Burnett notes?

A. Pretty much and a little bit more.

Mr. Pritchard: I want to here and now object to the attorney using the statement the information which they gave him when, as a matter of fact, it was merely statements [fol. 1485] they made to him, and not information but merely statements that they were repeating that they had heard from someone rather than the term information, because there is no information about it. In my opinion I think that was misleading and improper.

Q. Now, I think he was saying that the information that was being passed to you by Dr. Aderhold and Mr. Barwick was a little more than was contained in the Burnett notes; is that correct?

Mr. Pritchard: I renew my objection to the use of the word information. It was merely hearsay of the purest type, it is a matter of hearsay rather than information.

Q. Would you go ahead and answer?

A. Yes, sir. Either Dr. Aderhold or Mr. Cook Barwick said that it appeared to them from the statement that they had that this was going to be a scandal that was much larger than the Black Socks Scandal.

Q. And by that I assume they were referring to the 1919 baseball scandal?

A. I suppose that was it.

Q. All right.

A. And that Mr. Barwick was in a lawyer's office in Atlanta a few days after talking with Mr. Burnett and that Furman Bisher and young Roderick Beddow came into the office and stated that they understood that there was a check, a photostatic copy of a check in the amount of \$10,000.00 written by Paul Bryant to a gambler in which he supposedly bet on a football game. And I made inquiry as to what game that could have been, and Mr. Cook Bar-

wick explained to me that it was the Georgia Tech-Alabama Football Game of 1962, in which we lost that ball game by one point. I asked—

Q. You say we, you refer to the University of Alabama?
[fol. 1486] A. University of Alabama.

Q. All right.

A. And I asked how that could be, and he said, well, Coach Bryant could have ordered his quarterback to call a field goal play rather than a passing play in which the ball was intercepted.

Q. This information that we were just discussing, namely this information relating to the Georgia Tech Game was not part of what Mr. Burnett was supposed to have overheard?

A. That is true.

Q. Now, do you remember whether Commissioner Moore said anything during this meeting?

Mr. Pritchard: That's the purest form of hearsay and I think it is a pure waste of time and money to attempt to examine a witness about—

The Witness: I don't know whether—

Mr. Runzer: I— Just a moment, Doctor. Unfortunately, as good a reporter as Mr. Zegarelli is, I don't believe he can get more than one at a time.

Mr. Pritchard: I object. It is the purest form of hearsay.

Mr. Runzer: I might add it is for the doctor's accommodation that if you wish to make a continuing objection, you certainly have the right to make any objection you want to.

[fol. 1487] Mr. Pritchard: I propose to exercise it too, so go ahead.

Mr. Runzer: Would you read the question, please.

(Question read.)

Q. Doctor, would you answer that question?

A. I do not recall what he said, but we all discussed the points that had been raised and talked about, including Commissioner Moore.

Now, did you take notes of the specifics of the information that was supposedly overheard by Mr. Burnett?

A. Yes, sir. I would say that I had about four small pages of notes contained in about four or five points that they had specifically raised which I used in my discussion with Coach Bryant when I met with him to talk to him about the accusation.

Q. Let me digress for a moment, Doctor.

Do you have any background in football at all?

A. Just sandlot football.

Q. By that, you mean you played sandlot football?

A. Yes, sir.

Q. Have you ever coached a football team?

A. Yes, sir, at one time during the war they couldn't get a coach at this high school nor an acting principal nor a dramatic coach, and I assumed all of the roles. But, I don't believe that I won but one ball game.

Q. What was the name of the high school?

A. Nicholasville High School, Nicholasville, Kentucky.

Q. How many years did this situation go on?

A. I believe—let me see. That would have been two or three years; I am not sure, may have been a little longer.

Q. This was during the war years?

A. Yes, sir.

[fol. 1488] Q. That would be in the early 40's?

A. No, sir. It would have been in the middle 40's, I believe. I think it was 1943 to 1945, or 6, somewhere right in there.

Q. And in an effort to perform this role, did you try to educate yourself in this new business?

A. Yes, sir. I tried to, but I couldn't do it. I had to rely on some of the Alumni of the school and the former coach who had to give up the job because he had additional duties, he worked out the formations for me, and the boys explained to me what they were the year before. There were only 75 boys in the high school, and they wanted to play and the superintendent of schools asked me if I would

supervise it. They weren't interested in winning, they were just more interested in having recreation.

Q. Excuse me.

Was the name of that Nicholasville?

A. Yes, sir. I believe it has been changed to Jessamine County.

Q. Spell that.

A. J-e-s-s-a-m-i-n-e.

Q. That's in Tennessee?

A. No, in Kentucky.

Q. Excuse me, Kentucky.

A. Nicholasville, Kentucky.

Q. All right, Doctor.

One other question while we are digressing.

Have you ever, during the course of this event which would date sometime from the middle of February, 1963, to date, retained either Mr. McCall or Mr. Pritchard, as your attorney?

A. Well, I have talked to them on many occasions and received counsel from them. I haven't formally retained them, but I have used them as my counsel.

[fol. 1489] Q. Now, how long did this meeting on the 24th last?

A. I would have to guess, sir. But, I would say about an hour and a half, to two hours.

Q. And have we exhausted the subject matter of that meeting?

A. As much as I recall, and as well as I recall.

Q. Now, you made a statement over in Atlanta when you testified that this matter was one of the most disturbing things that had ever occurred to you in College Administration?

A. Yes, sir, it was.

Q. And that is a true statement?

A. Yes, sir.

Q. And coupling that with your remark of a few moments ago that you were upset and stunned, I assume this was a matter of great information to you?

A. Yes, sir.

Q. Now, did Dr. Aderhold say or Mr. Barwick say why they were informing you of the information?

A. Well, they wanted Dr. Aderhold and wanted me to co-operate with them on making an investigation of the matter and we agreed that I would and that they would continue and that we would share information that we obtained from time to time.

Q. Then, would it be fair to say that you were asked to conduct an investigation from the point of view, from the geographical point of view from the University of Alabama?

A. I don't know that I was specifically asked to conduct an investigation, but it was expected that I would.

Q. And did you indicate that—

A. And understood that I would, and I indicated I would.

Q. In other words, regardless of whether it was a request made of you, it was agreed among the group that you would conduct an investigation here in Tuscaloosa?

[fol. 1490] A. Yes, sir.

Q. And part of your investigation would be to find out whether Coach Butts had given any significant information to Coach Bryant for the Georgia-Alabama Game; is that correct?

A. That is true; yes, sir.

Q. And that is what you set about to do when you left the meeting?

A. Yes, sir.

Q. And did you state any concrete steps to this group that you would take in conducting this investigation?

A. No, sir, I did not, not that I recall.

Q. Let's try to test your memory a moment.

A. We may have—no, sir, I don't believe that we did.

Q. Did you say that you would discuss it with any specific individual in the University Administration?

A. No, sir, but I think this was understood that I would talk to people about it.

Q. Would you say that it was understood or did you say that you would?

A. No, sir. I just told them that I would look into it and let them know.

Q. Did you say that you would discuss it with the University Attorneys?

A. No, sir.

Q. Are you certain about it?

A. I am not positive, but I can't imagine that I would say that. I don't see the reason at that time for saying that.

Q. Now, where did you go—strike that.

Did you leave first from the meeting?

A. Yes.

Q. All right.

A. We thought it would be best, because if we all did leave together in the event that a newspaper reporter might see us, he would begin to ask questions about it.

[fol. 1491] Q. And I assume, during the course of this meeting as you indicated, you asked questions about things, about this material?

A. Sir?

Q. You asked questions of Dr. Aderhold and Mr. Barwick?

A. Yes, sir.

Q. Were you told that Mr. Burnett had taken a lie detector test?

A. I believe that I was told that at that meeting. If I wasn't told that at that meeting, I learned it later.

Q. You don't recall whether you learned it at that meeting or not?

A. I think I did learn it at that meeting.

Q. When you learned he had taken a lie detector test, did they also tell you that he had passed the lie detector test?

A. Yes. When I learned of the lie detector test given Mr. Burnett, I was told that he had passed it.

Q. Were you also told at this meeting that he had given an affidavit as to this information?

A. I don't recall, sir.

Q. Now, it was agreed then that you would leave separately so as to throw any newspaper man off the scent?

A. Yes, sir.

Q. Did you go directly back to Tuscaloosa?

A. Yes, sir.

Q. What time did you arrive back there?

A. I would say sometime between 12 and 1 o'clock.

Q. Now, during the course of this meeting, did you indicate that there would be some difficulty in your doing something in that coming week because of other commitments?

A. Yes, sir. I told them that I had to be in Washington and New York and Chicago for a meeting. Dr. Aderhold [fol. 1492] stated that he too was supposed to go to the meeting in Chicago, and that it was agreed that as soon as I got some information that I would share it with him and he would share information that he had with me.

Q. Did you make any remarks as to the whereabouts of Coach Bryant during this meeting?

A. I don't recall.

Q. Well,—

A. I didn't know what his schedule was and I didn't know whether he was here or whether he was away.

Q. So, then, you couldn't have made a remark as to where he was?

A. Sir?

Q. You couldn't have made a remark as to where Coach Bryant was?

A. It may be that I could have, yes, sir. It may have been at that time that I knew where he was. I just don't recall.

Q. You don't recall?

A. No, sir.

Q. Now, you drove straight home and got in Tuscaloosa some time around 12 or one o'clock; is that right?

A. Sometime between 12 and 1 o'clock.

Q. Am I also correct that during this meeting you were never shown the so-called Burnett notes?

A. No, sir.

Q. What did you do when you got home?

A. Well, I was so upset about the matter that I went upstairs and sat down and thought about it for awhile, and then my wife called me down to lunch and I went down and had a very light lunch and went back up and thought about it some more.

Then I decided the best thing for me to do was take a nap and then think about it when I was more refreshed and relaxed.

Q. And did you do that?

[fol. 1493] A. Yes, sir.

Q. All right.

A. After taking a tranquilizer and I slept for about an hour.

Q. Excuse me.

Is it your custom to take a tranquilizer?

Mr. Pritchard: We object to that. My gracious sakes alive, we are here to try a lawsuit.

Mr. Runzer: Let me finish the question, please.

Mr. Pritchard: I am going to object to the pure waste of time.

Mr. MacLeod: You have your objection.

Mr. Runzer: The question is not over yet, with all due respect to you, Colonel Pritchard.

Mr. Pritchard: I object on the grounds the question is incompetent, irrelevant, immaterial, as to whether or not he took a tranquilizer before or after he took his nap, or if he took them on any other occasion. I want to say it is merely a waste of time in an effort to get into the record testimony that has no bearing on the issues to be tried in this case.

Mr. Runzer: Do you make any objection—

[fol. 1494] Mr. Pritchard: That's my objection in the record, please.

Mr. Runzer: I am sure he has gotten it down.

Q. Doctor, I will finish the question.

Did you take a tranquilizer because of the upsetting nature of this news, or is it your custom to do that?

A. Because of the upsetting nature of the news.

Q. You answered the question, thank you, Doctor.

I assume when you awoke you began to think about this matter again?

A. Yes, sir. I thought about it from about 2:30 to 3 o'clock until about 5 and I thought of it from every angle that I possibly could. I thought about the people that I should see first, and by 5 o'clock came to the conclusion that the thing for me to do is confront the man that had been accused.

Q. That was your final conclusion of this thought process; is that correct?

A. Yes, sir.

Q. Would you run down for me in brief fashion exactly what your thought process was. You said you considered whom you would consult with, who are you speaking of?

A. Well, on most of the problems that arise at the University, I talk with Mr. Jefferson Bennett, the Administrative Vice-President of the University.

Q. And this is the gentleman that is seated to my right here?

A. Yes, sir.

And I usually, in athletic matters, usually consult Mr. Jefferson Coleman, who was former business manager of Athletics at the University, and who is now Director of Alumni affairs. I usually consult Mr. Ernest Williams who is a member of the executive committee of the Board of [fol. 1495] Trustees. And I felt, in this situation, after thinking it through, that I owed it, a thing of this serious a nature, to talk to the man that had been accused first.

Q. What, in your mind, was Coach Bryant accused of at this point?

A. In my mind he was accused of having received information from Coach Butts that would affect the outcome of the University of Georgia-Alabama Football Game.

Q. And this was an accusation that you were setting out to investigate?

A. Yes.

Q. Now—

A. And it was insinuated either consciously or unconsciously on the part of Mr. Barwick and Dr. Aderhold that it might be a great deal more serious than the receiving of information that might affect the outcome of the ball-game.

Q. Now, if you will tell me, did you then proceed to get in touch with Mr. Bryant?

A. Yes, sir. I called Mr. Bryant around 5 o'clock.

Q. Where did you reach him?

A. At home and told him that I would like to have him meet me in my office at 7 o'clock. He told me that he would be glad to do so and he came to my office at 7 o'clock.

Q. Let me stop you there a moment.

Did you give him any indication as to why you wanted to meet him?

A. No, sir.

Q. You said, just meet me at 7 o'clock at my office?

A. Yes, sir.

Q. And he said he would?

A. Yes, sir.

Q. Up to this point, how would you describe your relationship with Mr. Bryant, a friendly one?

[fol. 1496] A. Yes, it is a friendly relationship; however, it is the same relationship that exists between me and all of my staff members, personal relationship.

Q. There is a personal relationship?

A. Yes, sir.

Q. Now, he came to your office at 7 o'clock?

A. Yes, sir.

Q. By your office, you mean the room we are seated in right now?

A. Yes, sir.

Q. Now, between the time you left the meeting and the time that Coach Bryant arrived here, did you discuss the matter with anyone else?

A. Yes. I believe that I told my wife what Dr. Aderhold and Mr. Barwick had told me, and I believe that I discussed with her the people that I should talk with first and it was also her thinking that I should talk to the man first that had been accused.

Q. But, outside of your wife, you had discussed the matter with no one before the meeting with Coach Bryant?

A. No, sir.

Q. Now, the two of you were alone in this room?

A. Yes, sir.

Q. Was anyone in the outer office?

A. No, sir.

Q. Did you sit in the chair where you are sitting right now?

A. Yes, sir.

Q. That's the one behind the desk?

A. Yes, sir.

Q. Where did Coach Bryant sit?

A. He sat on my left where Colonel Pritchard is sitting facing me. Over on my right facing me, I get confused; I am lefthanded.

[fol. 1497] Mr. Runzer: Off the record.

(Off the record discussion.)

Q. So, Coach Bryant sat at the corner of the desk at your right?

A. Yes, sir.

Q. And at this time, did you have in your possession the notes that you had made?

A. Yes, sir.

Q. Who opened the meeting?

A. I did.

Q. What did you say?

A. I tried, as best I could, to relate to him the information or statements that Dr. Aderhold and Mr. Cook Barwick had given to me regarding his conversation with Coach Butts.

Q. Did you start off by giving it in conclusion form or did you give it—give him the specifics of information that was supposedly passed?

A. I don't recall, but I believe that I gave him the points that I had taken down of what I had considered the essence of the meeting and related it to him as best I could, the story from the beginning to the end as it had been given to me.

Q. Now, during this initial remark by you, did you tell him that he was accused of receiving information from Mr. Butts that could affect the outcome of the Georgia-Alabama Game?

A. Yes, sir.

Q. Did he allow you to talk interrupted—uninterrupted, excuse me?

A. Well, at each point I would ask him questions about it. I wanted to know if he had talked to Coach Butts, what was the nature of the conversation, and then I went down each point talking to him about that.

[fol. 1498] Q. Did you tell him first then that he was accused of receiving information that could affect the outcome of the game?

A. Yes, sir.

Q. Did he make any remark when you said that?

A. He was tremendously shocked and upset about it, too, and asked me to go ahead and tell him everything that had been said, and I did. And then, we discussed it point by point after that.

Q. Just so that it is clear in my mind, the first thing you told him he had been accused of receiving information from Mr. Butts that could affect the outcome of the football game; is that correct?

A. I don't know what it was exactly in that manner, sir. I did reveal to him that Coach Butts supposedly called him and called him from off of the football field and gave him information about the University of Georgia.

Q. And this was about the first thing that you said to Mr. Bryant in this office that night?

A. Yes, sir.

I got down to it rather quickly.

Q. And then, although he was shocked, he asked what was the nature of the information he was supposed to have received; is that correct?

A. Yes, sir.

Q. And then you discussed—went through the points you had taken notes of at the meeting that morning; is that correct?

A. Yes, sir.

Q. When you finished going through the points, did he let you go through them without making any remark or did you stop on each one?

A. I don't exactly recall. I think that we discussed the overall accusation. He said that he had talked to Coach Butts on many occasions on many subjects as he did to [fol. 1499] many coaches, those with whom he played on his schedule, and those whom he didn't play.

Q. Did you ask him whether he had—whether he had received a phone call from Mr. Butts on September 13th 1962?

A. Yes, sir.

Q. What was his answer to that question?

A. He said he didn't know, but he would be glad to look it up, that he come to him several times in the last—during that period and he talked to several other coaches during that period, but that he was sure that his record or telephone bills would show whether he had talked, and he would be glad to look it up on that specific date.

Q. Just so we are perfectly clear, we are talking about a call on September 13th, when Mr. Butts called Mr. Bryant. Did he say his records would show that?

A. No. I believe that had to do with his call that he was supposed to have made back to him.

Q. That's what I had thought, you had misunderstood my question.

My question is, did you ask him whether he had received a call from Mr. Butts on September 13th, 1962?

A. He did not specifically remember that call though he did say that Wally Butts had called him and that he had

called Wally Butts and that they had talked on several occasions about many things. But, he did not specifically remember that call.

Q. Did you also, in the course of this meeting, ask him if he had called Mr. Butts on September 16th, 1962?

A. Yes, sir.

Q. What was his answer?

A. And he did not recall whether he had made that call or not, but stated that he could have made the call, that there had been several calls made to Coach Butts and [fol. 1500] to other coaches and that he could look that up and find out whether he had made that call or not.

Q. That was the call he was going to check on his telephone bill record?

A. Yes, sir.

Q. The September 16th call?

A. Yes, sir.

Q. Did you discuss with him the specific points that Mr. Burnett was supposed to have overheard?

A. Yes, sir.

Q. Do you remember what any of those points were?

A. I will try to recall them to the best of my ability. There has been quite a bit of time that has gone by.

Q. Yes, sir.

A. And I try—these were the points that Dr. Aderhold and Mr. Barwick had raised, and this was what I was trying to do in my letter, to the best of my ability to interpret.

Q. Did you take notes of your meeting with Coach Bryant?

A. Yes, sir. I took a few notes down on the notes I had taken up there.

Q. Of course, they are also gone now?

A. Yes, sir.

Q. Now, proceed; you were telling us what you were saying?

A. He said that they could have talked about many things, one that they talked about primarily was—that he had talked to him about a great deal about the inter-

pretation of new football rules, that he was concerned about that. Neither he nor his staff fully understood the rules. He stated that they could have—

Q. Let me stop you at each point, sir.

I think it would be more orderly if I did. You say that [fol. 1501] Mr. Bryant said that they could have talked about rules or rule interpretations; is that correct?

A. Yes, sir.

Q. I want you to be sure, in your own mind, did he say they could have talked about that?

A. Yes, sir.

Q. Or did talk about it?

A. No, sir. He said that they could have, and he was sure that they had from time to time discussed it. He said that he was greatly concerned about some of the interpretations, and that Coach Butts had been on a National Rules Committee and that he wanted to get from him as much as he could about some of these things. He said—he was trying to interpret for me the telephone call, if he had made one back, you see, or if Coach Butts had called him, that they could, at that time, have talked about Continental Enterprises.

Q. Let me stop you one minute. Let's try to stick to the rule changes or interpretations?

A. Yes, sir.

Q. Is it correct that they could have talked about it, not that they did talk about it?

A. On these specific telephone calls?

Q. That's right.

A. Yes, sir.

Q. Did he not say on the 13th of September, 1962, or 16th of September, 1962, that we did discuss rule interpretations?

A. No, sir, but they had discussed them during recent time, during that period there.

Q. This was presented to you as a possibility, as something that could have been discussed during the so-called telephone conversations?

A. Along with several other things.

Q. I understand that. We are dealing with one at a time. [fol. 1502] Mr. Bryant said this is one of the things that could have been discussed?

A. Yes, sir.

Q. What is the next thing that could have been discussed?

A. Could have discussed Continental Enterprises in which he had some stock and that I believe he said he had made some money and that he had lost some money on this stock and that Coach Butts probably was closer to it or knew more about it than he did and this was one of the things they could have talked about, because they had discussed this within a period of time during that time period.

Q. Did you—

Mr. Pritchard: Please, don't interrupt the witness. Go ahead, Doctor.

A. He said they could have talked about the tickets because Georgia had not sold all of the tickets they had to the football game, and that he needed tickets and was very much interested in selling all of the tickets to the game. I think this pretty much was some of the things he said they could have discussed.

Q. Now, did Coach Bryant deny to you that he had ever received any information about Georgia Football from Mr. Butts?

A. Specific techniques or plays?

Q. You told him that he was accused of receiving information from Mr. Butts about Georgia Football that could affect the outcome of the game?

A. The 1962 team?

Q. That's correct.

A. Yes, sir.

Q. Now, did he deny that?

A. Yes, sir.

[fol. 1503] Q. What were his words?

A. He said that's ridiculous.

Q. Now, you say then that he said they could have talked about rule changes, Continental Enterprises, and ticket sales; is that correct?

A. Yes, sir.

Q. Now, how long did this meeting take?

A. Lasted about three hours.

Q. All right.

A. And I asked him many, many questions, every question that I could possibly think about that would have any bearing on the telephone call that Coach Butts supposedly made to him and that he supposedly made to Coach Butts.

Q. Did you ask him if he and Mr. Butts ever discussed any football plays?

Mr. Pritchard: That's repetitious. We have been over it at least—the record will bear me out, we have been over it at least three times, and it is a useless waste of time to ask him the same question three times. I object, it is purely repetitious and a waste of time.

Mr. Runzer: Your objection is in the record. Would you please answer the question? Read the question, please.

(Question read.)

A. Of the 1962 Georgia team?

Q. No, just any football plays?

A. Yes.

Q. What did he say?

A. He considered himself one of the best defensive football coaches in America and he considered Coach Butts one of the best offensive coaches in America, and that on many [fol. 1504] times that he had shared defensive techniques with Coach Butts as Coach Butts had shared offensive techniques with him, just as he had the same discussions with Bud Wilkerson of Oklahoma and Coach Royal of Texas and other coaches and he named others that I have forgotten.

Q. Am I correct in saying that he said he did discuss football plays with Coach Butts?

A. Not in the telephone conversation, the plays of the Georgia 1962 team. He stated in that that he was concerned about some of the rule interpretations that had been raised at the meeting of the coaches of the Southeastern Conference sometime during the summer in Birmingham, and the statements that had come to him that Mr. Gardner had informed the officials to watch some of the techniques of some of the teams in the Southeastern Conference, including the University of Alabama, that he was primarily concerned with such things as Butt blocking and Head blocking, and that Coach Butts probably knew more about the interpretation of these things than anybody else, and that he knew that he had several discussions with Coach Butts on this.

Q. Now, my question, Doctor, is, did he admit that he discussed offensive plays with Mr. Butts?

A. No, sir.

Q. He did not admit that?

A. No, sir.

Q. Did you raise with him the point of information the notes that a player named Woodward committed himself too quickly?

A. I asked him—I told him that I had in my notes that Dr. Aderhold and Barwick said that this was supposedly discussed and he said he knew nothing about this. I said, well, could you try to explain to me what it would mean and he tried to explain to me what it would mean. But, he knew nothing about any individuals or anything that had to do [fol. 1505] with that. But, he said that in explaining some kind of technique they could have talked about movements of players but he said as far as any specific individuals, no.

Q. Now, my question is, did you ask him whether he heard Coach Butts say that Woodward commits himself too quickly?

A. He said he did not.

Q. He did not?

A. Yes, sir.

Q. You certain that is what he said in response to that question?

A. Yes, sir.

Q. Did he ever indicate that he didn't understand the use of the phrase, Woodward commits himself too quickly?

A. Let me put it this way. I don't recall exactly what he said, but he did not recall any names or any discussion of that. But, he did try to explain to me on my further questions what it would mean.

Q. In other words, he did understand what the use of the term, Woodward commits himself too quickly means?

A. Yes, but he didn't recall that there was ever any discussion.

Q. I understand he didn't say it was discussed, but he did understand what the term, Woodward commits himself too quickly means?

A. Yes.

I think he would understand what anyone committing himself—I mean, he said to me, specifically, that no names could have been discussed, because he didn't even know anything about the name.

Q. I understand that, but he did tell you that he did understand what that term meant, that Woodward committed himself too quickly?

A. Yes, sir.

[fol. 1506] Q. Now, did he give you any explanation as to why he might have called Mr. Butts back on the 16th?

A. He said that the only reason that he could, and he didn't recall that he had called him back, that he could have called him back, would have been that Coach Butts did not understand some of the questions that he was raising, and was to try to think about it or find out what he was talking about, and that he was to try to get in touch with him; but he didn't recall whether that had been done, or whether that was it or not.

But, he did say that there was some things they had talked about or could have talked about that he did not understand.

Q. And these things concerned what?

A. Concerned rule interpretation.

Q. Did he ever say—

A. New rule interpretation.

Q. Did he ever tell you that he called Butts back because Butts was going to check on a play that Butts had used?

A. He didn't say that specifically, but he did talk about the techniques, the interpretation of the techniques.

Q. Did he ever tell you that he called Butts back because Butts was checking on information about a play that Butts had used in the past?

A. He didn't use the word play. This was my interpretation of it, but he did talk about the techniques.

Q. In other words, he did not say that he called Butts back to get information about a play that Butts had used?

A. No, sir.

Q. Are you saying no, he did not say that?

A. No, he did not say that specifically.

Q. Did he tell you—excuse me.

In the course of this conversation, I assume Mr. Gardner's visit was also discussed?

[fol. 1507] A. Yes, sir.

In fact, he was the one that told me about it, Mr. Gardner's visit.

Q. That is, Mr. Bryant is the one that told you about that?

A. Yes, sir.

Q. Up to that point, until he told you, had you known that Mr. Gardner had been here?

A. No, sir.

Q. All right.

A. And there was no reason for me to know that Mr. Gardner had been here. Coach Bryant did tell me that he had gotten permission from Commissioner Moore to ask Mr. Gardner to come here and that Commissioner Moore said that he could have that permission to do it, and that the Southeastern Conference or Commissioner Moore's office would pay his expenses for the visit.

Q. Did he tell you, during the course of this meeting, that he changed his defensive techniques as a result of these conversations with Gardner and Butts?

A. Yes, sir; but he said that he and his coaches still were not clear on some of the interpretations of the new rules regarding the techniques, but that they had done the best that they could and that they sat around tables and drawing boards and that Mr. Gardner went over several of these things and that they still were not completely clear on it, but were most anxious that we not have any problems which we had had with Georgia Tech in 1961.

Q. But, you say he did tell you that as a result of talking with Mr. Gardner and Mr. Butts, he did change his defensive techniques?

A. Yes, sir, that he had made some changes in his techniques that would have penalized the Alabama team.

Q. And these were defensive techniques?

A. Yes, sir.

[fol. 1508] Q. And these changes were made as a result of his conversation with Mr. Gardner and Mr. Butts?

A. And the meeting in Birmingham of the Southeastern Conference Coaches where this was discussed, which Commissioner Moore informed me that Coach Bryant asked more questions than all the other coaches, because he was really concerned about it, and this was the reason he consented to have Mr. Gardner come because he did not want Alabama to get any adverse publicity on penalties.

Q. Did he tell you when he made these changes on defensive techniques?

A. No, sir.

Q. Did he tell you that he had learned anything different and changed his techniques from Coaches Gardner and Butts?

A. I would say if he made changes, he did. He didn't specifically say that, but that was the interpretation I got.

Q. In other words, from what he said, you understood him to say that he did learn something from Gardner and Butts that made a change in his defensive techniques?

A. Yes, sir.

Q. Did he say that in talking to Mr. Butts that it prevented Alabama from being penalized?

A. Not that I recall.

Q. Did he say that as a result of talking with Mr. Butts he got information that favored Alabama?

A. I asked him that question, and he said that he may have, but he doubted it seriously.

Q. He said that he may have, but that he doubted it seriously?

A. Yes, sir.

Q. Is that his exact quote, as you recall it?

A. Well, I don't know that that is his exact quote, but this is my interpretation.

[fol. 1509] Q. Did he say that the visit of Gardner and his conversation with Butts prevented him from using illegal plays?

A. Yes, sir.

Q. During the course of the conversation, did he say that if Lee Roy Jordan had been expelled from the game, he might have lost that football game?

A. He used that as an illustration. This was the illustration that he used.

Q. Tell me what he said. What was the illustration?

A. I asked him to try to explain to me just what he was talking about in our defensive techniques and interpretation of the rules and he tried to explain to me what it might have meant if Lee Roy Jordan butt blocked or head blocked. Now, I still don't know what that means.

Q. In other words, he did say to you that if Mr. Jordan had been expelled from the football game, it could have cost Alabama the football game?

A. He said it could have. I don't know if he specifically put it in that way, but that was the interpretation that I put on it, and I think most of us that knew the team that Alabama had at that time, if we lost the best defensive man that we had on the team, that we would have been in serious trouble.

Q. Now, did he say that they discussed what could happen with the offensive plays of any school and the defensive plays of Alabama if they were illegal?

A. I don't recall specifically his just making that pointed statement, but in the overall discussion, this was what came out of it.

Q. All right.

A. That if we used any illegal defensive techniques or tactics that it could cause an injury to a boy like the Holt-Granning incident with Georgia Tech. It could cause us to be seriously penalized. It could cause us to get the bad [fol. 1510] publicity from the Georgia papers which we had been receiving for almost a year and that he was greatly concerned about that.

Q. Well, then, he did say that the discussion with Butts concerned the offensive plays of any schools and defensive plays of Alabama; is that right?

A. Yes. This would have to be in regard to the change of techniques and rules interpretation.

Q. But, he did state what I just said; is that correct?

A. I don't think he came right out and said that exactly as you put it, but this was the interpretation I got out of it.

Q. What did he say?

Mr. Pritchard: I object to that as being five times that question has been asked and the witness has answered it fully and clearly and concisely and it is a pure waste of time. It is repetitious and I object to it.

Q. Would you answer the question, now, please, sir?

A. I can't tell you exactly what he said, but I can tell you the interpretation that I got from him and the discussion that we had.

Q. By interpretation, you mean what he said?

A. I can tell you what my interpretation of the conversation with him was and that was to the effect that if he used illegal offenses that it could seriously penalize the University by bad publicity and might lead to the injury of another player.

Q. But, did he say that the conversation with Butts revolved around the offensive plays of any school and the defensive plays of Alabama if they were illegal?

A. Yes, and he said that he had to know this part of it, that he considered Coach Butts the leading offensive Coach in the country and that he considered himself the best defensive Coach.

[fol. 1511] Q. Did you discuss, during your conversation with Mr. Bryant, that Mr. Burnett said he overheard specific Georgia plays being mentioned?

A. Yes, sir. I told him, and he said that was ridiculous.

Q. He denied that happened?

A. Yes, sir.

Q. Did you tell him that specific formations of the Georgia team were discussed by Mr. Butts?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. Now, if the meeting started at 7, it took about three hours, you said?

A. Yes, sir.

Q. Presumably it was over in the neighborhood of 10 o'clock?

A. Yes, sir.

Q. At the end of your conversation, did you consider your investigation complete?

A. No, sir.

Q. Was anything left for Coach Bryant to do?

A. Yes, sir. He was to go and get from his files or to get Mr. Callahan to get from his file the telephone calls that had been made from his office from a period of August 1st until October 1st.

Q. And did you plan to do anything else yourself?

A. Yes, sir.

Q. What did you plan to do?

A. I planned to discuss it with Mr. Bennett and with Mr. Coleman, former business manager of Athletics and a