

out the participation of the players, or some of the players, themselves?

A. Definitely not. I do think any fix has got to be occurred by the participants, and if it can't be fixed in any other way, we are in serious trouble in football.

Q. I didn't—I didn't understand.

A. I said, if it could be fixed any other way, I think football is in serious trouble.

Q. What is that?

A. I think if you can pick up a telephone and call somebody and express an opinion about somebody and say it's a fix, I think we are in serious trouble; because I think we express opinions every day. We give more information to the press every week to promote the game than is being expressed in these notes right here.

Q. My second question; based upon the experience that you have had as a player and coach, which I just related [fol. 728] and will not repeat, is there any way, in your opinion, that the outcome of a football game can be pre-arranged, fixed, or rigged without the players' knowledge?

A. I believe they do have to have some knowledge of it. I don't believe that I, as a coach, on the same football team, can give an adverse offensive plan and still fix a game, because basically football is surrounded with blocks, tackling and running with the football.

Q. Therefore, your answer is that it would require prior player knowledge and participation knowledge in order to—

A. Fix a football game; that's correct.

Q. In your opinion as a former player and a present coach, is there anything in that exhibit which you are now holding in your hand which, in any way, could be used to affect or have influence upon the outcome of a football game?

A. I have studied these notes, and I believe I expressed my opinion of these notes when they first were announced; and I still contend there's nothing in here to substantiate anything of value in football planning.

Q. You, at present, are where? You came here from where?

A. I came here from our training camp in Lake Forrest, Illinois.

Q. And you plan—you came in yesterday?

A. I came in Saturday evening.

Q. And you plan to return—

A. I am returning this afternoon, if I can get away.

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[fol. 729] (Whereupon a conference was held at the Bench between the Court, Mr. Schroder and Mr. Cody.)

* * * * *

RAYMOND W. CLARK called as a witness on behalf of the Plaintiff, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. State your name for the record.

A. Raymond W. Clark.

Q. Speak up so everyone can hear you, Mr. Clark. In 1962, where were you in school?

A. I was a senior at University of Georgia.

Q. Were you, in 1962, a member of the Georgia football team?

A. I was captain of the team in 1962.

Q. You were captain of the 1962 team that played Alabama in Birmingham?

A. Yes, sir.

Q. What is your position or what position were you assigned to?

A. I was left end on the University of Georgia team.

Q. I believe the testimony is that you were injured and unable to play in the game?

A. Yes, sir; I was injured Thursday night before the game.

Q. Was that during a scrimmage, I believe you said?
[fol. 730] A. Yes, sir; we had a full scrimmage without tackling the night before the game in the stadium.

Q. Did you attend the game?

A. Yes, sir; I dressed out for the game, but I was unable to walk.

Q. Did you sit on the side lines there?

A. I stood on the side lines; yes, sir.

Q. You were how close, now, to the boys as they would be substituted for other players and as they came off the field?

A. I would talk to them as they came off the field, and more or less watching them. I was watching the ends pretty close. Barry Wilson had taken my place, and I was watching them and telling them what I could tell them what I could tell them to do to better themselves, and I was right there on the side lines as they came off the field.

Q. Was or not there anything said by any of those boys to whom you talked indicating that anything was wrong on the field?

A. No, sir; none that I heard on the side lines.

Q. Did you or not hear any of the Georgia boys come off the field complain that Alabama had an advantage over them—

A. No, sir.

Q. —because of knowing the plays or something?

A. No, sir.

Q. Were you out for the rest of the season? Did you play any more?

A. Yes, sir; my leg was broken.

Q. It was broken?

A. Yes, sir.

Q. Prior to the game played on September 22, 1962, you were, I assume, a regular participant in the practices until you injured yourself on Thursday night?

[fol. 731] A. Yes, sir; that's right.

Q. Mr. Clark, during that—strike that, please. Mr. Clark, when—as captain of the team I am asking you this

question, when is the plan, the offensive plan that the University of Georgia was going to use against Alabama on February—on September 22, given to the team?

A. You mean our plan, to Georgia, when it was given to us?

Q. Yes.

A. We usually start running against the Alabama defenses on Monday. We will start running them on Monday. We will take offense for half the practice and defense for the rest.

Q. The plays and formations then that Georgia is going to specialize in against Alabama that year were finalized in the week of the game?

A. Yes, sir; we—see, we usually have the two weeks before our Alabama game each year, and the first week is more or less conditioning, strictly conditioning. We do sprints, and we scrimmage quite a bit, and the Monday of the week we start preparing ourselves for the game.

Q. Reference has been made to the pass pattern known as, in Georgia jargon, as optional left; does that mean anything to you—

A. Yes, sir.

Q. —as an end?

A. Yes, sir. That tells us our pass pattern.

Q. Did you have such a play or not in the game plan for the Alabama '62 game?

A. An optional left?

Q. Yes, sir.

A. We had the play, but we didn't run it, I don't believe, in the game.

[fol. 732] Q. Had you used it in 1961?

A. Yes, sir; we used it, I believe, if I am not mistaken, against Florida, optional left and right.

Q. How long, to your knowledge, had that been one of the pass patterns for the University of Georgia?

A. I believe we have been running it ever since I have been at Georgia. It's been five years, I mean, the name

may have changed, but it was always basically optional left and right.

Q. Who played quarterback for Georgia? Who was the first string quarterback in that game against Alabama?

A. Larry Rakestraw.

Q. Was he or not injured before the game also?

A. Yes, sir; his ankle was injured. He had it taped up during the game.

Q. Did that have any effect upon his ability to play during that game?

A. I believe it hindered him quite a bit. He could roll out, but it hindered him a lot, and he was confined on how far he could run.

Q. Were any of the other first string members of the Georgia team also in a hampered physical condition?

A. Well, were all leg weary. You also get leg weary with two a day, you are pretty tired, and we were all leg weary and just worn out.

Q. Who was your first string defensive center?

A. I believe it was Len Hauss.

Q. Was Hauss—did he have any injury before the game?

A. Yes, sir. He had torn ligaments in his leg, and he—he had to wear a steel brace on his leg during—

[fol. 733] Q. Did he play during the game, too?

A. Yes, sir; he played.

* * * * *

ROBERT WALLACE WILLIAMSON called as a witness on behalf of the Plaintiff, after having first been sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. For the record, will you please state your full name?

A. Robert Wallace Williamson.

Q. To shorten this, are you a member or were you a member of the University of Georgia football team in 1962?

A. Yes, sir.

Q. State what position you played and what string it was.

A. Right guard on the first team.

Q. All right, sir. Did you play in the Alabama-Georgia game in Birmingham, September 22, 1962?

A. Yes, sir.

Q. About how long did you play in that game?

A. Approximately forty or forty-five minutes.

Q. Mr. Williamson, was it your brother Willie Williamson—

A. Yes, sir.

Q. —that went to Georgia Tech?

A. Went to Georgia Tech.

Q. During the game, did Georgia or not run any sweeps?

A. Yes, sir; we ran some sweeps.

[fol. 734] Q. What is a "sweep"?

A. Well, that is—

Q. Speak up, please, sir.

A. Well, the backfield motion it would be to the right or left with certain interference, the halfbacks leading.

Q. During the Alabama-Georgia game of 1962, did you, playing guard, ever pull on a sweep when you were the onside guard?

A. No, sir; I didn't.

Q. Does Georgia have any play where the onside guard pulls on a sweep?

A. No, sir; I don't believe so.

Q. Was or not that in the game plan for the Alabama-Georgia game?

A. No; it wasn't.

Q. You have been playing varsity ball at Georgia how long?

A. Past three years.

Q. During the time that you were on the field, I believe you estimated it as having been forty to forty-five minutes?

A. Yes, sir.

Q. The length of a game in actual playing time is sixty minutes?

A. Yes, sir.

Q. During the time that you were on the field as a player, will you please tell the Court and Jury if there was anything done or said by the Alabama players which indicated they might know what Georgia was going to do?

A. No, sir; not a thing.

Q. And a guard plays where with reference to where all the plays are?

[fol. 735] A. Well, center plays in the middle of the lane and a guard plays on either side.

Q. You are right in the middle of where all the players are?

A. Yes, sir.

Q. What was the, in your opinion, physical condition of the Georgia football team before the Alabama game in 1962?

A. Before, I don't think it was real good. I think a lot of the boys were pretty worn down; at least, I was. I don't know how the other boys were; a little bit weary.

Q. The Saturday Evening Post in its issue of March 23, 1963, in a story captioned "The Story of a College Football Fix" has this to say on Page 81, Column 3, and I quote, "The Georgia players their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating". I want to ask you two questions about that quotation. Number one, at any time during that football game did you, who played forty to forty-five minutes in that game, ever feel that the moves of the Georgia team were analyzed and forecast as described in that part I read you?

A. No, sir.

Q. After the game was over, and I will read this part again, it says the Georgia players "took a frightful physi-

cal beating"; in your opinion, I will ask you after the game was over, had the Georgians taken a frightful physical beating?

A. I don't believe so. I know I didn't, and I played right in the middle of it.

Q. Were there any games other than this one in which the players took worse beatings physically?

A. Yes, sir.

Q. How about Georgia Tech?

[fol. 736] A. We did by them.

Q. South Carolina?

A. South Carolina.

Q. What sort of team is Alabama insofar as—well, you describe it to me in relation to the others that you played; how do they play?

A. Their lineman is about my size—I am fairly small for a college lineman and real agile and quick and they pursue real well.

The Court: Any questions, Mr. Cody?

Mr. Cody: I don't believe he is through, Your Honor.

The Court: I understood he was.

Mr. Schroder: Yes, sir.

Cross examination.

By Mr. Cody:

Q. Mr. Williamson, who was your best running back?

The Court: You referring to Georgia?

Mr. Cody: Georgia.

A. (By the witness) Well, we didn't have too many really good ones. Don Porterfield was a good one; Leon Arm-
[fol. 737] brester, our fullback, was good. I thought Leon Armbrester played the best offense game since—

The Court: Are you referring to the Alabama and Georgia game—

The Witness: Yes, sir.

The Court: —or all season?

The Witness: Well, all season; he is the best back.

The Court: Armbrester?

The Witness: He picked up more yards, I believe.

By Mr. Cody:

Q. Who was your best pass receiver?

A. I would say Ray Clark was before he got hurt, but I guess Mickey Babb was after that.

Q. Without being too modest, other than yourself, who was the best lineman you had?

A. I'd say Paul Holmes.

Q. Holmes?

A. He is up with the pros now. Len Hauss, before he was hurt bad, I thought he would be an outstanding line-backer.

[fol. 738] Q. Mr. Williamson, in acquainting the players with the game plan for this Alabama game, don't you know that the players themselves were not informed by the coaches of the game plan itself but only their particular assignments for particular plays?

A. I don't quite follow you.

Q. Prior—let's put it this way. Prior to the Alabama game, did you see any layouts of the game plan?

A. There was a layout for my group, the guards; we had our assignments.

Q. It is limited to that, isn't it?

A. There is an overall plan, too, they run.

Q. You didn't get a hold of that?

A. I don't pay attention to what the backs do.

Q. The coaches didn't tell you what the game plan for the backs were?

A. They didn't tell me.

Q. Well, that is what I'm asking you?

A. No, sir.

Q. And they didn't tell you what the game plan for the fullback was?

A. No. I knew the players that I was supposed to block for the fullback and halfbacks.

Q. And the game plan, so far as you were concerned, the only part that you were informed about was the part that you were to play in it; is that right?

A. That's right.

Mr. Cody: That's right.

The Court: All right, sir.

[fol. 739] Redirect examination.

By Mr. Schroder:

Q. And that would be made clear to the team what—how long before the game, the game plan itself; when was it finalized?

A. Usually the Monday before—I mean, the Monday before the Saturday ball game.

Mr. Schroder: All right, sir. Come down.

Mr. Cody: One more question.

The Witness: Yes, sir.

Recross examination.

By Mr. Cody:

Q. Mr. Williamson, you started on Monday of the week of the game to specifically put into operation whatever your assignment was, and that is practice for the particular plays for that game, right?

A. Right.

Q. So that necessarily those plays had to be formulated the previous week; is that right?

A. Yes, sir; I imagine they were.

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MICKEY BABB called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

[fol. 740] Direct examination.

By Mr. Schroder:

Q. Would you kindly state your name for the record?

A. Mickey Babb.

Q. Where is your home, Mr. Babb?

A. Atlanta, Georgia.

Q. Where are you now in school?

A. Athens, Georgia, University of Georgia.

Q. In 1962, were you a member of the University of Georgia varsity football team?

A. Yes, sir.

Q. What position did you play?

A. Right end.

Q. Do you have or not another year of eligibility?

A. Yes, sir.

Q. You will, therefore, be on the varsity team this coming fall?

A. Yes, sir.

Q. Mr. Babb, prior to the Alabama-Georgia game in Birmingham, in September, 1962, what coaching was given you with respect to where you should play on Georgia's offensive formation known as the pro-set?

A. If I was going to swing or not?

Q. Yes, sir.

A. It was—the week prior to the game I was told that I was going to be the wide man on the pro-set every time; I would be the wide man.

Q. You use the word “swing” in describing your coaching or what was coached you. Would you please describe to the Court and Jury what “swinging” means?

[fol. 741] A. Well, we would run a pro-set, and if we say “pro-right”, we'd use a slot formation to the right and send a left end out between and eight and fifteen yards; they told me the week prior to the game I would be the wide

man on all the pro-sets. On pro left, I would be wide man right, and on pro right I would be the wide man left.

Q. When you say "the week prior to the game," will you tell us what you mean by that?

A. It was on a Wednesday that I was informed that I would be the swing man.

Q. How many days before the game was that Wednesday?

A. Three; it was Thursday, Friday and we played on Saturday.

Q. During the game that the University of Georgia had with Alabama on the evening of September 22, was that formation that you have just described used or not used by the University of Georgia?

A. It has been used in the past, and we used it prior to the game.

Q. Was it used or not used during the game?

A. Yes, sir; it was used during the game.

Q. And as I understand your testimony you were the end that was out, you say, eight to fifteen yards?

A. Yes, sir.

Q. Why do you say eight to fifteen yards? Is there any discretion to you in your hands?

A. Well, it is according to the field position where we have the ball. If we are near the side line, I can't split out as far as I could if we were in the middle of the field. It is according to how the field position is.

Q. When Georgia was in the normal slot formation and you were playing the slot end, how far from the tackle would you place yourself?

[fol. 742] A. Well, you vary it sort of how the defensive man plays. I would say between three and five yards.

Q. During the Alabama-Georgia game that we are talking about did you do what you have just described?

A. Yes, sir; I played according to how the defensive man played me.

Q. The pro-set that we talked about before we talked about the normal slot, do you recall about how many times

Georgia employed that formation during the first half against the University of Alabama?

A. It wasn't—I can't remember exactly how many times we run it. It wasn't too many times as I can recall, but I am not too definite on that.

Q. Do you recall with what success the University of Georgia employed that formation during the first half?

A. It was about the only way we were moving the ball against Alabama at the time. We had gone into a pro formation and had some gains off of that.

Q. During the second half of the same game, did or not the University of Georgia use the same formation?

A. Yes; we used the pro-set in the second half too.

Q. Compare for the Court and Jury, please, sir, the success that Georgia had in the first half and the success, if any, that Georgia had in the second half when employing that pro-set formation?

A. In the first half the pro-set was successful for us, but in the second half Alabama switched their defense around, and then kind of checked our defensive formation then.

Q. Mr. Babb, are you familiar with the pass formation described as optional left in the Georgia series of plays [fol. 743] that had been used by Georgia for—in the past?

A. Yes, sir.

Q. Was that formation known as optional left in the game plan for the Alabama game of 1962?

A. No, sir.

Q. During the game in Birmingham were you in the position that you have stated you were in when Georgia was using the pro-set? Was the ball thrown to you on passes?

A. Yes, sir.

Q. During the first half of that game would you relate to the Court and Jury whether or not you were in the open, so to speak, during the first half?

A. Yes, sir; I broke an open on a number of occasions during the game, but the ball was never thrown to me.

Q. During that game, without regard to what formation Georgia was in, did you, Mr. Babb, or not, catch everything that was thrown to you?

A. I didn't catch everything that was thrown to me; that is almost impossible.

Q. Was there or not anything, in your opinion, wrong with the physical condition of your quarterback, Mr. Rakestraw, during that game?

A. Larry's ankle was broken during the summer, and he was handicapped by his ankle.

Q. Did, in your opinion, that, plus pass protection, have anything to do with Georgia's passing in that game?

A. Well, our pass protection, our linemen just didn't block too well; they just seemed to fall down on their protection blocking. Larry was rushed, and he had to throw off balance a lot of times.

[fol. 744] Q. Mr. Babb, as a member of the Georgia varsity football preparing for the Alabama game, when was the final game plan formalized?

A. We put in our game plan the Monday before the game on Saturday. We diagram all the plays on the chalkboard, and that is when we get our game plan.

Q. Are all of the members of the squad present when that is done for the players?

A. Yes, sir; yes, sir.

Q. In the Saturday Evening Post article appearing in its issue of March 23, 1963, appears this, and I will read it. "The Georgia players, their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating." Now, how many minutes, roughly, did you play in that ball game?

A. I played approximately fifty minutes.

Q. Out of sixty minutes taken to play the entire game?

A. Yes, sir.

Q. In your opinion, were the moves of the Georgia players analyzed and forecast as described in that quotation I just read you?

A. No, sir. We didn't take a physical beating from Alabama. They don't play that type of ball game. They play

a hit-and-run defense. They analyze your plays as quick as possible, and they are gone; they hit you and are gone.

Q. How does that compare with other teams that Georgia played during the season?

A. Well, other teams, like South Carolina, they play an entirely different ball game. They will stand there on the line and fight you. They don't hit you and go; they stand right there and fight you. Clemson does the same thing, and Tech plays on that type.

[fol. 745] Q. In the Georgia-Alabama game did you as a player feel that your move was being—each move was being analyzed?

A. No, sir.

Q. In that same article, and in that same column, Page 81, Column 3,—will you step down here or can you read this from there—reading in the lower part of that column, sir, and I am quoting directly from the column, “Later other members of the Georgia squad expressed their misgivings to Furman Bisher, sports editor of the Atlanta Journal, ‘the Alabama players taunted us,’ end Mickey Babb told him. ‘You can’t run eight-eight pop, a key Georgia play on up, they’d yell. They knew just what we were going to run and just what we called it.’” You have heard me read that portion, and you have stood here while I read it. Did I read it correctly?

A. Yes, sir.

Q. I want to ask you, Mr. Babb, is that an accurate quotation from you?

A. That is inaccurate.

Q. Will you please use this mark and draw a sort of a parenthesis there and initial it, please, sir?

A. Right there?

Q. Yes, sir.

The Court: What page was that on? What column?

Mr. Schroder: Page 81, Your Honor, Column 3. It is the third from the last paragraph. You see it, Your Honor?

The Court: Yes.

[fol. 746] Mr. Schroder: All right.

By Mr. Schroder:

Q. You were, evidently, interviewed by the party named as quoting you at some time about that game, were you not?

A. Yes, sir.

Q. When were you—

The Court: What party is that? Mr. Bisher?

Mr. Schroder: Yes, sir.

By Mr. Schroder:

Q. When were you so interviewed?

A. It was the Friday before we had our G-Day game, spring practice. I don't recall the day. It was the Friday before the game.

Q. Would that have been some time in the spring?

A. It was—we had—

Q. February?

A. I believe it was March the 4th; I don't recall the date, but I believe—

Q. Now, in your conversation with the gentleman named, did you refer to the 1962 or the 1961 game, and, if so, what was there discussed?

A. That was the 1961 game I discussed with Mr. Bisher. What I said was not related any at all to the 1962 game.

Q. Did the University of Georgia in 1962 or 1961 have a play called "Eight-eight Pop"?

A. No.

[fol. 747] Q. Is it or not common, in your opinion, for a football player or players, when they are on the wrong end of the score, to complain a little bit about how they are being triple-teamed or double-teamed, or something like that?

A. Everybody likes to make up excuses when you lose.

Q. That is common practice; you do it yourself?

A. Yes, sir. We kind of get around and talk about the game, talking about why we lost, or something.

Q. That excuse will last about how long?

A. Until the next game. We, you know, talk about it.

Q. You see the movies after that?

A. Yes, sir. We see the movies on the Sunday afternoon after the game.

Q. What, in your opinion, was the physical condition of the Georgia team just before the Alabama game?

A. We were sort of run down. We had had two weeks of hard practice; our legs were tired, and I don't think we were physically able to play on that day.

Mr. Schroder: You may examine.

Cross examination.

By Mr. Cody:

Q. Mr. Babb, when Georgia had the ball in the middle of the field, that is, the middle of the field from the standpoint of the side lines, what instructions had you received [fol. 748] from the coaches as to how far out to go on this split end?

A. On the pro-set?

Q. Yes.

A. I split out fifteen yards.

Q. And then the only reason for you not going out that distance of fifteen yards would be on account of that ball being on the side line and not being able to go out that far?

A. We have a certain amount of yards that we can get to the side lines; six or eight yards. We just leave that line open, because you can't operate in that small a distance.

Q. Is it true, Mr. Babb, that you only receive your assignment for that particular game without knowing what the assignment of the other players were?

A. Well, we have meetings the week prior to the game, and the whole team splits up. The ends go in one room and the backs in another and the linemen in another room, and we receive our own instructions there.

Q. The ends know what they are supposed to do?

A. We know what we are supposed to do, and in a general form we know what everybody is supposed to do.

Q. They have the tackles in another room?

A. They have the tackles, guards and centers in another room.

Q. And you don't know what their instructions are?

A. I do in a round-about way.

Q. But indirectly they are not permitted to disclose that to you, are they?

A. Yes, sir.

[fol. 749] Q. Do you know what the assignment the half-back is?

A. I know in a general way.

Q. But not specifically?

A. I wouldn't know specifically because I am not a half-back.

Q. As a matter of fact, isn't it true that the—that the game plan itself is something that is within the knowledge of the coaches and not the players?

A. They diagram every play we will run on the chalkboard in front of the whole team. We watch what every man is supposed to do.

Q. When do they do that?

A. Monday prior to the game.

Q. So that is formulated prior to Monday?

A. I don't know when the coaches formulate theirs.

Q. Don't they draw up a—what is known as a game plan?

A. Yes, sir.

Q. And put it on paper?

A. Uh huh; yes, sir.

Q. Did you see that before the Alabama game?

A. Yes, sir; they gave us a game plan.

Q. A complete copy?

A. Yes, sir.

Q. What day was it that you say you talked to Furman Bisher?

A. It was on a Friday prior to our spring day game.

Q. That would be about the first of February?

A. I can't remember.

The Court: He said the first of March.
 [fol. 750] The Witness: I believe we had our spring practice in February.

Examination.

By the Court:

Q. What conversation did you have with him? You said in regard to the '61 Georgia game?

A. Yes, sir.

Q. You didn't discuss the '62 Alabama game?

A. No, sir. What I said to him was in regard to the 1961 game. I made it specific to him that is what I was talking about.

Q. What did you say in regard to the '61 Alabama game?

A. He said to me, he said, "I want to ask you a question. Did the—" he said, "Did the Alabama team seem to know your plays?" I said, "Not last year. If they did, it would have been more obvious in the 1961 game, if they did." One of the boys after the game—we have got friends on all the teams. One of my friends said, "You can't run this play." You know, just general football talk.

Q. That was in the 1961 Alabama game?

A. The 1961 Alabama game.

Q. Which was played in Athens?

A. Sanford Stadium.

Q. First game of the year?

A. Yes, sir.

Q. And you were a sophomore at that time?

A. Yes, sir.

Q. That was your first game?

A. Yes, sir.

Q. Your discussion did not center on the '62 game?

[fol. 751] A. I told him I didn't know if there was any talk on the line in the 1962 game.

Q. You didn't hear any talk, if there was any?

A. No, sir, I did not.

Q. Go back to the '61 game. What is that you said about the '61 game, that it was—if it happened at all, it would have been in '61?

A. I said it would have been more obvious in the '61 game if it had happened.

Q. You mean taunting back and forth?

A. I didn't hear—I just heard from a boy, it was a half-back—

The Court: That would be hearsay.

Cross examination (continued).

By Mr. Cody:

Q. Did you have any play at all in your series that had a number "eight-eight" on it?

A. Eighty-eight, yes, sir. We had an eight-eight and a ninety-nine.

Mr. Cody: That's all.

The Court: Any further question of Mr. Babb?

Redirect examination.

By Mr. Schroder:

Q. Can you pop off of eight-eight or eighty-nine?
[fol. 752] A. No, sir; that is two entirely different plays. The blocking is different and everything.

* * * * *

SAMUEL RICHWINE, called as a witness on behalf of the Plaintiff, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. For the record, will you kindly state your full name?

A. Samuel Richwine.

Q. Where do you live, Mr. Richwine?

A. I live in Athens, Georgia.

Q. What is your occupation, Mr. Richwine?

A. I am the athletic trainer for the athletic teams at the University.

Q. In 1962 were you the trainer for the University of Georgia football team?

A. Yes, sir.

Q. Mr. Richwine, on March 23, 1963, the Saturday Evening Post published an article entitled "The Story of a College Football Fix." On page 81, in column 3, that article reads as follows: "And Sam Richwine, the squad's trainer, told Bisher, 'They played just like they knew what we were going to do, and it seemed to me a lot like things were when they played us in 1961 too.'" Mr. Richwine, is that an accurate or an inaccurate quotation?

A. Inaccurate.

Q. You evidently did have—before I do that, will you come down here, please, sir; I didn't read that from the [fol. 753] board. What I just read, Mr. Richwine, is right here, and you can check it again to make sure I read it right.

A. Uh huh; yes.

Q. You say that is an inaccurate quotation?

A. Yes, sir.

Q. Will you please make one of these marks there and put your initials out there? Go back to the stand.

Mr. Schroder: You may examine.

Cross examination.

By Mr. Cody:

Q. Mr. Richwine, when you were talking to Mr. Bisher, what game were you referring to, what game were you discussing?

A. The Alabama game of 1962.

Q. Did you get into any discussion of the 1961 game?

A. I made a comment about the '61 game.

Q. What was the comment?

A. I commented about what wonderful physical condition I thought they were in.

Q. Did you say anything to him about—about what knowledge the Alabama team had of the plays that Georgia was running?

A. No, sir.

Q. You were on the side line as these players came out of the game?

A. Yes, sir.

Q. Did you personally hear any comment made by any of the Georgia players about what was going on in the game?

[fol. 754] A. Well, they make all kinds of comments about "this fellow hitting me" or something like that.

Q. Was any comment made about what Alabama knew about the plays they were running?

A. No, sir.

Q. Did you have any other subject matter that you discussed with Mr. Bisher?

A. No, sir. He just came over and talked to me the one day when I was in the training room working. He asked me—I made a comment I thought they were in wonderful physical condition in '62, and I said I thought they were in better shape in '61.

Q. Georgia?

A. No; I am talking about the Alabama team.

Examination.

By the Court:

Q. What was—does he usually come over and talk to you, Mr. Richwine?

A. Oh, he comes over a lot to talk to the coaches and watch practice.

Q. What question did he propound to you when you said the Alabama team was in wonderful physical condition?

A. He asked me what I thought about the game.

Q. And that is all he asked you?

A. Made a statement like, “didn’t”—something to the effect “didn’t you get the opinion that they knew everything that we were going to do?” When he said “we”, he meant “us”.

Q. Yes, sir. What was your answer to that?

A. I told him I didn’t know; I don’t know one play from the other, no way for me to know that. I take care of the [fol. 755] physical conditions; I don’t do anything.

Q. No semblance of anything told to Mr. Bisher in—didn’t resemble this statement in any way?

A. Well, the resemblance—I referred to the physical condition of the men.

Q. Yes, sir.

A. But, in the article there, the statement, there is nothing about physical condition. That is what I said.

Q. You mentioned nothing to him in any way about any plays?

A. No, sir; I don’t know—I don’t know a play when I see one.

Q. The ’61 game, did you discuss that?

A. I discussed the physical condition. I said I thought they were in better shape in ’61 than in ’62.

Q. And that’s all?

A. Yes, sir.

Q. That was the only fact that you stated to him, they were in better physical condition in ’61 than in ’62?

A. Stated that they were in—they were in good physical shape in '62, and I thought they were in better shape in '61 than in '62.

The Court: All right, sir.

Mr. Cody: Come down.

The Court: You may step—are you through with him?
[fol. 756] Mr. Schroder: No, sir.

Redirect examination.

By Mr. Schroder:

Q. Shortly after the appearance of this article published by the Saturday Evening Post, did you discuss what you—the quotation that was in there by you with Johnny Griffith?

A. I discussed it with him the next morning; yes, sir.

* * * * *

BRIGHAM EVERETT WOODWARD, called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. Will you please state your full name?

A. Brigham Everett Woodward.

Q. Where is your home, Mr. Woodward?

A. Augusta.

Q. Augusta, Georgia?

A. Yes, sir.

Q. You attend the University of Georgia?

A. Yes, sir.

Q. Speak up, please, sir. You play football at the University of Georgia?

A. Yes, sir.

Q. During 1962 were you a member of the varsity football team?

[fol. 757] A. Yes, sir.

Q. Do you still have another year of eligibility?

A. Yes, sir.

Q. You will play this fall, then?

A. Yes, sir.

Q. Did you play in the University of Georgia-University of Alabama game in Birmingham in September, 1962?

A. Yes, sir.

Q. What position did you play in that game, Mr. Woodward?

A. Safety man.

Q. That is on defense?

A. Yes, sir.

Q. You did not play on offense?

A. No, sir.

Q. Were you in that game as the Georgia safety man every time that Georgia was on defense?

A. Yes, sir; as far as I know. We have to get in when we can.

Q. Sir?

A. We have to get in when we can. I usually get in first play on defense, most of the time.

Q. During the 1962 University of Georgia-Alabama game, state to the Court and Jury whether or not there were any forward passes thrown by Alabama in your zone?

A. There weren't any thrown in my zone at all that night. They were all thrown in the flat or to the half-back's zone.

Q. On March 23, 1963, the Saturday Evening Post published an article entitled "The Story of a College Football Fix", and in that article it states that "the Georgia players, their moves analyzed and forecast like those of rats in a maze, to a frightful physical beating." Now, with regard to that statement—I am going to break it down in two portions. I want to ask you this question, first. In your opinion, were the moves of the University of Georgia players, did they appear to be analyzed and forecast by the University of Alabama players?

A. Well, defensively I would say "no", that would be the only thing I can answer, because I don't play offense.

Q. The second part of that portion reads, "the players took a frightful physical beating". You were with the players after the game in the lockerroom, were you not?

A. Yes, sir.

Q. In your opinion, did the University of Georgia players take a frightful physical beating in that game?

A. No, sir; I wouldn't say so.

Q. Would you, as a defensive player, Mr. Woodward, be on the side line when substitutions were made on Georgia's offensive team?

A. Yes, sir.

Q. While on the side lines did you or not hear players running off the field stating that Alabama knew their plays and that they had been sold out?

A. No, sir; I never heard anybody say anything.

Q. What was the, in your opinion, physical condition of the University of Georgia football team before it went into the game in Birmingham?

A. We were all pretty tired. Most of us were leg weary. We had been practicing pretty hard before the game.

Q. Do you or not feel that the University of Georgia was ready for that game?

[fol. 759] A. No, sir; I don't think we were ready.

* * * * *

JAMES WALLACE BUTTS having resumed the stand, testified further as follows:

Cross examination (continued).

By Mr. Cody:

Q. Coach Butts, when we adjourned and you left the witness stand, we were talking about four specific calls among other that you made to Frank Scoby in Chicago in September of 1962. You remember our discussion about those calls?

A. Yes, sir.

Q. Two of the calls that we had—that we were discussing were, I believe, one the day before the Georgia-Alabama game?

A. Yes, sir.

Q. One call on the day of the game, and one call the day after the game; you remember that?

A. I remember you discussing the call on the day of the game, sir, but I do not remember the call that you mentioned the day after the game.

Q. Well, do you remember that I gave you access to this Defendant's Exhibit No. 17, which you may refresh your recollection from. I will leave it here where you can hold it if you want to.

A. All right, sir.

Q. Do you recall the nature of any of those four particular calls?

A. Yes, sir. The one that stands out in my mind is the one that was made somewhere around the middle of the [fol. 760] day on September 22nd, on the day of the Georgia-Alabama, the reason being already stated to you, sir.

Mr. Schroder: Let's go ahead—

A. (The witness) All the calls that I have made, Mr. Cody, to Mr. Scoby of Chicago have been for business reasons.

By Mr. Cody:

Q. Well, if so, why did you charge those calls to the University?

A. Mr. Cody, I think you know that—I'm sure it has been reported to you that I thought when I made the charges to my credit card that I was charging them to my home. I explained that to Mr. J. D. Bolton, the Comptroller of the University of Georgia.

Q. But that was in April of this year you made that explanation, wasn't it?

A. Mr. Cody, it doesn't matter when it was made, it's the truth.

* * * * *

By Mr. Cody:

Q. Did you ever discuss with Mr. Scoby this Continental Enterprises?

A. Yes, sir.

Q. Did he have some money tied up in that company?

A. Well, I would put it this way, sir; he bought some stock in that corporation.

Q. Do you—

[fol. 761] Examination.

By the Court:

Q. Is Continental Enterprises the one you and Coach Bryant had, and Mr. Wolfson, Sam Wolfson, is that the same corporation?

A. Yes, sir.

Q. Continental Enterprises?

A. Yes, sir, Your Honor.

The Court: All right.

Cross examination (continued).

By Mr. Cody:

Q. Do you know what the outstanding capital stock of that company was?

A. No, sir; I'm not a good businessman, sir.

Q. Do you know the par value of the stock?

A. Well, Mr. Cody, I have been a little afraid to check it lately; it's so low.

Q. Do you know what business that company is in?

A. Yes, sir; I know that the main thing they were trying to do was sell throughout America a projection type

cap on a can that projected all kinds of fruit juices, chocolate and so forth.

Q. When you and Coach Bryant got into this particular company, did you—did you know whether or not it had a surplus or big deficit; did you know anything about the financial condition of the company?

A. I had a statement, but I'm not sure that I paid any attention to it, sir.

Q. What I'm trying to find out, Coach Butts, is whether [fol. 762] or not these telephone conversations which you had with Mr. Frank Scoby in September of 1962, whether or not that—the affairs of that particular company could have taken up a big part of these telephone conversations?

A. No, sir.

Q. I see.

A. I can explain, sir, that the businesses that did take up the telephone calls were loan companies which I did not operate in any way, but which I was trying to help and Universal Food Products of Lakeland, Florida, and also, as I explained to you once before, Mr. Scoby at one time checked out Orange River Groves, Incorporated, and as I told you, he did not think it was a good investment.

Q. And you also told me it didn't take him long to make that decision, didn't you?

A. Yes, sir.

Q. Now, getting back to this relationship with Mr. Scoby where you were to get a cut on the sale of scotch whiskey, what territory was that designed to cover, this arrangement, Mr. Butts?

A. Mr. Cody, this proposition never got past the talking stage, but we did discuss the Southeast, an override on all of the products sold in the Southeast.

Q. When did you begin your discussions with him on that subject?

A. Mr. Cody, I'm very sorry, I cannot give you an answer to that question.

Q. That's all right. Were you to pay him anything for this concession?

A. No, sir; he doesn't need it, Mr. Cody, he's a wealthy man.

Q. Did you talk about what your cut would be on this deal?

[fol. 763] A. No, sir.

Q. Did you discuss what your duties were to be?

A. Yes, sir.

Q. What were they?

A. The main duties I would have would be more or less a goodwill man, furnish the name. Of course, this could not possibly have happened if I hadn't also been able, at the same time, to line up a job with a professional football team.

Examination.

By the Court:

Q. Mr. Scoby make it contingent on your getting a connection with a professional football team before he would give you this override on the scotch whiskey?

A. Your Honor, he did not, but that was—

Q. The understanding?

A. No, sir; in my own thinking.

Q. Oh, yes, sir.

Cross examination (continued).

By Mr. Cody:

Q. Well, Coach Butts, do you—do you see any inconsistency in being in that type of business, and also being connected with a professional athletic team?

A. No, sir. President Kennedy's father made two hundred million out of scotch, sir.

The Marshal: Let's have order, please.

[fol. 764] By Mr. Cody:

Q. You are not attempting to recommend him to us, are you?

A. No, sir.

Q. At the time that you were talking to him about this arrangement, were you then athletic director at the University of Georgia?

A. Yes, sir.

Q. Then, can you give us any reasonable estimate as to the time when you first began to talk to him on this subject?

A. No, sir; but I'd like to explain to you one thing. There's not anyone any place that ever accused me of being lazy, and I was perfectly able to do everything that I was supposed to do at the University of Georgia and make some telephone calls.

Q. Let me ask you this question, Coach Butts. If it can be shown in this case by proper evidence that Mr. Scoby was a man who bet as much as forty to fifty thousand dollars on football games in one season, mostly college football games, do you think—do you see any inconsistency, as an athletic director of the University, in associating with a man of that type? I'm asking you to assume that he did?

A. Mr. Cody, I do not condone betting in any way, and in that direction you are picking the wrong man. I have never even played poker, and never even done what perhaps you and a lot of people have, bet on my golf game. I don't play golf.

Q. You talking about me and Mr. Schroder, now, aren't you?

A. Yes, sir.

Q. Let's go back and answer—

[fol. 765] The Court: All right; we're going to have order in this audience back here or we're going to clear the room, and I mean it. These outbursts—the next outburst, that's it.

By Mr. Cody:

Q. Suppose you answer my question, though, Coach Butts. If it can be shown by evidence in this case that this man bet on football games in one season between forty and fifty thousand dollars, mostly college football games, do you think it inconsistent for an athletic director to associate with a man of that type?

A. Mr. Cody, if the athletic director knew that, I will agree.

Q. Now, if that were the case, and if it can be shown that such a man did the thing which I described to you, don't you think that would hurt the University?

Mr. Schroder: If the Court please, I don't think that is properly phrased. If the man did it, it wouldn't hurt the University, unless the man connected with the University knew. That's what the man just testified to. I don't understand the question, and I don't know whether the witness did.

The Court: Would you repeat your question, Mr. Cody?

By Mr. Cody:

Q. If such were the case, that is, the case which I described in the previous question, don't you think that it would hurt the university for that situation to be known?

[fol. 766] The Court: What is your objection?

Mr. Schroder: I still don't know what situation he's talking about. Is he assuming the athletic director associated with a man he knew did that, or is he assuming the director associated with him without knowing that.

The Court: Yes, sir; I think you ought to clarify that.

By Mr. Cody:

Q. Suppose it were not known to you, Coach Butts, but suppose it was known to the public, don't you think it would hurt the University?

A. Yes, sir; but I don't think I could take responsibility for that, Mr. Cody, because I might have lunch any day at a table with people that I have no idea—

Q. I understand.

A. That's my point.

Q. Coach Butts, I'd like to pass on to another subject, just a moment. I'd like to find out from you if, since January the 6th, 1961, at various meetings which you attended as athletic director, if you have ever openly criticized the coaching staff, or the athletic board at the University?

A. I have never been conscious of doing that, sir, and I would like to add to that that I would like for my—the things that I have done to stand on record to show my regard for Coach Johnny Griffith over the years.

Q. Isn't it true that—isn't it true that before this Bryant affair came up that a representative of the athletic board [fol. 767] of the University notified you that they wanted your resignation?

A. No, sir; that's not exactly true.

Q. Well, what's the story on that?

Mr. Schroder: If the Court please, I inquire as to the relevancy of this.

The Court: Yes, sir; I think it would probably be relevant on the question of general damages, Mr. Schroder; I will let him go into that.

Mr. Schroder: As to mitigation, not as to whether there was a liable committed. I assume all of this is on mitigation of damages.

By Mr. Cody:

A. Ask your question again, please, sir, if you will?

Mr. Cody: You want it read back?

The Court: Yes; read that back, Mr. Court Reporter.

(Whereupon the Court Reporter read aloud the question.)

A. (By the witness) The answer to that is no member of the athletic board has told me they wanted my resignation.

[fol. 768] Q. What was it you wanted to explain about that subject matter?

A. What I wanted to explain was that on an occasion, the day I do not know, about the time the Atlanta Touch-down Club meets every year, Mr. Cook Harwick invited me to come by his office and he said something along that line, but at the same time he intimated he would never vote against me.

Q. But he said he was the only one—

A. No; he—

Q. —that wouldn't vote against you?

A. No, he did not, sir.

Q. Well, did he tell you that the rest of the members of the board had that attitude?

A. No, he did not, sir.

Q. Well, didn't you resign at that time?

A. I went to see the President of the University of Georgia, and told him that I would like to retire as athletic director the last day of June.

Q. Now, can you pin-point the date of that conversation?

A. I have told you, sir, it was at the time that the Touch-down Club meets in Atlanta.

Q. Wasn't that about the 15th?

A. If you say so, I'll agree that's it.

Q. What I'm trying to straighten out, Coach Butts, is that this resignation as of February 23, subsequent to the one we are talking about now, was for a different reason. State to the Court if that is the letter you wrote President Aderhold, or a copy of it, on February 23?

A. One minute, please, sir. Yes, sir; I wrote this to the President of the University of Georgia, and I'd like to explain.

The Court: You go ahead and explain.

[fol. 769] By Mr. Cody:

Q. Go ahead; you can make any explanation you wish.

A. On Friday, I believe it was February the 22nd, and I do not—I don't want to be held strictly to the date, I attended a meeting in Mr. Cook Barwick's office here in Atlanta, and for the first time—

Q. This is a different meeting from the previous one you had in Cook's—

A. Yes, sir.

Q. Go ahead.

A. For the first time—I rode over to that meeting with President Aderhold and Mr. J. D. Bolton. They did not mention anything that was to take place in the meeting. I thought it was to talk about a retirement plan, and in that meeting the so-called Butts-Bryan incident was discussed. The following day, Saturday—or let me go back to Friday night, please, sir. Friday night I received a call from Mr. Furman Bisher, sports editor of the Atlanta Journal, and he said: "I understand you are going to resign next week instead of June." I changed the subject, saying that "perhaps will see you at the Georgia Tech versus Georgia basketball game in Atlanta." But Mr. Bisher is a very persistent gentleman, and he asked me if I would be interested in professional football. I did not discuss it with him. The next morning, being Saturday, I think February the 23rd, I received a call from Mr. J. D. Bolton, comptroller of the University, and he said that he received a call from Atlanta, and: "I understand that Mr. Furman Bisher, in the Saturday afternoon Journal, will state that you are resigning at the University of Georgia." He said: "This will be embarrassing to the President." I then went to the President of the University of Georgia's office, and because I knew of the rumors related to the so-called Bear Bryant-Butts things as advertised around the country by [fol. 770] rumors, in order not to embarrass the University of Georgia I resigned, sir.

Q. Effective February 28?

A. Yes, sir.

Examination.

By the Court:

Q. Let me get this straight. I think the Jury might want to get it straight, too. You had previously resigned, Coach Butts, effective June 30?

A. Yes, sir; I had requested that they release me from my duties as of—

Q. June 30?

A. With retirement, sir.

Q. And this second resignation is another resignation which just brings it up—up-dates it?

A. That was the official resignation.

Q. All right. You had already resigned effective June the 30th, or something like that?

A. Yes, sir; yes, sir.

Q. That's what I didn't understand.

The Court: You were talking about two different resignations.

Mr. Cody: That's right.

The Court: All right, sir.

[fol. 771] Cross examination (continued).

By Mr. Cody:

Q. In this letter of resignation dated February 23rd, you state that: "During the past two years I have developed business interests. I find that I am having to devote more time to these interests. It is for this reason that I submit my resignation as athletic director of the University of Georgia effective February 28, 1963."

A. Yes, sir.

Q. Now, that is somewhat different from the explanation you just gave. Now, what is it?

A. That was very well written, sir, by the Assistant to the President, Mr. Louie Griffith.

Q. He wrote the letter, not you?

A. That's right; and it was written in his office.

Q. You signed it?

A. I signed it.

Q. Will you describe for us, Coach Butts, what these business interests were at that time and how long they had been going on?

A. Mr. Cody, I had one-third interest, stock only, in six loan offices, the location has already been described to you.

Q. I remember that.

A. Yes, sir. I had offers from at least one insurance company, and I, of course, had been involved in the Orange River Groves, Inc., which, of course, I was out of at that time.

Q. Do you have any others you want to describe to us?

A. No, sir.

Q. Were you devoting much time to this Continental Enterprises?

A. No, sir. All I did was about once a week call up and see how much it had dropped on the market.

[fol. 772] Q. Is that the company in which you lost a lot of money?

A. Well, Mr. Cody, it remains to be seen how much money I will lose. It hasn't been sold to date.

Q. Did you take part in the organization of the corporation known as the B. E. M. Corporation? Wasn't that a real estate venture?

A. No, sir. I have never taken part in the organization of a real estate organization.

Q. What was the B. E. M. Corporation; do you remember that?

A. No, sir; there—

Q. Did you have a company by the name of Coffee Break Sales?

A. No, sir. I had some stock in a corporation called Coffee Quick.

Q. You don't remember anything about the Coffee Break Sales and Service Company?

A. I think at one time, sir, I bought some stock in it, but I am not sure of the name, and I think my money was returned to me at a later date.

Q. What is the name of this other company, the Coffee Break Distributing Company, wasn't it?

A. The name of it was—please don't—

Q. Go ahead.

A. Coffee Break, Incorporated, I think, sir.

Q. Were you devoting much time to that, sir?

A. Not any, sir.

Q. What about that Universal Food Products thing?

A. I did not devote any time to that, sir, except making some telephone calls in that connection.

Q. What about that Orange River Grove?

A. Mr. Cody, I had a clear understanding when I went into that corporation that I would not spend any of my time, but I became alarmed because I was afraid some of the people who had purchased the contracts in this corporation [fol. 773] would lose their money, and I did put some time into it for that reason and that reason only.

Q. Getting back, Coach Butts, for the moment when we were talking about resignations when you resigned as coach following the 1960 season, did you intend, at that time, to ever get back in the coaching of any athletic team?

A. Mr. Cody, as I told you in my deposition, which you have—

Q. That is not in evidence yet. Let's keep it on the evidence in the courtroom.

A. Yes. I intended to try professional football if given the opportunity, sir. May I explain? Professional football is different from college football in that it is not necessary to teach positional play, and you can recruit the material in a much different manner.

Q. You mean by that, it is not as strenuous?

A. I believe, sir, while the game is going on, all football games are strenuous, but the college coaching game is about a twenty-four hour a day job.

Q. What did you tell the University officials when you resigned at that time?

A. Mr. Cody, I did not talk to but one official, that official being President O. C. Aderhold.

Q. What did you tell him?

A. I told him that my blood pressure was very high, and that I had a very hard time making it through the last two games of the season, and I thought because of my health that I should drop out of the picture as a football coach.

Q. Just wasn't physically up to it?

A. I told you exactly what I said, sir.

Q. Did you have anything to do—getting back now to these businesses you said you had developed over this two-year period, the two-year period mentioned in this letter, [fol. 774] did you have anything to do with a concern called the Trans-America Securities Corporation?

A. Mr. Cody, I was on the board at that company, Trans-American, and I attended only two meetings of the board, and I have to confess to you, I didn't know what the business was all about when I did attend the meeting.

Q. What about this—you had, previous to that, a few years ago, operated a restaurant in Athens, hadn't you?

A. Yes, sir; and I didn't have anyone to watch the cash register.

Q. You lost a lot of money in that?

A. I lost some.

Q. Was that the Huddle, what they call the Huddle?

A. Yes, sir.

Q. What about the Frost Free Groves, Coach Butts? Were you interested in that company?

A. I never heard of that, sir.

Q. Didn't you have an interest in a lumber business?

A. No, sir.

Q. What about a trucking concern up in Philadelphia; didn't you have an interest in that business?

A. No, sir. The way you might—I don't think I need any explanation, unless you want it, but I have two friends

there. One of them is deceased, Lewis and Leonard Tose had a very large trucking business, but I had no interest in it at all.

Q. What is this insurance business you said you were trying to develop?

A. Sir, I have not tried to develop an insurance business, but there was an insurance company started in Birmingham, Alabama, the home office is now in Dallas, Texas, that since the Saturday Evening Post story broke, they invited me out for a conference, but I wasn't able to make the connection, and so that is the status of that at this time.

Q. You are trying to get an agency in Georgia?

[fol. 775] A. That was the talk under consideration, sir.

Q. Coach Butts, weren't you, at the time you wrote this letter, interested in a couple of housing developments, one in Athens and one in St. Simons?

A. No, sir; absolutely not.

Q. Well, these businesses that you were devoting some attention to, do you see any inconsistency in that and trying to be athletic director at the University?

A. Well, Mr. Cody, you can make a case against anyone, but I would like for you to investigate of the members the faculty of the University of Georgia. And you would find that some of them own stock in different corporations.

Q. But not—not trying to run a business?

A. I have not tried to run a business, sir.

Q. Well, if you—if you devoted a lot of your time in the running of any of these businesses, don't you think that would have hurt the University of Georgia?

A. Well, to my way of thinking it did not, sir. That is my opinion, and it could—someone else could have another opinion.

Q. Coach Butts, let me ask you a few questions about where you made your headquarters when you came to Atlanta and made business calls. What—what offices did you use?

A. Well, the Rhodes—in the Rhodes-Haverty Building there was an office called Communications International.

It was convenient, and I used it at times to make calls. I think that is what you're referring to.

Q. That is the business that this fellow Werbell (?) had in Atlanta?

A. Yes, sir; it was an advertising agency, so to speak.

Q. You did make a good many trips to Atlanta during the year, is that true?

[fol. 776] A. Yes, sir; I made quite a few trips, and I made a lot of speeches all over the South.

Q. When you—when you had a lot of telephoning to do, did you use the office of this Communications International?

A. At times I did, sir.

Q. How many trips would you say you made to that office during the year 1962?

A. Mr. Cody, I have no idea.

Q. They were numerous, weren't they?

A. Several.

Q. Well, they were numerous?

A. Well—

Q. If you have no accurate idea about it, I don't insist.

A. I do not have an accurate idea about it, sir.

Q. All right, sir. Do you remember going to the office of Communications International, that is, here in Atlanta, on September 13, 1962?

A. No, sir; I do not.

Q. Do you remember being in Atlanta on that date?

A. Mr. Cody, as you know, I had a desk record, and I thought I was in Atlanta, as I told you. It doesn't show on the record. However, the telephone company's records show I was in Atlanta and did make a telephone call on that day.

Q. Do you have any independent recollection yourself—

A. No, sir; I do not.

Q. Do you remember receiving a telephone call from Coach Bear Bryant on September the 16th, 1962?

A. No, sir; I have received many calls from him, but I don't remember any particular call any time.

Q. You have no such memory, even though that call came to you at your home?

A. No, sir; I have had a lot of calls at my home.

[fol. 777] Q. Have you had a lot of calls that lasted an hour and seven minutes?

A. The amount of time on such a call doesn't impress me very much, because I have made many calls, long calls.

Q. But you remember nothing about this one?

A. No, sir.

Q. Do you recall that on May 3rd, 1963, I took your deposition in your attorney's office before a Court Reporter for the purpose of obtaining evidence to be used in the trial of this case?

A. I did not remember the date until you questioned me Friday, and you told me that.

Q. You remember the occasion, though?

A. Yes, sir.

Q. And you remember being under oath at the time to tell the truth?

A. Yes, sir; and I am under oath now.

Q. I'd like to read to you, Coach Butts—

The Court: What page are you reading from in the deposition?

Mr. Cody: I can't give you the page at the moment, but I want to quote it.

Mr. Schroder: I would like to have it so I can check it. Maybe one of his associates here can tell me.

The Court: Yes, sir. I think he is entitled to the page.

Mr. Cody: I don't believe I have the page before me at the moment.

[fol. 778] The Witness: Your Honor, may I get a drink of water?

The Court: Yes, sir. Bring Coach Butts a drink of water, Mr. Marshal.

The Witness: That is all right; I don't want to delay—

The Court: You are entitled to a drink of water anytime. You can just sit up there. Can you find the page number?

Mr. Cody: I can't.

The Court: Go ahead and ask him the question. If Coach Butts remembers the questions, we will save time.

Mr. Cody: These are the questions which appear in the pleadings under the motion to compel. It is a part of the record in this case.

The Court: All right, sir. Mr. Schroder can remember the questions. We will save time on it.

Mr. Schroder: May I just have the question—it is voluminous. May we see what the question is?

The Court: I think he said they were in the motion to compel.

[fol. 779] Mr. Cody: It is in the motion to compel.

Mr. Schroder: Wouldn't that have been in July, a different deposition?

Mr. Cody: No; it would have been in May.

The Court: All right, sir. Go ahead.

By Mr. Cody:

Q. I want to read to you about eight or ten questions that were propounded to you at that time by me, and when I have finished I'd like for you to state whether or not you refused to answer those questions.

The Court: Let the Jury go—

Mr. Schroder: Wait a minute.

The Court: Let the Jury go to the Jury room.

Mr. Schroder: Yes, sir.

Mr. Cody: This is not—

(Whereupon the Jury retired from the courtroom at 2:45 p. m.)

[fol. 780] Mr. Schroder: May I be heard on this, whatever is going on?

(Whereupon a conference was held at the Bench between the Court, Mr. Schroder and Mr. Cody.)

* * * * *

By Mr. Cody:

Q. Coach Butts, in football parlance, does the term "split end" refer to a formation?

A. The answer is 'no'. An end may be split from any formation used in football, and I'd like to call your attention to the fact, Mr. Cody, that when my first deposition was continued I corrected that in my continued deposition. In other words, Mr. Cody, to explain, you can have what they call a full set; every back in his normal position, just three men back, the normal T and split either end way out. You can split him out from a slot, from a wingback formation, from almost any formation used in offensive football today.

Q. Is the term "slot", does that refer to a formation?

A. Slot formation, if nothing else is added, refers to a simply slot formation with an end on one side moving out creating a slot with a halfback on the inside.

Q. What you are saying though, it would be variations?

A. Oh, yes, sir.

Q. In this deposition that we—that you gave on July—in July, I'd like to read from one page there.

Mr. Schroder: May I again ask counsel—

Mr. Cody: 147.

[fol. 781] Mr. Schroder: Sir?

The Court: I assume we have an original here.

The Clerk: Yes, sir.

The Court: Open the original.

The Clerk: All right, sir.

Mr. Cody: I don't need the original; it's on Page 147.

By Mr. Cody:

Q. I will ask you, Coach Butts, if you didn't make this statement, referring to a quick kicker.

Mr. Schroder: If the Court please, I don't think it is proper to read him that now until he asks him the question first, and if he testified to something different, then he can

attempt to contradict him, but he can't proceed to read all the way through from his deposition.

The Court: I think he can ask him did he testify as to a quick kicker on such and such a date, and is that his opinion now.

Mr. Schroder: Yes, sir.

[fol. 782] The Court: All right; I think he can proceed that way.

By Mr. Cody:

Q. Getting back to these Burnett notes and that particular phrase "can't quick kick", question—let me ask you if this is your evidence, Coach Butts. It is on Page 146 and 147. "Coach Butts isn't the main effectiveness of a quick kick, doesn't it lie in the surprise of the defensive team with the kick?" Answer: "Well, I don't see any need of quick kicking as Georgia used it as surprise, if that's the question you want, because they line up in a kicking formation. It would be stupid. What made it good at the University of Georgia was the fact that the safety man had to be worried about passing with Jake Saye in it."

Question: "Because Saye might pass?"

Answer: "Saye might pass, see. Well, when a team lines up in a kicking formation you have to be pretty dumb not to anticipate a kick. Now, Paul Bryant and Bobby Dodd are the two best proponents of the quick kicking game that I know of. And in a quick kicking game with a man in a normal position, lefthalf is in front of fullback quick kicks ahead of time, is very disconcerting. But we just haven't had that man."

That a correct transcript of your testimony?

A. I made that statement, sir, and I ask for the blackboard. I want to show exactly what I said.

Q. I am reading what you said.

A. I know, but I want to show this Jury—I am not worried about what you are reading.

Q. I am not asking you to use the blackboard.

The Court: You answer the question, and Mr. Schroder have you explain it on redirect.

[fol. 783] The Witness: I am not ashamed of that statement at all; I am proud of it; nothing wrong with it.

Mr. Schroder: I think perhaps Mr. Cody ought to complete the reading of the answer which he stopped in the middle of.

By Mr. Cody:

Q. That part of your answer is correct; is that right?

A. Yes, sir.

Q. That was your testimony?

A. If I made it, that is what I thought.

Q. Does Georgia belong to the National Collegiate Athletic Association?

A. Yes, sir.

Q. Has the Southeastern Conference, of which Georgia is a member, have they adopted the By-Laws and Constitution of the National Collegiate Athletic Association?

A. Yes, sir. The University of Georgia operates under the organization that you are speaking of.

The Court: You mean they operate under the Southeastern conference, or the N.C.A.A.?

The Witness: The Southeast, sir, they operate under the Southeastern Conference, but the Southeastern Conference operates—

[fol. 784] The Court: Under the N.C.A.A.?

The Witness: —Under the National Collegiate Athletic Association.

By Mr. Cody:

Q. Let me ask you if you are familiar with this paragraph in the Constitution and By-Laws of the National Inter-collegiate Association?

Mr. Cody: It is on Page 5. I furnished you with a copy of this.

Mr. Schroder: Did you?

Mr. Lockerman: Just a moment.

Mr. Cody: On Page 5, Section 6.

Mr. Lockerman: Just one minute.

By Mr. Cody:

Q. Are you familiar with this particular part of Section 6?

A. I haven't read it, sir.

Q. I am going to read it to you. "Individuals employed by or associated with member institutions for the administration the conduct or the coaching of Intercollegiate Athletics and students competing in Intercollegiate [fol. 785] Athletics, shall report themselves with honesty and sportsmanship at all times to the ends that Intercollegiate Athletics as a whole, their institutions, and they as individuals shall stand for the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports." You familiar with that section?

A. I haven't read it, sir, but I think it is a good—

Q. Let me read you this paragraph on Page 6, which is a part of the official enforcement program. "Individuals employed by or associated member institutions for the administration, conduct or the coaching on intercollegiate athletics are in the final analysis teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or personable acts. Their own moral values must be certain and positive, that those younger and more pliable will be influenced by their example. Much more is expected of them than the less critically placed citizen." Are you familiar with that section?

A. No, sir; I have never read it, sir.

Q. Coach Butts, in order to establish the date of your approval of this list of calls that we referred to, will you state whether or not that is the letter you wrote to Mr. Bolton on the date mentioned?

Mr. Schroder: I don't believe any point has been raised as to the lack of authenticity of this.

The Witness: Yes, sir; I wrote the letter.

[fol. 786] Mr. Cody: I see.

The Court: I don't—I don't know exactly what you all are proving or disproving.

Mr. Cody: That is the date, I am trying to get the date straightened out.

The Court: All right, sir.

Mr. Cody: I believe that's all.

The Court: All right, sir.

Mr. Cody: This has been identified as Defendant's Exhibit No. 18.

* * * * *

Redirect examination.

By Mr. Schroder:

Q. At the close of the hearing on Friday Mr. Cody at that time was asking you had you not, when your deposition was first taken, testified that the resignation tendered by you on February the 23rd, was to become effective in March rather than in February, and I believe you pointed [fol. 787] out to Mr. Cody that you had made a correction of that when your deposition was resumed later?

A. Yes, sir.

Q. Will you read from your deposition the portion where that was corrected when Mr. Dody was present there in my office and asking those questions?

A. Are you sure, sir, that you have given me the right page?

Q. Is that Page 153?

A. No, sir; 152; excuse me. The part of my deposition that Mr. Schroder is referring to reads like this, quoting Mr. Schroder: "There are one or two things, Mr. Cody, that Coach Butts called to my attention that he would like to correct in connection with his previous deposition that

he had reflected upon since it was taken in May, one of which had to do with the effective date of his resignation as athletic director.”

Quoting Mr. Cody: “Well, let him state for the record what corrections he wants to make.”

“Mr. Schroder: ‘If you did say it was in March, what did you mean to say?’

“The Witness: ‘Mr. Cody asked me the question in the previous deposition when my resignation was effective as athletic director. I think I gave the answer ‘at the end of March.’ The correct answer should be the end of February.’”

“Mr. Cody: ‘Go ahead and state whatever corrections you have to make. I don’t care to ask any questions about it.’”

* * * * *

[fol. 788] JAMES WALLACE BUTTS having resumed the stand, testified further as follows:

Redirect examination (continued).

By Mr. Schroder:

Q. Mr. Butts, on cross-examination, you were questioned about a business association you had with a gentleman named Frank Childs. When you were discussing this business connection with Frank Childs, what was he at the time, and what business was he in?

A. He was vice-president of the Bank of Gray, sir.

Q. And you mentioned the name of Westmoreland; what is his first name?

A. Carl Westmoreland.

Q. What is he?

A. He is a lawyer in Macon, Georgia.

Q. On cross-examination you were asked about a telephone call made by you from Birmingham on September 22 to Frank Scoby in Chicago, and you stated that you did

recall that telephone call. Did you explain how you happened to remember that call?

A. I am not sure, sir, but the reason—

Q. You are not sure you explained it, or you are not sure of what?

A. I am not sure I explained it.

Q. All right, sir, would you please explain it?

A. Well, Mr. Schroder, it seems that an article occurred in a Tampa newspaper about this matter, and I received a call from Mr. Joe Sargeant, who lives at Lakeland, Florida, not too far away. He was—in explaining, I'd like to say Mr. Joe Sargeant has a dairy at Coleanor, Alabama, [fol. 789] which is sixteen or eighteen miles out of Birmingham. He met me for lunch the day of the Georgia-Alabama game, and he wanted me to speak to Mr. Frank Scoby about some business negotiations that he had, so I called Mr. Scoby and put Mr. Joe Sargeant on the telephone, and he talked to him at that time. That is the reason I can identify the call, because Mr. Joe Sargeant reminded me of the same.

Q. Within the past couple of months?

A. Well, it would have to be since the article was written about Mr. Frank Scoby.

Q. After this publication, after the March 23 issue of Post?

A. Mr. Schroder, I am not sure that it came after that time—yes; I am sure it was. I was confused with another investigation that went on here in Atlanta; yes, sir; it came after the Saturday Evening Post, sir.

Q. All right, sir. Now, much was asked you on cross-examination about investments that you had made. Would you please now describe to the Jury and Court just what your present financial situation is?

A. Mr. Schroder, the best to describe it and get to the point, I am insolvent at this time.

Q. What is your income?

A. I have no income.

Q. On cross-examination it was pointed out to you that in the Saturday Evening Post article that you had been requested to submit yourself to a lie detector machine examination, and that you at that time refused to do so. Now, will you please inform the Court and Jury what your reasons were for so declining?

[fol. 790] A. Mr. Schroder, at that time I considered it, more or less, an insult, and that was my reason for not taking the lie detector test.

Q. Have you since taken one at my insistence?

A. Mr. Schroder, you know that you insisted on me taking a lie detector test.

Q. All right, sir. Now, before the issue came out in question, I believe you were testifying the other day that prior to that time that you were engaged in negotiations with the National Football League team known as the Dallas Cowboys; is that true or not true?

A. That is true.

Q. I am just going to ask you this: Since the date of the publication of the article in question, have you heard further from the Dallas Cowboys?

A. No, sir.

Mr. Cody: He has already testified to that, Your Honor. He is just repeating what's already been said.

The Court: I believe you brought it out on cross-examination. I will let Mr. Schroder ask him about that. I will overrule the objection.

By Mr. Schroder:

Q. In checking through these toll tickets, telephone toll tickets which were brought into Court by Mr. Fleming, have you been able to tell the Court and Jury where you were on September the 11th, two days before the so-called telephone conversation?

A. Mr. Schroder, in checking my record of speeches I [fol. 791] made, I find that I was in Cullman, Alabama, at that time.

Q. On September the 7th?

A. Yes, sir.

Q. In the State of Alabama?

A. Yes, sir. I made more than ten speeches in Alabama during the last season.

Q. All right, sir. On September the 11th, two days before this so-called interception, while you were in Alabama, did you at that time get in touch with Coach Bryant and meet him anywhere to discuss anything about the game?

A. No, sir.

Q. On the first page of the Saturday Evening Post article in question the editors of the Saturday Evening Post had written this, and I want to read it to you. "Not since the Chicago White Sox threw the 1919 World Series has there been a sports story as shocking as this one. This is the story of one fixed game of college football. Before the University of Georgia played the University of Alabama last September 22, Wally Butts, athletic director of Georgia, gave Paul 'Bear' Bryant, head coach of Alabama, Georgia's plays, defensive patterns, all the significant secrets Georgia's football team possessed. The corrupt here were not professional ball players 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." Does that editorial con-[fol. 792] tain any truth insofar as you, Coach Wallace Butts, the Plaintiff in this lawsuit, is concerned?

A. No. And I would like to explain that for a time I hid from people, but not any more. I am looking them in the eye, because it is not true.

* * * * *

JAMES WALLACE BUTTS having resumed the stand, testified as follows:

Recross examination.

By Mr. Cody:

Q. Coach Butts, are you sure you feel like continuing with this examination?

A. Yes, sir.

Q. I show you, Coach Butts, what appears to be a certified copy of a financial statement which you furnished to the Comptroller General of the State of Georgia, in July, 1961. Do you remember preparing that statement or having your auditor do so?

A. No, sir; I do not remember the details of it, sir.

Q. You have testified a few minutes ago, though, that you are now insolvent?

A. I am insolvent.

Q. Did you sign that statement?

A. That is my signature.

Q. Take a look at this statement and see if it doesn't show that you have a net worth in excess of two hundred thousands dollars as of that date?

A. I have never been worth a hundred thousand dollars.

[fol. 793] Q. You mean by that, that that is a false financial statement?

A. Mr. Cody, this statement was filled in. I signed it. I didn't know anything about what was in it.

Q. Let me have it a minute.

A. All right.

Q. Why did you sign it? What was the purpose of the instrument?

A. I don't know what the purpose was, because such a statement was not required of any such amount.

Q. Well, I mean, what were you driving at when you signed this statement and turned it over to the comptroller General of the State of Georgia? What were you after?

A. We had some applications for loan licenses, sir.

Q. Was that these small loan businesses that you had throughout the state, sir, the Instant Loan Company?

A. Yes, sir; they were small loan licenses that I had some stock in.

Q. You don't deny that this statement shows you have a net worth of two hundred five thousand nine hundred eighty-eight dollars?

A. Mr. Cody, there's been a big change in my financial status since that time, and I do not know exactly what I was worth at the time.

Q. This is July the 17th, 1961. If you had—if you had a net worth of two hundred five thousand nine hundred eighty-eight dollars as to that time, what has happened to it?

A. Mr. Cody—

[fol. 794] Mr. Schroder: I suggest that counsel—

A. (The witness)—I spent—

Mr. Schroder: Wait. May I suggest that counsel let the witness see the statement so he can see what is listed on there as assets.

The Court: I presume a financial statement would be broken down in to "real estate," "insurance policies," "liabilities," whatever it might be.

The Witness: Mr. Cody, for example, my residence and furniture is rated at ninety thousand, ninety thousand dollars. When the property was sold it brought forty-one or forty-two; I am not sure of the exact amount. Let me ask you this question.

Mr. Schroder: Let him go on with the assets.

The Court: Let him go on with it.

The Witness: Since that time my stock values have gone down to—quite a bit, and I do not know exactly how much. What else you want to know, sir?

By Mr. Cody:

Q. What stock values were you talking about?

[fol. 795] A. Well, Continental Enterprises has gone

down from six to less than a dollar a share. I had to drop some other things—

Q. Let me have that back when you get through.

A. All right, sir.

Q. That is the company that you and Wolfson and Coach Bear Bryant were involved in?

A. Mr. Cody, I was not involved with anyone in the company, I owned some stock in the company, and so do many other people.

Q. Did you see—

Mr. Schroder: Whoa, whoa; let him finish.

The Witness: Many people own stock in that company.

By Mr. Cody:

Q. Did you notice this instrument was signed by Thomas L. Williams, A. C. P. A.?

A. Yes, sir.

Q. Is he your auditor?

A. Yes, sir.

Q. Does he handle the preparation of your tax returns and instruments of that nature?

A. Yes; he does, sir. But I might add, my income tax has been checked very carefully for years.

Q. I am not asking you that. Just answer my questions, Coach Butts.

A. All right, sir.

Q. But it is your testimony that at the time you signed this, you didn't know what you were signing; is that, in [fol. 796] substance, what you are undertaking to tell this Court?

A. Yes, sir.

The Court: What is the purpose in filing a statement with the Comptroller General? Does he handle small loan licenses?

Mr. Cody: Yes, sir. He has control over it under the law of Georgia. It is a discretionary matter as to the issu-

ance of those licenses. Also has supervision over the operation of them after they are granted.

By Mr. Cody:

Q. Do you still have your interest in these small loan businesses?

A. It is in my name, Mr. Cody, but it is used as collateral; it is being used as collateral at this time.

Q. Do you know, Coach Butts, whether or not the Comptroller General of the State of Georgia has withdrawn several of those licenses that were heretofore issued?

A. The Comptroller General of Georgia—at the present time?

Q. Yes.

A. Mr. Cody, I prefer, if the Court will permit, this as an answer and you will accept it, I prefer that you consult with Mr. James Bentley, Comptroller General.

Q. Well, don't you know? Can't you answer my question?

A. I can answer the question that he has never taken one away from me.

[fol. 797] Q. Well, had—

A. If that is the answer to your question.

Q. Well, have any of the licenses to operate this business been cancelled by him, that is, licenses heretofore issued to the Instant Loan Company?

A. Well, I—

Q. You would know that, wouldn't you, Coach Butts?

A. I can answer your question, Mr. Cody.

Q. What is it?

A. I turned in one, but I had a clear understanding as to the future status of this company.

Q. Is that the only license that's been withdrawn?

A. Yes, sir.

Q. Now, Coach Butts, you have explained some of the things—some of the nature of the telephone conversations with this Mr. Scoby. Now, do you—I assume you have had

an opportunity to analyze some of these telephone calls just like I have or at least your counsel has; he's had a copy of this list?

A. Yes, sir.

Q. You and your secretary, Mrs. Malcolm, actually helped in the preparations of that list, didn't you?

A. Yes, sir.

Q. With Mr. Bolton?

A. Yes, sir.

Q. And when it was finished you approved it in every respect, didn't you?

A. Yes, sir.

Q. You found no error in it?

A. No, sir.

Q. Now, did you know that—let's just take the month of April 1962, that there—did you know that there were no calls to Scoby by you? Have you checked that? Let me [fol. 798] point out to you what I have found, and you and your counsel can correct me if I am wrong, and it will give you an opportunity later to do it. Did you know that there were no calls in April and May of 1962?

A. Mr. Cody, that is of no significance to me.

Q. Well, it might be to me or to the Court. Let me give you my summary, and see if you have any contest about it. No calls in April or May, five in June, two in July, four in August, and then fourteen in September. Why the difference?

A. I might point out, Mr. Cody, if you check you won't find any since that Saturday Evening Post story broke.

Q. I am not asking you about that, Coach. Suppose you just answer the question instead of arguing with counsel about it.

That is all I am trying to do is solicit some answers from you.

A. Mr. Cody, my answer is this. By your implication you are implying that I have called him in relation to gambling. I have never—

The Court: No, sir.

Mr. Cody: I am not implying anything. I am asking you a fact.

The Court: Probably we'd move faster if you will answer or not, and your counsel can—

The Witness: Ask me the question, please, sir.

[fol. 799] By Mr. Cody:

Q. You find anything wrong with the tabulation that I just related about these calls?

A. No, sir.

Q. Now, did you know that—aren't you familiar with the deposition that has been taken which indicates—

Mr. Schroder: I don't believe counsel can state what a deposition indicates. If he wants to read it, he is at perfect liberty to read it.

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

By Mr. Cody:

Q. Do you remember approximately how many calls Mr. Scoby made to you in 1962?

A. Mr. Cody, I have never read his deposition.

Q. I see. That is all right; that answers my questions. I have one or two more questions to ask you, Coach.

A. All right, sir.

Q. Do you remember that on October the 20th of 1962 that Georgia played Florida State College down in Florida?

A. Yes, sir.

Q. Do you remember that two days before the game, namely, on October the 18th, that you telephoned Coach Peterson from Atlanta and talked to him for a period of fifty-seven minutes?

A. I am not sure where the call was made, sir, but I remember making the call, and I want to explain.

[fol. 800] The Court: All right, sir, go ahead and explain.

A. (By the Witness) I made the call in behalf of the University of Georgia. The head defensive coach came to

me and he had seen pictures of the University of Miami versus L. S. U. football game, and in this picture L. S. U. was using what is called a crack block; in other words, putting a flanger out what we call opposite, a counter flanger. This flanger was going in motion and hitting the Miami ends from the rear. L. S. U. furnished Coach Peterson, the coach of F. S. U., Florida State University, and I called him in behalf of the University of Georgia, and I did a good job, because I talked him out of using this crack block in the football game to be played with the University of Georgia.

Q. Well, let me ask you this question. Do you remember mentioning to him that in that coming game two days later that Georgia might use the Utah pass?

A. No, sir; I don't remember that.

Q. You know what I am talking about in calling it a Utah pass; that is the shovel pass, isn't it?

A. I was the first one put it in in the South, so I know it; yes, sir.

Q. Did you know that Georgia hadn't used that pass up until that time in the 1962 season?

A. No, sir.

Mr. Cody: I believe that's all.

[fol. 801] Examination.

By the Court:

Q. I am confused. What is the relationship between L. S. U. and F. S. U.? I mean, I am not—

A. Your Honor, sir, L. S. U. employs the same type of attack as does F. S. U., because Coach Peterson was a member of the Paul Dietzel coaching staff at L. S. U., and of course, evidently I didn't know it, but the members of the coaching staff at the University of Georgia knew that F. S. U. had this crack back block which injured two or three men in the L. S. U. versus Miami football game, and they were concerned about it, and I want to explain further

that I did not call as an interim member of the Rules Committee at Large; I called them simply to help the University of Georgia, which I did.

By Mr. Schroder:

Q. Is the block to which you are referring to a crippling block?

A. Well, Mr. Schroder, if you want to be the end, I can demonstrate.

Q. No, sir; I don't care about that.

The Marshal: You will have to remain quiet in the courtroom, please.

By Mr. Schroder:

Q. Did the chief defensive coach at the University of Georgia tell you in connection with that call—

[fol. 802] Mr. Cody: Your Honor, I object to that for two or three reasons. It is leading, it—

The Court: I think, Mr. Schroder, it is leading.

Mr. Schroder: Sir?

The Court: It is leading.

Mr. Schroder: I will withdraw it and rephrase it.

The Court: All right, sir.

By Mr. Schroder:

Q. What did the University of Georgia chief defensive coach tell you that he was teaching his boys in connection with that game if that block was used on Georgia?

A. He advised me that the University of Georgia had put in the same plan, and that if Georgia—Florida State University used it against the University of Georgia, the University of Georgia would in turn use it against Florida State University.

Q. With the results being what, in your opinion?

A. In my opinion the sort of fiasco was pending with penalties, and another thing, I wanted Georgia to win the

football game, and I knew that if Georgia started into a new plan of this kind they'd be awkward in carrying out the [fol. 803] plan and would have a better chance to get penalties in using that plan.

Q. State whether or not—did you say you were successful in keeping Florida State from using that against Georgia?

A. It was not used in the game, sir.

Q. All right, sir. Let me turn to this statement, financial statement that was—that you were being questioned about under the heading of “Assets” is listed four thousand eight hundred dollars in the bank. Under “Marketable Securities” is listed fifty-two thousand six hundred sixty-two dollars, which includes a footnote, seven thousand shares of Continental Enterprises stock. Now, your testimony is that when that statement was prepared by an accountant in July, 1961, the market value of that stock was what, approximately?

A. About six dollars per share, I think.

Q. And today, the market value of that—of that seven thousand shares of stock is approximately what?

A. Less than one dollar, sir.

Q. Also included in that item is thirteen hundred shares of Georgia International Life Insurance Company stock. Where is that stock or shares of that stock?

A. Mr. Schroder, I had to sell that stock because of recent events.

Q. What events?

A. Well, right now I am unemployed.

Q. Under the item “Investments in Closely Held Corporations” is listed ninety-three thousand five hundred dollars, footnoting that, Orange River Groves, Inc., seventy-eight thousand five hundred dollars. What is that worth today?

[fol. 804] A. Mr. Schroder, that stock is not worth anything, and the value as shows in this statement was estimated on the value of the receivables held by Orange River Groves, Inc., at that time.

Q. Under the same caption "Investments in Closely Held Corporations" ninety-three thousand five hundred dollars is listed, Hollywood Estates, Inc., fifteen thousand dollars. Where is your equity in that investment today?

A. Mr. Schroder, the way that figure was arrived at, someone in my office called the President of Hollywood Estates, Charlie Evans—

Q. That is not my question. My question is: Where today is your investment in that corporation?

A. The stock was sold to pay a loan and was paid on a loan at the Hubert State Bank.

Q. Well, you don't have that anymore?

A. I do not have it.

Q. All right, sir.

A. No, sir.

Q. Eighty thousand dollars under "Assets" is listed as cash surrender value of life insurance, approximately; it says eighty thousand. What has happened to that asset?

A. Mr. Schroder, since that time I have had to borrow all I could on my insurance.

Q. Then there is quite a difference in your financial picture then and your financial picture since the Saturday Evening Post article came out?

A. Yes, sir; there is quite a bit of difference in my financial status.

Mr. Schroder: Let me check, Mr. Cody, and see if I have another question here.

[fol. 805] The Court: Just a moment. I think he wanted to confer with them.

Mr. Cody: Okay.

Mr. Schroder: I don't think I said I was through, yet. Just a minute.

The Court: Just a moment; he is not through yet.

By Mr. Schroder:

Q. This so-called crack block that you were describing, what is the present situation of that so-called block insofar as it being legal or illegal today is concerned?

A. Mr. Schroder, I would never have made the call to Florida State except for the benefit of the University of Georgia, because—

Q. That is not my question. Is that block today legal or illegal?

A. It is legal if the blocker has his head in front of the man he is blocking. Therefore, in explanation, Mr. Schroder, I would like to say I kindly felt I was fooling with someone else's business, namely, Florida State's, and I did it for the University of Georgia.

Q. In any conversation, without regard to what month it took place in, that you have ever had with Frank Scoby, has there ever been discussed between you and him betting or gambling or anything to do with the outcome of any contest involving the University of Georgia?

[fol. 806] A. Absolutely not.

Q. To your knowledge has Frank Scoby, without regard to what year it might be, ever placed any money on the outcome of the game engaged in by the University of Georgia?

A. I am sure he has not.

Q. To your knowledge has he ever bet any money on the outcome of any game, no matter whether Georgia was in it or not?

A. Not to my knowledge.

Mr. Schroder: You can examine.

Recross examination.

By Mr. Cody:

Q. Coach Butts, you referred a moment ago to this Georgia International Life Insurance Company Stock.

A. Yes, sir.

Q. Did you know that at the date of that statement that stock was worth seven dollars a share?

A. No, sir; I did not know that.

Q. Did you know what it was worth?

A. No, sir. I know what I paid for it, sir.

Q. What?

A. Five dollars a share.

Q. Did you know that it is worth thirteen dollars a share now?

Mr. Schroder: If the Court please, it is worth more than that.

[fol. 807] The Court: It's twenty-two dollars a share today.

By Mr. Cody:

Q. When did you sell it?

A. I don't know, sir. It was sold by Goodbody and Company in Athens, Georgia, I think.

Q. When?

A. It was—when, I don't know the date, sir.

Q. You made a nice profit on that, didn't you?

A. Yes, sir; bought it at five and sold it at something; I don't know what it was.

Q. You sold it around thirteen, didn't you?

A. I am not sure, Mr. Cody.

Q. Well, now, Mr. Schroder was trying to illustrate to the Court that by selling this stock you hurt your financial statement, but on the contrary, you helped it, didn't you?

Mr. Schroder: I don't believe counsel has stated what I was demonstrating.

The Court: Let's don't put it in that way. I think he can ask him questions, not in the form in which he asked it; I agree with you, Mr. Schroder.

By Mr. Cody:

Q. Well, if the sale of that stock changed your financial condition, it bettered it; isn't that true?

A. Yes, sir; Mr. Cody,—

Q. That is all I wanted.

[fol. 808] Mr. Schroder: Let him answer your question.

The Witness: If you are trying to prove I am a poor business man, I am with you a hundred per cent.

By Mr. Cody:

Q. Well, that is not exactly what I am trying to prove, Coach Butts.

A. Well—

Q. You said—you said on the witness stand that you are now insolvent.

A. That is not hard to find out, sir.

Q. Who was it that got you in this Orange River Groves deal?

A. Mr. Cody, the Orange River Groves, Incorporated, was started by a building corporation called Jones and Frederick in Coral Gables, Florida. I thought it was a good opportunity, and I would have to be frank with you in telling you that I put more into it than I expected in trying to protect people who had bought contracts in that company. I was unselfish in that.

Q. Now, when you—when you signed this financial statement that we are discussing you named four banks that you owed money to. You left out the Bank in Chicago. Was that Mr. Williams' mistake or yours?

A. Mr. Cody, I cannot be sure, but at that time I do not believe I owed the Bank in Chicago.

Q. What about—what about a bank in Knoxville? You left that out.

A. Mr. Cody, that loan was effected at a more or less [fol. 809] recent date and endorsed by a wealthy gentleman living in Knoxville, Tennessee.

Q. What about this bank loan at Bridgeport, Pennsylvania? You left that out. Is that Mr. Williams' mistake or yours?

Mr. Schroder: Is there any evidence that that was a loan outstanding at that time, or is Mr. Cody testifying again?

The Court: I will let him ask that, Mr. Cody; I will let him ask him if it wasn't outstanding, and Mr. Butts can say yes or no or he doesn't remember.

The Witness: Mr. Cody, I don't know why, but I will try to explain. This—I have a contract with a canning company in Bridgeport, Pennsylvania.

By Mr. Cody:

Q. For what purpose?

A. For the purpose of canning Coco-Colas in the Philadelphia area, and this loan, when arranged, was supposed to be paid from the income from the royalties that I would receive on each case of canned Coca-Colas, and I think it is one penny per case.

Q. But you did sign the Bridgeport loan?

A. Yes, sir; endorsed by Mr. Lewis Tose, T-o-s-e.

Q. Coach Butts, haven't you had a loan outstanding for several years and prior to the time this statement was prepared that was payable to the Northside Bank at Jacksonville, Florida?

A. That loan, Mr. Cody, is less—I don't know the date of the loan.

[fol. 810] Q. But it was prior to this financial statement, wasn't it?

A. I do not know, sir.

Q. Well if—can I ask you who endorsed that loan?

A. Mr. Lewis E. Wolfson.

Q. Don't you know that that loan had been outstanding for about a year before this financial statement was prepared?

A. Mr. Cody, I am not sure about date.

Q. As a matter of fact, Coach Butts, you owed considerable more money than is disclosed by this financial statement as of the date of that statement; isn't that true?

A. I am not sure. You seem to know more about it than I do, sir.

Q. Well, you should know more about it, though, shouldn't you?

A. Yes, sir.

Q. Now, since the date of this financial statement, which is July 17, 1961, you drew your salary from the University

up until the time you resigned, they have paid you that, haven't they?

A. Yes, sir; they paid me through February of this year.

* * * * *

JOHN CARMICHAEL called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Lockerman:

Q. Will you state your name please, sir?

A. John Carmichael.

[fol. 811] Q. Where do you live.

A. 4392 East Brookhaven Drive, Atlanta.

Q. Speak as loud as you can so that counsel back here can hear you.

A. All right, sir.

Q. How long have you lived in Atlanta?

A. All my life; I was born in Atlanta, sir.

Q. What business are you in?

A. I am in the real estate, insurance and sales promotion business.

Q. Mr. Carmichael, do you know George Burnett?

A. Yes, sir.

Q. How long have you known him?

A. Since 1960.

Q. Have you had any business connections or dealings with him?

A. Yes, sir.

Q. Directing your attention to the period back to the time of September 13, 1962, were you and George Burnett connected in in any kind of business together?

A. Yes, sir.

Q. Will you state briefly what that type of business was?

A. It was a business that I owned. The name of the business was the Institute of Oral Hygiene. It was—

Q. Did that have to do with toothbrushes and—

A. It was a sales agency for the sale of a toothbrush sterilizer.

Q. Did you have an office for use in connection with that business?

A. Yes, sir.

Q. And where was it located?

[fol. 812] A. At Number 72 Eleventh Street.

Q. That was here in Atlanta?

A. Yes, sir.

Q. Prior to that particular association, had you been in any business association with George Burnett?

A. Yes; he had been working for me for about a year.

Q. In some other business connection?

A. Yes, sir. He had been working for me as an insurance agent for Foundation Life Insurance Company, which I was district manager for Foundation Life.

Q. You were the district manager for Foundation Life, and he worked for you?

A. Yes, sir.

Q. Did you get a leave of absence or something?

A. Yes, sir; and in the last part of June of '62, we both got a leave of absence from the company.

Q. Now, this Institute of Oral Hygiene, was that your company?

A. Yes, sir.

Q. Directing your attention further to the date of September 13, of 1962, do you happen to remember that date?

A. Yes, sir.

Q. Do you recall approximately what time you arrived at your office on that date?

A. Well, I was a little late getting there that morning, usually got there about 9:00 o'clock, but that morning I had a dental appointment and I got there about 10:30.

Q. About 10:30?

[fol. 813] A. 10:30 or 10:35; somewhere right in there.

Q. Did you have in your offices there that you have referred to, an office that was more or less your office?

- A. Yes, sir; I had an office.
- Q. Private office?
- A. Yes, sir; private office.
- Q. With a desk and phone on it?
- A. Right, sir.
- Q. When you went into the office that morning, was George Burnett there?
- A. Yes, sir.
- Q. Will you state to the Court and Jury just what you found with reference to George Burnett when you arrived at your office that morning?
- A. Well, when I went in the reception room our secretary hadn't come to work, and she didn't come to work all day that day, but I walked on in the reception into my office, and Mr. Burnett was sitting at my desk, and he had the telephone to his ear, and when I walked in he put his finger to his mouth like this, and I turned around and walked out.
- Q. Will you turn to the Jury so they can see?
- A. I turned directly around and walked out.
- Q. Will you show the Jury what you meant by the motion of your hand?
- A. Well, he had the phone to his ear, and when I walked in, he took his finger and put it to his mouth like this, and I turned right around and walked outside the door, and I sat—there's a little secretary's desk right outside the door, —I had a seat there and started looking through the morning mail.
- Q. Now, the secretary's desk that was just outside the door, I assume you mean the door of the office where he was seated at your desk?
- [fol. 814] A. That's correct, sir.
- Q. Approximately how far, now, from the desk where he was seated, was the secretary's desk where you went and sat down?
- A. Well, it was about—actually two desks, wasn't over three feet apart, if you got down to measuring the distance between the desks, but there was a wall separating them and a door in the corner, so I guess if you had to walk

around it, it would be six feet from one desk to the next desk.

Q. The door, then—

A. Six or eight feet.

Q. —was open in to the office where he was seated?

A. Yes, sir.

Q. And so you were about six feet from—six or eight feet, walking through that door, to where he was seated?

A. Yes, sir.

Q. I believe you stated there was no secretary there. Was anyone else in the office?

A. No, sir; not that day, no. She didn't work that day.

Q. Was there any sort of commotion or noise or disturbance going on?

A. No, sir; not at all.

Q. Now, approximately how long after you walked to the door where he was seated in the office and then turned and went back to the secretary's desk, about how long was it before anything happened with reference to you and George Burnett?

A. Well, I would say approximately five or six minutes.

Q. During that five or six minutes, was there any conversation by George Burnett over the phone that he was listening in on?

A. No, sir.

Q. Was there anything said by George Burnett to anyone into the receiver of that phone?

A. No, sir.

Q. While—after you got there?

A. No, sir.

Q. What was the first thing, then, that was said by George Burnett after you sat down to that desk, and after you had gotten there?

A. Well, he called my name.

Q. And when he called your name, what did you do?

A. I got up and went into my office.

Q. Relate to the Jury what George Burnett said to you after you went into the office and the desk where he was seated?

A. He said: "John?"—and he called my name,— "John?" I said, "Yes". And I got up and went into the office. I said, "What is it, George?" And he just said, "I heard a conversation between Coach Wally Butts and Coach 'Bear' Bryant." He says, "Seems funny to me that one coach or athletic director would be calling another one before game time." And he said, "I made some notes about it." And he had these notes in his hand, and he proceeded to tell me a little bit about the conversation.

Q. All right, sir. Now Mr. Carmichael, were you in a position to where you could have heard anything that George Burnett would have said to, into that phone receiver, had he said anything?

A. Yes, sir; if he had said anything at all I would have heard it.

[fol. 816] Q. Now, this article of the Saturday Evening Post of March 23 states this, and I quote, with reference to what Burnett is supposed to have heard. Let me show you, Mr. Carmichael, this reproduction of the Saturday Evening Post article which states in the second column, on Page 81. "Suddenly,"—talking about Burnett—"he heard an operator's voice. 'Have you completed your call, sir?' Burnett stated. 'Yes, operator. By the way, can you give me the number I was connected with?'" Did you hear George Burnett make any such statement to any operator on the phone at that time?

A. No, sir; and he didn't make it.

Q. If he had, you could have heard it?

A. That's right, sir.

Q. The next thing I read from here is: "The operator supplied him with a number in Tuscaloosa, Alabama, which he later identified. Burnett—" Then, going on down—"Burnett then dialed Jackson 5-3536, the number he originally wanted. This time the call went through normally, and he reached a close friend and former business asso-

ciate named Milton Flack.” And it quotes Burnett as saying: “Is Wally Butts in your office now, Milt?” Burnett asked, and it quotes Flack as saying: “Well, he’s in the back office making a phone call, I think. Here he comes now.” Did George Burnett make any statement over that phone to Milton Flack, or anyone else, as stated in this Post article?

A. No, sir; he did not.

Q. If he had, could you have heard him?

A. Yes, sir.

Q. This article comes down—no, it’s on the first column, Mr. Carmichael, on Page 81 of this article, and states here, after referring to the claim that Burnett heard the operator [fol. 817] say Coach Bryant was on the phone ready to speak to Coach Butts, then— “Hello, Bear,” Butts said.” Then it goes down to say, “As Burnett listened, Butts began to give Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later.” After you started to talking with George Burnett, when he called you into the desk there where he was seated, did he tell you at that time, which was moments after it—after he had listened on this conversation, that Butts had given to Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later?

Mr. Cody: Your Honor, I am going to object to this form of questioning. I think he can ask the witness what Burnett said, what he heard.

The Court: Yes, sir; I agree with you. I think you are leading your witness, Mr. Lockerman. I think you can ask him what was said, but you can’t suggest to him what his answer might be. I sustain the objection.

Mr. Lockerman: All right, sir.

By Mr. Lockerman:

Q. Will you state to the Jury just what George Burnett said to you as to what he had heard in the conversation that he claimed to be listening to?

A. Well, he said that Coach Wally Butts had called Coach Bear Bryant and that he had got hooked up in the conversation and that in the conversation Coach Butts [fol. 818] had said that some football player, and I have forgotten the name of the player because it didn't—don't strike a bell with me, was a great football player; and also the statement he made to me was that Coach Butts said that Georgia had two new coaches, and the Coach Bryant—they talked a few minutes, and Coach Bryant asked him if he was going to be home Sunday. Now, outside of that, there was nothing else particularly involved in it, except the general conversation which he admitted to me between the two coaches.

Q. General conversation about what?

A. About football in general.

Q. Yes, sir. And was that what Mr. Burnett told you at that time, moments after the conversation?

A. That's right, sir, except he did add a little bit more than that. He says: "It seems funny to me that an athletic director from one school would be calling another school before a football game." And he said, "You think we should bet anything on this game?"

Q. Who? Was that Burnett said that to you?

A. Yes, sir.

Q. Whether you thought that the two of you should bet anything on that game?

A. That's right, sir.

Q. That was his statement?

A. That was his statement to me.

Q. All right, sir; what did you say with reference to that?

A. I said: "Well, George, from what you tell me, it's nothing there to lead me to believe you would know who to bet on. Do you know who you'd bet on? Was there anything said to lead you to believe that there would be some favorite in the game?" And he said, "No". I said, "Well, [fol. 819] from what you tell me, I can't judge that either, so I think the best thing we should do is forget it."

Q. Was anything else said about that conversation until sometime, say, later in the afternoon of that day?

A. Not after that. There was nothing else said about it until about, oh, I guess roughly about 2:00 o'clock that afternoon.

Q. Were you still at the office about 2:00 o'clock, or 2:30 that afternoon.

A. Yes, sir.

Q. What brought about something else being said about it, about 2:00 or 2:30 that afternoon?

A. Mr. Milton Flack came by the office.

Q. Let me ask you there, who is Milton Flack?

A. Well, he's a gentleman that was the President of Sterilray, and at one time Mr. Burnett had worked for him in the capacity of sales agent for Sterilray, for this same toothbrush sterilizer.

Q. Had you been—did you have some previous business connection with Mr. Flack, also?

A. Well, the only other business I had had with Mr. Flack was when Mr. Flack was hired in the Public Relations Department, United American Life Insurance Company while I was on the Board of Directors of that company.

Q. You were on the Board of Directors of United American Life Insurance Company?

A. Yes, sir.

Q. Yes, sir.

A. And he was hired as a public relations man for the company.

Q. All right, sir. Going back to that afternoon, then, on September the 13th, you indicated that Milton Flack [fol. 820] came to the office of Oral Hygiene. Relate what took place when he arrived.

A. Well, we talked for a moment or two, and then George, Mr. Burnett, rather, proceeded to tell Mr. Flack about the same thing he had told me that morning in regard to the conversation that he said he had heard between Coach Butts and Coach "Bear" Bryant, and he asked Mr. Flack the same question that he had asked me earlier in

the morning. He say, "What do you think about putting a bet on the game?" Mr. Flack asked him about the same thing that I did, too, and told him that he didn't think there was anything to it, and that—he asked him if he knew which side to bet on, and he said, "No." And he said, "Well, I don't know either." And he told him just about the same thing I did, and told him he didn't see any way to bet on it, or wouldn't know which way to bet on it, and told him that he thought the best thing to do was to forget about it.

Q. And as far as you are concerned—

A. But—excuse me. He had also told him this, though, Mr. Flack told him that—he said, "What time was that call?" And he told him it was about 10:30 in the morning, and he said, "Well Coach Wally Butts was up at the office of Communications International this morning."

Q. Is the Milton Flack telling George Burnett that Coach Butts was at the office of Communications International that morning?

A. That's right, sir.

Q. Had—up to that moment, had George Burnett said anything to you or to Milton Flack indicating that he had any idea—

[fol. 821] Mr. Cody: Your Honor, that is the same objection. Now, Mr.—

The Court: Yes, sir; I think you are leading your witness, Mr. Lockerman. I sustain the objection.

Mr. Lockerman: All right, sir.

By Mr. Lockerman:

Q. Had George Burnett—will you state whether or not George Burnett had said anything to you or to Milton Flack—

Mr. Cody: Same objection, Your Honor; I think—

The Court: Yes, sir.

By Mr. Lockerman:

Q. What, if anything, did George Burnett say to you or Milton Flack concerning where Wally Butts was?

A. Well, he didn't know where Wally Butts was, I don't believe; if he did, he didn't say anything to either one of us about it, and, in fact, Mr. Flack is the one that told him where Coach Wally Butts was that morning.

Q. All right, sir.

* * * * *

[fol. 822] (Atlanta, Georgia; Tuesday, August 13, 1963, 9:30 a. m., in Chambers.)

EXCEPTIONS AND RULINGS THEREON

The Court: Mr. Cody, I believe you stated you wanted to make certain exceptions in the record, and I think it would be better to make them outside, and I want you to preserve every right you have got, and I thought this would be the proper time.

Mr. Cody: I have understood from the very start, the way it should be done so as not to ask any questions that prejudicial to this Plaintiff, I mean, the question, the answer to which would be inadmissible.

The Court: All right sir; you just proceed where we can get it on the record.

Mr. Cody: We wanted to show, Number one, by Mr. Bolton, J. D. Bolton, that telephone calls to the extent of twenty-eight hundred dollars were made by the Plaintiff and charged to the University of Georgia, which calls were made between October, 1961, and February 1, 1963.

The Court: Is that—

Mr. Cody: That these telephone calls which were charged to the University were not known to the University until an investigation was begun in the latter part of 1962, that [fol. 823] these calls involved people of questionable character, one of which was a woman by the name of Evelyn

Lindsay, and that in excess of three hundred of these calls were to her.

The Court: Well, now, are you through?

Mr. Cody: That is one time; yes, sir.

The Court: All right, sir; the Court feels that, and it is the ruling of the Court, that the fact that these calls were charged to the University are irrelevant to the issue at hand. Now, I have permitted you to— The Court has permitted you to ask questions in regard to Mr. Scoby.

Mr. Cody: Yes, sir.

The Court: I can see no relevancy in the calls to E. C. Lindsay.

Mr. Cody: Judge, I didn't think this morning we were going to get into a discussion of—

The Court: I was just making the ruling for the record. I thought it would be for the record, the Court's ruling would be on the record.

[fol. 824] Mr. Schroder: May I make a comment?

The Court: Let me get cleared up with Mr. Cody. What are you attempting to show here, Mr. Cody?

Mr. Cody: That none of these telephone calls were in connection with University business, and to charge these calls to the University—

The Court: You are simply attempting to show that the calls were charged to the University which were personal calls?

Mr. Cody: Right.

The Court: Well, I don't think that is relevant to the issue, and I rule it out.

Mr. Cody: All right, sir.

The Court: Go ahead.

Mr. Schroder: Your Honor—

Mr. Cody: Then, in that—

[fol. 825] Mr. Lockerman: May I make this statement for the record also, that if you have any names of suspicious characters, as you refer to, other than Evelyn Lindsay and Mr. Scoby, that I think the record ought to show who you have reference to other than those.

The Court: That is the reason I asked him the question, the basis of his contention that they were admissible and he said they were charged as calls to the University, personal calls, and I put my ruling on that basis. Now, if you have got another basis for them, let me hear from you.

Mr. Cody: Now, with respect to all of these matters which I am about to mention, I take the position that I have a right to cross-examine the Plaintiff on this subject in order to develop other evidence along the same lines and to substantiate the correctness of the records. Now, Number—maybe I should go into a little more detail.

The Court: All right, sir; go back to whatever detail you want.

Mr. Cody: —into the discussion of the admissibility.

The Court: Go into anything you want to.

[fol. 826] Mr. Cody: I want to prove by Evelyn Lindsay that she has traveled with Coach Butts on numerous occasions, some of which are to football games made by the University of Georgia, that he visited her in her room, that on two occasions he was seen drunk, that he paid her expenses on these trips and exhibited her to members of the football team, associating with her in their presence. I want to offer proof that on the night of Tech-Georgia, the Georgia-Georgia Tech game, 1961, in Atlanta, following that game Coach Butts had dinner with this woman and spent the night with her at the residence of Mr. Leon Froshin here in Atlanta.

The Court: Well, I would say on that point, I don't think specific acts of misconduct are admissible, entirely disconnected with the libel action. I don't believe that a man has to come in and defend every act that he has ever committed during his whole life.

Mr. Cody: I think I understand that.

The Court: And for that reason I exclude the evidence and rule it out.

Mr. Lockerman: And, Your Honor, for the sake of the record, let me say this also in behalf of Mr. Butts.

[fol. 827] The Court: I don't want to defend every act I have ever done.

Mr. Lockerman: According to the testimony given by Evelyn Lindsay that he referred to, in each instance she said that whenever Coach Butts visited her in her room at any hotel or any other place, there was someone else present. Also, with reference to the—

Mr. Cody: Judge, let me interrupt him just a minute.

The Court: I am assuming everything he says is correct or could be correct, and I still think it is inadmissible and I rule it out.

Mr. Cody: I don't think we ought to get into a discussion in the brief time we have allotted here in the brief time—

The Court: I am letting you get your record for any appeal.

Mr. Lockerman: I do want the record to show that we take the position that the factual statements that he is making, that are incorrect in a number of instances as indicated, I know that he is not deliberately making incorrect statements, but I think if he checked the depositions carefully he would find that some of these statements of what he expects to prove are incorrect.

[fol. 828] Mr. Cody: I don't want to get into a discussion with him about what his position is.

The Court: That's all right. I want you to get your record straight, and I will rule on it.

Mr. Cody: I want to show that—

The Court: I might state this, that under the case of Kessler versus Best, which is a New York case which you cited, I read numerous cases which hold to the contra, and I believe that the majority of the cases, and also the case of Cox versus Strickland in the 101 Georgia is authority for my ruling.

Mr. Cody: I am not going to touch on the reasons for admissibility until I get through with these instances.

The Court: Go ahead.

Mr. Cody: I think I should state on this last point that we would undertake to prove by Mr. Hendry Ogdon the fact that Coach Butts did get drunk on the evening of the Tech-Georgia game in 1961 and spent the night with Evelyn Lindsay at this place. He, as well as Evelyn Lindsay, would be witnesses in that respect.

[fol. 829] The Court: All right, sir. I overrule—I exclude the evidence as being irrelevant and immaterial.

Mr. Lockerman: Let me say this; we take exception to that statement.

Mr. Cody: I understand you—

The Court: You don't need to take exception if I am ruling on it.

Mr. Lockerman: All right.

Mr. Cody: We expect to—we want to be permitted to prove that Coach Butts on a number of occasions during the time he was coach or athletic director visited the Domino Lounge in Atlanta in company with Evelyn Lindsay and several others, and also another nightspot called the Copa Cabana, at which places liquor was served and floor shows were put on, including—which shows included the so-called strip tease artists.

The Court: I rule that evidence out for the same reason as being irrelevant and immaterial to the issue involved. [fol. 830] Mr. Cody: We expect to prove not only by the records of the airlines but the records of the University of Georgia that Coach Butts traveled with Evelyn Lindsay to various places, Birmingham, Miami, Nassau, Chicago, Los Angeles, Lexington, Kentucky, one or two where they did not travel together there but on some traveled back together, that he bought her ticket and paid for it, and paid her expenses, and in most of those cases charged the airline transportation charges to the University of Georgia.

Mr. Lockerman: Your Honor, Mr. Butts is here, and I think he can state into the record—

The Court: I don't think he need state anything. Let's just rule on the facts.

Mr. Lockerman: That is not a true statement of fact.

The Court: Are you through?

Mr. Cody: No, sir. In connection with those—several of those trips, the airline tickets which were charged to the University of Georgia are under a fictitious name, an assumed name was used for Evelyn Lindsay, namely, E. C. Smith and E. Smith, and subsequently when he was confronted by one of the University officials with respect to these particular transactions he admitted his indiscreetness, that one of those trips was to Nassau with Evelyn [fol. 831] Lindsay, he and Evelyn Lindsay alone, and that he paid the entire expenses of that trip, and in connection with one of those trips he put Evelyn Lindsay up at the Phoenix Hotel in Lexington, Kentucky, arranged for her to be registered under the name of E. C. Lindsay and wife, and that the University of Georgia, all of that was put on University of Georgia bill and paid by the University of Georgia without knowing what it was for, who it was, that Coach Butts subsequently paid that bill and admitted that this involved Evelyn Lindsay, stating also that he, having already testified in this case by deposition, he doesn't know anybody by that name, E. C. Lindsay. We would expect to show by Dr. Bolton—by J. D. Bolton that previous to that he had instructed Mr. Bolton when confronted with this bill to send the bill to E. C. Lindsay at 50 Biscayne Drive, Northwest, Atlanta—Northeast, which is the address, the address of Evelyn Lindsay. I believe that's all on that point.

The Court: All right, sir. I rule that that evidence is irrelevant and immaterial to the issues involved.

Mr. Cody: I think I should mention for the record, Your Honor, that we would expect to prove those facts by the airline records. I don't think I mentioned that, by the hotel records themselves, two witnesses for the—two employees of the hotel having given their depositions and identifying the records, and we would also prove a part of those statements, records, by Mr. J. D. Bolton and also by the cross-[fol. 832] examination of Mr. Butts. If Your Honor thinks

I should at this time name the two employees, the employees of the Phoenix Hotel, I will put that in.

The Court: You do what you want to.

Mr. Cody: One of them is named Anderson, Mr. Anderson, and Mr. Bachelor, who have testified by deposition in this case and have identified these records. And by Mr. Tracy of the Delta Airlines who identified the transportation tickets and has also testified by deposition.

The Court: All right, sir. You ready? Is that all?

Mr. Cody: Yes.

The Court: All right, sir, I rule that evidence irrelevant and immaterial to the issues involved.

Mr. Cody: We expect to show by Evelyn Lindsay that she sent to California by plane in 1960 to the Georgia-California game, and that Butts paid for that trip, and visited her in her room while she was there at the hotel. We expect likewise to show by her that the Georgia-Auburn game in 1962, Butts paid her expenses to Columbus, Georgia, where she stayed at the Royston Hotel, and he paid her expenses there and transportation expenses. We expect to show by her that in Jacksonville in November, [fol. 833] 1962, at the Georgia-Florida game she stayed at the Robert Myers Hotel, and Butts paid her expenses there, and that he visited her in her room during her stay there, and also that he was—he was on one occasion doing that weekend drinking heavily. We expect to show by two of the University officials that Coach Butts bought from Boomershine Motor Company in Atlanta a new Pontiac and gave it to Evelyn Lindsay, which incidently embarrassed some of the University officials in that the retention title contract on that car was recorded in Athens, and a record of it published in one of the publications that are issued in Athens. I don't know the name of that publication; I don't have it at the moment now, but it was published, and we would expect to show he was confronted by one of the University officials about his indiscreetness in doing that, and that he told that official that he did not buy this car for Evelyn Lindsay but simply helped finance it tempo-

rarily for her brother. In that connection we would expect to show that insofar as we have been able to ascertain that she has no brother. We expect to show you—prove that Evelyn Lindsay has a private unlisted telephone number which Coach Butts has called on many occasions in excess of a hundred times during the period I mentioned heretofore, all of which calls were charged to the University and included in this twenty-eight hundred dollars. We also expect to show that Coach Butts has visited many times in Evelyn Lindsay's apartment on Biscayne Drive while he was coach and while he was athletic director at the University of Georgia, and made this known to others who talked about it, and caused common gossip to be spread about it, which has embarrassed the University of Georgia.

[fol. 834] The Court: All right, sir, is that all?

Mr. Cody: I believe that's all.

The Court: All right, sir, I rule that evidence is irrelevant and immaterial to the issues involved. All right, sir, anything further?

Mr. Cody: Let me see. I think I have—like also, in connection with this trip to Lexington, Kentucky, I expect to show that on the return to Atlanta from that city that Coach Butts was with Evelyn Lindsay and also on that plane were five football players on the University of Georgia team, and on that visit none of Coach Butts family was on that trip. We would expect to show by Coach Butts and by Evelyn Lindsay that in the purchase of the Pontiac, in addition to the Pontiac automobile he purchased for her he bought her a mink stole. Now, I want to—I want to perfect the record, Judge, if such need be done, with reference to these seven or eight questions I wanted to ask Coach Butts yesterday.

The Court: Let me rule on that. I rule on that last statement, what you intend to prove, that it is irrelevant, and immaterial to the issues involved. All right, sir, go ahead.

Mr. Cody: With reference to these several questions?

[fol. 835] The Court: No, sir; I haven't heard those.

Mr. Cody: I wanted to prove yesterday with Coach Butts on cross examination that he refused to answer these seven or eight questions, I may be wrong in the number, which I showed to Your Honor yesterday and which had to do with the time when he was in Atlanta round September 13th or whether or not he made any calls to Coach Bryant, undertaking, of course, to show by this evidence that he was evasive and—

The Court: I think I am familiar with the questions, and I—

Mr. Cody: That's right; you looked at them.

The Court: —informed you at that time you could ask him those questions. My recollection was that you stated that you wanted to show he would not answer the questions at the time the deposition was taken—

Mr. Cody: That's right.

The Court: —and my recollection was that he was advised by his attorney not to answer the questions—

Mr. Cody: That's right.

[fol. 836] The Court: And I couldn't see where any benefit would be derived. I assumed that if a party is represented by counsel, and those questions were not answered at that time, but I told—I informed you on yesterday that you could ask the questions again. If you are making any real issue on the point, I will permit you to ask Coach Butts why he didn't answer the questions or refused to answer them, and I think it comes back to the same thing.

Mr. Lockerman: Your Honor, let me make this statement into the record. The questions that Mr. Cody is stating that Coach Butts refused to answer, in which he did refuse to answer, were questions that were put to him on May 3, 1963 where there was pending before Your Honor certain motions—

The Court: Some interrogatories.

Mr. Lockerman: —with respect to the admissibility of the questions that he was seeking the answer to. Thereafter the Court ruled—

The Court: That he did have to answer.

Mr. Lockerman: —that he did have to answer, and that I have in my hand here the deposition that Mr. Cody resumed of Coach Butts on July 16th, 1963, at which time he put those questions to Coach Butts, and Coach Butts did [fol. 837] answer those questions, after Your Honor had ruled that he should answer them, and for him to come back now and seek to ask him questions, and he refused to answer on advise of counsel on May 3rd, but which he did answer on July the 16th, certainly doesn't illustrate anything.

The Court: Yes, sir. That was a disputed legal point, and I can't see how you could impeach your witness when the matter was—the matter was to be determined by the Court and was later determined by the Court, and thereafter the questions were answered.

Mr. Joiner: Of course, even if their legal position was correct—

The Court: Yes, sir.

Mr. Joiner: —Plaintiff had his right to waive the benefit and give the whole truth of the circumstances.

The Court: Mr. Joiner, if it was a legal question that had to be determined, I would certainly think witness should follow the advice of his counsel.

Mr. Cody: It is still a question for the Jury to determine whether or not it is trying to be evasive.

The Court: No; no, sir.

[fol. 838] Mr. Lockerman: That's right.

The Court: I don't think that is a proper method of impeachment or discrediting.

Mr. Cody: It is not under impeachment.

The Court: What is it under? What is the reason for asking it?

Mr. Cody: His demeanor on the witness stand. The Jury has a right to consider the trustworthiness of a witness.

The Court: That is what you are getting back to.

Mr. Cody: That's right.

The Court: Same thing that I said. I don't think that is proper, and I rule that out.

Mr. Cody: All right. We expect to—we will expect to prove by Coach Butts that he has testified that he does not know any person by the name of E. C. Lindsay. This, of course, comes under the heading of impeachment.

Coach Butts: Your Honor, I didn't say anything—
[fol. 839] The Court: We are just on a legal issue, Coach. Haven't we been over—didn't you go over that when we first started? Didn't you make—

Mr. Cody: We discussed it privately in front of Your Honor at the Bench.

The Court: I thought you started on that today.

Mr. Cody: No, sir.

The Court: All right, sir, anything further?

Mr. Cody: I would—I would propose to ask Coach Butts if he—if he is acquainted with—with his own reputation.

The Court: No; that is not the proper way to prove reputation.

Mr. Cody: Well, I believe that covers it.

The Court: The law sets out how you can prove reputation, and there are three specific questions—three specific questions, yes, and that is the way you can prove it, and that is the only way. I will let you prove it that way as the law provides, but you can't ask of the party, nor can [fol. 840] the party testify to his own good reputation.

Mr. Cody: Well, in order to perfect the record I would like to be permitted to ask him the further questions as to whether or not his reputation is good or bad. That is in the same category.

The Court: Well, I exclude that as being an improper question.

Mr. Cody: That's all I have.

The Court: All right, sir, anything further?

Mr. Cody: No, sir.

* * * * *

JOHN CARMICHAEL, having resumed the stand, testified further as follows:

Direct examination (continued).

By Mr. Lockerman:

Q. Mr. Carmichael, when Court adjourned yesterday. I believe we were discussing the events of the afternoon of September the 13th, that took place in your office, the Institute of Oral Hygiene, after Mr. Flack arrived. I believe you had stated to the Jury that Mr. Flack told Mr. Burnett [fol. 841] about the fact that Wally Butts had been in the office of the Communications International that morning; is that correct? Have I stated that approximately correct?

A. That's correct, sir.

Q. All right, sir. Now, I believe you had also testified Mr. Burnett went over with Mr. Flack the same things that he had told you immediately after he had hung up the receiver from listening in on that conversation he claimed he heard; is that correct?

A. That's correct.

Q. Did he tell Mr. Flack substantially the same thing that he told you—had previously told you?

A. That is correct, sir.

Q. And what was the decision made, if any was made, about what to do, if anything, about that matter?

A. Well, Mr. Lockerman, I don't know whether you'd call it a decision was being made or not, but Mr. Burnett asked Mr. Flack approximately the same thing he had asked me in regards to betting on the game.

Q. Speak so counsel can hear you.

A. He asked Mr. Flack what he thought about placing a bet on the game, and Mr. Flack said, in brief, "Well, there's nothing there that would lead me to believe which side to bet on, and I think we had better not make a bet on either," or words to that effect, which is about the same thing I told him.

Q. Was that, in substance, what took place about the matter after Mr. Flack arrived?

A. That's right, sir.

Q. Of course, as you have stated, that was on September the 13th. Now, directing your attention to the date of [fol. 842] September the—the Monday morning following the game on September the 22nd, was anything said between you and Mr. Burnett on that day concerning this matter, and if so, what?

A. Well, on Monday morning I think that Mr. Burnett, to the best of my recollection, about the only thing was said was he said: "Well, John if we had bet on Alabama Saturday, we'd have won." That was Monday after the game had been played, now.

Q. Yes, sir. Now, from that date, the Monday following the game on the 22nd, did anything else occur about that matter between you and Burnett, or you and Flack, or you and anyone else until the date of January 30, of this year, 1963?

A. No, sir.

Q. Will you please relate to the Jury what occurred concerning this matter, if anything, on that date?

A. On January 30?

Q. Yes, sir.

A. Well, let me back up just a minute, Mr. Lockerman, with your permission, and say—

Q. All right, sir.

A. —we closed this business of the Institute of Oral Hygiene the latter part of October, and in November Mr. Burnett went back to work for the insurance company, and in December I went back to work for the insurance company, but Mr. Burnett was not working for me at this time. He had been put in another district before I went back, and I went back in December, and I didn't see too much of Mr. Burnett during the month of January because he wasn't working for me, but on the morning of January the 30th I went into the office of Foundation Life Insurance Company and I walked into the agency room

[fol. 843] and Mr. Burnett was in the agency room on telephone by himself. When he hung up the telephone he turned to me and he said, "John," he said, "I have got myself in an awful trap, and I don't know what to do about it." I said, "What do you mean?" He said, "Well, a few weeks ago I was talking to Bob Edwards,"—Bob Edwards is the Division Manager for South Georgia for Foundation Life, and he says, "I was talking to Bob Edwards, and I happened to mention to him that I heard a conversation back in September between Coach Wally Butts and 'Bear' Bryant, and he said he's a good friend of Johnny Griffith, or Coach Griffith, and I didn't know that he was going to run over there and talk to him, but," says, "he's went over there and talked to him about it, and next thing I know," he said, "They had me down talking to some of the Georgia officials, including an attorney and President of the college," and he says, "I've got myself in a trap here, and I don't know what to do about it."

Q. Now, following that conversation on that date with George Burnett, did you, yourself, do anything about this matter that day or that evening?

A. Well, I asked George that morning, I said, "George," when I was talking to him, "I don't know what you have told these people, but I want to ask you a question." I said, "did you say that I was there when you were supposed to have heard the conversation, or did I listen in on the telephone in the conversation?" And he said, "No, I did not". I said, "Well, I'm glad of that, because if you said I listened to the conversation, I'd have to say it's a lie." And that was, in essence, about all that was said about it there.

Q. Well, let me ask you this. Then, just to get down to the question that I have in mind, did you communicate [fol. 844] with Wally Butts at any time that day or that evening about the matter?

A. Well, that night I went home, and I told my wife about what had happened, and I says, "I just don't think it's right—"

Q. Well, now, don't go into conversation with your wife.

A. Okay. Well, anyway, the facts of the case is that I decided to call Coach Wally Butts and tell him about it.

Q. Well, let me interrupt you about it and ask, did you know Coach Wally Butts?

A. I have been an acquaintance of the Coach. I have never been a friend of the Coach, but I have known Coach in a casual way for about fifteen years.

Q. Who introduced you to Coach Wally Butts?

A. To the best of my recollection it was Coach Frank Leyhe from Notre Dame.

Q. About fifteen years ago?

A. Yes, sir; about fifteen years ago.

Q. All right, sir. Now did you—did you reach Coach Butts on the telephone on the evening of January 30, or any time during that night?

A. Yes, sir; I did.

Q. Where did you reach him? Where was he?

A. Well, I called his home in Athens and he wasn't there, and I finally, you know, they told me Coach was off on a trip, and he was in Philadelphia, I believe he was in Philadelphia, Pennsylvania, and I called Philadelphia, and he was in a hotel in Philadelphia but he wasn't in when I called, and I left my number for him to call me back, and he did that night.

Q. He called you back that night?

A. Yes, sir.

[fol. 845] Q. What conversation took place between you and Coach Butts when he called you back?

A. Well, I didn't know whether Coach Butts would know who I was or not, at first, so I told him over the phone who I was, and I asked him if he remembered me, and he said: "Yes, I do, John." And so then I told the Coach what Mr. Burnett had told to me on the morning of September the 13th, when he received the telephone call, and I told the Coach what Mr. Burnett had told me that morning on January 30th, what he had done, and the Coach said to me, he said: "Well, John, I appreciate you calling me,

but," he said. "I'll tell you this," he said: "I am sure there is nothing to it, because I don't know whether I called Coach Bryant or not, but I will tell you this," he said, "I talk to a lot of coaches, and I don't remember making a call on that particular day, but if I did," he says, "I will assure you there was nothing to it, because I would never do anything to hurt Georgia." And he thanked me for calling him, and it was a very short conversation. It only lasted three or four minutes at the most, and that was all there was to that conversation.

Q. Had you previously, at any time, said anything to Coach Butts about this matter prior to that time?

A. I hadn't even seen Coach Butts prior to that time.

Q. As a matter of fact, did you know Coach Butts socially, or did you ever visit his home, or he in yours?

A. I have never been to his home in my life, never met any members of the family in my life; he has never been to my home, and I have never been out with him socially.

[fol. 846] Q. Have you ever had any business transactions with Coach Butts?

A. One time in my life.

Q. Will you state what that was?

A. I believe it was in 1958, I organized a company, a corporation, rather, in the State of Georgia, known as the Coffee-Break Sales & Service Company. I believe it was a corporation; I believe that was the name of it. It was a business that was—it was organized for the purpose of selling coffee and hot chocolate out of vending machines in small locations, and I went to about twenty people who were prominent people, and I got these people to put two thousand dollars or fifteen hundred dollars apiece into this corporation to buy stock into it.

Q. Will you name some of the people?

A. Well,—

Mr. Cody: I don't think that is relevant, Your Honor.

The Court: Yes, sir; someone brought out about the Coffee-Break Company yesterday; I will let him go into it.

Mr. Cody: All right, sir.

The Court: Go ahead.

A. (By the witness) Dr. Chris. McLoughlin, who was killed in the Paris crash, was one of the people.

Q. Was he a practicing M. D. in Atlanta?

A. He was a practicing physician here in Atlanta. He was also, I believe, President of either the National Association of Georgia Doctors' or an association of some kind. Mr. Wylie Moore, Jr. was one of the people in this. I was in Athens; I went to see Coach Butts, and Coach—I explained the situation to Coach Butts, and he said: "This sounds like a very good idea," and I says, "Of course, we'd love to have you come in. We believe it will make some money, and we believe that you could probably help us up this way, if we come up this way to distribute our machine." And he purchased some stock in the company. Another gentleman was Mr. Robert Hogg. I don't remember all the people, but I will tell you it was a pretty good bunch of people we had in it.

Q. I see, and he put some stock in it?

A. He bought some stock in this corporation.

Q. I believe there's been some testimony about a refunding of the money to Coach Butts reference to that stock; will you state what that is?

A. That's correct.

Q. What did you have to do with that?

A. Well, I was President of the corporation, and, of course, the people that put their money in this corporation, they didn't know anything about the machines. They put it in there because I told them it was a good deal, I believed, and I had a contract with a company that was manufacturing these machines, and they guaranteed to me to do certain things, and they did not live up to the specifications they were guaranteed to me for, so I broke my contract with the manufacturer on the machines after about three months' operation. I saw it wasn't going to do the job, and I called the stockholders' meeting, and I refunded

every penny of money to every stockholder that had purchased stock in this corporation, even though we had spent some of the money. I personally refunded every penny [fol. 848] of the money to every stockholder in the corporation that had put a penny in it, and gave Coach Butts and everybody else involved in it a check for the full amount they had put in the corporation.

Q. Now, that was some personal loss to yourself?

A. Yes, sir.

Q. All right, sir. That included, of course, as you say, Coach Butts?

A. Yes, sir.

Q. Now, you testified a moment ago that you were introduced to Coach Butts about fifteen years ago by Coach Frank Leyhe of Notre Dame. Will you explain to the Jury how Coach Leyhe happened to introduce you to Coach Butts?

A. Well, at this time I was operating a restaurant on West Peachtree about a block from the Biltmore Hotel, and Coach Rupp and Coach Leyhe and a lot of other coaches who brought their teams to Atlanta, needed a good place for these people to eat, for the players to eat, and I was feeding quite a few football teams, and as a matter of fact, I was feeding most all the high school teams when they had their tournaments here in Atlanta. Some of the personnel I knew. Sid Scarborough, who was Director of Athletics, I believe, for the City of Atlanta, and a lot of these people eat with me, and I would feed the whole teams, and it happened that Coach Frank Leyhe and some of his players there, and I was feeding them dinner or lunch, I don't remember whether it was dinner or lunch, but anyway, I think I had met Coach Frank Leyhe, of course, when he came in and made arrangements for it, and we were serving these players a meal and Coach Butts came in and Coach Leyhe asked me if I knew Coach Butts. I said, "I have never had the pleasure." I shook [fol. 849] hands with him, and if I remember right, Coach Butts sat down and had dinner with them.

Q. All right, sir. Now, you have read the article in the Saturday Evening Post that is the subject matter of this law suit, haven't you?

A. Yes, sir.

Q. Will you state to the Jury whether or not there is anything in that article that George Burnett told you he had overheard during the conversation with—that he listened in on, which he claims he listened on?

A. Well, the only thing that I can see in that article that even comes close to what Mr. Burnett told me was he did mention the fact, of course, that he had heard the call. He did mention the fact that—there was a mention that he made to me that some football player was a great football player. I do not remember the name of this player, however. And also the fact that Coach Bryant asked Coach Butts if he was going to be home on Sunday. And outside those three things, there is nothing in that article that appears—pertains to the conversation that Mr. Burnett had with me that morning.

Q. I believe you stated that all that Burnett said about the—about Sunday, the Sunday matter, was that Coach Bryant asked Wally if he was going to be home on Sunday?

A. That's correct, sir.

Q. And is that the extent of what he said about that?

A. That is exactly it and nothing more.

Q. All right, sir. Speaking of people that you have discussed this matter with, have you at any time ever [fol. 850] discussed this matter with a lawyer here in Atlanta by the name of Pierre Howard?

A. No, sir; I have not.

Q. You know Mr. Howard?

A. Yes, sir; very well.

Q. But you have never discussed this matter with him?

A. No, sir.

Q. Mr. Carmichael, going back to the date of September the 13th when George Burnett called and asked you to come to the desk where he was seated where he had been listening in on this phone, I believe you testified yesterday

that he had some notes on the desk there in front of the two of you; is that correct?

A. That's correct. I sat down beside the desk and he had some notes he had in his hand.

Q. Did you see those notes?

A. Yes; I did.

Q. Do you think you would recognize those notes if you saw them again?

A. I believe I would, sir.

Mr. Lockerman: May I have the notes that were introduced as Defendant's Exhibit No. 12?

By Mr. Lockerman:

Q. I hand you what has been represented in this case by Mr. George Burnett to be the notes that he claims that he made during that telephone conversation while he was actually engaged in listening to it. Now, they have been put into evidence by the Defendant and marked as Defendant's Exhibit No. 12. I ask you, please, sir, to look at them [fol. 851] carefully and state whether or not those are the notes that George Burnett had immediately following the telephone conversation when he called and asked you to come in and you discussed the matter with him?

A. No, sir; these are not the same notes that Mr. Burnett handed me.

Mr. Lockerman: All right, sir; you may cross-examine.

Cross examination.

By Mr. Cody:

Q. Mr. Carmichael, I believe you started out our testimony by saying you were in the real estate insurance business?

A. That's correct, sir.

Q. You don't have a license issued by the Georgia Real Estate Board, do you?

A. No, sir; But I own twenty percent of the stock in a real estate development company and I am vice-president of the company. It is well rated in Dun & Bradstreet.

Q. Well, answer my question.

A. I believe that puts me in the real estate business.

Q. Answer my question, then, without arguing.

A. I do not have a real estate license.

Q. You don't have an insurance license, do you?

A. Yes; I do.

Q. Issued by the—

A. State of Georgia.

Q. Insurance Commissioner?

A. Yes, sir.

Q. When was that issued to you?

[fol. 852] A. It was issued January of this year, sir. It's signed by Mr. Bentley; I don't remember the exact date.

Q. Do you remember when your deposition was taken?

A. I don't remember the date; no, sir.

Q. About in June of this year?

A. Yes, sir.

Q. Will you state whether or not this is a correct transcript of the question and answer that was transcribed in this deposition?

Mr. Schroder: What page are you reading from?

Mr. Cody: Page 8.

Mr. Schroder: Sir?

Mr. Cody: Page 8.

By Mr. Cody:

Q. "Did you see the notes which Burnett said he made of the conversation?" Answer: "Yes, sir." Question: "Did you examine them?" Answer: "I did not take them in my hand, no, sir. He sat back down at my desk and I sat down in a chair next to it, and he was telling me—he laid these notes out and he was telling me the things I

just mentioned. He laid the notes down on the desk. They were laying there and I did see them, but I did not pick them up and look at them.”

[fol. 853] A. That’s true, sir.

Q. Well, if you didn’t look at them—

A. I did look at them.

Q. You testified you—

A. I said I didn’t take them in my hand. I saw the notes, sir.

Q. But you said, in answer to the question that I just read you, that “I did not pick them up and look at them.”

A. I also said—

Mr. Schroder: That is what he’s saying now.

The Court: That’s all right; you can bring it out on redirect examination.

A. (By the witness) I also said I saw them in the deposition, sir, but I didn’t say I picked them up in my hand and looked at them.

Q. What was the name of this business you had on Peach-tree?

A. It was Peach Blossom Inn, sir.

Q. Did you even operate a business known as “The Gypsy Room?”

A. Yes, sir.

Q. Where was that?

A. It was at two locations. When I originally opened it, it was on the Clermont Hotel.

Q. On Ponce DeLeon Avenue?

A. Yes, sir. And then I closed the business in the Clermont hotel, and I moved to Pine Street, to Number 26 Pine Street.

Q. Well, now, let’s back up just a minute. What sort of a business was that?

[fol. 854] A. It was a supper club, sir.

Q. Where you served liquor?

A. Well, we served whiskey; yes, sir.

Mr. Schroder: If the Court please, what relevancy could that have to this case, whether he operated a supper club, or whether or not he did or did not sell whiskey.

The Court: Well, he went in, Mr. Schroder, to the type of businesses he operated, and the fact—if he had certain football—I will let him continue with that line, if he can connect it up.

By Mr. Cody:

Q. Did you have a floor show in that business?

A. Yes, sir; I did.

Q. Coach Butts ever visit you at that place of business?

A. I don't believe he did; no, sir.

Q. You are not sure?

A. Well, I couldn't swear to everybody that's ever been in there, but I never saw him there.

Q. You don't remember seeing him there?

A. No, sir.

Q. Where was it you said you moved that business to?

A. I moved to Number 26 Pine Street, between the Peach-trees, but I kept the same name. The business operated under the same name.

Q. Did you ever operate a business by the name of The Circus Lounge?

A. Yes, sir; I did.

Q. Where was that?

[fol. 855] A. It was at the same location. The building caught on fire at The Gypsy Room, and we remodeled the business, remodeled the building, and when we did we put a different motif in it and called it The Circus Lounge.

Q. Is that the business on Pine Street between the two Peachtrees?

A. That's correct, sir.

Q. Is that business in operation now?

A. I believe somebody is operating it; I don't know who.

Q. You don't have anything to do with it now?

A. No, sir; I never have been in it since I left.

Q. Did you ever operate the Wieuca Inn?

A. Yes, sir.

Q. Was that your business?

A. Yes, sir; I owned it.

Q. Did you ever operate a business on the Marietta Highway known as the Casa Rio?

A. On the old Marietta Highway. Yes, sir.

Q. That in business now?

A. No, sir; I don't believe it is.

Q. Did you ever operate a business known as the Rhythm Ranch?

A. No, sir; I did not.

Q. You ever heard of Rhythm Ranch?

A. Vaguely. I have heard the name; I don't even know where it's at.

Q. You say it was about fifteen years ago that you met Coach Butts?

A. I would estimate it to be about that; yes, sir.

Q. Have you ever— Did you ever get in any trouble, Mr. Carmichael?

[fol. 856] Mr. Lockerman: If Your Honor please—

The Court: That is not the proper way to prove that, Mr. Cody.

By Mr. Cody:

Q. Have you ever been convicted of a crime?

Mr. Lockerman: Your Honor, please, I don't think that is the proper way.

The Court: No, sir. Let the Jury go out.

(Whereupon the Jury retired from the court room at 10:44 a.m.)

The Court: Mr. Cody, my recollection of the law in regard to impeachment, I think you can ask him whether he's ever been convicted of a crime involving moral turpitude—

Mr. Cody: Yes, sir.

The Court: —and if he admits he has, then you can, or whatever the particular crime, you can refer to the particular crime. I don't know what the nature of your ques-

tion is, what crime you are talking about, and then if he admits it, then there is nothing further; if he denies it, you can introduce a certified copy, if such is in existence.

[fol. 857] The Witness: Your Honor, may I ask a question?

The Court: No, sir. May I see that when—

Mr. Schroder: I have never seen it before either, Your Honor.

The Court: But a *nolo contendere* is not admissible.

Mr. Cody: It is not a *nolo contendere*, Your Honor.

The Court: And it has to be a crime involving moral turpitude, which would be a crime charged for more than a year and a day.

Mr. Cody: It involves moral turpitude.

The Court: I don't know what the law of Ohio is in regard to this particular crime which he was charged with.

Mr. Lockerman: He'd have to prove that.

Mr. Cody: It's a charge—it's a charge of larceny. Our courts have held that it involves moral turpitude, a charge of larceny.

[fol. 858] The Court: Well, under the Ohio statute, did —was it a misdemeanor or was it a felony?

Mr. Cody: Well, there are—we can furnish you some Ohio authorities on the subject.

The Court: Well, it's difficult for me to keep up, certainly, with the Ohio law.

Mr. Cody: I understand that.

The Court: I just don't know. Until I am convinced—you know the rule; it's got to be a crime which would involve more than a year and a day.

The Witness: It wasn't, Your Honor.

Mr. Cody: Doesn't have to be a felony, Your Honor. Your Honor is mistaken about the length of time of the service of a sentence as having any connection with moral turpitude. The question—the question involved is simply one of whether it does involve moral turpitude, and according to the decisions in Georgia, larceny is—

The Court: The crime with which he is charged has got to be a crime which involves a sentence of more than a