

member of the Athletic Committee and with Mr. Williams, a member of our Executive Committee.

Q. Now, I understand that during the week following this Sunday meeting, you had out of town commitments in Chicago, Washington, and New York?

[fol. 1512] A. I will have to consult my book. Is that all right?

Q. Certainly, sir.

This would be the week of February 24th, 1963?

A. Yes, sir. I left for Washington on February 25th, Monday, February 25th. I attended a meeting of the Commission on Accreditation in Washington on Tuesday, February 26th.

Q. Let me stop you here a moment. You left on Monday the 25th; is that correct?

A. According to my book, I did. I couldn't swear to it, but I am sure because the meeting started at 9 o'clock on Tuesday, February 26th, and there is no other way I could have gotten there that early in the morning.

Q. Do you recall what time you left Tuscaloosa that morning?

A. Usually the plane leaves at 8:40. At that time, it was leaving at 8:40 in the morning and then it left at 2:20 in the afternoon.

Q. Are these times from Tuscaloosa or Birmingham?

A. From Tuscaloosa.

Q. And do you recall whether you caught the morning or afternoon flight this Monday?

A. I think I caught the morning flight, the 8:40 flight.

Q. And where—

A. But, I am not positive about that.

Q. Where does that flight stop? Does it stop in Birmingham?

A. I believe at that time it was stopping in Birmingham and I don't know whether I took it from Tuscaloosa to Birmingham and caught another plane out of Birmingham, or whether I went to Atlanta and caught a plane out of Atlanta.

Q. Which line is it that flies the 8:40 out of Tuscaloosa?

A. Southern. That's the only line we have coming in here. Now, it could have been I could have taken the [fol. 1513] University plane or I could have used some other plane, because—but, I think that morning I took the Southern 8:40 flight out of there.

Q. And you don't recall whether you changed planes in Birmingham or not?

A. No, sir, or Atlanta.

Q. You retain your ticket itineraries?

A. No, sir. After I make out my expense account, I throw away the papers.

Q. And your recollection is that you got into Washington what time?

A. I am sorry, I can't answer that question.

Q. Did you have any business in Washington preceding the meeting of the Commission of Accreditation?

A. I could have.

Q. Do you recall?

A. No, sir.

Q. Now, you say you might not have taken the Commercial Flight you might have taken the University Flight?

A. Yes, sir.

Q. What type of plane is that?

A. That is a Cessna 310 Twin Engine.

Q. Who flies it?

A. Different people. Sometimes we use pilots out of Dixie Air, sometimes we use students, sometimes I get pilots that are friends.

Q. Now, I think you also said that there was another possibility as to how you could have traveled on the 25th?

A. Yes, sir. I used planes of friends of mine from time to time to go to different places. I used Gulf States Paper Company's plane.

Q. What type of plane is that?

A. That's an Aero Commander Twin Engine.

Q. Have a regular pilot for that plane?

A. Yes, sir.

[fol. 1514] Q. All right.

A. I used Mr. Winston Blount's.

Q. Would you spell that for the Reporter, please?

A. B-l-o-u-n-t.

He is a member of our Board of Trustees.

Q. What type of plane is that?

A. Lockheed Lodestar.

Q. Who flies that plane?

A. He has pilots, he has two or three planes.

Q. All right.

A. I used Mr. Bill Sellers.

Q. How do you spell that?

A. S-e-l-l-e-r-s.

And I used single engine plane of Mr. Harry Pritchard, Neal Morgan, anybody that is an Alumnus of the University that has a plane that I can get on.

Q. Is it your recollection that on this trip you took the commercial Line?

A. I think I took the Commercial Line that morning.

Q. You attended the meeting in Washington on Tuesday of the Accreditation Committee?

A. The title is the Commission on Accreditation of Service Experiences. It has to do with courses with the Military at colleges and universities and centers, Educational Centers around the world.

Q. Now, on that Monday which would be the 25th, did you do any further work on this Butts-Bryant matter?

A. I don't recall whether I did or not.

Q. Did you discuss it with anybody that day?

A. I don't recall. It may have been that I called Mr. Luther Callahan, our comptroller, and asked him to get me the telephone records. But, I don't believe that I discussed it or the reason why with anyone.

Q. In other words, on this Monday which would be the [fol. 1515] 25th, you may have asked Mr. Callahan to forward you some telephone records?

A. Yes, sir, and have it in my office when I return.

Q. But you are not sure you did that?

A. No, sir.

Q. But, you discussed with no one else other than the possible exception of Mr. Callahan, this matter?

A. I am pretty sure I didn't, because I didn't discuss it with you, Mr. Bennett, until Friday, did I?

Q. Now, did you discuss it with anyone either in person or by correspondence or over the telephone while you were in Washington?

A. No, sir.

Q. Were you in Washington all day Tuesday?

A. Yes, sir.

Q. Did the meeting take all day?

A. I think it took until about 4 or 5 o'clock in the afternoon.

Q. Do you remember the names of any other individuals that were at the meeting?

A. No, sir, but I can get them for you.

Q. What type of individuals—

A. I know the people that were on the committee. I don't know whether they were present there or not. They were University Presidents and Deans.

Q. Was it a large committee?

A. Yes, sir.

Q. About how many, roughly?

A. Again, I am going to have to guess. I would say about thirty and it was composed of Military Personnel, too, out of the Pentagon.

Q. From Washington where did you go?

A. To New York City.

Q. And when did you leave Washington, do you recall?
[fol. 1516] A. I think I left Tuesday, the 26th, but I am not sure. But, I think that is when I left.

Q. How did you get from Washington to New York?

A. I flew on a plane.

Q. Commercial Plane?

A. Yes, sir.

Q. And what was your business in New York?

A. I was to attend the meeting of the National Foundation which used to be the National Foundation for Infantile Paralysis. I am not sure they had a quorum and had a meeting at that time, because there had been several times that I had gone up and at the last minute people would have to cancel out and they wouldn't have a quorum and they would change the meeting. But, that meeting was set and that was the purpose of my going to New York.

Q. Now, is this a Committee or Commission or Board of Trustees, or what of his organization?

A. Board of Trustees.

Q. How many are on it?

A. I think twelve.

Q. Who are they?

A. Mr. Basil O'Connor is the Chairman, Mr. Tom Russell of Alexander City is on it now, I don't believe he was on it then. The Provost of the University of Chicago, is on it, and I don't recall his name. There are several others that I just don't specifically recall.

Q. Now, you don't recall whether they had a meeting on that Wednesday or not; is that correct?

A. No, sir, I don't recall. I just don't know, because there were, during this period—see, this would have been my first meeting. I had been up for four meetings and one or two of them were changed because they didn't have a quorum and I would get a call from down here at the office telling me that the telegram had come stating they couldn't [fol. 1517] have the meeting the next morning because they had cancellations.

Q. How long did you remain in New York?

A. According to my schedule, I remained there until Friday morning, March 1st. But, Mr. Bennett can help me refresh my memory on this, because instead of going to Chicago, we decided that we should have a meeting in Washington, and we met in Washington on March 1st; isn't that true?

Mr. Runzer: Off the record.

(Off the record discussion.)

Q. All right. You may answer.

A. I recall, to the best of my memory, that I came down to Washington on Friday, March 1st, and had a series of meetings in Washington.

Q. Now, these meetings were unconnected with the Bryant-Butts affair?

A. Yes, sir.

Q. And during the course of this week, had you done anything on the Bryant-Butts affair?

A. Nothing except just to think about it, and kind of organize what I had in my mind. I am pretty sure that during that week I tried to reach Dr. Aderhold and was unable to reach him.

Q. By telephone?

A. Yes, sir.

Q. Now, the meetings on Friday, the first was Washington?

A. Well, there weren't any meetings. These were visitations to try to get some grant contracts for the University.

Q. Perhaps I should change it. This Friday, these appointments you had in Washington—

A. I wouldn't say they were appointments. We did see [fol. 1518] people, we got appointments, but none were set.

Q. When you refer to we, you are talking about yourself and Mr. Bennett?

A. Yes, sir.

Q. During the course of that day, did you discuss the Butts-Bryant affair with Mr. Bennett?

A. Yes, sir.

Q. This was the first time you discussed it with him?

A. Yes, sir, I believe it was.

Q. What did you say to him?

A. I told him of my visit with Dr. Aderhold and Mr. Cook Barwick in the office of Commissioner Moore. I told

him of my three hour session with Coach Bryant. We discussed the whole thing. He asked questions, and we looked at questions and discussed how best to proceed and decided that we both would think about it further and decide where we were going to go from there.

Q. Did Mr. Bennett contribute any information to the investigation that you did not know up until that time?

A. No, sir.

Q. Would it be fair to say that your meeting with Mr. Bennett was more in the line of consulting with another person's opinion that you respected to decide what should be done?

A. Yes, sir.

Q. In other words, it was you that gave information to Mr. Bennett; is that correct?

A. Yes, sir.

Q. And he was giving you his advice or opinion on how it should be handled?

A. Yes, sir.

Q. Did you return to Tuscaloosa that day, Friday?

A. Again, I am not certain. I think that we returned on Friday evening or on Saturday, but I just don't know.

[fol. 1519] Mr. McCall: Mr. Runzer, it is now 11 o'clock. Could we have a five minute recess?

Mr. Runzer: Certainly.

(Short intermission.)

Mr. Runzer: Would you read the last question and answer, please?

(Question and answer read.)

Q. Regardless of whether you returned Friday night or Saturday morning, up to this point, you have discussed the matters with Mr. Bryant, Mr. Bennett and possibly with Mr. Callahan. Had you discussed this with anybody else up to the point you returned to Tuscaloosa?

A. I am not sure somewhere in this time period or some-

time between then and my time of answering Dr. Aderhold's letter, I discussed it with some members of the Athletic Committee.

Q. Was it discussed in person?

A. Yes, sir.

Q. They were not on any of these trips with you?

A. No, sir.

Q. So, then, it could not have been before you came back to Tuscaloosa?

A. I am not sure, sir. It could have been before I left Tuscaloosa or it could have been the following time that I returned to Tuscaloosa. But, sometime in there before writing Dr. Aderhold, I discussed this with members of The Athletic Committee.

Q. This trip to New York, were you alone?

A. Yes, sir.

Q. I mean, were you alone?

A. Yes, sir.

[fol. 1520] Q. I mean, other than the other people on the plane?

A. Yes, sir.

Q. You had no one to accompany you?

A. No, sir.

Q. Now, when you got back, which was either Friday evening or Saturday, which would be March 2nd—

A. Yes, sir.

Q. You stated that somewhere in here you believe you discussed it with members of your Athletic Board?

A. Yes, sir. Sometime either before leaving or before writing Dr. Aderhold, I just don't know when that was.

Q. Well, now, who did you discuss it with specifically?

A. I discussed it with Mr. Jeff Coleman who had been business manager of Athletics. I believe that was his correct title.

Q. All right.

A. Also Assistant and had been Assistant Athletic Director, I believe, who is now the—Secretary to the Ath-

letic Committee. I discussed some time in that period with Mr. Ernest Williams, a member of the Executive Committee of the Board of Trustees, I believe. I am not sure about this, that also during this time I discussed it with Dr. Sharpton, who is Chairman of the Athletic Committee, though I am not sure.

Q. Were all of these personal discussions, that is, face to face?

A. Yes, sir.

Q. Going back to Mr. Coleman for a moment—

A. Now, I am not sure that Mr. Williams—I am not sure I discussed it person to person with him, or over the telephone.

Q. You sure Dr. Sharpton and Mr. Coleman was a face to face discussion?

A. Yes, sir.

Q. You certain you talked to these people before you [fol. 1521] wrote the letter to Dr. Aderhold?

A. Yes, sir.

Q. That would pin it down to February 24th and March 6th, between that time?

A. Yes, sir.

Q. Would you give me the discussion you had with Mr. Coleman?

A. I don't recall, frankly, what I said to him. I think my discussion was along the lines of reporting to him what Dr. Aderhold reported to me, and what Coach Bryant had reported to me, and to get their thinking about it to see just what they thought and whether—from Mr. Coleman, whether Coaches talk to other Coaches about tickets.

Q. What did he say?

A. He said he had been in charge of tickets at the University and it wasn't anything unusual for coaches to talk many times previous to any game about tickets, particularly when it wasn't a sell-out. He said that he knew that Wally Butts was an authority on football rules and football interpretations and Coaches did discuss these things.

Q. Are you speaking about rule changes when you say these things?

A. Rule changes, yes, sir. And, I don't recall whether it was then or later I asked him because of his close personal relationship to Commissioner Moore to go and talk to him about it and to get his interpretation and information that he had. But, sometime during my investigation, either before writing Dr. Aderhold, or after, I asked Mr. Coleman to do this, and he did.

Q. Did he report back to you before you wrote Dr. Aderhold?

A. I don't recall.

Q. What did he report back to you in any event?

A. He reported back to me the fact that Mr. Moore had, previous to our meeting with Dr. Aderhold and Mr. Barwick in his office on Sunday, February 24th, had been in a meeting in Atlanta or somewhere in Georgia, may have been Athens, with Dr. Aderhold and Mr. Barwick, and I believe a man by the name of Hardiman, who is an Alumnus of the University, but I am not positive about that. And I am not positive about this, but that also Commissioner Moore had talked with Mr. Burnett and that Commissioner Moore was continuing his investigation and had not reached any definite conclusions at that time, but would share, from time to time, information that he might get.

Q. Now, your conversation with Dr. Sharpton, what did that consist of?

A. My conversation with Dr. Sharpton was pretty much along the lines of reporting to him what had happened.

Q. Does that also hold true for Mr. Williams?

A. Yes. Mr. Williams also, and to ask him whether he thought that I should call an executive committee meeting or meeting of the Board of Trustees to discuss it with them.

Q. Now, with the exception of Mr. Coleman—strike that.

Did Dr. Sharpton or Mr. Williams give you any information which you did not already have?

A. Mr. Williams was Treasurer of the University for ten years, and, of course, was responsible for paying all of

the bills and the operation of the Athletic Department. He knew that coaches called one another often before ball games to discuss tickets and different arrangements, and that it wasn't anything unusual to him that Coach Bryant and Coach Butts would have talked.

Q. Would it then be fair to say that Mr. Williams and also Mr. Coleman corroborated the fact that Coaches do discuss matters like tickets before a football game?

A. Yes, sir.

[fol. 1523] Q. But, did not give you any independent information that you did not already have?

A. Not on this specific thing.

Q. Did they give you any other specific independent information?

A. Nothing that I didn't already know or had learned and that is that the coaches from schools on our schedule or outside of our schedule talk to one another often.

Q. Now, when was the next time you saw or talked or heard from Mr. Bryant after your February 24th meeting?

A. When I returned to my office, I believe that was the time. I am not sure, but sometime during the period of my meeting—sometime during the period of my talking with Coach Bryant on that Sunday evening of February 24th, and my writing Dr. Aderhold, Coach Bryant furnished me with a letter in which he listed the calls that he had made to Athens.

Q. Now, did he give you that letter on the Monday after the meeting which would be the 24th—the 25th?

A. I don't know, sir.

Q. Well, was the letter predated or postdated in any way?

A. No, sir. The letter apparently, I guess, I don't recall, was dated the day he wrote it. But whether he wrote it—had it written early that morning and sent it right on over by one of the members of his staff, I don't know.

Q. What I mean to say is, the letter, for example, was dated the 27th of February. You did not receive it then on the 25th?

A. No, sir, why would I?

Q. I am trying to find out when you did receive it, Doctor, and you say you have no independent recollection; is that correct?

A. No, sir. I don't know exactly when I received it, but [fol. 1524] I received it sometime from the time I talked to him on Sunday night and before I wrote Dr. Aderhold, because it was—it was in a letter to Dr. Aderhold that I stated to him that Coach Bryant did call Coach Butts and I shouldn't have done that, because I am not sure that he did.

Q. Well,—

A. But, the phone calls from the office showed that there was a call to Athens.

Q. You got a letter, you say, sometime in the period between February 24th and March 6th, from Mr. Bryant?

A. Before I wrote the letter to Dr. Aderhold.

Q. Sometime in that period you got a letter?

A. Yes, sir.

Q. Am I correct in my understanding your recollection was that you believe it was here when you got back from this trip; is that right?

A. Yes, sir.

Mr. Runzer: Would you mark that Defendant's Exhibit 1, please, sir.

(Whereupon, said document was received and marked "Defendant's Exhibit 1 to the Deposition of Dr. Frank A. Rose" and a photostatic copy is submitted in lieu of the original and is attached to the deposition.)

Mr. Runzer: Do you want to see it?

Mr. Pritchard: Yes, sir, if you offer it. You go right ahead.

[fol. 1525] Mr. Runzer: I would like to have the letter back.

Mr. Pritchard: Oh, I beg your pardon.

Q. Doctor, I show you a letter which is marked as Defendant's Exhibit I on stationery, I believe, of the Athletic Department of the University of Alabama under date of February 28, 1962, and ask you if that is the letter of Mr. Bryant to which you just referred? Excuse me, Doctor, but we are getting on to 1 o'clock.

Mr. Pritchard: We decided to cancel out 1 o'clock and go right on through.

Mr. Runzer: Please don't interrupt.

Mr. Pritchard: We decided to go on.

Q. Is that correct, doctor?

A. Yes, sir.

Q. Let's get one thing at a time. We are cancelling the 1 o'clock deadline?

A. Yes, sir.

Mr. Pritchard: We want to get through right now.

The Witness: I would like to get through.

Mr. Runzer: I can't blame you, Doctor. I want to make sure.

[fol. 1526] Q. Let me ask you a different question, Doctor. Let me put the letter aside.

A. I think that's the letter I received. I don't think I received another one. However, it is a longer letter than I thought.

Q. Let's ask the question this way.

Is it your opinion that when you returned from this trip which was to New York and Washington, there was a letter from Coach Bryant?

A. Yes, sir.

Q. I assume you read that letter?

A. Yes, sir.

Q. And also during this time it is your best recollection after you discussed the matter with Mr. Coleman, Dr. Sharpton and Mr. Williams?

A. I am pretty sure. I am not certain, but I think it was during this time that I did.

Q. All right.

Now, did you have any discussion over this week-end with Mr. Bryant?

A. I am not sure.

Q. Well, now, in your previous testimony in Atlanta, you said that you talked with Mr. Bryant twice after your initial meeting. Could you tell me when those conversations took place?

A. No, sir, I don't know when it was.

Q. Do you now recall whether you talked to him twice more or not?

A. Yes, sir. I talked to Coach Bryant twice after my Sunday evening talk, but when it was, I don't know exactly.

Q. Were these face to face meetings?

A. One was face to face, and the other one, I believe, was on the telephone. Both of them may have been face to face.

[fol. 1527] Q. Now, what was the conversation in the first subsequent conversation with Mr. Bryant?

A. I don't recall exactly. I do know that I wanted to know more about the telephone calls. I wanted to know about Coach Butts' call to him, and whether he had made a call himself to Coach Butts. And I believe it was at that time, I am not certain, that he informed me that he had discovered, since our initial talk, that he couldn't have received a telephone call in which Coach Butts called him from Athletic Field, because they didn't have practice that day and that he doubted seriously that he had called Coach Butts back, though there was a telephone charge to that.

Q. Now, when is the next time you talked to him?

A. I just don't recall.

Q. What was said?

A. I am sure it had to do further with his thinking about the telephone conversation and what they discussed.

Q. Was he any more definite as to whether the calls were or were not made?

A. No, sir.

Q. Was he any more definite as to what was or was not said?

A. No, sir, but he was—he became more and more of the opinion that it had to do with the interpretation of these rule changes, because this had been one of his real great concerns, but he wasn't positive.

Q. In other words, he still wasn't sure what was discussed?

A. No, sir.

Q. But, his opinion was now that he probably talked about rules and changes in rules?

A. Yes, sir.

Q. Did he rule out the fact that he might have talked about the ticket sale?

A. No, sir.

[fol. 1528] Q. He did not rule that out?

A. No, sir.

Q. Did not rule out the possibility of talking about Continental Enterprises?

A. No, sir.

Q. These were the only three discussions you had with Mr. Bryant between 2-24-63 and the writing of the letter to Dr. Aderhold?

A. I am not sure whether those additional two came before the writing of the letter. They may have come even after that, I am just not sure because, you see, I was looking into this problem over a period of several weeks, and I just don't recall exactly, but, I—

Q. Doctor, I just wanted to try to jog your memory. I realize this happened sometime ago, and been a lot of things that have happened; but, on page 1414 of the record in the trial in Atlanta, you were asked this question. "Did you, after that particular meeting in your office on Sunday, February 24th, talk to Coach Bryant again on several occasions?" And your answer is recorded here as, "Yes, sir. I talked to him twice after that before I wrote to Dr. Aderhold." Now, I want you again to try to think. Did you talk

to Coach Bryant three times in all between the meeting of the 24th with Mr. Moore, Mr. Barwick and Dr. Aderhold and the letter that you wrote to Dr. Aderhold on March 6th?

A. Let me look at my calendar. You see, the problem that I have, sir, is we were going to—we were under a Federal Court Injunction to integrate the University of Alabama and we had applications and this is a rather serious problem too. And during this same period we had two applications for March 23rd enrollment of two Negro students in Huntsville, Alabama, and we had applications for enrollment here in the summer for the summer term on the main campus and it was during the same period [fol. 1529] that we are talking about now, about this investigation, that I was going through all the problems, meeting with the Governor, meeting with Board members, meetings with various people on the whole problem as related to the University Student Faculty, and this is why I find it difficult to pin myself down to dates, because it is just almost impossible to carry those two burdens and remember specific times and specific dates. I would say now, looking at my calendar, that I—that it was during the period of February 24th to March 6th, that I talked to Coach Bryant on those two other occasions, but I can 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. Now, did he later—strike that.

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

[fol. 1530] A. Yes, sir.

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

A. That's correct.

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.

Q. On the basis of this information, and the telephone record, you proceeded to try to write the letter to Dr. Aderhold?

A. Yes, sir.

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.

Q. Excuse me.

Will you answer the question first?

Mr. Pritchard: I suggest that he is entitled to answer the question in his own way.

A. I am going to answer the question.

Mr. Runzer: Would you read the question. I don't think you understood the question. You can make whatever explanation you want to.

Mr. Pritchard: Don't cut him off or try to.

[fol. 1531] Mr. Runzer: Just a moment. Would you read the question back, Mr. Zegarelli?

(Question read.)

A. Yes, sir, that is what I stated.

Q. Is that a correct statement?

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 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 so 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?

[fol. 1532] 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 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.

Q. March 5th, 1963?

A. Yes, sir.

Q. Are you still saying it was dictated on a morning?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir, I am positive.

Q. You certain it was dictated hurriedly because you had to leave?

A. Yes, sir.

[fol. 1533] Q. Are you saying you had to leave to catch this 8:40 plane?

A. I am not sure, but that's the time that the plane leaves, if I was going to Washington. I am not sure I went to Washington.

Q. Let's go back a moment. Where did you dictate the letter?

A. Here in this office.

Q. You were in that chair? (Indicating)

A. Yes, sir.

Q. Was the secretary in here?

A. Yes, sir.

Q. That's a Mrs. Park?

A. Yes, sir.

Q. Does she take hand transcription?

A. Yes, sir.

Q. You did not dictate to a machine?

A. No, sir.

Q. Now, tell me something about the letter, Doctor? Was it a difficult letter to write?

A. Yes, sir, it was.

Q. Would I be correct then in assuming, like most of us, you just didn't sit down and dictate a difficult letter in a hurry or right off the top of your head?

A. I had one a great deal of thinking about this and tried to organize it as a layman and from the interpretation and the conversation I had with Coach Bryant, to send a letter to another layman, a University President, to try to answer some of the questions that he had raised in the meeting that I had.

Q. Well, did you dictate it all in one uninterrupted sentence?

A. Not in one uninterrupted sentence.

Q. I said uninterrupted sitting?

A. I dictated the letter uninterrupted.

[fol. 1534] Q. In other words, it wasn't a holding dictation, you didn't stop to think about it?

A. I did the best I could in writing it, yes, sir. I just didn't go right down the line on it, I did the best I could.

Q. I am trying to find out if you did your thinking before you dictated it?

A. I did some of it to try to get it into points to interpret for Dr. Aderhold some of the questions that he had raised.

Q. Did you have, when you were doing the thinking or dictating, the notes that you had taken in the meeting with Mr. Moore, or the meeting with Mr. Bryant?

A. No, sir.

Q. You had destroyed those?

A. I don't know what I did with the notes. Apparently I had placed them in my holder here, and I just don't know. I looked for them everywhere.

Q. You did not have them at the time you dictated the letter?

A. No, sir.

Q. Or at the time you were preparing to dictate the letter?

A. No, sir.

Q. Now, let me ask you again. Did you have to stop in the middle of your dictation to consider what you were going to say next?

A. I guess as you would on any letter that you are writing. You just—I am not one of these rapid fire people who dictate fast.

Q. In other words, you didn't have a prepared script with you, in effect, to read to your secretary?

A. No, sir.

Q. You were composing this as you went along?

A. Yes, sir.

Q. Although you had done some organizing before hand?
[fol. 1535] A. In my own mind; yes, sir.

Q. Any written summary or outline?

A. No, sir.

Q. How long would you say it took you to dictate the letter?

A. Oh, ten or fifteen minutes.

Q. Is that an unusually long period for one letter for you?

A. Important letters, no. It is about right. I wasn't attempting to write any legal document or any letter to be used in a court trial or anything like that.

Q. It was an important matter, an important letter, wasn't it?

A. It was an important letter to try to answer some of the questions in my layman's language of what Dr. Aderhold had raised.

Q. And the question that Dr. Aderhold raised was whether or not Mr. Bryant had received information from Mr. Butts which could affect the outcome of the Georgia-Alabama Football Game?

A. Yes, sir.

Q. That is the question you were trying to answer?

A. Yes, sir.

And I think in my letter it is quite evident, taking the letter in total, that I answered that question that at that time I was convinced that he had not received any information that affected the outcome of the game.

Q. Now, is it your testimony today that after the dictation you had to leave the office?

A. Yes, sir.

Q. How long did you remain in the office after you dictated the letter?

A. I just don't know.

Q. Was it dictated during normal business hours?

A. Early in the morning.

[fol. 1536] Q. During normal hours?

A. She usually comes, on days that I have to dictate, a few minutes early and particularly if I have got to leave. But, normally we start dictating at 8 o'clock, and this is before other people get into the office, and dictate until around 9:30 or 10 o'clock.

Q. What office hours—what are Mrs. Park's normal hours?

A. From 8 o'clock or 8:15, I forgotten exactly which, to 4:45 with an hour and a half for lunch.

Q. Did she come in early this particular day?

A. It was my recollection that she did, because of things that were piled upon the desk and other correspondence and things like that.

Q. Now, you, of course, had a chance on numerous occasions since this letter was dictated to examine the letter?

A. I don't know about numerous occasions, I think I read it four or five times.

Q. Is the letter transcribed as you dictated it regardless of whether your dictation is correct?

A. To the best of my thought, it is pretty much what I dictated to Mrs. Park.

Q. In other words, any errors in the letter were not errors of Mrs. Park?

A. Well, I haven't examined it for errors. I do think that it is unfortunate that I, as a layman, used the word plays instead of the techniques and that I didn't use more care in preparing it. But, it was, as I say, just a letter from one University President to another about a field that neither one of us are very familiar with.

Q. My question is, Doctor, if there are any errors in the letter, they are errors of the Secretary?

A. No, sir.

Q. Are there some secretarial errors?

A. I don't know.

[fol. 1537] Q. Would you examine the letter and show me any places where it was transcribed differently than you dictated?

A. I don't think I have to read it for you. I think I could say, as to the best of my memory, this is what I dictated to Mrs. Park. I can't swear that it is exactly what I dictated to her, but I think this is pretty much my dictation and at that time, my best interpretation.

Q. This refers to your letter dated March 6th, addressed to Dr. Aderhold, President of the University of Georgia?

A. That's correct.

Q. So that to the best of your recollection, any errors in the information which is recorded here were errors that

were made by you or because something that happened to you and not Mrs. Park?

A. Yes, sir.

Q. Was the letter typed while you were in the office?

A. No, sir, I don't think so, because I think I left immediately after finishing dictation.

Q. Did you—had you ever discussed, before this letter was written, this matter with Mrs. Park?

A. Sir, I didn't get your question.

Q. Had you ever discussed the Butts-Bryant matter with Mrs. Park before this letter was dictated?

A. No, sir.

Q. By discussing, I mean dictated anything to her that would let her know what this is about?

A. No, sir, not that I recall.

It may be that she—I am pretty sure that she saw Coach Bryant's letter.

Q. Now, did you tell her that this was an important letter when you dictated it?

A. No, sir, I don't believe I did.

Q. Then, as far as she was concerned—

A. But, I did tell her that I wanted her to be sure to [fol. 1538] call Coach Bryant and ask him if this was a good interpretation of our discussion in answer to the questions of Dr. Aderhold.

Q. Had you attempted to check your thinking with Mr. Bryant before you dictated the letter?

A. No, sir.

Q. Except for the three conversations you had with him, you hadn't contacted him?

A. No, sir.

Q. No, sir; I am right, is that what you are saying?

A. Yes, sir.

Q. Now, you don't recall now where you were going when you left the office the day that this was dictated?

A. I thought, sir, I was going to Washington when I testified over in Atlanta, because, as I said, I just checked my calendar early before I left. You may recall I was called back from Mexico to testify.

Q. For the record, Doctor, I was further away from Atlanta than you were at any time during the proceeding, and I know nothing except what I read in the Record.

Would you read the last question back?

(Question read.)

A. No, sir, I don't. I thought when I testified that I was going to Washington, but I am not sure.

Q. Now, we do not know now when we said it was dictated on Monday, March 6th, that was an error; is that correct?

A. Yes, sir. Now, I know it was.

Q. Because Monday was the 4th?

A. Yes, sir.

Q. Does your calendar show any engagement for the 4th of March?

A. No, sir.

Q. Show any engagement for the 5th of March?

[fol. 1539] A. Yes, sir.

Q. What engagements do you have there?

A. I can't tell whether I met them or not, because as I said, during this period I had many engagements with particular individuals that I made. I met with Dean Bidgood.

Q. Would that have taken place in his office?

A. Yes, sir.

Q. Did you have a time down for Dean Bidgood?

A. I have a time of 11 o'clock, but I don't think I met with Dean Bidgood that morning. I had a Staff Meeting at 2 o'clock and 4 o'clock, but I don't think I had those meetings that day.

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

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 rec-

ord of it. This is not unusual, because during this period I made many confidential trips. Sometimes I would tell Mr. Bennett and sometimes I wouldn't tell him.

Q. Is it 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.

Q. Have you had an opportunity to review them?

A. I believe I have asked my secretary to review them.

Q. All right.

A. And I believe I asked the comptroller to.

[fol. 1540] Q. Now, you don't recall now where you were going when you left on the day you dictated this letter?

A. No, sir, but I don't think that's important. I think the important thing is, I say it over again, I dictated that letter hurriedly. I told my secretary to call Coach Bryant and check on it and get it out to Dr. Aderhold as soon as possible.

Q. But, you don't recall where you were going when you left?

A. No, sir.

Q. Now, you stated in Atlanta you were going to Washington to a meeting of the American Council on Education?

A. Yes, sir. I had just returned the night before or morning before I left here from Mexico City, and then took the University plane, I think, to Atlanta to get there to testify by 11 o'clock in the morning and I believe I was up all night trying to get back from Mexico. I am not sure, but I think it was; I got a phone call to be there at 11 o'clock, I remember that.

Q. Did you have to go to a meeting on March 6th, in Washington, for the American Council on Education?

A. I was supposed to go to Washington for a meeting

on March 6th. I don't know whether it was for this special committee on the Accreditation of Service Experiences or not.

But, at that time, that would have been pretty much the meeting; but looking back on my calendar, I find that I did go there on Tuesday, February 26th, for the meeting. So, apparently I had that meeting confused with the meeting I had in Washington the week before.

Q. Is the American Council on Education and this Accreditation thing the same thing?

A. The Commission on Accreditation for Service Experiences is a Commission of the American Council on Education.

Q. And where would the meeting take place?

A. It would be held in Washington.

Q. Where in Washington?

A. At the American Council building.

Q. Which is located where?

A. I don't know. It is on Massachusetts Avenue, I think. I can get it for you.

Q. Is it a building with a name, or do they rent offices in a large building?

A. No, sir. They have their own building.

Q. Presumably then it would be listed in the street directory in Washington?

A. Yes, sir.

Q. Now, do you know how long you were away when you left on this trip?

A. No, sir, I don't.

Q. And you don't know what you did?

A. No, sir.

Q. And do you know who you talked to?

A. No, sir.

Q. Do you know what you talked about?

A. No, sir.

Q. Has Mr. Bryant ever informed you that he called Mr. Butts on September 16th?

A. No, sir.

Q. You stated in Atlanta that this was a surmise because the record showed such a call; is that still your understanding?

A. Yes, sir, and I believe Coach Bryant. I believe that in talking with Coach Bryant, not long ago, that he told me he is till not sure he was the one that called.

Q. Now, when were you advised that the letter to Dr. [fol. 1542] Aderhold had been made public, or at least gotten available to the public?

A. I got a telephone call and I don't know when, but it was when the attorney general of Georgia was making his so-called investigation, a news analyst on one of the radio or television stations called me and told me he had seen the letter, and would I care to comment on it. I told him no, that I didn't have anything to say, that I was surprised that Dr. Aderhold would take a confidential letter from me and make it public and to try it in the public when it wasn't written as a legal record and wasn't written to be used for a legal purpose. It was my best interpretation, as a layman, of my discussion with Coach Bryant.

Q. Did you later discuss with Dr. Aderhold, that the letter had been subpoenaed from him?

A. I called him.

Q. Did he tell you that?

A. Yes, sir.

Q. Now, subsequently on March 23rd, 1963, the Birmingham Post carried a statement concerning that letter reportedly to be written by you; is that correct?

A. Is that statement about techniques?

Q. Yes, sir.

A. Yes, sir.

Q. And in all fairness to you, Dr. Rose, I think we should make sure we are talking about the same thing.

I am referring to a statement as follows: "The substance of any letter to Dr. Aderhold is accurate and correct. This letter was my personal and first response to the first conference held between President Aderhold, Commissioner Bernie Moore and me.

It was an attempt on my part to relay in laymen's language the substance of the telephone conversations between Coach Bryant and Butts after a preliminary examination of the facts by me. It was understood by all parties that I [fol. 1543] was to continue, and I have done so, a complete, thorough and exhaustive investigation of the extremely serious charges directed against Coach Bryant and Coach Butts.

Since the latter was a purely preliminary, personal communication between Dr. Aderhold and me, I did not take the time to verify in explicit detail either the exact sequence of events or the interpretation of my layman's language as it relates to the technical phrases used by coaches and athletic directors in modern day football. The substance of my letter is accurate.

Coach Butts and Coach Bryant were discussing the impact of rules changes on the defensive and offensive techniques employed in the Southeastern Conference, particularly as they relate to the Alabama Squad in its forthcoming season, including its opener with the University of Georgia.

In my letter, I say they discussed offensive and defensive plays. The appropriate phrase should have been, and still remains, techniques.

Now, there was more to the statement than that, but is that the statement?

A. Yes, sir, and I wrote it right here by longhand on this desk.

Q. Did you consult with anybody on that?

A. Mr. Jeff Bennett.

Q. Did he assist you in the drafting of that?

A. Made two or three corrections.

Q. Obviously then, you must have learned of the publication of your letter to Dr. Aderhold prior to March 23, 1963?

A. I just don't know, sir.

Q. Well, your statement appeared in the Birmingham Post on March 23rd, 1963; is that right?

A. I am not even sure about that.

Q. It did appear on March 23, 1963?

[fol. 1544] A. Then, if it did appear, then, apparently, I wrote that statement on the 22nd, I believe; I am not sure.

Q. Certainly you would have written the statement before it appeared in the Birmingham Post?

A. Yes, sir.

Q. And certainly would seem rational that you knew the Aderhold letter had been published before you wrote that statement; would that be correct?

A. I don't know whether the letter had been published, but Dr. Aderhold, I called and he informed me that afternoon that it had been.

Q. Let me rephrase it then. The statement was written after you learned that Dr. Aderhold's letter had been subpoenaed and was now apparently in the hands of the television people?

A. Yes, sir.

Q. Now, in the interval between learning this and the writing of this statement, did you consult with Coach Bryant?

Mr. McCall: We want to interpose an objection to any question about that newspaper report which occurred after the article printed in the Saturday Evening Post of March 23rd after the article had gone to Press, which under the undisputed evidence in the case, shows that it went to Press on or about March 3rd, 1963?

A. May I, off the record, ask one question?

Mr. Runzer: Off the record.

(Off the record discussion.)

Q. Mr. McCall made an objection, which I believe was on the record. I hope so, anyway.

In the interval between learning of the publishing of the [fol. 1545] Aderhold letter or being informed by the Doctor that the letter had been subpoenaed and the dating of the statement that appeared in March 23rd Birmingham Post, March 23, 1963, did you consult with Coach Bryant?

A. I am pretty sure I did. I am not certain of it. I am pretty sure sometime in here I had—yes, sir; I think I did.

Q. Did you discuss your letter with Dr. Aderhold?

A. With Coach Bryant?

Q. Your letter to Dr. Aderhold with Coach Bryant?

A. Yes, sir, but he said he hadn't seen the letter that I sent to him.

Q. Now, the statement we just read points out, as I think you said a mistake in the letter in the use of the word plays when it should have been techniques; is that correct?

A. Yes, sir.

Q. Who was the one who told you that was a mistake?

A. I believe that was at the time I called Coach Bryant and read the letter to him; I am not sure. He said that just isn't right. This isn't what I told you. He said we never talked about plays. He said we talked about techniques and we talked about things that would have been illegal in rule interpretation. I believe that that was the day that I read the letter to him.

Q. So, it was Coach Bryant that pointed out to you that there was a mistake in the letter?

A. I am not sure, but I think it was Coach Bryant.

Q. And there may be others?

A. Could have been. I just don't know. I still continue to say plays and I don't know that much difference about it.

Q. But, whether Mr. Bryant was the first or not, you did say he pointed out to you the letter was wrong?

A. Yes, sir.

Q. And was your subsequent statement which appeared in the Birmingham Post, March 23, 1963, drafted in reliance [fol. 1546] on the information that Mr. Bryant had given you in this recent conversation with him?

A. Partly.

Q. What other basis?

A. On my reading the letter and the information that I had gotten between that time of writing it and what I had and as I said, in consultation with Mr. Bennett.

Q. Now, in discussing this letter with Mr. Bryant, he pointed out to you there was an error in it. Did he still say he was not sure whether they talked about the rule changes?

A. He said to me, Dr. Rose, you really did not understand. I am a damn poor coach to not to be able to keep my President better informed on football than you are. That's a very poor interpretation of our conversation.

Q. Well, was he still saying that he did not recall what was talked about in the conversation with Mr. Butts?

A. He said that. He said to me that he didn't know what he talked to him about. This is what he told me that afternoon. He said, I told you it could have been and tried to explain, but he said I am a poor coach—

Q. In other words, he was still telling you he did not know specifically what was talked about and that rule changes was one of the things that could have been talked about?

A. Yes, sir, and about which he was really concerned, and that Coach Butts had the knowledge and explanation.

Q. And did he also again repeat he might have talked about the ticket sales and Continental Enterprises or other investments?

A. No, sir.

Q. In other words, he just said we could have talked about rules changes?

A. He didn't—we didn't even discuss that. He was so [fol. 1547] upset over the poor job I had done answering the letter, we just didn't talk about it.

Q. What exactly did he say then? Maybe I misunderstood you?

A. He said that the letter was all wrong, that I misinterpreted what he said to me, and tried to explain that he could understand how I got some of this misinformation, but it was a very poor interpretation of his conversation with me.

Q. When did you learn the date of—when did you learn that a call had been made from Tuscaloosa to Athens on the 16th, not who made it, but that a call had been made?

A. I still don't know who made, and I don't know exactly where I learned about the call.

Q. Who told you, Mr. Callahan or Mr. Bryant?

A. I am not sure. Mr. Callahan gave me some information; Coach Bryant gave me some information; I just don't know.

Q. Did Coach Bryant ever tell you which rule interpretation he was concerned about?

A. He tried his best to explain it to me, and even tried to show me. But, I mean, I just couldn't understand it all. I know what blocking is, and I know what tackling is, but I don't know what butt blocking is and I don't know what head blocking is, and I don't know what is legal and what is illegal, and all of the rules they have in scientific football today.

Q. Now, the statement says that Mr. Butts and Mr. Bryant were discussing the new type of rules of offensive and defensive rules?

A. This is my interpretation.

Q. Is that a correct statement? They were discussing the impact of rules on offensive and defensive plays?

A. I don't know. That's what Coach Bryant said they could have been talking about.

[fol. 1548] Q. This is what Coach Bryant said they could have been talking about?

A. Yes, sir.

Q. Then, it would be incorrect to say that they were talking about it?

A. Yes, sir; but you have to understand the problem that we had with the Georgia Tech incident, and with the publicity that followed the Holt-Granning incident in which the Granning boy got his jaw broken. Coach Bryant was humiliated, he was castigated, nastiest things that could possibly be written about a man were written. It was a reflection upon me and my integrity and academician as University President. There was a statement to the effect, in a sports writer's column in Atlanta, that it was nothing more than a football factory, there were nasty letters

written to me from prominent citizens in Atlanta who had just read and understood one side of it, and I had told Coach Bryant that I did not want another incident like this to happen again, and that I meant it. That this was a University, a good academic institution, and that this institution could not take that kind of publicity and maintain its academic standards.

Q. Well, in your opinion, were not the charges that were made against Mr. Bryant growing out of the Butts affair more serious than those growing out of the Holt-Granning incident?

A. Yes, sir.

Q. Far more serious?

A. Yes, sir, but I think, sir, that the charges that grew out of the conversation between Coach Bryant and Coach Butts was started and deliberately perpetrated by the same man that started the whole fuss over the Darwin Holt-Chuck Granning incident.

Q. Now, you also say in the statement that much of the Bryant-Butts conversation related to explanations of [fol. 1549] changes which Bryant proposed to introduce to his team at the suggestion of Mr. Gardner?

A. Yes, sir.

Q. Where did you get that information?

A. This was in our discussion which he explained to me that Mr. Gardner came to the University of Alabama at his request with permission of Commissioner Bernie Moore. His reason for inviting Mr. Gardner was following a conversation he had with Coach Butts in August, and I believe in Buffalo, New York, at a Coaches meeting, a Coaching Clinic, and again at a Clinic in Atlanta; and then following a meeting of football coaches of the Southeastern Conference, and his ability to understand the new interpretations. And that when he told me that this one thing was one of the things they could have been talking about, and knowing his concern about it, this was the reason I used that statement in my letter.

Q. In other words, that information came from Coach Bryant; is that correct?

A. My interpretation of what Coach Bryant had said to me.

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.

[fol. 1550] 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.

Q. Now, prior to your deposition being taken, did you discuss the matter with anyone, that is, your deposition being taken back in May, 1963?

A. Did I discuss what, sir?

Q. The testimony or the incident with anyone in preparation for that deposition?

A. That morning we took it in your offices, didn't we?

Mr. McCall: Yes, sir.

A. And I came up to ask you—see, I never have given a deposition before and never been in court before. I wanted to know what to expect, and that's all these gentlemen told

me, to try to remember, to the best of my knowledge, and that's what I tried to do.

Q. Did you ever discuss your pending testimony with Mr. Bryant?

A. No, except he was up for—to give his deposition that day and we rode up in the car together. But, we didn't discuss any details of it.

Q. Were you in the same room at the time they were going over your testimony with you?

A. I don't believe so. Were we? I just don't know.

Mr. Runzer: Excuse me again, Dr. Rose. They can't [fol. 1551] answer. If you don't know, it is perfectly proper for you to say that.

A. I don't know.

Q. You don't recall?

A. I believe that he was asked to go outside.

Q. Did you testify before the Alabama State Legislature in this investigation?

A. Yes, sir.

Q. Do you recall when that was?

A. No, sir. I might can look it up.

Q. Would you please, sir?

A. Would you have the date when that was?

Q. If you are asking me, the answer is no, I do not.

A. No, sir, I don't have it on my book.

Q. Prior to your deposition being taken in May, 1963, did you have any conference with Mr. McCall?

A. May when?

Q. Your deposition taken May 27, 1963?

A. Yes, sir. May 16th.

Q. Where did that conference take place?

A. I am not sure. I think here, I am not sure though.

Q. Just you and Mr. McCall present?

A. No, sir. Mr. McCall and Coach Bryant.

Q. And what was discussed? Was the letter discussed at that meeting?

A. I don't know, sir.

Q. You don't have any recollection?

A. No, sir.

Q. Did you make any notes?

A. No, sir.

Q. Did you subsequently get a copy of any one else's notes?

A. No, sir.

Q. Are you certain about that?

A. Well, I am not sure.

[fol. 1552] Q. I might warn you, Doctor, don't answer so hastily, it pays you to think?

A. I just don't—

Q. I will ask you the question again.

Did you receive a copy of anyone else's notes?

A. I just don't know, I may have.

Q. Did you review—

A. I do believe on one or two times after meetings that Mr. McCall sent me copies of letters or wrote me a letter, but I am not sure about that.

Q. Did you read those letters?

A. Yes, sir.

Q. Did you read the same memos or notes that were attached to them?

A. Yes, sir.

Q. Did they accurately reflect the discussion that you had had?

A. I don't know, sir, because this was when I was really getting down to the real crisis of the integration problem.

Q. Now, getting back to the letter for a moment, the first sentence says, "I have spent a great deal of time investigating thoroughly the questions that were raised during our meeting in Birmingham and have talked with Coach Bryant at least on two occasions." Is that sentence correct?

A. I think it is.

Q. And that is your best recollection today?

A. Yes, sir.

Q. Next sentence is, "As best as I can ascertain, this is the information that I have received."

Was that sentence correct?

A. Yes, sir.

Q. New paragraph. "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 [fol. 1553] Bryant, LSU 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."

Is that correct?

A. Now, Coach Bryant informed me later that that was not what he had told me. He said that he told me that there had been changes in rule interpretation and that Commissioner Gardner, Commissioner of the Officials had told the officials to be sure and watch Alabama, Tennessee and LSU and somebody else, because they had been violating these rules.

Q. So, that second paragraph of your letter is incorrect?

A. Yes, sir.

Q. Third paragraph.

"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 Lee Roy Jordan, an Alabama player, to be expelled from the game, but could severely injure one of the offensive players on the Georgia team?"

Is that correct?

A. That is not a correct statement.

Q. In what respect is it incorrect?

A. It is incorrect there in that I was trying to reveal to Dr. Aderhold what Coach Butts was trying to explain to Coach Bryant what was wrong with his illegal defenses, were we playing any team, but I was trying to pinpoint, for Dr. Aderhold, about the University of Georgia, and he wasn't talking about the University of Georgia, he was talking about any team that Alabama would play.

Q. Let's take it apart.

[fol. 1554] Did Coach Bryant tell you that Coach Butts had discussed this, referring to rule changes, with Coach Bryant?

A. Coach Bryant said this could have been what they were talking about. They talked about it many times.

Q. One of the things they could have talked about?

A. Yes, sir.

Q. And did Coach Bryant tell you that the two were together where Coach Butts told Coach Bryant that the University of Georgia had plays that would severely penalize the Alabama team?

A. He told me they were at something which they discussed the illegal defenses that Coach Bryant was using, and then demonstrated to him plays or techniques, I keep saying plays, I mean techniques, offensive techniques that could cause the University of Alabama to be seriously penalized and probably lose the services of a player. Coach Bryant said a player like Lee Roy Jordan.

Q. Are you certain now that Coach Bryant told you that Coach Butts discussed offensive techniques which could cause Alabama to be penalized?

A. He wasn't talking about the University of Georgia's offenses. I used the term in there to relate it to Dr. Aderhold. He was talking about any offensive play in which Coach Bryant would use an illegal defensive play and Coach Bryant told me at that time over the years he and Butts had talked about these things.

Q. Did Coach Bryant say that Coach Butts said there were offensive techniques of any school that could cause Alabama to be penalized or cause a player like Lee Roy Jordan to be expelled?

A. In answer to Coach Bryant's wanting to know what the rule interpretation was.

Q. Oh, he did say that?

A. That was my interpretation, what Coach Bryant said to me.

[fol. 1555] Q. You heard what he said, you were sitting in the room?

A. Yes, sir, but I didn't understand it, I still don't.

Q. What I am trying to find out, did you understand Coach Bryant to say that Mr. Butts told him that there were offensive techniques of any types that could cause Alabama to be penalized or a player like Jordan to be expelled from the game?

A. Under the new rule interpretation.

Q. And that is what Coach Bryant told you that Coach Butts said?

A. That they could have been talking about it if they were discussing it over the telephone, but Coach Butts had said it to him at the meeting where they were talking about this thing.

Q. Fourth paragraph.

"Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14th he called Coach Bryant and told him."

Is that a correct statement?

A. No.

Q. In what respect is it incorrect?

A. It is incorrect in that he wanted to know about the new rules interpretation, how it affected his defenses, some offenses in which we might be found guilty of illegal defenses, and Coach Bryant said that he knew that over the period of the summer that there were some rules changed that had to do with a defense on an end run or something, and I saw it explained on television one night, but I still don't understand it, and that—and that he had tried to get Coach Butts several times to remember exactly what the offense was that would cause the illegal defensive technique to be used.

Q. Did Coach Bryant tell you that he asked Coach Butts to let him know what the offensive techniques were?

[fol. 1556] A. Well, he said that if he did call, and if he did call him back, that this would have been one of the

things that he could have talked to him about; he didn't say specifically; no, sir.

Q. Continuing from the letter, the last portion, "And on September 14th he called Coach Bryant and told him."

Is that a correct statement?

A. Was there a call on September 14th? I have been so confused about these dates?

Q. I am asking you, sir, if it is a correct statement?

A. I am not sure, but taking that Coach Butts did call Coach Bryant on the 14th, of course, Coach Bryant said this could have been one of the things that he called him about.

Q. Where did the September 14th date come from that is in your letter?

A. Apparently in my notes.

Q. Which were taken in your meeting—

A. With Mr. Aderhold.

Q. Do you recall they used the date September 14th?

A. There was some confusion about it. I think the dates that I had when I got back here were not—not exactly the dates that corresponded with telephone conversations. I mean, with telephone records, but they were close and I didn't know exactly.

Q. Are you saying there was a confusion about the date in the meeting there at Commissioner Moore's office?

A. No, sir. I just wrote down the dates that were given.

Q. Were the dates given to you in that meeting, September 14th?

A. That's the only place I could have gotten it.

Q. Next sentence. "There was a question about another one of the offensive plays of the Georgia team that could [fol. 1557] seriously penalize the Alabama team, and bring on additional injuries to a player. Tell me, did Coach Bryant tell you that?"

A. No, sir, but this was one of the things that he tried to explain to me on that end play, and defensive techniques

where he said that Lee Roy Jordan would, instead of rushing in would pull out and run out to the end. Now, I don't know what that means, but I did see it explained on a television program, it looked pretty good to me then; but, I still don't know anymore about it.

Q. All right.

Let's go on. "Coach Bryant asked Coach Butts to check on that play, which he did, and called back on September 16th," is that correct?

A. Coach Bryant said that could have been what the call was about, but he wasn't sure. He wasn't even sure he made the call.

Q. That is an incorrect statement, that last statement?

A. Yes, sir, but my best interpretation of what the calls were.

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 [fol. 1558] about all of these things, but that he doesn't remember specifically.

Q. Either the call or what was talked about?

A. Yes, sir.

Q. Next sentence.

"It was then that Coach Bryant changes 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." Is that right?

A. That's wrong. He had Commissioner Moore bring Gardner here before.

Q. Is it correct that he changed his defenses?

A. He said that he and his coaches decided that they had better change some of their techniques.

Q. So that the word defenses should be defenses techniques?

A. Yes, sir.

Q. And also correct the date of Mr. Gardner's visit?

A. Yes, sir. I believe that was sometime in August, but I am not sure about that.

Q. That would explain then the next sentence where you say this, "This Mr. Gardner did the following week." That's also incorrect?

A. Yes, sir, but I want to say this; that Coach Bryant wasn't even clear in his own mind about that.

Q. All right.

"The defenses were changed, and Coach Bryant was grateful to Coach Butts for calling this to his attention."

Is that a correct statement?

A. I asked him, well, do you think that you got anymore information from him? He said, well, there is no doubt it has been most helpful and that anytime you do not get yourself penalized or any boy is hurt, all coaches are concerned about players, and their being hurt. And he went on to talk about how unfortunate it was that Chuck Granning [fol. 1559] had gotten hurt and his concern about it, and his concern about his own boys.

Q. Well, is the statement, the defenses were changed, and Coach Bryant was grateful to Coach Butts for calling this to his attention; is that correct?

A. The defensive technique, but the statement like it is is not exactly correct.

Q. It should be defensive techniques?

A. Yes, sir.

Q. With that addition, it would be correct?

A. My interpretation of what Coach Bryant was stating to me, yes.

Q. That would be correct as you understood Coach Bryant to tell you?

A. Yes, sir.

Q. The next sentence.

“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”, is that correct?

A. This was after an interrogation like you are giving me that I just kept pressing him on it, but Coach Bryant had every confidence that while he was glad there wasn't any penalties or any serious penalties in the game, and no public criticism of the game in terms of what the sportswriters over there called hard-nose football and roughness, that he didn't need any information to beat the University of Georgia.

Q. Well, was it correct that Coach Bryant informed you that calling this to his attention may have favored the University of Alabama Football team, but he doubts it seriously?

A. Yes, sir; that's correct.

Q. Next sentence. “He, meaning Coach Bryant, did say that it prevented him from using illegal plays after the new change of rules.” Is that correct?

[fol. 1560] A. Yes, sir.

Q. Now, skipping down, I see we are getting on to your deadline.

You say, “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.”

Is that correct?

A. Yes, sir.

Q. Now, Doctor, several times during the course of your previous testimony you indicated that you feel you could write a better letter or clearer letter after having the benefit of talking to people and understanding the matter better?

A. Yes, sir, but I still don't think, sir, that I could write a legal document on it, or anything that would prove any points in court or have any substantial changes. I think in that letter I have conveyed to Dr. Aderhold that I have looked into the accusations that he has made, and that I cannot find the evidence that he was looking for and that there was no rigging or fixing that football game.

Q. Are you saying that you couldn't write a clearer letter of March 6th?

A. I think I could write a more correct letter and use better terminology, but I still don't think that I could write a letter that you couldn't sit there, as a legal mind, and pick to pieces, because I haven't had any legal training. I am not a scientific football coach. My field is philosophy and theology. That's the reason I have members of the staff to take care of these departments.

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

A. No, sir.

[fol. 1561] 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.

Mr. Runzer: Excuse me. Off the record.

(Off the record discussion.)

Q. Doctor, before we stop, you are aware that we asked for your calendar book and some of your checks?

A. Yes, sir. Here it is, and here are my checks. I will need those checks for income tax purposes.

Q. I was going to suggest, and in view of your time deadline, if the Court Reporter photostats that material, we won't have to have those and could return those to you.

Mr. Pritchard: Perfectly willing to do so.

A. How do we handle it?

Mr. Pritchard: Give it to him right now.

A. This is all I have got.

Q. Doctor, just a few more infamous questions. This trip that commenced on the morning of March 5th, do you have any idea how long it took?

A. No, sir, I don't. I can't tell you exactly.

Q. Do you know how you travelled?

A. No, sir.

Q. You do not know where you went?

A. I am not sure where I went.

Q. Where do you think you went? What is your best recollection?

A. That has to be confidential.

[fol. 1562] Mr. Bennett: Could we go off the record?

Mr. Runzer: Off the record.

(Off the record discussion.)

Q. Doctor, is it my understanding, from your off the record statement, that these—this trip had nothing to do with the Butts-Bryant incident?

A. Yes, sir.

Q. And that you consider the matters that you discussed and the people you discussed them with confidential?

A. Yes, sir.

Mr. Runzer: Off the record.

(Off the record discussion.)

Q. Dr. Rose, where did you go when you left the University on the morning of March 5th?

Mr. Bennett: Now, at that point, you have been advised by me that you are free to refuse to answer on the grounds that your trip had nothing at all to do with the matter at issue and involves your confidential relationship as President of the University of Alabama.

Q. You do so refuse to answer on that basis?

A. Yes, sir.

Q. Who did you see on that trip?

Mr. Bennett: Same advice.

A. I refuse to answer that.

[fol. 1563] Mr. Runzer: Off the record.

(Off the record discussion.)

Q. How long did the trip take?

Mr. Bennett: Same objection, and can you just repeat the same grounds for refusal each time?

Mr. Runzer: And you do refuse to answer on advice of counsel?

A. Yes, sir.

Q. Were your expenses reimbursed to you through the University for these trips?

A. No, sir.

Q. You absorb them yourself?

A. Yes, sir.

Q. Do you remember the means of transportation you used?

Mr. Bennett: Same objection.

A. I don't believe I will answer that.

Mr. Bennett: Same grounds.

Q. You refuse to answer?

A. Yes, sir.

Q. Do you recall the name of the places that you went to?

Mr. Bennett: Same advice and same grounds.

A. I refuse to answer.

[fol. 1564] Q. Will you tell us the name of the Hotel or Motel where you stayed—

Mr. Pritchard: Same objection.

Mr. Runzer: I would appreciate it—

Mr. Pritchard: We object to it.

Mr. Runzer: I would appreciate it—

Mr. Pritchard: You have got enough to test your question, go ahead.

Mr. Runzer: I—

Mr. Bennett: Let the record show he refuses to answer on the same grounds.

Mr. MacLeod: Let him finish.

Mr. Pritchard: I object to it.

Mr. Runzer: Not in the middle of my question.

[fol. 1565] The Witness: When you present this to the judge, will we have an opportunity to present—

Mr. Pritchard: We will be right there, don't worry.

The Witness: Will this be a public hearing or can you get—

Mr. Runzer: Off the record.

(Off the record discussion.)

Mr. Bennett: If we can make certain, back on the record, that he refused to answer the last question on the same grounds that we resaid it before.

Q. Doctor, I would just like to go briefly into the background of your relationship with Mr. Bryant prior to his coming to the University, that is, the University of Alabama. When did you first meet him?

A. The first year that he became President of the University of Kentucky.

Q. The first year he became President?

A. I mean, Coach at the University of Kentucky and I believe that was 1946 or '47.

Q. Did you meet him in a business way?

A. No, sir, at a social gathering at a country club.

Q. Did a personal relationship develop out of this meeting?

A. No close personal relationship. I knew him and went to his ballgames and would see him from time to time and we had mutual friends.

[fol. 1566] Q. Did you ever entertain he and his wife in your home?

A. No, sir.

Q. He and his wife ever entertain you in their home?

A. No, sir.

Q. Did you continue to have a relationship with him when he went to Texas A & M?

A. No, sir.

Q. Ever correspond with him?

A. No, sir.

Q. Did you meet him during that period?

A. No, sir.

Q. Now, am I correct that you are responsible for bringing him to the University as football coach?

A. Yes, sir.

Q. How long had you been President when he arrived?

A. I was elected President on September 5th, 1957, and I made trips down every week to the University, but I remained on as President of Transylvania until December 10th, I believe it was, of 1957, as President of Transylvania. Then, I made trips back and forth from here and made administrative decisions, and during this period I obtained the resignation of the coaching staff and assumed the responsibility of employing a new coach and Athletic Director and coaching staff. I employed him on December 1st, 1957, effective January 1, 1958.

Q. And where was he employed at the time you secured him, do you know?

A. Texas A & M at College Station, Texas.

Mr. Runzer: Doctor, you can make your plane.

A. Bless your heart.

[fol. 1567] Mr. Pritchard: Thank you all.

Further Deponent Saith Not

Certificate

State of Alabama,
Jefferson County.

I hereby certify that the above and foregoing deposition was taken down by me in shorthand, and the questions and answers thereto were reduced to writing under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the cause, nor am I in anywise interested in the results of said cause.

Commissioner-Notary Public

1212

[fol. 1568]

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 63-166

PAUL BRYANT, Plaintiff,

versus

CURTIS PUBLISHING COMPANY, a Corporation, Defendant.

CONTINUED DEPOSITION OF DR. FRANK ANTHONY ROSE—
Filed February 28, 1964

Continued Deposition of Dr. Frank Anthony Rose, resumed in the above-styled cause on the 17th day of January, 1964, commencing at 3:45 p.m. at Tuscaloosa, Alabama, pursuant to recess of said deposition on the 8th day of January, 1964, and following the order of the Honorable H. H. Grooms, District Judge, pertaining to the examination of said witness.

APPEARANCES

Mr. Winston McCall, of the firm Pritchard, McCall & Jones, Frank Nelson Building, and Mr. Francis Hare, Sr., of the firm Hare, Wynn, Newell & Newton, City Federal Building, Birmingham, Alabama, for the Plaintiff.

[fol. 1569] Mr. Eric Embry, of the firm Beddow, Embry & Beddow, 2121 Building, Birmingham, Alabama, for the Defendant.

Mr. James Bennett, Attorney at Law, Tuscaloosa, Alabama, appearing for the witness.

Reported by
Jerry L. Rotruck

Deposition

FRANK ANTHONY ROSE, recalled as a witness, being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Examination by Mr. Eric Embry:

Q. To refresh your recollection, Doctor, going back to the occasion of the prior questioning—you have a copy of that I see that Mr. McCall is giving to you—at page 138 of the deposition which was on the 8th day of January of this year—

A. Yes, sir.

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.

[fol. 1570] Q. The last—

A. Yes.

Q. —complete answer on that page.

A. I am not sure where I went.

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.

Q. Have you been able to determine in order to form any recollection of your own as to where you did go on that date?

A. I wouldn't say recollection, but if you want me to guess, I can guess where I went.

Q. Well, if you define your best recollection as a guess it is all right with me, just whatever any of us can draw upon in our minds or intellects as we best recall what we did and when we did it. That is the context I am asking you this in.

A. Yes, sir. I would guess that I went to Montgomery.

Q. Montgomery, Alabama?

A. Yes, sir.

Q. Now, on that occasion do you know how you traveled? Do you have any recollection as to how you traveled?

Mr. McCall: We object.

[fol. 1571] Mr. Bennett: At this time, Dr. Rose, I would advise you that as I remember the order of the court at the hearing of this week on this matter it extended only to the question of your recollection as to where you went, not as to mode of transportation or who you saw or where you stayed, but to what city did you go?

By Mr. Embry:

Q. I don't interpret it that way. Of course, this is a matter that would probably be some point of contention between the attorneys in the case, but my understanding of the intent of the judge's order is that if you do have any recollection of where you went that I am permitted reasonable bounds of inquiry as to place, time and situation in order to identify the places you may have been.

A. I have not found out any information that would tell me definitely where I was that day, but I am having to guess at it, and I would guess that it was Montgomery.

Q. Do you have anything to which you can make reference to refresh your recollection, an appointment calendar?

A. I had an appointment calendar. You have it now.

Q. Yes, sir.

A. There was not anything there.

Q. Do you have any other thing of that nature that would serve to refresh your recollection?

A. No, sir. I have tried to find everything that I possibly could.

Q. Do you have any recollection as to who accompanied you?

A. No, sir.

Mr. McCall: Objection.

[fol. 1572] The Witness: I would have to guess at that. I just don't know.

By Mr. Embry:

Q. Do you have a recollection whether or not you, on advice of counsel, are willing to disclose? Do you have any recollection as to what mode of transportation you used?

Mr. McCall: I object on the ground it is repetitious.

Mr. Embry: I am asking if he has a recollection. I am not asking what it is.

Mr. McCall: I object on the grounds it is repetitious. You asked do you know how you traveled and he answered no, sir, on page 138, and I object on the grounds it is a repetitious question and it has already been answered in the record.

By Mr. Embry:

Q. You have had an opportunity, I assume, between the 8th and today, as you have stated, to check references in order to refresh your recollection.

A. Yes, sir.

Q. And in light of that I am asking you whether you do have any recollection, not what your recollection is, but whether you have a recollection as to what mode of transportation you used.

A. No, sir, I don't.

Q. You do not?

A. No, sir.

Q. Do you have any recollection as to whom you saw on the occasion of the visit?

Mr. Bennett: At this point I would advise you that as [fol. 1573] I understand the direction of the court on this particular part of the motion being heard filed by counsel for the plaintiff that you are not required to answer that question.

Mr. Embry: Do you decline on the advice of your attorney to answer.

Mr. McCall: We further object on behalf of the plaintiff on the grounds it goes beyond the scope of the examination and is contrary to the specific instructions of Judge Grooms.

By Mr. Embry:

Q. I just want to know if the Doctor declines to answer on the advice of this attorney, Mr. Bennett?

A. Yes, sir.

Q. Do you have any recollection as to the places, physical places—

Mr. Bennett: As to this point again—

By Mr. Embry:

Q. —at which you visited.

Mr. Bennett: At this point again I would advise that you have the right to decline to answer under the ruling of Judge Grooms for the same reasons outlined in the earlier advice to you.

By Mr. Embry:

Q. Do I take it that upon such advice to you that will be your answer and that you will decline?

A. Yes, sir.

Q. Do you have any recollection whether you stopped at a hotel or motel or a place of lodging on that occasion?

Mr. Bennett: If I might make a short rendition, you are advised as to the same question for the same reasons.

[fol. 1574] By Mr. Embry:

Q. Do I take it that upon such advice you should not answer say it and I will take that is your answer to decline to answer us.

A. All right.

Q. Do you have any recollection as to whether you visited any dining establishments or a restaurant on that occasion?

Mr. Bennett: Your advice is the same for the same reason.

By Mr. Embry:

Q. Do you have any recollection whether you had occasion to stop at a filling station or such a place as a filling station?

Mr. Bennett: Your advice is the same for the same reason.

By Mr. Embry:

Q. Or any other place of public service?

Mr. Bennett: Same advice.

By Mr. Embry:

Q. Do you have any recollection as to whether you visited any state offices of the State of Alabama on that occasion, and, if so, do you have a recollection of what offices you visited?

Mr. Bennett: Your advice is the same for the same reasons, Dr. Rose.

By Mr. Embry:

Q. Do you have any recollection of the names and identities of any persons you saw on that occasion?

Mr. Bennett: Your advice is the same for the same reason, Dr. Rose, that this was a content of a hearing of earlier this week.

[fol. 1575] Mr. Embry: We will conclude on that.

Further deponent saith not.

Certificate

State of Alabama,
Jefferson County:

I, Jerry L. Rotruck, a Court Reporter at Birmingham, Alabama, do hereby certify as follows:

That I correctly reported in shorthand the foregoing deposition of Dr. Frank Rose at the time and place stated in the caption hereof;

That the witness was by me duly sworn and was examined by counsel;

That I later reduced my shorthand notes to typewriting, or under my supervision, and that the foregoing pages 2 to 8, both inclusive, contain a full, true and correct transcript of the testimony of said witness on said occasion;

That I am neither of counsel nor of kin to any parties involved in this matter, nor in any manner interested in the result thereof;

That the reading and signing of the deposition by the witness was waived by counsel and the witness.

This 23rd day of January, 1964.

Jerry L. Rotruck, Court Reporter.

[fol. 1576]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Case No. 63-166

PAUL BRYANT, Plaintiff,

versus

CURTIS PUBLISHING COMPANY, a Corporation, Defendant.

STIPULATION—Filed February 28, 1964

It Is Stipulated and Agreed by and between the parties through their respective counsel that the deposition of Mrs. Marian H. Parks may be taken before Carmen Zegarelli, Commissioner, at the University of Alabama, Tuscaloosa, Alabama, on the 5th day of January, 1964.

It is further stipulated and agreed that the signature to the deposition by the witness is waived, the 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 question except as to form or leading questions, and that counsel for the parties may make objections and assign [fol. 1577] grounds at the time of trial or at the time said deposition is offered in evidence, or prior thereto.

It is further stipulated and agreed that notice of filing of the testimony by the commissioner is waived.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Case No. 63-166

PAUL BRYANT, Plaintiff,

versus

CURTIS PUBLISHING COMPANY, a Corporation, Defendant.

Tuscaloosa, Alabama

DEPOSITION OF MRS. MARIAN H. PARK
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.

[fol. 1578] 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 Mrs. Park.

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 2:00 p.m., Mrs. Marian H. Park, witness in the above cause, for oral examination, whereupon, the following proceedings were had and done:

MARIAN H. PARK, being first duly sworn, testified as follows:

Examination by Mr. Runzer:

Q. Mrs. Park, I am going to ask you questions, if you don't understand me, because my voice is starting to fail, if you don't hear me, stop me and make me ask it again. I want you to understand my questions before you begin to answer it.

A. Yes, sir.

Q. Now, Mr. Bennett, who represents you, has said that you will waive the signing of this deposition; is that correct?

A. What does that mean, Mr. Bennett?

[fol. 1579] Mr. Bennett: That means that you not require the deposition to be sent back to you for you to read and does not require your signature.

The Witness: Well, the last deposition was sent back to me.

Mr. Bennett: The other deposition that was taken today, the same stipulation has been entered into and I just advise you to accept it.

The Witness: All right, I do.

Mr. MacLeod: We have the same stipulation and agreement as to objections that we had with Dr. Rose's deposition, that is, that it is not necessary at this time to state objections to questions except as to form of the questions.

Mr. Pritchard: Yes.

Mr. Runzer: And any objections can be made as appropriate at the time of the deposition is used.

Mr. Pritchard: That's agreeable.

Q. Would you give us your full name, please, ma'am.

A. Marian H. Park.

Q. Are you Dr. Rose's personal secretary?

A. Yes, sir.

[fol. 1580] Q. Now, I understand you have brought with you today your notebook containing the letters that were dictated to you somewhere in the vicinity of March 4, 5 and 6 of 1963; is that correct?

A. Yes, I have.

Q. Have you located in that book the notes of a letter dated March 6, 1963, addressed to Dr. Aderhold, President of the University of Georgia?

A. Yes.

Q. Would you open to those notes, please. Now, does your notebook indicate the day on which it was dictated?

A. Yes, it does. That is about the fifth letter on March 5th.

Q. Does your notebook indicate the time of the day it was dictated?

A. No, sir, it does not.

Q. Are you able to figure, from going back through your notebook, the time that it was dictated?

A. No, sir, I cannot.

Q. Do you have any independent recollection of the time of day it was dictated?

A. No, sir, I just can't recollect.

Q. Do you recall the letter being dictated?

A. Yes, sir, I do.

Q. Did it strike you as an unusual letter when you took it?

A. Well, the only thing unusual about it was that Dr. Rose asked that it be confidential, which I have in my notes here, and that it be mailed as soon as possible.

Q. Do you recall whether Dr. Rose and you had any conversation about the letter either before, during or after the dictation?

A. No, sir.

Q. You do not recall?

A. We did not have any.

[fol. 1581] Q. Would you read the stenographer the notes as you have them there?

A. Yes, I will.

Dr. O. C. Aderhold, President.
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 and have talked with Coach Bryant at length on two occasions and as best 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, Louisiana State University, 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 Leroy Jordan, an Alabama player, to be expelled from the game, but it could severely injure one of the offensive players of the Georgia team.

Coach Bryant asked Coach Butts to let him know what the plays were and on September 14th he called Coach Bryant and told him. There was a question about another [fol. 1582] one of the offensive plays of the Georgia team that could seriously penalize the Alabama team and bring on additional injury to a player and Coach Bryant asked Mr. Butts to check on that one and he did. Just a moment. Check on that one and he did call back on September—

wait just a minute. To check on that one and he did and called back on September 16th. It was then that Coach Bryant—this is a new paragraph.

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 which 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 changes of rules.

I have checked into other matters that were discussed and can find no grounds for Mr. Bisher's accusation 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

[fol. 1583] Most cordially yours

Frank A. Rose.

Mr. Runzer: Now, Mr. Reporter, would you read that back to Mrs. Park so she will be certain of her transcription, and will you follow his reading against your notes so there is no mistake talking about the same letter.

(Whereupon, said letter was re-read by the reporter to the witness.)

Q. Did Mr. Zegarelli read back the letter the way it is contained?

A. Yes, he did.

Q. At several points punctuation is indicated in your notes?

A. Yes, sir.

Q. That was dictated?

A. No, sir.

Q. Those were your additions?

A. Yes, sir.

Q. And the paragraphing also your addition?

A. I don't recall, sir. Sometimes he dictates paragraphs and sometimes I use my own judgment in making the paragraphs.

Q. You recall this letter being dictated?

A. Yes, sir.

Q. Was it a—did it strike you he was dictating easily or was it a letter he was struggling with?

A. Well, Dr. Rose always dictates very slowly and thoughtfully and I don't recall having the feeling that he was struggling with it.

Q. Would you say there was anything different about [fol. 1584] his manner of dictation with this letter than any other letter that he writes?

A. No, sir, I don't think so.

Q. Now, did I understand you to say that he told you he wanted this letter to go out as soon as possible?

A. Yes, sir.

Q. Did he also tell you to check with Mr. Bryant before the letter went out?

A. Yes, sir, he did.

Q. Do you recall that you started transcribing it right away or did something else transpire?

A. No. I apparently did not, because the letter was dated March 6th.

Q. Now, does your book indicate that other letters were dictated to you on the 5th?

A. Yes, sir.

Q. How many more letters after this one?

A. May I count them?

Mr. Runzer: Off the record.

(Off the record discussion.)

A. Twenty-seven.

Q. Twenty-seven after this letter?

A. Yes, sir.

Q. And this was the fifth letter he dictated that day?

A. Yes, sir.

Q. That would be 32 letters that were dictated?

A. Yes, sir.

Q. Do you recall how long it took to dictate those letters?

A. No, sir, I don't.

Q. Can you give me any estimation from your notes how long it would take, in your best estimate, a matter of hours?
[fol. 1585] A. Well, I would say between maybe an hour and an hour and a half.

Q. Were they dictated in one long session or was he interrupted?

A. I don't recall.

Q. Do you recall how long he stayed in the office after the letters were dictated?

A. No, sir, I don't. I just don't recall.

Q. Did he tell you any of these other letters had to be gotten out right away?

A. I don't have any indication on my notes and don't recall.

Q. Would you ordinarily write on your notes if he told you that?

A. Yes, sir.

Q. This is the only letter that was dictated to go out in a hurry; is that correct?

A. Yes, sir.

Q. And do you remember the time of day on March 5th it was dictated?

A. I assume that it was in the morning.

Q. Well, now, ma'am, when you say assume, do you recall?

A. No, I do not recall, except that Dr. Rose usually dictates first thing in the morning.

Q. In other words, it is his usual custom to dictate then?

A. Yes, sir.

Q. Did he plan to be out of the office that day?

A. The best of my knowledge, he left the office.

Q. When did he return?

A. Now, I did not see him on the 6th. He could have possibly have been in the 7th; I just don't recall.

Q. Any letters in your book indicating letters on March 4th?

[fol. 1586] A. Yes, sir.

Q. How many letters did he dictate on March 4th?

Mr. Runzer: Let the record show that the witness is referring to her stenographic notebook.

A. Twenty-six.

Q. Now, when is the next dictation after March 5th?

A. March 14th.

Q. Could you show me where you indicate the date on your book?

A. Yes, sir.

Q. 3/5/63?

A. It will either be right here or here (indicating).

Q. And you put that on each page?

A. No, I do not, just when I start the dictation.

Q. And you do not make other entries of the date until the date changes?

A. That's correct.

Q. Do you recall where the doctor went on March 5th?

A. I do not.

Q. Did he not tell you?

A. No, sir.

Q. Now, was the letter dictated in this office?

A. Yes, sir.

Q. Dr. Rose was seated in the chair where you now are?

A. That's correct.

Q. And you don't recall how long it took you to get to the transcription?

A. No, sir, I don't.

Q. Did you start on the letter to Dr. Aderhold first?

A. I don't recall.

Q. In any event, you did ultimately begin to transcribe it?

[fol. 1587] A. Yes, sir.

Q. Did you read the letter back to Dr. Rose after it was dictated?

A. No, I did not.

Q. Does he ever ask you to read letters back to him?

A. Very seldom.

Q. Now, where did you transcribe the letter?

A. At my desk.

Q. Which is in the next room here?

A. Uh-huh.

Q. Is it still the same desk now?

A. Yes, sir.

Q. Same typewriter?

A. Yes, sir.

Q. With the exception of whatever age was done in the last six months it is exactly as it was at that time?

A. Yes, sir.

Q. You typed it from the notes you just read?

A. Yes, sir.

Q. Do you remember the day you transcribed it?

A. Well, the letter is dated the 6th. Our mail is picked up here in this office around four o'clock in the afternoon. Occasionally I will transcribe letters after the mail is picked up and date them for the next day because they won't go out until then; I can't remember.

Q. So, based on your custom it would have either been transcribed after four o'clock on the afternoon of the 5th or sometime during the day of the 6th?

A. That's correct.

Q. Can you explain if it was dictated to you in the morning why it took so long?

A. I can't, unless I had something to do in here in the office.

Q. You can't recall why it took you so long?

A. No, sir.

[fol. 1588] Q. When the letter was transcribed, I assume you proofread it for typographical errors?

A. Yes, sir.

Q. Do you recall that?

A. No, it's just habit.

Q. Did the letter have to be retyped?

A. I don't recall that.

Q. Do you think you could recall it if you had to?

A. I doubt it.

Q. When you proofread, do you proofread for grammar, punctuation or spelling, or do you try to improve Dr. Rose's syntax?

A. As far as I am capable, I try to send out a letter that is grammatically correct and correct in context.

Q. Did you make any changes in this letter?

A. Not that I remember, no.

Q. Now, did you show the transcribed letter to anyone?

A. I may have shown it to Mr. Bennett, but I can't say that I actually did. Occasionally if there is a letter—for instance, I couldn't get in touch with Coach Bryant, I knew a letter had to go out, I might have shown it to Mr. Bennett; I don't recall.

Q. You do not recall whether you did that or not?

A. No, sir.

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.
- Q. When you transcribed this from your notes, you attempted to get in touch with Coach Bryant?
A. Yes, sir.
- Q. By telephone?
A. Yes, sir.
- Q. And you were not able to do so?
[fol. 1589] A. No, sir.
- Q. Who did you talk to, do you know?
A. No, sir, just the girl who answers the phone in the Athletic Department.
- Q. Were you informed where he was?
A. No, sir.
- Q. Were you informed how long he would be away?
A. I probably did inquire.
- Q. So, then, after you were informed you couldn't get in touch with Coach Bryant, you may have shown it to Mr. Bennett?
A. Yes, sir.
- Q. You showed no one else?
A. No, sir.
- Q. No one including yourself made any changes in the letter?
A. No, sir.
- Q. Was the letter that went out dated March 6th that I show you which was attached as Defendant's Exhibit 8 to your previous deposition, look that over, is that a copy of a letter that you typed up and sent out?
A. Yes, sir, it is.
- Q. Now, Dr. Rose has told us that he had to leave in a hurry. So, I assume he didn't dictate any first draft or anything of that nature?
A. No, sir.
- 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 involved sen-

tences 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?

[fol. 1590] 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.

Q. The letter was sent out presumably the 6th, that's the date?

A. Yes, sir.

Q. I presuppose no copy was made of this letter?

A. No, sir.

Q. It is usual procedure here to make copies of letters, isn't it?

A. Usually.

Q. Any specific reason why no copy was made in this case?

A. None, except Dr. Rose told me not to make a copy.

Q. In other words, the reason you did not make a copy was because Dr. Rose told you not to?

A. Yes, sir.

Q. If it had been left to you, you would have made a copy?

A. Yes, sir.

Q. Did you retain any copy of this letter in your file?

A. No, sir.

Q. And so I am perfectly clear, this represents what you typed up from your notes?

A. It does.

Q. No one made any changes?

A. No, sir.

Q. No one read over any draft and dictated a new version?

A. No, sir.

Q. Did you read any over, any draft, and retype it?
[fol. 1591] A. No, sir. I say that, I don't recall, but I just never do that.

Mr. Runzer: Off the record.

(Off the record discussion.)

Mr. Pritchard: We are going to object to encumbering this record with any letters in that notebook saving except they be letters that shed some light on the controversy here or that would be material evidence in the trial of this cause.

Mr. Bennett: Off the record.

(Off the record discussion.)

Q. In the course of those other 31 letters that were dictated on March 5th, is there any other letters to an individual which would relate to the so-called Butts-Bryant affair?

A. I see none other except one addressed to Bernie Moore, Commissioner Moore of the Southeastern Conference in which Dr. Rose informs him that: I got in touch with Coach Bryant in Washington and he informs me that he can meet with us on Tuesday, March 12, at 10:00 a.m. in my office. I sincerely hope that this meets with your schedule.

Q. Excuse me. Did you just recite the actual wording from your notes?

A. Yes.

Q. Would you repeat it, I missed it.

Mr. Bernie Moore
Commissioner
Southeastern Conference
[fol. 1592] Redmont Hotel
Birmingham, Alabama

My dear Bernie:

I got in touch with Coach Bryant in Washington and he informs me that he can meet with us on Tuesday, March 12,

at 10:00 in my office. I sincerely hope that this meets with your schedule.

Looking forward to seeing you soon, I am

Most cordially,

Q. Did you try to get in touch with Coach Bryant in Washington the day this letter was dictated?

A. No, sir, I did not.

Q. Well, I would like to place in the record the addresses of the other letters that were dictated on the date of March 5th.

Mr. Bennett: Marian, at this point, I am going to advise you that if your testimony would show that none of those other letters are related to the Bryant-Saturday Evening Post matter, you can refuse to testify on the ground that it is not related to the matter at issue.

Mr. Runzer: Of course, we take the position that the discovery of this correspondence may give us some indication of Dr. Rose's whereabouts which is of issue in the case.

Mr. Pritchard: And further we want to object on the grounds it is purely prejudicial. Sheds no light on the con-[fol. 1593] troversy here and Dr. Rose's private correspondence which in no way relates to the controversy here and would not be material in any sense of the word, we object to going into his private and personal business which in no way is concerned with the trial of this cause.

Mr. Bennett: My advice was based on the assumption that this other correspondence is not related to this matter and I assume that is the same basis of your objection.

Mr. Pritchard: Exactly.

Mr. Bennett: Then my advice still stands.

The Witness: That the only letters that relate to this case—

Mr. Runzer: Off the record.

(Off the record discussion.)

Q. Will you state the names of the addressees of the other letters that Dr. Rose dictated on the day of March 5th?

Mr. Pritchard: We re-interpose the same objection and I advise you that you certainly don't have to answer the question unless the Court tells you to.

Mr. Bennett: I advise you can refuse to answer this [fol. 1594] question on the ground that your testimony would not bear any relationship to the matter at issue.

Mr. Pritchard: Purely a private correspondence of Dr. Rose. It is not fair for us to question with whom he is corresponding.

Q. Would you read from your notes the body of the 30 other letters that were dictated on March—

Mr. Bennett: Once again I advise you can refuse to answer this question on the ground that your response would bear no relationship to the matters at issue and are concerned with the private business of Dr. Rose as President of the University.

Q. Would those letters, when transcribed, show the date of their transcription?

Mr. Bennett: You can answer the question.

A. Yes, they would.

Q. All right. Now, I will ask you to produce the transcribed copies of those letters.

Mr. Bennett: Once again, I advise you you can refuse to produce the transcribed copies of the 31 other letters on the ground they have no bearing on the matter at issue and only concern Frank Rose as President of the University.

Q. Do you have available a copy of the letter of Mr. Moore that you previously read from?

Mr. Bennett: You can answer.

A. Yes, sir, I do.

[fol. 1595] Q. Do you have any objection to showing us that?

A. No, sir.

Mr. Runzer: Let the record show that the witness is leaving the room to obtain a copy of the letter.

(Witness leaves room.)

Mr. Runzer: Let's identify the notes as Defendant's Exhibit 1, and we will make this two. Mr. Reporter, would you mark the notebook as Defendant's Exhibit No. 1 to Mrs. Park's deposition?

Mr. Bennett: Now, let's go off the record, if I might.

Mr. Runzer: Sure.

(Off the record discussion.)

Q. Mrs. Park, you were subpoenaed to bring here today your notebook. Is that the notebook in front of you?

A. It is.

Q. Would you hand it to me, please, ma'am?

Mr. Bennett: I will advise you that you can refuse to hand to him the full notebook providing your testimony would show that only the two letters previously referred to have any bearing on the matters at issue and that the others are concerned with the other responsibilities and private affairs of Dr. Rose.

Mr. Pritchard: And I want to suggest to you, in view of [fol. 1596] the attorney's attitude about it to take it away, it would be a mistake on your part to hand it to him and I will so tell the Judge.

Q. Do you refuse to give me the book that has been subpoenaed?

Mr. Bennett: I advise you that you have the right, if you choose to do so, and I have advised you on the ground which you refuse to do so.

The Witness: Just the two letters that concern this case, the one to Dr. Aderhold and the one to Commissioner Moore.

Q. Have you looked through that entire book? Can you state here and now that those are the only two letters that concern the Butts-Bryant incident?

A. I have looked through the transcription of the fourth and the fifth. The next date is the 14th. I have not looked at that.

Q. Have you looked at any time preceding the 4th?

A. I believe that's the first transcription in the book.

Q. And you do not refuse on the advise of counsel to hand me that book that was subpoenaed here today?

Mr. Bennett: You have that right under my advice to you.

A. Except for the two letters, I refuse to do so.

Q. Will you hold the book, since it's been subpoenaed, I ask you to hold it until the judge makes a determination.

A. Yes, sir, indeed I will.

Q. And you will see that no one else will take it?

A. Yes, sir.

Q. Where will you keep it?

A. I will lock it in my desk.

[fol. 1597] Mr. Runzer: Off the record.

(Off the record discussion.)

Mr. Runzer: And you refuse us the right to mark the exhibit, Exhibit 1, not to look at, but have it marked?

Mr. Bennett: At this point I would remind you of your right to refuse to offer the entire notebook in response to the question based on the assumption that the entire book would reveal the only two letters that you have testified to. If you are not certain of that and you cannot state that your testimony would so show, you should now examine the letters from the 14th on in order to make certain that the position you have taken, that you refuse to produce the entire notebook is well taken.

Mr. Pritchard: And I suggest you do it now.

Mr. Bennett: Let the record show that she is now examining that portion of her notebook from March 14th, '63, to the end.

The Witness: This is a letter here, Mr. Bennett, that Dr. Rose received expressing confidence in Coach Bryant.

Mr. Bennett: Any response to that sort of letter?

The Witness: Yes, sir.

[fol. 1598] Mr. Bennett: That is a letter related to the Coach Bryant-Saturday Evening Post affair which will be the third one.

Mr. Runzer: Will you permit her to testify to that, details of that letter?

Mr. Bennett: I wouldn't advise her not to, no, sir.

Q. What is the date of that letter?

A. I should put it on every page, shouldn't I? I think it is the 22nd. The 22nd of March.

Q. 1963?

A. Yes, sir.

Q. Who is the letter addressed to?

A. Dr. Harold G. Martin

Minister

Mount Vernon Methodist Church

2400—24th Avenue North, Box 5281

Birmingham 7, Alabama.

You already have a copy of this letter which was in the letters I carried to Birmingham.

Q. Will you read it into the record now, please, ma'am?

A. Dear Harold:

I received your good letter of March 20th and appreciate the kind things you had to say regarding your confidence in Coach Bryant. There is no doubt in my mind that Coach Bryant has represented the University of Alabama in the finest way and that this is an effort on the part of the Saturday Evening Post to try to destroy him.

[fol. 1599] Because the Georgia people made so much over the fact of Mr. Burnett taking a lie detector test, Paul Bryant asked on his own to take the test in order that there would be no doubt regarding the whole incident.

Thanking you for writing me and wishing everything for you, I am

Most cordially,
Frank A. Rose.

Q. I assume the witness is still looking through the letters.

A. Yes, sir.

Mr. Bennett: Yes.

A. This is another letter of which you have a copy in your possession.

Q. The date of the letter, please, ma'am?

A. The 22nd. Was that the last date I gave you? Yes, March 22nd.

Q. Yes, ma'am. Who is it addressed to?

A. Mr. J. N. Groinger.

Q. All right. Would you read that?

A. Mr. J. N. Groninger
563 Downer Place
Aurora, Illinois

Dear Mr. Groninger:

I received your letter of March 18th and I appreciate your writing me regarding the recent story in the Saturday Evening Post. Coach Bryant and Coach Butts have entered suits against the Saturday Evening Post that will involve [fol.1600] Mr. Burnett and I have no doubt in my mind that they are going to win their cases.

Thanking you for your—it doesn't look like a letter, I can't read what it is, wishes. May I continue reading now?

Q. Yes.

A. Here is another one, same date, March 22nd.

Mr. Stephen H. Alex
Town Center Plaza
1000—6th Street Southwest
Washington 24, D. C.

Dear Stephen:

I received your gracious letter of March 18 and it was a real pleasure hearing from you again. I can think of no better group I would rather have behind me at this time than the Dragoons, D-r-a-g-o-o-n-s. This is a very personal letter, because they are the finest damn people I know anywhere, particularly at times like this.

The whole thing is beginning to clear up and from three separate—there is a word here I can't read, investigations, it appears that an effort has been made by a sports writer to take his vengeance out on Coach Bryant that has been building up over a period of years through a national magazine. Great damage has been done to Coach Bryant and the University but we are getting so much support from other national magazines and people across the country it may be that we can reclaim some of our prestige.

Thank you for your good letter and hoping to see you sometime soon, I am

[fol. 1601] Most cordially. Now, we start backwards. Another letter on the 22nd to the Honorable Gessner T. McCorvy.

Honorable Gessner T. McCorvy
P. O. Box 1070
Mobile, Alabama.

Mr. Bennett: Could the record at this point show that Mr. McCorvy is Chairman Pro-Ten with the University of Alabama?

Mr. Runzer: Certainly. No objection.

A. Dear Mr. McCorvy:

I received your letter of March 20th regarding Bear making the proposed announcement that he and Coach Butts did not talk on the telephone and this has been discussed with Mr. Winston McCall and Coach Bryant on

the day we made our television appearances. We discussed it at great length and Mr. McCall thought it would serve the best interest of Bear's case if nothing more was said than had been said at the present time. However, I will discuss this with Bear today and if he should decide to go ahead I'm sure you will hear about it.

Thanking you for calling this to my attention, I am
Most cordially,
Frank A. Rose.

[fol.1602] Another letter on the 22nd.

Mr. Edward P. Curkuff
11 Kerney Street
Oneonta, New York

Dear Mr. Curkuff:

I received a copy of your letter to the Saturday Evening Post dated March 31st in which you praised them for their story in the March 23rd issue. You may be assured that Mel Allen, who has been one of our active alumni does not share the view which you have taken and I am disappointed that alumnus of the University of Alabama which subscribes to the philosophy that a man is guilty before his defense has been offered.

I assure you that five responsible agencies of our Federal Government, the State of Alabama, and the State of Georgia have been conducting a thorough investigation and as of this date have found nothing that would indict Coach Paul Bryant or Coach Wallace Butts in rigging, fixing, or betting on a football game.

I think you should also know that Coach—now, I have Coach B here, at this date, I don't remember which it was. Has a \$500,000 libel suit against the Saturday Evening Post on an article that was printed last year that was without foundation or fact and a deliberate effort has been

made—that's Coach Bryant, and are being made to try to fight this case in public to the destruction of the character of Coach Bryant and the integrity of the University.

[fol. 1603] Hoping you will follow the coming events rather carefully in order that you might know the whole truth, I am

Sincerely yours,

Frank A. Rose.

Another letter the same date, the 22nd.

Mr. Marvin J. McGarity
1416 Sutherland Place
Birmingham 9, Alabama

Dear Mr. McGarity:

I received your good letter of March 24th and I want you to know my deepest appreciation for the kind things you have to say about Coach Bryant. All of us feel the same way you do about him and there is no doubt in my mind but that he is one of our finest citizens.

Thanking you for sharing your letter with me, I am

Most cordially.

Now, we go into a long line of letters answering letters about Coach Bryant, copies of which you have. Would you like me to read them just the same?

Q. Yes, I would.

A. Mr. Eddie Leitman.

Q. This is also March 22nd?

A. Yes, sir.

[fol. 1604] Mr. Eddie Leitman
President Student Government Association
University of Alabama
University, Alabama.

1242

Dear Mr. Leitman:

I received your good letter of March 21st enclosing the resolution on behalf of Coach Bryant and I want you to know my deepest appreciation for this action. I am sure your expression of confidence in support of Coach Bryant will mean a great deal to him as it does to all of us who served as his colleagues.

Thanking you for this resolution, I am

Most cordially yours.

Same day:

Honorable George Huddleston, Jr.
Member of the United States House of Representatives.
Washington, D. C.

My dear George:

I received your memorandum with your remarks to the House of Representatives and I want you to know my appreciation for this good thing you have done on behalf of Coach Paul Bryant and the University of Alabama. We will forever remain indebted to you.

Thanking you again for your many services, I am

Most cordially.

[fol. 1605] Another letter the same date.

Dr. Marten ten Hoar
4 Forest Lake Drive
Tuscaloosa, Alabama

Mr. Bennett: At this point let the record show that Dr. ten Hoar is Dean Americus for the College of Arts and Sciences for the University of Alabama.

A. That's spelled with a small t-e-n and capital H-o-a-r. Marten is spelled M-a-r-t-e-n.

My dear Marten:

I received your letter of March 25th and I assure you it came at a time which was a most helpful period. I don't believe I have ever gone through a day as I did yesterday and I hope I shall not have to go through another one in the next few months. However, I believe that everything worked out pretty well and we are about to find the "rat in the woodpile" in Atlanta.

Hoping all is going well with you and Marie and we can get together sometime soon, I am

Most cordially.

On the same day:

Honorable William Inge Hill
P. O. Box 116
Montgomery, Alabama

[fol. 1606] My dear Inge:

I received your gracious letter of March 25th enclosing the resolution from the Montgomery County Alumni Association and I want you to know my deepest appreciation for this confidence you have expressed in Coach Paul Bryant and me. Everyday we continue our investigation confirming the innocence of Coach Bryant and we feel that we are about to get hold of some information that will help us to understand the whole problem.

Thanking you for your continued loyalty and interest in the University, I am

Most cordially.

Another letter on the same day:

Mrs. Elizabeth Gaines Jackson
526—looks like W-i-l-l-a-i-n-t, and I don't have the whole town here. Looks like River Falls, I don't know where the town of River Falls is.

Dear Mrs. Jackson:

Q. Excuse me, is that an Alabama town?

A. I don't think so, no, sir. Do you know, Mr. Bennett?

Mr. Bennett: I can't answer.

A. Excuse me. I don't believe it is an Alabama town.

[fol. 1607] Dear Mrs. Jackson:

I received your letter of March 21st enclosing a copy of your letter to the Editor of the Saturday Evening Post and I have never read anything that was finer nor more incensive than you have written.

I want you to know that we have found nothing after four and a half weeks of investigation that would reveal that Coach Bryant has done anything wrong or unethical. There is no doubt in my mind but that this is an effort to try to destroy an outstanding man.

Thanking you for speaking in our behalf, I am

Most cordially.

This is a letter dated the 29th of March.

Honorable Fred W. Nichols

Circuit Solicitor

City of Tuscaloosa. I don't have it down here. Mr. Bennett—

Mr. Bennett: I can't respond.

A. Tuscaloosa, Alabama.

My Dear Fred:

Is it possible for me to convey to you my deepest and most profound appreciation for taking the time to come to Birmingham and administer the Polygraph test to Coach Bryant and then making a special effort you made yesterday to come to Montgomery to testify before the

[fol. 1608] Legislative Committee. In all my years of public service I have met no one in whom I have greater confidence or respect more than I do you and it was on the basis of this confidence that I informed Attorney General Cook of Georgia that it is my conviction that there is no man better qualified or more honest that could have improved upon the Polygraph test that you gave Coach Bryant. He too was impressed when I informed him about you but apparently let his politics alter his judgment and the integrity.

In order to keep our records official, I would appreciate your sending me a statement for services rendered as I not only feel strongly that you should be compensated but I believe it will help our cause with the Southeastern Conference to keep it professional.

Thanking you again for the good thing you have done on our behalf and on the behalf of justice and fairness, I am

Most cordially yours.

There is a letter on the 29th:

Mr. Ben A. Green, Editor
The Voice of the Tennessee Walking Horse
Shelbyville, Tennessee

Dear Mr. Green:

I received your gracious letter of April 1st enclosing a copy of your address and I want to express to you my deepest appreciation for this good thing you have done on behalf of Paul Bryant. All of us who know him know of [fol. 1609] his integrity and honesty and not have been shaken one bit by the political situation in Georgia.

I am passing on Kipling's quote "IF" for him to hang on his wall.

Thanking you again, I am

Most cordially.

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This is a letter on April 9th:

Dr. Curtis Jones
Minister of the Union Avenue Christian Church
St. Louis, Missouri

Dear Curt:

I received your good letter of April 2nd regarding your recent luncheon discussion with Dr. Charles Allen Thomas and I appreciate your expressing concern to me regarding our present football investigation. Needless to say it's been a most difficult period for all of us but a great deal of light has come on the subject in the last few days when Dr. Carmichael, the President of an insurance company in Atlanta revealed that he saw the brief notes taken by Mr. Burnett who accused Coach Butts and Coach Bryant of rigging the football game, stating that the notes were not the same as those in the Saturday Evening Post article and that even Mr. Burnett confessed to him that the two men were discussing illegal defenses which were brought about because of football rule changes. The Justice Department, the Commissioner of the Southeastern Conference and I are now of the opinion that this was an effort on the part of Mr. Furman Bisher, sportswriter, Atlanta Con-[fol. 1610] stitution, against whom Coach Bryant has a \$500,000 suit, to attempt to blackmail and smear Coach Bryant.

Coaches like businessmen, college presidents, and preachers, discuss techniques, tickets, football players and anything else pertaining to their business and this has been confirmed by ten of the leading coaches in America that there was nothing in the notes that would confirm anything illegal or unethical.

Hoping that you will keep this confidential until I make my final report, I am

Most cordially.

Mr. Bennett: Off the record.

(Off the record discussion.)

Mr. Runzer: Show him these intervals that Mrs. Park is referring to her notebook. I think it is only fair to her to show that.

The Witness: That's it. Now, just let me start here at the beginning and it won't take but a minute to do that. This is on the 22nd of February. That's it.

Q. Now, do you have with you the notebook that contains the letters for the first days of March which are not contained in that book? That book started with March 4th, you told me.

A. No. This book starts with the 22nd of February.

Q. And there are no other letters except the ones that you told us, except the ones that are connected with the Butts-Bryant incident?

[fol. 1611] A. That I have in my possession. On the last deposition I gave, I stated I do not ordinarily keep notebooks but for a few months. I think I have them now through August.

Q. And this notebook runs from February—

A. 22nd.

Q. Until—

A. April 16th.

Q. Now, I want to identify this as Defendant's Exhibit No. 1.

(Whereupon, said letter was received in evidence and marked "Defendant's Exhibit No. 1," and is attached to the original deposition of Mrs. Park.)

Q. What is the date in April?

A. Sixth.

Q. Mrs. Park, I show you a letter marked Defendant's Exhibit No. 1, which is a copy of a letter dated March 6th from Dr. Rose to Mr. Bernie Moore. Was that a copy

of a letter that was dictated to you by Dr. Rose and transcribed by you?

A. Yes, sir.

Q. And dictated on the 5th and transcribed on the 6th?

A. Yes, sir.

Q. Where in the order does that come? The letter to Dr. Aderholt was the fifth letter of that day?

A. Yes. Now, I have lost my place. Letter to Dr. Aderholt was the fifth and that is No. 16.

Q. Is this your customary initial on the letter, M/H/P?

A. Yes, sir.

Q. Does anyone else at the University use those initials that you know of?

[fol. 1612] A. Not to my knowledge.

Q. And, of course, F.A.R. stands for Frank A. Rose?

A. Yes, sir.

Q. Dr. Rose told us on the week beginning February 24, 1963, he was out of town most of that week; do you recall that?

A. No, sir, I don't. I will have to look at Dr. Rose's calendar.

Q. Do you recall previous to him writing Dr. Aderhold that he received a letter from Mr. Bryant?

A. No, sir.

Q. If such a letter came in, would you merely place it on his desk for his attention when he came back?

A. Yes, sir.

Q. Would you necessarily even read it?

A. I would unless it were marked personal or confidential.

Q. Does this office date stamp the receipt of letters?

A. No, sir, we don't.

Q. Excuse me one moment, please.

Off the record.

(Off the record discussion.)

Mr. Runzer: I think that will be all.

Mr. Bennett: Off the record a moment.

(Off the record discussion.)

Mr. Runzer: It is agreed that the notes relating to those letters which Mrs. Park read us as relevant events to the Butts-Bryant incident will be produced, photocopied, and [fol. 1613] the other notes will be held by Mrs. Park pending a determination by the Court.

Mr. Pritchard: Correct.

Mr. Runzer: All right, that's all.

Further deponent saith not.

Certificate

State of Alabama,
Jefferson County.

I, Carmen Zegarelli, United States District Court Reporter, Birmingham, Alabama, do hereby certify that I reported in shorthand the foregoing deposition of Mrs. Marian H. Park at the time and place stated in the caption hereof; that said witness was first duly sworn to speak the truth, and nothing but the truth; that I later reduced my shorthand notes to typewriting, or under my supervision, and the foregoing pages, numbered three through 48, both inclusive, contain a full, true and correct transcript of the testimony of said witness on said occasion.

I further certify that I am neither of counsel nor of kin to any parties to said cause, nor in any manner interested in the result thereof.

Official Court Reporter

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[fol. 1614]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21491

CURTIS PUBLISHING COMPANY, Appellant,

versus

WALLACE BUTTS, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Before Brown, and Bell, Circuit Judges, and Spears, Dis-
trict Judge.

ORDER—Filed August 21, 1964

By the Court:—

It Is Ordered that the letter-request of counsel for ap-
pellee to dispense with the requirements of Rule 24 (2) (e)
be, and the same is hereby granted.

[fol. 1615]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

MINUTE ORDER RE ARGUMENT AND SUBMISSION—

October 8, 1964

On this day this cause was called, and after argument
by Welborn B. Cody, Esq., Harold E. Abrams, Esq. and
Philip H. Strubing, Esq., for appellant, and by Allen E.

Lockerman, Esq., and Wm. H. Schroder, Esq., for appellee,
was submitted to the Court.

[fol. 1616]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21491

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

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Before Rives and Brown, Circuit Judges, and Spears, Dis-
trict Judge.

OPINION—July 16, 1965

Spears, District Judge: This is a libel suit. Curtis Pub-
lishing Company¹ published an article in the March 23,
1963 issue of the Saturday Evening Post² entitled “The
[fol. 1617] Story of a College Football Fix”, characterized

¹ Hereinafter referred to as either “Curtis”, “defendant” or the
“Post”.

² Also referred to herein as the “Post”.

by the Post in the sub-title as "A Shocking Report of How Wally Butts and 'Bear' Bryant Rigged a Game Last Fall."

On March 25, 1963, Wally Butts,³ former Athletic Director of the University of Georgia, instituted this action against Curtis. In August, 1963, the case was heard before a jury, which returned a verdict against Curtis for \$60,000 general and \$3,000,000 punitive damages. Conditioned upon the failure of Butts to remit that portion of the award for punitive damages in excess of \$400,000, the trial court granted Curtis' motion for a new trial. At the same time, Curtis' motion for judgment notwithstanding the verdict was denied. On January 22, 1964, after Butts had filed a remittitur, Curtis' motion for new trial was denied, and judgment for Butts in the amount of \$460,000 was entered. Thereafter, Curtis filed motions for new trial under Rule 60(b), F.R.Civ.P., which were denied on April 7, 1964. This appeal is taken from the judgment of January 22, 1964, and from the trial court's denial of Curtis' motions for judgment notwithstanding the verdict and for new trial. We affirm.

Curtis publishes various magazines including the Post. Prior to the publication of the story in question, the editor-in-chief, undoubtedly hoping to attract more readers, had decided to "change the image" of the magazine by making it an "expose" type, and embarking upon a policy of "sophisticated muckraking", in order "to provoke people" and "make them mad".⁴

[fol. 1618] The article⁵ involved was based upon a claim by one George Burnett that on September 13, 1962 he had

³ Sometimes hereinafter referred to as "Butts" or "plaintiff".

⁴ See note 25, *infra*.

⁵ The following editorial comment was inserted at the beginning of the story:

"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

accidentally overheard, and made notes of, a long-distance telephone conversation between Butts and "Bear" Bryant, football coach at the University of Alabama, in which Butts divulged certain information about football plays the University of Georgia would use in its opening game against Alabama. Georgia was subsequently defeated 35-0.

About four months after the alleged telephone conversation Burnett contacted various people, including Georgia football coach Johnny Griffith, and then decided to tell his story to the Post. A writer, Frank Graham, Jr., was assigned by the Post to investigate and write the story, and [fol. 1619] an Atlanta sports editor was retained to advise him. Graham never saw Burnett's notes, as they were at the time in the possession of Georgia school officials; he did not interview a witness known by him to have allegedly discussed the notes with Burnett on the same day the telephone conversation purportedly took place; he never viewed the game films; and neither he nor anyone else on behalf of the Post ever contacted Butts or Bryant. He agreed that both he and Curtis knew publication of the article "would ruin Coach Butts' career".

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."

In the story itself it is stated, among other things, that "(t)he Georgia players, their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating". Georgia coach Johnny Griffith was quoted as saying bitterly to a friend, "I never had a *chance*." The next sentence read: "When a fixer works against you, that's the way he likes it."

On March 11, 1963, eleven days before the article was published, Curtis was informed by telegram and letter, both sent by Butts' counsel, of the "absolute falsity of the charges" contained in the proposed story. The record does not disclose that any additional investigation was initiated, and the telegram and letter went unanswered. In addition, a long-distance telephone appeal that the article not be published, made by Butts' daughter prior to publication, was rejected. After the article was published, Curtis refused a demand that it publish a retraction.

The Post took the position from the beginning that the statements made in the article concerning Butts were true, and that because of their nature it had exercised great care by thoroughly checking every significant source of information as to their truthfulness and accuracy, in advance of publication.

Curtis chose not to use as a witness either the author of the article or any of its editors who had made contributions to the article after it had been submitted. Nor did it [fol. 1620] use the Atlanta sports editor who had assisted in the preparation of the story. As one of its principal witnesses it called upon George Burnett, who was known by Curtis to have been convicted of writing bad checks, and to be on probation at the time he claimed to have listened in on the conversation.

Both Butts and Bryant testified. Each emphatically denied the charges contained in the article and stated that there was never any conversation between them having as its purpose the fixing or rigging of any football game. Several football players, past and present, expressed their opinions to the effect that the outcome of a football game cannot be rigged or fixed without participation by the players themselves, and that there is no way in which two coaches can rig or fix the outcome of a football game without the players' knowledge. Other "experts" stated their opinion that the information contained in the "so-called" Burnett notes would not be of any assistance at all to the University of Alabama in preparing for its game

with the University of Georgia. In several instances Butts' witnesses denied direct quotations attributed to them in the article.

In an opinion written by the district judge the facts are stated in some detail,⁶ and no useful purpose could be served by repeating them here, although portions thereof pertinent to specific issues later discussed may be utilized. It is significant, however, at this point, to say that in view of the verdict it rendered, the jury undoubtedly accepted [fol. 1621] Butts' version that the story was "willfully, maliciously and falsely" published, as a result of which he has suffered substantial injury to his "peace, happiness and feelings", as well as to his "honor, reputation and integrity". As the trial judge saw it: "The article was clearly defamatory and extremely so. . . . The guilt of the defendant was so clearly established by the evidence in the case so as to have left the jury no choice but to find the defendant liable."⁷ We wholeheartedly agree with that appraisal.

The Issues Presented

Curtis submits twenty-eight specifications of error which are argued in its brief under ten propositions. The issues involved are: (1) Was the article libelous per se? (2) Does the court's judgment violate Curtis' rights under the First, Fifth and Fourteenth Amendments? (3) Did the arguments of Butts' counsel, not objected to at the trial, require a new trial? (4) Did the court err in excluding certain testimony offered to impeach the credibility of Butts and the witness John Carmichael? (5) Were the extrajudicial statements of George Burnett, and the statements made to him by third person, properly excluded? (6) Did the trial court commit plain error in instructing the jury? (7) Did the trial court err in refusing to charge

⁶ *Butts v. Curtis Publishing Co.* (N.D. Ga. 1964), 225 F.Supp. 916.

⁷ *Id.* at 919.

the jury that it should construe Butts' testimony "most strongly against him"? (8) Did the trial court err in refusing to charge the jury that it should disregard the entire testimony of any witness whom it found to have knowingly and wilfully testified falsely? (9) Does the "newly [fol. 1622] discovered evidence" offered in Curtis' motion under Rule 60(b), F.R. Civ. P. require a new trial? (10) Is the award of punitive damages so excessive that it cannot be cured by the remittitur?

The Article as Libelous Per Se

The trial judge charged the jury that the article was libelous per se. This was objected to by Curtis on the ground that Butts was not actively engaged in the profession of a football coach at the time of publication, and, that no special damage was shown.⁸ Curtis took the same position in its motions for directed verdict and for judgment notwithstanding the verdict.

Curtis' contention in this regard cannot be sustained. This is a *libel* suit as distinguished from a *slander* suit.⁹ Under Georgia law, a plaintiff may recover in a libel action where the defamation is apparent from the writing itself, without the necessity of alleging or proving special damages,¹⁰ and it is not necessary that he be engaged in the

⁸ In support of this proposition, Curtis cites—Weatherholt v. Howard, 143 Ga. 41, 84 S.E. 119 (1915); Van Epps v. Jones, 50 Ga. 238 (1873); Mell v. Edge, 68 Ga. App. 314, 22 S.E. 2d 738 (1942); Haggard v. Shaw, 100 Ga. App. 813, 112 S.E. 2d 286 (1959); and Estes v. Sterchi Bros. Stores, 50 Ga. App. 619, 179 S.E. 222 (1935). These cases, however, appear to be "delinquent debtor cases" referred to in note 11, *infra*.

⁹ Ga. Code Ann. § 105-701 (libel), § 105-702 (slander).

¹⁰ Floyd v. Atlanta Newspapers, Inc., 102 Ga. App. 840, 117 S.E. 2d 906 (1960), the leading case in Georgia, states that words which, if merely spoken, would not be actionable in absence of special damage, may be libelous when printed if false and tend to injure reputation and bring one into public hatred, contempt or ridicule. Ordinarily, only general damages need be alleged in an action for libel.

[fol. 1623] pursuit of his trade, business or profession at the time of publication.¹¹

But even if the law necessitated a showing that Butts was actively engaged in the profession of a football coach [fol. 1624] at the time of publication, we think this requirement has been satisfied.

¹¹Ga. Code Ann. § 105-701, defines libel as the “false and malicious defamation of another, expressed in print . . . tending to injure the reputation of an individual and exposing him to public hatred, contempt, or ridicule . . .”, without the requirement that the charges be calculated to injure one in his trade, office or profession. A newspaper libel is described in Ga. Code Ann. § 105-703, as being “any false and malicious defamation of another in any newspaper, magazine or periodical tending to injure the reputation of any individual and expose him to public hatred, contempt, or ridicule”, again without the requirement that the charges refer to one’s trade, office or profession. Only in the area of slander is a reference to one’s trade, office or profession required. Ga. Code Ann., § 105-702.

The case of *Floyd v. Atlanta Newspapers, Inc.*, *supra*, note 10, in its definitive statement of the Georgia law of libel explains that written words are sufficient to constitute libel per se if they tend to bring a man into public hatred, contempt or ridicule. Damages will be presumed from the nature of the words themselves and their harmful effect and no proof of special damages is necessary. Where the only possible construction is that the words are libelous per se, upon proof thereof, the only remaining question for the jury is that of damages. See also Restatement of the Law Second, Torts, Tentative Draft No. 11, April 15, 1965, Section 569, wherein Georgia is named as one of the majority of states following this rule, and, as explained in the notes to Restatement of the Law of Torts, 1938, Vol. III, Sec. 569, Comment e, pp. 168-9, it may be libelous to impute misconduct in one’s trade, etc., although he is at the time no longer engaged in the pursuit of the trade, business or profession.

Curtis cites many cases in support of its position (see note 8, *supra*). However, these are part of a group of cases known in Georgia as the “delinquent debtor cases” and, as explained by the *Floyd* case, stand in a class by themselves, and have no bearing on causes of action other than those involving charges that one owes a debt and refuses to pay, or owes a debt long past due. In this isolated situation the charge is, as a matter of law, uniformly held in Georgia, not libelous per se, and it is in these cases that Curtis finds language to the effect that falsely spoken or written words that do not contain a charge made in reference to one’s trade, office or profession are not actionable without proof of special damages.

The story was purchased by Curtis on February 22, 1963. Butts resigned as Athletic Director effective February 28, 1963. The article was published in the March 23, 1963 issue of the Post. Thus it may be assumed that Butts was at least temporarily out of work on the day of publication, but it hardly follows that he had completely abandoned the coaching business.

Actually, Curtis admitted in its answer that Butts "has enjoyed a national reputation as a successful and respected member of the coaching profession", and that he "has been approached and offered employment as head football coach by several colleges and professional football teams in the country due entirely to his reputation as a successful member and leader in his profession." This admission, in and of itself, would indicate a recognition that Butts was still identified with some phase of football activities.

Upon Curtis' insistence, its second defense asserting that the statements contained in the article were true, was held to be a valid plea of justification. By interposing this plea, Curtis admitted a prima facie case,¹² but gained the valuable right to open and close. The complaint alleged that "plaintiff's career as a member of the football coaching profession had been ruined and destroyed by this scurrilous and contemptible defamation." (Emphasis supplied.) Without regard to any question as to whether the [fol. 1625] plea constitutes an admission that the remarks were made with malice, it is our view that it necessarily carries with it an admission, not only that the libelous statements were made by Curtis, but also that they were made in relation to Butts "as a member of the football coaching profession". Under all the circumstances, it is untenable to say that simply because Butts was temporarily out of

¹² See Ga. Code Ann. § 105-708 and § 105-1801; *Baldwin v. Davis*, 188 Ga. 587, 590, 4 S.E. 2d 458 (1939).

a job at the time of publication, he was not actively engaged in the coaching business as a means of livelihood.¹³

We hold that the trial court correctly charged the jury that the article was libelous per se, and that he did not err in denying Curtis' motions for a directed verdict and for judgment notwithstanding the verdict.

Curtis' Constitutional Rights

Curtis contends that the trial court's judgment violates and abridges its rights of freedom of speech and of the press guaranteed by the First, Fifth and Fourteenth Amendments to the Constitution of the United States. It relies upon the case of *New York Times Company v. Sullivan*, 376 U.S. 254, 84 Sup. Ct. 710, 11 L.Ed. 2d 686 (1964), decided subsequent to the trial of this case, in which it was held that in order for a public official in a libel suit to recover any damages he must prove that a statement against his official conduct was published "with actual malice—that [fol. 1626] is knowledge that it was false or with reckless disregard of whether it was false or not". 376 U.S. at 279-80. This holding, says Curtis, "drastically changed the constitutional principles applicable to libel actions", by announcing new safeguards which "make it manifestly clear not only that the rules of law which were applied in the trial of the instant case were unconstitutional, but also that the result reached by the jury is a patently unconstitutional result which cannot be permitted to stand".

Countering this, Butts says that the invocation of the constitutional defenses in libel cases has received emphatic and substantial attention by scholars and Courts over the

¹³ In the Missouri case of *Clark v. McBaine*, 299 Mo. 77, 252 S.W. 428 (1923), at 432, cited by Curtis, the Court stated that though the plaintiff "had been removed as a member of the faculty, . . . his profession, or means of a livelihood, was still that of a professor of law, and a writer of textbooks upon the law, and the gist of his damages . . . consisted of injury done to his standing as a professor and writer of law."

years; that the *Times* case resulted in no fundamental change of law, but merely gave new sanctions to a long standing rule; and that in any event, Curtis did not invoke those defenses even though they are more broadly stated in the Georgia law than in the *Times* case.¹⁴ Moreover, [fol.1627] Butts emphasizes that the *Times*' constitutional grounds now asserted were not timely raised or preserved below. In fact, they were presented for the first time in the F.R.Civ.P. 60(b) motion filed on March 23, 1964, long after trial.

The record reflects that Curtis did not object to the trial court's instructions.¹⁵ The *Times* case was decided by the Alabama Supreme Court on August 30, 1962. A petition for writ of certiorari presenting constitutional questions identical to those now being urged by Curtis, was filed in the United States Supreme Court on November 21, 1962, four months prior to the filing of the complaint in this

¹⁴ In support of his position, Butts cites: "Justice Black and First Amendment 'Absolutes'; A Public Interview," 37 N.Y.U.L. Rev. 349 (1962); C. L. Black, Jr., "Mr. Justice Black, the Supreme Court, and the Bill of Rights," Harpers, February, 1961, p. 63; *Caldwell v. Crowell-Collier Pub.Co.*, (5th Cir. 1947), 161 F.2d 333; *Sweeney v. Schenectady Union Pub.Co.*, (2d Cir. 1941), 122 F. 2d 288, aff'd 316 U.S. 642 (1942); *Henry v. Collins*, 158 So. 2d 28 (Miss. 1963); *Louisiana v. Garrison*, 244 La. 787, 154 So. 2d 400 (1963); *Louisiana v. Moity*, 245 La. 546, 159 So. 2d 149 (1963); and other pre-*Times* defamation cases. He points out that the Supreme Court in *Times* recognizes that "a like rule" has existed for a number of years in some state courts; that the Kansas Supreme Court, in *Kennedy v. Mid-Continent Telecasting, Inc.*, 193 Kans. 544, 394 P. 2d 400 (Kan. 1964), noted that the *Times* decision requires no change in the law; that the trial court said (note 23, *infra*) that Georgia provides this "like rule" by a statute granting a qualified privilege for "comments upon the acts of public men in their public capacity and with reference thereto", citing Ga. Code Ann. § 105-709(6); and that privilege can be lost by proof of actual malice, citing Ga. Code Ann. § 105-710.

¹⁵ See Rule 51, F.R.Civ.P. Also see note 36, *infra*.

case on March 25, 1963.¹⁶ Certiorari was granted in the *Times* case on January 7, 1963. The jury verdict in the instant case was returned on August 20, 1963, and the trial court's judgment thereon was entered the same day. A Birmingham, Alabama law firm, which represented the New York Times in the case brought against it by Sullivan, also, together with Curtis' General Counsel, represented Curtis in a libel suit Coach Bryant had filed against it in the United States District Court at Birmingham, Alabama. A member of this law firm had sent information to Curtis about the alleged telephone conversation between Butts and Bryant, and had talked with the author, Graham, about the matter prior to publication of the story. The same lawyer, together with another member of the firm, [fol. 1628] sat (as did the General Counsel for Curtis) at Curtis' Counsel table throughout the trial of this case.¹⁷

While it is true that the Supreme Court did not decide the *Times* case until March 9, 1964, it would be contrary to reason and common sense to assume that there had not been, at all times during the pendency of this case, full communication among Curtis' counsel, particularly con-

¹⁶ We have examined the petition for writ of certiorari presenting the constitutional questions, and find that it was filed by the New York Times Company on November 21, 1962. The brief for respondent in opposition was filed on December 15, 1962, and petitioner's reply thereto was filed on December 29, 1962.

¹⁷ The Birmingham law firm of Beddow, Embry and Beddow, which represented the New York Times in the Supreme Court of Alabama, is also shown to be counsel for the Times in the Supreme Court of the United States. Mr. Roderick Beddow of that firm represented Curtis in the case of Paul Bryant v. Curtis Publishing Company, in the United States District Court in Birmingham, and both he and Mr. T. Eric Embry of that firm sat, along with the General Counsel of Curtis, Mr. Philip H. Strubing, at the Curtis counsel table throughout the trial of this case. Butts' brief states, without contradiction, that Mr. Beddow "initially 'sent them (Curtis) this information' about the alleged telephone conversation and was a principal in the initial work of the author Frank Graham."