

[fol. 859] year and a day. Now, if there is a plea of guilty, or if there is a conviction, then it is admissible. I agree with you.

Mr. Cody: Well, there is a conviction, as Your Honor will see by that record, but not a sentence of a year and a day. I think Your Honor is mistaken.

The Court: You don't have to have a sentence, but the crime with which he is charged must have been a crime which was punishable by more than a year and a day.

Mr. Cody: I have an Ohio decision, Your Honor, if you'd like to take a look at it.

The Court: Let me hear it.

Mr. Lockerman: Your Honor, may I be heard on that just a moment?

The Court: Yes, sir; I will let you be heard on it, too.

Mr. Lockerman: The only way he can prove a statute of Ohio is to have a certified copy of it, properly certified, of the law.

The Court: I know that. I don't know whether he is required to go that far or not on proving statutes. If he was proving the statute which he was suing on, I agree with [fol. 860] you, but what I am concerned with is whether or not this particular crime involves—was a crime involving moral turpitude.

Mr. Cody: Under the Georgia law, Your Honor, it would be, and we—

The Court: We don't have such a law under the Georgia law. We have petty and grand; this is petty.

Mr. Cody: Well, it's larceny under our law. This is where he is giving evidence, and this is where the Courts of this State have to decide whether it involves moral turpitude or not. I offer it for that.

The Court: What I want to know, is the Ohio statute of this crime which is charged here, did it involve—could he have been sentenced to more than a year and a day under that crime. That's all I want to know.

Mr. Cody: That's not the—that is not the purpose of offering the evidence in this respect.

The Court: What is it?

Mr. Cody: We say under Georgia law it involves moral turpitude.

[fol. 861] The Court: Sir?

Mr. Cody: We say that under the Georgia law it involves moral turpitude, in which event he can be impeached on proof of conviction. Now, that is the purpose for which we are offering it.

The Court: I agree, if you can show that it involves—it was a crime involving moral turpitude, under the law of Ohio, it would be impeachable.

Mr. Lockerman: Yes, sir.

Mr. Cody: You can prove—you can prove the law of Ohio by the decisions of the Ohio Courts.

The Court: Read me what the Ohio Courts say.

Mr. Cody: In the case of Burch, in re Burch, which is in the 54 Northeastern 2d., at Page 803. “If a crime is one involving moral turpitude, it is because the act announced by the statute offends the generally accepted moral code of mankind.”

And here is the definition under Ohio law of moral turpitude, in the Bostwick case, quoted in the 181 Northeastern 1095. “Moral turpitude is defined as an act of baseness, violence or depravity in the private social duties which man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”

Moral turpitude is otherwise defined by another court as “Anything done contrary to justice, honesty, principle and good morals.”

The Court: Well, a misdemeanor could be that, but it’s still got to be a felony.

Mr. Cody: It could be but I think Your Honor is wrong about the felony. If Your Honor should be right on that question, then it wouldn’t be—then it wouldn’t be admissible.

The Court: That’s right; that is the point I am raising.

Mr. Cody: But I think Your Honor is mistaken about the distinction between a felony and a misdemeanor because a misdemeanor could involve moral turpitude.

The Court: No, sir; not under the Georgia law.

Mr. Cody: I think this does involve moral turpitude.

The Court: That is what I want to know, what is the statute; what is the statute of Ohio? How much could one who was convicted of that crime in Ohio? What was the [fol. 863] maximum sentence which such violator would have received.

Mr. Cody: I can't answer that question. I don't have the statute before me, but I take the position that under the Georgia law that the conviction of this crime involves moral turpitude, which conforms to our impeachment statute. That is the position that I take. It is the Georgia law that prevails, and not the Ohio law, on what is moral turpitude.

The Court: You are bringing in a certified copy of a conviction in Ohio—

Mr. Cody: Yes, sir.

The Court: —for larceny, for a particular kind of larceny. In Georgia, if that had been simple larceny, if I recollect my criminal law correctly, it would be a misdemeanor, but it would not be a method of proving moral turpitude, it would not be admissible. But if it had been grand larceny, it would be admissible. The question I am asking is, this particular crime to which this certified copy of the Cincinnati statute, I mean, Ohio, in Cincinnati, was that a crime for which the violator could have received more than a year and a day?

Mr. Cody: I am not prepared to say.

[fol. 864] The Court: Well, that is the controlling point to me, and until it is cleared up, I—

Mr. Cody: May I take a look at the 94 Georgia Reports, Your Honor?

The Court: Yes, sir.

Mr. Cody: Do you have 94 Georgia Reports here? Do we have a Georgia Reports up here?

The Court: There is a particular charge, Mr. Cody, that quite often we give in the case. I have given it many times. The Code Section provides how you may impeach a wit-

ness. That is one of the methods, but it's got to be a crime involving moral turpitude; it can't be a misdemeanor,—

Mr. Cody: That's right.

The Court: —and I believe under the full faith and credit clause we do have to recognize what the Ohio State —Ohio Courts held was a crime involving moral turpitude. We have no such crime by this particular name in Georgia, if I remember my Georgia criminal law correctly.

[fol. 865] Mr. Cody: This is the case of Coleman against the State in 94 Georgia, Page 85, which holds that a conviction of a witness of larceny is admissible in evidence to impeach him.

The Court: Yes, sir.

Mr. Cody: Doesn't make any difference where the conviction was. That is our position. Now—

The Court: Which larceny?

Mr. Cody: It doesn't matter. Our position is that it doesn't matter.

The Court: Well, I have got to be convinced that the Ohio statute under which the violator was charged would have to be a crime involving moral turpitude; otherwise, I think it would be reversible error, serious error.

Mr. Cody: I understand Your Honor's ruling about—

The Court: If you can show me what the Ohio statute is—I understand I'm supposed to take judicial cognizance, but I will be frank, I don't know what the Ohio law is on this point. If you can aid me in knowing what the law is [fol. 866] in Ohio—I assume that, I don't know whether Martindale or some of the—I know the statutes of Ohio are available at the State Capitol.

Mr. Cody: We will take an opportunity to look at it so as to be on the safe side.

The Court: I will let you put this witness back up if you can show me some authority during the noon hour; otherwise—

Mr. Cody: I have one other question to ask this witness after the Jury gets back.

The Court: Let the Jury be brought back in.

Mr. Lockerman: Your Honor, before the Jury come in, will you instruct the Jury to disregard the question he asked about conviction?

(Whereupon the Jury returned to the courtroom at 10:59 a.m.)

The Court: Members of the Jury, just prior to the time you were directed to leave the courtroom certain questions were propounded in regard, on cross-examination, as to whether or not the witness had ever been in trouble or had ever been convicted. At this time I would direct that you disregard any such statement, or any such evidence, [fol. 867] completely from your mind until such time—until a later date.

Mr. Cody: May I proceed, Your Honor?

The Court: Sir?

Mr. Cody: May I proceed?

The Court: Yes, sir.

By Mr. Cody:

Q. Mr. Carmichael, did I understand you, in your direct testimony, to say that you have never discussed this so-called Butts-Bryant affair with Mr. Pierre Howard?

A. That is correct, sir; I have never discussed it with him. I know—

Q. Did you ever—did you ever tell him that you bet some money on the Georgia-Alabama game of 1962?

A. I never told him, or nobody that, because I didn't bet any money on it.

Q. I see.

The Court: Any further questions?

Mr. Cody: That's all.

[fol. 868] Redirect examination.

By Mr. Lockerman:

Q. Mr. Carmichael, do you have any interest one way or the other in this law suit?

A. No, sir; not at all, sir.

Mr. Lockerman: You may come down.

The Court: Any further questions of Mr. Carmichael?

Mr. Cody: No further questions.

The Court: You may step down.

(Whereupon the witness was excused from the stand.)

The Court: Mr. Carmichael, do not leave, you will be required, probably, to come back on the stand, so remain in the anterooms.

Mr. Carmichael: Thank you, sir.

The Court: All right, sir.

Mr. Schroder: If it please the Court, we have perhaps [fol. 869] two witnesses whose testimony we plan to introduce from the stand in the event it might become necessary after the rebuttal, so, with that in mind, I will not call them at this time but will proceed with the reading of the deposition which we started last Wednesday, I think.

The Court: Now, I believe, Mr. Schroder, under the Rules, that if you—if they are to contradict some evidence which has been presented now, you will be required to put them up now.

Mr. Schroder: I understand, but they have the rebuttal. I don't know what they are going to put up in the way of rebuttal—

The Court: Yes, sir.

Mr. Schroder: —but I may have witnesses that may rebut their rebuttal, in other words, surrebuttal.

The Court: Yes, sir.

Mr. Schroder: So that is the reason I am not putting them up at this time. Of course, if there is nothing for them to surrebut, they won't have to go on at all.

The Court: It's got to be strictly in rebuttal.

[fol. 870] Mr. Schroder: Exactly.

The Court: All right, sir.

Mr. Schroder: If the Court please, we will resume reading the deposition of Frank Graham, Jr., the author of the article in the May 23 issue of the Saturday Evening Post. Of course, Mr. Graham's deposition was being taken for discovery and/or use as evidence by us, but we are not adopting him, of course; he is an agent of the opposite party.

The Court: He is an adverse witness.

Mr. Schroder: Adverse witness; yes, sir.

The Court: All right, sir.

Mr. Schroder: I have forgotten where I stopped. Do you have any idea?

Mr. Lockerman: I think it is Page 55.

Mr. Schroder: Sir?

[fol. 871] Mr. Lockerman: 55.

Mr. Schroder: Well, I will ask a couple of questions so we can get back in the middle of the stream where we were when we reached last Wednesday. The question at the top of Page 55, Mr. Cody, Line 5.

FRANK GRAHAM, JR. testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. What do you have in your notes pertaining to that sentence that I have just read?

A. I just have—I asked him about that and he didn't elaborate. There was nothing more for me to add, so I just said "No quick kickers," and referred back to the affidavit.

Q. Skipping on down to the third from the last paragraph in that first column, there is a quotation which reads:

“Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off. . . .”
What is the source of that quotation?

A. That did not come from Burnett. Burnett was trying to recall other things that had happened and Flack and Howard told me the first morning one of the things they thought they remembered him saying was something about Rakestraw, and this was it.

[fol. 872] Mr. Schroder: Of course, the article itself, Your Honor, says that Burnett said that. Now, the point here was that he now says it didn't come from Burnett; that was after the thing was published.

By Mr. Schroder:

Q. Will you please refer to your notes and read me what you have in your notes pertaining to that which I have just read?

A. Yes. George Burnett later said, when the article came out, that he had not recalled overhearing this remark.

Oh, he mentioned in there—he did mention that there was reference to what he called pass patterns or the passing game, was discussed by Wally Butts.

Q. Well, I am—

A. I have no specific thing on Rakestraw. This was told to me by Flack and Howard in the office that morning, and it was to be checked against the notes, if we got them.

But Burnett heard something about Rakestraw, but he does not recall this exact—but he does not recall the phrase as Flack and Howard mentioned the details.

Q. When did you discover that Burnett denied making that quotation or denied overhearing that?

A. He said he did not recall overhearing this. I learned that after the article was published.

Q. What was the source of that information?

A. The source of that information was a reporter for the Post named Oberdorfer, who was a native of Georgia, and who talked to Burnett after the article came out, who [fol. 873] was down there in Georgia at the time the article was published.

Q. Oberdorfer says that he talked to Burnett after the article was published?

A. Yes.

Q. And Burnett says that that quotation, insofar as his recollection is concerned, was erroneous?

A. So far as—he could not recall having heard that.

Q. Was there anything else that Oberdorfer told you that he learned from Burnett after—

A. No, I didn't speak to Oberdorfer directly. This came through Davis Thomas, the managing editor, who talked to Oberdorfer.

Q. Did Mr. Thomas indicate to you that Oberdorfer had told him anything else pertaining to his conversation with Burnett after the article was published?

A. Yes, that—there was a—he said that during the conference in the room when he disclosed this information to Johnny Griffith, he had remembered Johnny Griffith saying, "We knew somebody had given our plays to Alabama, but we had no idea it was Wally Butts."

Q. Will you pinpoint that for me in the article?

A. Yes, it is on Page 82. There is a heading there that says "Suspicions Confirmed."

Q. In the right-hand column at the bottom?

A. Yes, lower right-hand column, and it is in that second paragraph, where he said, "But we had no idea it was Wally Butts."

He said later that he had thought that Griffith had said that, and Griffith denied having said this sentence and Burnett said, on recollection, it was—he believed it to be

Edwards, the other man in the room at that time, who [fol. 874] was very close to Johnny Griffith.

Q. So that Burnett has, in effect, denied that quotation, on further recollection?

A. That's right, on further recollection he thinks that Edwards actually said that.

Q. Who was Edwards?

A. He was the friend of Johnny Griffith who took Burnett to see Griffith.

Q. Did you meet Edwards when you were in Atlanta?

A. No.

Q. Had you ever met him?

A. No, I haven't.

Q. Have you ever talked to him?

A. No, I haven't.

Q. Going back to Mr. Oberdorfer again, did Mr. Thomas indicate to you that Oberdorfer, after talking to Burnett, since the article was published, had Burnett told Oberdorfer anything else was incorrect in the article?

A. No, not that I know of.

Mr. Schroder: Passing on, Mr. Cody, to the bottom of Page 62, Line—

Mr. Cody: Why not read what is in between.

Mr. Schroder: I will pick what I want to read, and—please the Court, I understand I have a right to read what I want to read and he can read whatever he wants to read. [fol. 875] Mr. Cody: Well, I think the rule—

The Court: Sir?

Mr. Cody: I think the rule requires him to read it, read all the evidence on a particular point.

The Court: No, sir; that is not the law. Many times in patent cases we have certain parties that will read the other party's depositions, and they can just read what they want. It is available to you.

Mr. Cody: May I show the Court one rule on this subject?

The Court: Yes, sir. Let the Jury go to the Jury room. Just let them go to the Jury room.

(Whereupon the Jury retired from the courtroom at 11:10 a. m.)

Mr. Cody: I think it is rule 26 (d) (4), Your Honor, which provides that if only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced.

The Court: Yes, sir. Well, you can read—you can read [fol. 876] any part of the deposition that you want to that he omits to read.

Mr. Cody: I realize that—

The Court: Yes, sir.

Mr. Cody: —but I was relying on this rule.

The Court: What rule?

Mr. Cody: 26 (d) (4) which requires that we can require him to read it.

The Court: What rule are you citing?

Mr. Cody: Rule 26 (d) (4) under the use of depositions. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other part. We have both.

The Court: Yes, sir.

Mr. Cody: We can require him to do it or we can use it ourselves, but on this particular point he's left out— [fol. 877] The Court: I think you can come back and read it yourself, Mr. Cody.

Mr. Cody: All right, sir.

The Court: Let the jury be brought back in.

(Whereupon the Jury returned to the courtroom at 11:14 a. m.)

Mr. Schroder: Passing on, Mr. Cody, to Page 62, at Line 22.

By Mr. Schroder :

Q. In the next sentence you have written, "But he recorded all that he heard." Is that what Burnett told you?

A. He said he made constant notes. After he—he had listened for several minutes to this and he said he was amazed as it went on and finally he pulled over a note pad which was on the desk, took out a pencil and began to make notes. But for several minutes he had not been making any notes.

Q. My question is related to the language that you have used, sir, that I have just read, "But he recorded all that he had heard." Is that what he told you or is that your own language?

A. That is my own language.

Q. He gave you the impression, though, that he recorded everything that seemed important?

A. Well, he recorded—

[fol. 878] Q. He recorded in writing everything that he considered to be important?

A. After he started to jot down notes, yes.

Mr. Schroder: Mr. Cody and Mr. Lockerman, I am passing to Page 66, Line 4.

By Mr. Schroder :

Q. Below the caption "Putting the pieces together," in the second column of Page 81, what was the source of your information for that full paragraph, beginning, "In the next few hours . . ." and ending ". . . from the field"?

A. Part of it was Furman Bisher. I would say most of the paragraph is based on information given me by Furman Bisher, and the last sentence was ". . . outspokenly bitter about his removal from the field."

Q. What were you saying about that, sir?

A. That came from both Bisher and from Pierre Howard, talking about Georgia football.

Q. Was that information given to you—at least that part of the information which you say Bisher gave you—was

that given to you at the meeting with Bisher in the Manhattan Hotel in New York?

A. Yes.

Q. Did you make notes of it?

A. No, I was just told that by Bisher.

Q. The way the paragraph reads, it would indicate that this was coming from Burnett, because the lead sentence says:

“In the next few hours Burnett tried to piece together what he knew of Georgia football.” But that is not what he knew of Georgia football, was it?

[fol. 879] A. That was to fill the reader in on the background.

Q. But that is not what he knew of Georgia football, what follows—

A. I assume that he knew that, too, because in various conversations in the presence of Pierre Howard and Milton Flack, et cetera, this information was mentioned several times. I believe it was mentioned in the Heart of Atlanta Motel, a little bit of the background of Wally Butts, et cetera.

Q. I understood you to say that much of that was given by Furman Bisher.

A. But this was checked, too. I checked the “native of Milledgeville,” et cetera. On that, also, there was a story which appeared in the Atlanta Journal on Saturday, which was the 23rd, written by Furman Bisher, headlined “Butts to Resign At Once, Hopes For Job With Pros.” And this information was also in here, about Bisher—

Q. When did you get that?

A. On the Saturday that I was in Atlanta.

Q. In that paragraph that I have just referred to, there appears this language:

“Then prominent University of Georgia Alumni abruptly soured on him, . . .” Who gave you that information?

A. Howard.

Q. Did he say what prominent University of Georgia Alumni he had in mind?

A. No.

Q. Did he use the word "sour" or was that your language?

A. The word may be mine, "soured," but it was substantially that, that they had begun to think that he should be removed.

Q. And Bisher—

[fol. 880] A. Yes, and Bisher told me that.

Q. He confirmed that when he was in New York?

A. Yes.

Q. Who did you say it was that told you about Mr. Butts being outspokenly bitter?

A. First it was Howard and then Bisher.

Q. Did you make any notes of your conversation with Pierre Howard?

A. No, just casually I jotted down a name.

Q. Do you have anything in your notes which would indicate the information that is contained in that paragraph which I have just read?

A. About him being replaced?

Q. The whole paragraph.

A. The whole paragraph?

Q. Yes.

A. I have it in this clipping here, some of that information.

Q. Will you let me see the clipping, please?

A. Yes, sir.

Q. Well, there is nothing in that article about his being bitter or about his being—

A. No, I said some of the information which is contained in this paragraph is in that clipping.

Q. Let's pass on to the next paragraph, please, Mr. Graham, which refers to a speculation in Florida orange groves.

A. Yes, sir.

Q. Wherein it is stated, "Butts had lost over seventy thousand dollars." What is the source of that information?

A. The first—first, I was told in the room by Howard and Flack, who were talking about this. They told me they believed it was over eighty thousand dollars. Later, I asked [fol. 881] Bisher on that, about that, and Bisher gave me this figure.

Q. That that amount of cash had actually been lost?

A. That is what he said, yes.

Q. You didn't investigate it any further?

A. No.

Q. Passing on to the next paragraph, beginning "That afternoon Burnett told Flack what he had overheard." Do you have a note on that?

A. I don't know. No, just from talking to Flack and Burnett.

Q. You mentioned—

A. I think that is—

Q. You mentioned the name Carmichael earlier in your testimony, in connection with Burnett and Flack. Did they tell you that Carmichael was also aware of this alleged overheard conversation?

A. They did, and they said he wanted absolutely nothing to do with it, and that he was angry that they had reported the conversation; that they thought—Mr. Carmichael thought the conversation should have been kept secret.

Q. What do you have in your notes supporting what you have just testified to?

A. Nothing. I made no notes on that.

Q. You made no notes on Carmichael at all?

A. No.

Q. Sir?

A. No.

Q. In that same—but you did know that Carmichael had been present—

A. Yes.

Q. (Continuing) —at the time this conversation was intercepted?

[fol. 882] A. I had heard that, and they didn't want to talk about it. They said, "We don't want to mention Carmichael."

Q. No, sir, my question is this: Burnett and Flack told you that Carmichael had been present?

A. I asked them if he was present.

Q. At the time of the conversation?

A. At the time of the conversation. And they said, "John Carmichael does not want anything to do with this. In fact, he is angry that George told Edwards about this."

Q. Did they tell you that he was present at the time it was overheard?

A. No.

Q. Did they tell you that he knew anything about it?

A. They told me about this—I believe Howard mentioned it once, that—he said that—I think it was Pierre Howard who told me that Carmichael had called Wally Butts about this later on.

Q. I am speaking about the time of the interception or so-called interception of the telephone call. Flack and Burnett discussed Carmichael with you?

A. I brought up the name.

Q. Yes, sir.

A. The name of Carmichael, because Flack told me before that these three men had been friends for some time, Flack and Carmichael, Burnett, they knew each other, and so on, and I said, "What about John Carmichael, did he overhear any conversation? Was he in the room?" And they both said that Carmichael didn't want to be brought in on this, and so—and he was angry at Burnett.

Q. Well, he mentions Carmichael in his affidavit, does he not?

[fol. 883] A. He does.

Q. That he told Carmichael about the contents of the so-called intercepted conversation?

A. Right.

Q. When you asked them had Carmichael been present when the conversation was overhead, they didn't deny that he had been present?

A. They didn't deny it.

Mr. Schroder: Page 77, Line 22.

By Mr. Schroder:

Q. Now, you, having known, as you have testified to, that Mr. Carmichael was in on this at the beginning, and that it has been included also in Burnett's affidavit, that he discussed this with Flack and Carmichael together, and you also having been informed that Carmichael, I believe you said, was mad about it—

A. Yes.

Q. It didn't occur to you to check this story out with Carmichael?

A. No, I didn't want to talk to Carmichael.

Q. Why?

A. They said he didn't want to be brought into it and wouldn't talk about it.

Q. You made no effort to contact him at all, even though you had reason to believe that he might disagree with the whole thing?

A. There was no reason for me to think he would disagree with what he overheard. He was supporting a man that he knew.

Q. But you didn't consider that for the Curtis Publishing [fol. 884] Company's good you ought to interview him, too, just to check it out?

A. No, I didn't think it was necessary, because according to what they told me, he would have denied it—

Q. And you knew that when you wrote the article, that he would have denied it?

A. I knew he would not talk to me.

Q. You said he denied—

A. No, I corrected the word "denied." I said he didn't want to talk about it.

Q. And you made no effort to get in touch with him?

A. No. I came back after I had gotten the affidavit.

Q. That was on a Saturday that you came back?

A. Yes.

Q. You arrived in Atlanta when?

A. On a Wednesday evening.

Q. So that you were there for two and half days?

A. Yes.

Q. And you knew about Carmichael on the first day that you had the meeting in Howard's office?

A. I knew the name Carmichael.

Q. You knew the name John Carmichael when you took the affidavit from Burnett?

A. Yes.

Q. Until this day you have never checked him out?

A. Never have.

Q. Did you tell the people with Curtis when you came back to New York about Carmichael?

A. I showed them the affidavit and I said that Carmichael didn't want to play any part in this.

Q. Did you indicate to them that you learned that from Carmichael?

[fol. 885] A. No, no. I told them that Burnett told me.

Q. Did they agree with you that Carmichael shouldn't be interviewed before the article was written and published?

A. They didn't ask me to.

Q. But you told them about him?

A. Yes, I told them—the name Carmichael had originally been mentioned by Dave Thomas to me.

Q. As being with both Flack and Burnett on the day that the conversation was supposed to have been overheard?

A. As being with them.

Q. And that you had been told by Flack and Burnett that he would not in effect go along with them?

A. Right, that he wanted no part of this and insisted on being left out of it.

Q. They knew that before the story was published, the Post, you told them about that?

A. Yes, sir.

Q. On the top of column 3, or the third column on that page, there is the sentence reading:

“The Georgia team was composed chiefly of unsensational sophomores.”

What is the source of your making that statement?

A. I wrote "The Georgia team is composed chiefly of sophomores." One of the editors put in that word and apparently it is in reference to the previous sentence," "... with an effective attack built around a sensational sophomore quarterback named Joe Namath." And there was no player on the Georgia team that could be described in any sense as sensational, as this Joe Namath of Alabama was.

Q. Who was the editor who inserted and used that word in the article?

[fol. 886] A. Either Roger Kahn or Davis Thomas.

Q. The next sentence:

"Various betting lines showed Alabama favored by from 14 to 17 points." What do you mean by "betting lines"? Was that your language?

A. Yes, the odds which were in the newspapers before the game.

Q. Did the newspapers refer to them as betting lines?

A. Yes, I have been—often seen that in connection with football games.

Q. In connection with this article, I mean, sir. Do you have any notes on that?

A. Well, I have the fact that it was favored. Yes, I have here 11 to 17-point underdogs. I later checked—

Q. Do you mind if I see that note?

A. Yes, it is on the very top right-hand side.

Q. Where is it?

A. On the top left-hand side.

Q. I am sorry. You have written here, "11-17 point underdog."

A. Yes.

Q. Did you get that out of a newspaper?

A. Yes, I got it from various newspapers, I checked it out, and I asked down there before—I believe I asked Howard about the odds, and he thought 11 would be a little understating it. It wasn't that close. He thought 14. Then I had seen 14 in another paper. So I used 14 to 17 points.

Q. But you have referred in your article to that being a betting line.

A. Yes, that is what it is.

Q. Well, is it in the paper that way?

A. I believe it was.

Q. Sir?

[fol. 887] A. I believe it was.

Q. But you don't have any note to substantiate that?

A. No. That is what the papers generally refer to it as.

Q. The next sentence in that same paragraph:

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

Is that your language?

A. That is my language.

Q. What do you mean by it? What is the significance of that?

A. The significance is that, just as it says—

Q. Well, what are you suggesting there?

A. I am suggesting that George Burnett overheard a rather extraordinary and unethical conversation, and certainly there would be—in such a story you could suggest certain motives.

Q. Go ahead. What motive are you suggesting here?

A. I am suggesting here that somebody bet on the game, I don't know who. But people won money on the game, people lost money on it.

Q. Let's get down to brass tacks. Are you suggesting that either Butts or Bryant bet on the game?

A. I have no means of knowing whether they did or not.

Q. That is not my question. Are you suggesting that?

A. No—

[fol. 888] Q. Are you attempting to suggest to the reader that this was a reason for this or motive—

A. No, I am not suggesting that. I am just taking into consideration motives which could lead to the passing of information.

Q. Motives as applied to whom?

A. Anyone. I have no idea. I mean if I were writing this story, this would be one of the questions which would be asked, what a person reading the story about passing information would want to know about all the background on the game, and this certainly belongs in a story of a game about which there was a very questionable conversation.

Q. Well, it is your thinking, of course, because it is your language, and it was backed up by your thinking when you wrote it.

Now, is it your position that you didn't mean to suggest or indicate that either Butts or Bryant was betting on this game?

A. I didn't mean to accuse. I am just putting in this information. And this is background on the game. If a man were to bet on Alabama—

Q. Without using the word "accuse," just "suggest." Were you suggesting to your readers that maybe that was the motive behind this telephone call?

A. I am suggesting that this could be.

Q. Are you suggesting that it is?

A. No. I have no idea what the definite motives for these men were behind the telephone conversation.

Q. Obviously, you do not. But are you suggesting what they might be?

A. I am putting forth one of the suggestions of—
[fol. 889] Mr. Lockerman: Line 14.

Mr. Schroder: Go ahead; I don't have to say "Sir."

A. (by the witness) I am putting forth one of the—a suggestion as to what could be one of the motives, for anyone passing or getting information on a football game.

Q. So that you are suggesting—

A. I am not suggesting—

Q. This is a motive?

A. Or even a motive.

* * * * *

FRANK GRAHAM, JR., testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. The quotation further down in the column which you attribute to Bryant, "The only chance," et cetera, what is your source of that information?

A. That was a newspaper article in an Atlanta paper which I found in the library.

Q. Do you have that quoted in your notes?

A. Yes.

Q. May I see it, please?

A. It is on the upper left-hand page.

Q. You don't remember what paper it was?

A. No.

Q. I don't believe you refer to it there in your notes.

A. No.

[fol. 890] Q. And the next paragraph, you use the language—

A. It would be in the Atlanta Constitution.

Q. Are you through?

A. Yes.

Q. In the next paragraph you have written:

"Coach Bryant (he neglected to wear a black hood) snapped every trap."

Is that your language?

A. Yes.

Q. What did you mean by it?

A. I meant that he had information which gave him an advantage and these boys were in a sense walking right into a trap. A coach with a strong team—which a coach with a strong team had set.

Q. What does the "black hood" refer to?

A. I said the game itself would have been enjoyed most by a man who gets kicks from attending executions. It

was the kind of a game which for instance in boxing would be referred to as a pig-sticking, a one-sided game in which one team had no real chance.

Q. Did you see the game?

A. No.

Q. Where did you get your information about it?

A. I read the Atlanta Journal and Constitution in the days before and after the game.

Q. Did you read the quotation from Coach Griffith to the effect that Georgia lost the game because they didn't block and didn't tackle?

A. Yes, I did.

Q. Where is that in the article?

A. I don't believe it is in the article. I remember reading that. That was a very typical coach's statement after the game.

Q. You didn't think of putting that in and acquainting [fol. 891] your readers with what the coach thought about losing the game?

A. Oh, here, I put—

“Asked about the game by reporter Jim Minter, he said: ‘I figured Alabama was about three touchdowns better than we were. So that leaves about fifteen points we can explain only by saying we didn't play any football.’”

Q. Did you read the quote I just gave you?

A. No, I think this was the one. I may have, but I don't recall it. This is the one that I—

Q. And you have a quotation from Jesse Outlar of the Atlanta Constitution:

“Every time Rakestraw got the ball he was surrounded,” etc., et al.

You have here that Jesse Outlar was the—I mean that he wrote in the Sunday Journal?

A. He writes generally for the Constitution, but on Sunday the Constitution is not printed.

Q. What do they call the Sunday paper?

A. The Journal, that is what I saw.

Q. That is what you saw?

A. Yes.

Q. Was that taken out of context or do you have his full quote? Do you have his full quote in your notes?

A. I have the quote. I wrote it down—

Q. Let's put it this way: Did the Curtis representative named—I believe you said Oberdorfer.

A. Oberdorfer, yes.

Q. Did he interview Jesse Outlar after this article was published?

A. I don't know.

Q. Do you know whether he told the representative of the Post that Outlar says he was misquoted?

[fol. 892] A. No, I don't.

Q. The next—

A. Let me—I will try to come across that.

Q. I will wait on you.

A. Yes, I have it here.

Q. What does it say?

A. Jesse Outlar in the Sunday Journal. It is on the top left-hand side there.

Q. Mr. Oberdorfer, to your knowledge, hasn't talked to Outlar?

A. No.

Q. At least it hasn't been related to you?

A. Not to me, no.

Q. The next full paragraph, there is this sentence:

“Georgia could do nothing right, and Alabama nothing wrong.”

Where did you get that information?

A. Well—

Q. Was that your own language?

A. That is my own language.

Q. Where did you get the information?

A. From talking to—from reading the account of the game and from talking to Pierre Howard, who saw the game—heard of the game—from Mr. Beddow, because

he and Howard were talking about the game when I was in the office and I asked them what had happened in the game.

Q. We have already discussed the interview or the quotation from Jim Minter and Coach Griffith in the next paragraph:

“I figured Alabama was about three touchdowns better than we were. So that leaves about fifteen points we can explain only by saying we didn’t play any football.”

[fol. 893] A. Right.

Q. Did it ever occur to you that that might be the reason for the score?

A. I would say that is a typical coach’s statement after a game.

Q. I say did it ever occur to you that that might have been the reason for the thirty-five to nothing score?

A. It might have been, but the other information that I had here tended to discount that.

Mr. Schroder: Dropping to the bottom of Page 91, Mr. Cody, at Line 24.

By Mr. Schroder:

Q. The next paragraph, Furman Bisher is quoting End Mickey Babb as follows:

“‘The Alabama players taunted us,’ end Mickey Babb told him. ‘You can’t run eighty-eight Pop (a key Georgia play) on us,’ they’d yell. They knew just what we were going to run, and just what we called it.’”

Was that taken from an article in the paper by Bisher?

A. No, he gave that to me in a telephone conversation.

Q. He did?

A. Yes.

Q. Do you have a note of that telephone conversation?

A. Yes.

Q. What was the date of it, please?

A. That was on Friday, the—it was the Friday after [fol. 894] Washington's Birthday, exactly a week later, which should be March—

Mr. Strubing: February 29th—

The Witness: Yes—no, it would have to be March 1st, wouldn't it?

Mr. Strubing: Yes, that's right, March 1st. The 28th was Thursday. There were only 28 days this time.

By Mr. Schroder:

Q. Mr. Bisher called you in New York and I assume that he was in Atlanta.

A. Yes, he was.

Q. He told you that he had interviewed Babb since he had seen you in New York?

A. Yes.

Q. And this is what Babb told him?

A. Yes.

Q. You made this note, which I will read:

“They taunted us, you can't run eighty-eight Pop on us, they would yell. They knew just what we were going to run and just what we called it.”

Q. In your notes you have underscored “Eighty-eight Pop.” What significance does that have?

A. It was the name of a play which should go in quotation marks or in italics in the article.

Q. And this is word-for-word what Bisher gave you over the telephone?

A. That's right.

Q. He didn't say Babb said anything else other than [fol. 895] what you have put down?

A. Not that I recall.

Q. You would have recorded it, if he had told you?

A. Yes. I didn't write down everything he said to me—

Q. I know, but when he was quoting from someone you wrote that down?

A. When he was quoting, that is what I wrote down.

Q. The next paragraph includes a quotation from Sam Richwine, the trainer.

A. Right.

Q. "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.'"

That is exactly as Mr. Bisher gave you over the telephone from Atlanta on Friday, March 1st?

A. That is what I have written.

Q. You have that written down the same way that you have the other?

A. Yes.

Q. May I see it, please?

A. Yes.

Mr. Schroder: Passing over to Page 96, Line 21.

By Mr. Schroder:

Q. What is the significance of the quotation John Logue got from Wally Butts, "Potential is the word for what I saw"?

A. Wally Butts was involved in this and the only quote that I can find in a newspaper after the game from Wally Butts was this one, because the story concerned Wally Butts, and I wanted a remark from him about this game, [fol. 896] whatever he said, and this was the—

Q. But you used the language preceding that quote:

"Only one man in the Georgia camp did not despair that day."

What did you mean by that?

A. Everybody else seemed pretty down about what happened. Wally Butts was looking to the future.

Q. You indicated that you did want a quotation from Wally Butts as to his feelings after the game?

A. Right.

Q. You knew where he lived, didn't you? You knew he lived in Athens?

A. I knew he lived in Athens. I quoted these players right after the game, themselves, and I wanted a quote, and this was the one that was in the newspaper.

Q. Say that again. You did what?

A. I said I wanted a quote from Wally Butts, who was obviously implicated in something which we considered to be an amazing and, let's say, unethical conversation, and I wanted to know what he said about the game directly afterwards, and I found it.

Q. You said you took these quotes from football players right after, but Babb didn't give you a quote—

A. No, not Babb. I wanted Butts.

Q. Richwine didn't give you one right after?

A. No, he didn't.

Mr. Schroder: Dropping down to Line 13.

[fol. 897] By Mr. Schroder:

Q. All right, sir. Have you ever talked to Wally Butts about this whole thing?

A. No, I haven't.

Q. Have you ever talked to Mr. Bryant about it?

A. No.

Q. So far as you know, has Curtis Publishing Company ever had either one of these gentlemen interviewed as to whether this was all true?

A. No, because obviously we knew if this information was brought to them, they would immediately deny it, and, of course, they subsequently have.

Q. Just as in the case of Carmichael?

A. Well, Carmichael plays no part in this thing in the sense that Butts and Bryant do.

Q. You mean as to the truthfulness of the whole thing?

A. You just asked me a question about Butts and Bryant.

Q. Yes, sir.

A. And I said to ask them about this was immediately to get a denial, and, of course, they have.

Q. But before you published this story, or the Post published the story, it didn't interview either of these men, so far as you know?

A. No.

Q. And didn't interview Carmichael?

A. No.

Q. The next paragraph has to do with the whole matter weighing heavily on George Burnett. Do you have notes covering that?

A. I have notes on George Burnett, who told me the matter has been—had weighed heavily on him for a long time and he was worried and upset about it and that is [fol. 898] why he originally told his story to Edwards.

Q. Will you find that in your notes for us, please?

A. No, this was just from what he told me in the time I spent with him.

Q. You gave a quotation in that article directly from Burnett. Do you have a note on that?

A. No. He had mentioned this, I believe, in the room at the Heart of Atlanta Motel. He brought up the—

Q. But you have no note to back up that quotation?

A. No, I don't take notes as a rule on things like that. I don't take notes on general conversations.

Q. You quote directly from conversations?

A. No. I say an exact quote, which I would want to be precise, I take notes on that. On the other, I make a mental note, jot down a word or two, from which I remember.

Q. But this is a direct quote?

A. A direct quote, which is common practice in journalism, to recreate what this man said to me.

Q. On a direct quote?

A. Yes. I didn't make it up. I recreated it from what he told me. These are approximately his words.

Q. Your next paragraph reads :

“On one sense Burnett knew it would be easiest to keep the notes in the drawer. While every citizen is encouraged to report a crime to authorities, the penalties against the man who talks are often more severe than those against

the culprit. Burnett wasn't worried about physical retaliation. But there might be social and economic ones. Football is almost a religion in the South; the big-name coaches there are minor deities."

Is that your language?

[fol. 899] A. I don't believe I wrote this sentence.

Q. Sir?

A. I don't remember writing this sentence. I believe it was put in by the editor.

Q. The first sentence or the whole paragraph?

A. I would say none of that paragraph was mine, as I recall it.

Q. Do you know who wrote it?

A. I believe either Mr. Kahn or Mr. Thomas.

Q. Do you have with you there a copy of what you did submit to the Curtis Publishing Company?

A. No, I haven't. No, I brought—

Q. Do you have one anywhere?

A. Yes, I do. I believe it is back in Mr. Kahn's or Mr. Thomas'—either Mr. Kahn or Mr. Thomas would have it.

Mr. Schroder: Turn to Page 104, Line 7.

By Mr. Schroder:

Q. The next paragraph, was that yours, beginning:

"On January 4 of this year he sat in his office with Bob Edwards . . . "?

Was that yours?

A. Yes, he gave me that.

Q. The paragraph following that:

" 'You know, Bob,' . . . "

That was also given you by Burnett?

A. Yes.

Q. That was your language?

A. This is what he told me. This is almost exactly as he told me. He said:

“This has been eating me up for a long while,” and then he told me the rest of this.

[fol. 900] Q. Do you have notes to support that—both of those paragraphs?

A. Part of it comes from the affidavit, and the rest is from my memory of what he gave me, what he told me the conversation had been like.

Q. You don't have any notes?

A. No, because he could not remember the exact words himself.

Q. In the next column on that page, there appears in the second paragraph this sentence:

“Griffith pressed to meet him, . . . ”

Where did you get the information about Griffith pressing to meet him?

A. From Burnett. Burnett said that he had asked Edwards to keep him out of it, but Griffith said he wanted very much to talk to him.

Q. In your next paragraph you refer to the Georgia Tech-Alabama game in Atlanta and in the paragraph following that the same topic is discussed. What is the significance of that?

A. The significance is that this was a popular topic of conversation, which—at the time. Burnett recalled hearing talk of it around the hotel and Howard said there was talk of it, too, that he knew it.

Q. What did you mean to imply when you put that in there? How is that connected with the so-called telephone conversation?

A. It connects because the name of Bryant is involved in both the telephone conversation and in this talk which was around at the time.

Q. I will put it to you directly: Did you intend to imply by that that Bryant had a bet on the Georgia Tech-Alabama game?

A. No, I just wanted to imply that there was this talk around. I will not imply it because I didn't know, but it

[fol. 901] was a curious coincidence that there was talk about the strange finish of this game going around at the end of the season.

Q. You did attach, shall I say, some suspicions about the outcome of the Tech-Alabama game, insofar as Bryant was concerned?

A. I am just reporting what happened in the game and mentioning that there was talk about this, that there was talk, and apparently suspicions, about this, and I thought that had a place in the article.

Q. So that you intended to indicate to your readers that there was something suspicious about the way the Alabama-Tech game ended?

A. Just that people were suspicious. I don't know that there—

Q. That was why you put it in the article?

A. Yes.

Q. It related to suspicions?

A. Yes.

Q. Further on down in that column you quote Burnett:

“‘I didn't believe you until just this minute,' . . .” I don't mean quote Burnett—excuse me—you say Burnett told you that Griffith told him this, and I am quoting:

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

Your obvious source for that was Burnett?

A. Burnett.

Q. Do you have some notes to support it?

[fol. 902] A. Yes, this brief mention down here on the bottom. It says, “Up until this minute.” The bottom left—bottom right, I am sorry.

Q. I will quote from your notes:

“Up until this minute I didn’t believe you, but only Butts called . . .”

A. Called it by this name.

Q. Sir?

A. It refers to the fact that only Butts called the play by that name.

Q. You have used in your quotes, though, from Johnny Griffith, “pass patterns.” What pass patterns did Burnett indicate to you that Griffith had in mind or referred to in his conversation with Burnett?

A. I have no—I got no specific information on plays.

Q. Your notes don’t refer to pass patterns. At least not the part that you gave me.

A. That information came from—here, in this conversation with Bisher, he referred to pass patterns.

Q. Well, I quote from your notes—this is from Bisher?

A. Bisher.

Q. “Nobody ever used that name for that play but one man.”

Is that the part of your notes that you are relating to this quotation from the article that I just read?

A. Yes, I put that together from that phrase from both Bisher’s remembrance and Burnett’s recollection.

Q. Where did Bisher tell you that he got that information?

A. From Griffith.

Q. Sir?

[fol. 903] A. From Griffith.

Q. He told you that Griffith told him that is what he, Griffith, told Burnett at the Biltmore Hotel?

A. Yes, he said: “Burnett’s notes were read to me and I knew that he knew what we were going to do against Alabama.” That is what Griffith told Bisher.

Q. Bisher has called you on the telephone and quoted Coach Johnny Griffith as having told him, Furman Bisher, —say that again, please, sir—the following—and you read—

A. “As Burnett’s notes were read to me, I knew that he knew what we were going to do against Alabama.”

Q. Unquote?

A. That's right.

Q. Now, did he say whom he meant by "he"?

A. Burnett.

Q. He said that Burnett knew what Georgia was going to do against Alabama?

A. He said that the man who had these notes, Burnett—that is what he—

Q. That the man who had these notes, meaning George Burnett?

A. Yes.

Q. Knew what he, Johnny Griffith, was going to do—

A. Yes, he said "what we were going to do against Alabama."

Q. In short, Bisher called you and told you that he had interviewed Johnny Griffith?

A. Yes.

Q. And Johnny Griffith had told him, Furman Bisher, that when he, Johnny Griffith, read Burnett's notes, that George Burnett knew what Georgia was going to do against Alabama?

[fol. 904] A. He said the man who had these notes could—as Burnett did—knew "what we were going to do against Alabama." The man—now, I don't know—this was just what he said.

Q. All right.

A. And I didn't use this because it was a little vague as to whether he meant Burnett himself or Wally Butts, who gave the information. But is as I got it.

Mr. Schroder: Page 113, Line 17.

By Mr. Schroder:

Q. The next paragraph says: "Griffith has since spoken of his feelings when he had finished reading Burnett's notes. . . ." What is your source for that?

A. Bisher.

Q. When did Bisher give you that information?

A. On that Friday.

Q. That was a telephone conversation he made to you on March 1, 1963?

A. Right.

Q. The quotation is as—the quotation in the article as given to you by Bisher, which reads: “I don’t think I moved for an hour—thinking what I should do. Then I realized I didn’t have any choice.”

A. Yes?

Q. Do you have that quote as given to you direct by Furman Bisher?

A. Yes. It’s at the bottom there.

Q. Where is the part about “Then I realized I didn’t have any choice”?

A. He told me that on the phone.

[fol. 905] Q. You didn’t make a note on that?

A. No, I just put that in to refresh my memory.

Q. Your next paragraph has to do with what Griffith did later. You said: “Griffith went to university officials, told them what he knew and said that he would resign if Butts was permitted to remain in his job.” What is the source of that information?

A. Burnett. Burnett told me that he was told that by Cook Barwick.

Mr. Schroder: Passing over to 116.

By Mr. Schroder:

Q. Mr. Graham, I hand you an exhibit identified by the Reporter as Plaintiff’s Exhibit No. 1, and ask you to identify that, please, sir.

A. Yes, I wrote this. It is a carbon of my article.

Q. Is that a copy of the original manuscript that you submitted to the Curtis Publishing Company?

A. Yes.

Q. Of the article subsequently printed or published in the March 23rd issue?

A. That’s right.

Q. Not that I have any doubt that anything might happen to this, but will you kindly, at your convenience, initial each page here, please, sir?

A. Right (complying). Incidentally, there is an error there in the first page of that story in print. George Burnett—do you want me to wait?

Q. I am listening.

A. George Burnett was still waiting to get his notes, and he had recalled the date of the conversation between Butts and Bryant as a Friday. When he got his notes [fol. 906] back, he saw that he had dated his notes the 13th.

Q. That explains the mistake in the very first sentence of the article?

A. Yes.

Q. Which in the article says Friday, the 14th?

A. Yes.

Q. Whereas, it was Thursday, the 13th?

A. Yes.

Q. Mr. Graham, you have demonstrated several pages of notes during the morning and used them to refresh your recollection with respect to various matters asked you.

Do you have any objection to my having reproductions made of those notes here today?

A. That is all right with me.

Mr. Schroder: Passing over to 118, Line 9.

Mr. Lockerman: Line what?

Mr. Schroder: Line 9, n-i-n-e.

By Mr. Schroder:

Q. Now, the remaining part of that paragraph, ending with: "Shortly afterward he was seen in Atlanta at a Georgia Tech basketball game." Was furnished to you by whom?

A. Parts of this were furnished by Pierre Howard and Milton Flack, and I checked, for instance, the date—the

dates as January 28th and June 1st, with Furman Bisher. [fol. 907] Q. Therefore, you are now testifying that the contents of that paragraph were furnished you by Furman Bisher, Pierre Howard and Milton Flack?

A. Yes.

Q. Do you have notes on that, sir?

A. No, I don't see the notes on that.

Q. What I have particular reference to is the so-called rumor that is referred to by you as being the wildest one, that being that Coach Butts was mysteriously and suddenly ill and had entered the State Hospital at Athens.

Do you know who it was that gave you that information, as to the substance of that rumor?

A. The rumor was given me by Howard and Flack before I met Burnett, but they said this rumor had been around town, they had heard it, but that Howard said that he had seen Wally Butts at a Georgia Tech basketball game and I later checked that with Furman Bisher, and he said that the rumor was false, that Butts may have had a physical examination in connection with his retirement some time during the winter, but that he was never a patient in the hospital or anything like that.

Q. Did any of your informants indicate that Coach Butts was to be placed upon a pension, as indicated by your article?

A. Yes, this story was—was a matter of fact, Bisher indicated that this physical examination had to do with his resignation and application for a pension.

Q. Did you look into that further by checking with the State Hospital at Athens?

A. No. When he told me there was no truth to this rumor, we dropped it.

[fol. 908] Q. Well, you didn't indicate in your article that there was no truth to the rumor.

A. Yes, I do—yes, "This was quickly scotched. . . ." I say that. They "maintained Butts merely went for the physical check-up."

Q. Required for his university records?

A. Yes.

Q. What official—

A. “Shortly afterward. . . .”

Q. That was given to you by Pierre Howard, who said he saw them?

A. Yes.

Q. What university official scotched the rumor immediately before that?

A. Apparently from Bisher through Cook Barwick.

Q. From Bisher through Cook Barwick?

A. Yes.

Q. The next paragraph, having to do with the meeting in Cook Barwick’s office, what was the source of that information?

A. Let’s see. This was Burnett.

Q. Reference is therein made to a lie—polygraph lie-detector test.

A. Yes.

Q. Do you know who authored the editorial in the Saturday Evening Post of May 4, 1963, entitled “The Polygraph-Happy Pentagon”—

A. No, I don’t.

Q. (continuing) —in which four individuals were praised for declining to take the polygraph test?

When I say “were praised,” I will read: “Only four persons (God bless them) declined to take the polygraph tests.”

A. No.

Q. You don’t know who authored that editorial?

[fol. 909] A. No.

Q. In your next paragraph under “Phone Company Check”, the statement is made that: “Next an official of the Southern Bell Telephone Company checked and found . . .” et cetera, can you identify the official of the Southern Bell Telephone Company?

A. No, I can’t.

Q. Can you tell me the source of that information?

A. It was Burnett and later Bisher who said that he had heard the same thing.

Q. From whom did Bisher say he had heard it?

A. I don't know. I didn't ask him.

Mr. Schroder: Turning to 123, Line 21.

By Mr. Schroder:

Q. The next paragraph begins: "February 21 was a painful day for George Burnett.", et cetera. What is your source for that information?

A. Burnett.

Q. Do you have any notes on that?

A. Yes, I have. Here, on this.

Q. Point it out to me, please.

A. Here. February 21. And this was some of the conversation.

Q. Your notes read: "Last meeting, February 21. You were on probation when you heard this conversation. Now I am on trial." Is that the part of your notes that you give as your source for the information in the paragraph beginning "February 21 was a painful day for George Burnett"?

A. Yes.

Q. In the next paragraph you wrote: "From the start, Burnett sensed a mood of hostility in the air." And I [fol. 910] emphasize the word "Hostility." Is that your language?

A. No. Burnett himself used the word "hostility."

Q. Is that in your notes?

A. No.

Q. And the remaining part—

A. But he could not pick out anyone who was actually hostile to him, but he was a little shaken up by the manner in which this hearing took place, particularly when they asked him, "is there anything else in your past you're trying to cover up?"

Q. But in his conversation with you he could not point out any particular party who attended that conference or that meeting as being hostile to him?

A. Well, he thought that this regent who sprang this question to him, who said, "Is there anything else in your past you're trying to cover up?", he thought that he was hostile. And there was a man there named Hartman and he didn't know who Hartman was, but he felt—

Q. What did he tell you specifically about Hartman and what Hartman had to say to him?

A. He said Hartman—there were no questions asked by Hartman. He just said that he had the feeling that Hartman was there as an observer, a friend of Wally Butts.

Q. Although nothing was said by Hartman, he had the feeling, however, that Hartman was hostile toward him?

A. Yes, unfriendly.

Q. Just by being there?

A. Yes, he sensed this mood in the air. In connection with Hartman or anyone, he didn't say it was hostile, but he said the whole atmosphere was hostile and he mentioned that Hartman, he had the feeling, was there as a [fol. 911] friend and—an observer and friend of Wally Butts, and he said Bernie Moore, after shaking hands with him, didn't look at him for the rest of the meeting.

Q. Did he tell you that anyone at the meeting told him in what capacity Hartman was there?

A. No.

Q. It was just a feeling on his part?

A. Yes.

Q. Now, you mentioned in that article that Burnett was confronted "with a report that he had been arrested two years before for writing bad checks and that he was still on probation when he overheard the conversation between Butts and Bryant."

Didn't that alert you to look into further such incidents on the part of Burnett?

A. We understood later, when I came back here and made my report, we understood later from Furman Bisher

that this full investigation had taken place with the university.

Q. I am talking about you, sir, not the university.

A. By the time I came back here I was out of the actual investigating and so on. I came back here, made my report, on these men I talked to, and on the affidavit that I brought back. Then it was shown to the editors and they were to decide whether or not to go ahead with the article.

Q. So that you put that information before the Curtis Publishing Company editors about Burnett having been arrested two years before for writing bad checks and left it to them to decide, after investigation, whether there were other such incidents?

A. Yes, and then through Bisher we had corroborating evidence that a full investigation had been made.

[fol. 912] Q. Did you ask Bisher whether the university looked into the question of whether or not there were other such incidents?

A. None had come to light—

Q. I said did you ask him—

A. I asked him to get all the information that he could.

Q. About bad checks?

A. About Burnett.

Q. About bad checks on the part of Burnett?

A. Well, it would include bad checks.

Q. Did you include bad checks—

A. Yes, we mentioned bad checks and anything else that would be of interest.

Q. You and Mr. Kahn, representing the Post, at this meeting with Bisher, asked him to look into the matter of whether or not there had been other incidents of bad check-writing on the part of Burnett?

A. Not specifically, no.

Q. Well, generally?

A. Well, generally—

Q. Tell me how it was brought up and talked about.

A. I can't remember that.

Q. Generally. You have remembered a lot today.

A. We just said that Bisher would go back down there and accumulate every other bit of information which would be useful to us in this, particularly in talking to the university authorities. Then there were no specific—he had no specific instructions.

Q. Did you and Mr. Kahn, when you met with Bisher and commissioned him to represent the Saturday Evening Post in its field research in connection with this story, ask him to look into the background or look any further into the background of Burnett?

A. No, that had been thoroughly gone into.

[fol. 913] Q. I am asking the question. Did you?

A. I didn't.

Q. Did Mr. Kahn ask Mr. Bisher to look any further into the background of Mr. Burnett?

A. I don't know.

Q. You were present, were you not?

A. Not when I was present. He had other conversations with him.

Q. You were present in the conference in the Manhattan Hotel with Mr. Kahn and Mr. Bisher. Did you hear Mr. Kahn ask Mr. Bisher to look into any background of Mr. Burnett with respect to his bad checkwriting?

A. I didn't hear anything specific.

Q. Did you hear anything generally?

A. Bisher was to talk to Cook Barwick. Anything of interest was to be reported back to me.

Mr. Schroder: Passing on to 131, Line 9.

By Mr. Schroder:

Q. Now, in your third beginning paragraph on the last column of your article, you say: "Burnett was frightened and angry" when the matter of his bad checkwriting came up before the meeting.

Did he indicate to you why he was scared and why he was angry?

A. No. He said he wasn't—he was not angry at that having been brought up, but he was frightened and angry at the manner it was brought up, particularly, “Is there anything else in your past you're trying to cover up?”

Q. But your article does not state that he was frightened and angry at the manner. It just says—

[fol. 914] A. It follows up the quote, yes.

Q. Is that what he told you, that he was frightened and angry?

A. Yes, that is what he said.

Q. Insofar as you know, because you have not checked into it, the only two bad checks that he admits having written and being convicted of are those included in the fourth paragraph in the last column, which say, “I was way behind on my bills and two of the checks I wrote—one was for twenty-five dollars and the other for twenty dollars—bounced.” Those are the only two that you know about?

A. Those are the only two I know about.

Q. And you haven't looked into the question of whether there were any more?

A. No.

Q. In the next paragraph, the next to last sentence reads:

“He cared about his reputation.” Is that Burnett?

A. Burnett.

Q. Did he indicate to you that he cared about anybody else's reputation, other than his own?

A. That is my sentence.

Q. That is your sentence?

A. Yes.

Q. He didn't tell you that?

A. No.

Q. The next paragraph, what is your source for the quotation attributed to Burnett there, “Doctor Aderhold was always very kind . . .” et cetera?

A. It was Burnett, the day he came back to the Heart of Atlanta Motel in the afternoon, after the meeting.

Q. You have no notes to support that?

A. No, I don't find any here. He told me that then and [fol. 915] he repeated it, as I remember, on the way to the airport on the Saturday that we—that he took me out there.

Mr. Schroder: Over to Page 134, Line 19.

By Mr. Schroder:

Q. My question is much simpler than that. It simply is this: do you, representing the Post, attach any significance to the refusal by Coach Butts to take a lie-detector test?

A. As I, representing the Post, no. Individually, I attach some significance to it.

Mr. Schroder: Turning to Page 137, Line 16.

By Mr. Schroder:

Q. Now, in the third from last paragraph in the article you say: "The chances are that Wally Butts will never help any football team again." Is that your language?

A. That is mine.

Q. Is that your opinion?

A. That is my opinion.

Mr. Schroder: Page 138, Line 17.

By Mr. Schroder:

Q. You felt, and the Post felt, or Curtis Publishing Company felt, that when this article was published that was the death of Wally Butts in his chosen profession?

[fol. 916] A. I would say that it would be very difficult for him—

Q. That is your opinion?

A. That is my opinion.

Q. The next to the last sentence of that same paragraph, you say: "But careers will be ruined, that is sure." Is that your language?

A. That is my language.

Q. Whose career were you referring to?

A. To Wally Butts.

Q. You knew and the Curtis Publishing Company knew that when that article was published it would ruin Coach Butts' career?

A. Yes, we did.

Q. I see.

A. Because the conversation took place—if the conversation took place as Mr. Burnett said it did, I don't think there was any university that would hire him.

Q. How about professional football, is that a career? You meant to include that, too?

A. I was thinking of colleges here, but—

Q. You didn't limit it to colleges, though, did you?

A. I don't think I thought about it.

Q. Well, read it, sir: "Careers will be ruined, that is sure."

A. I don't think there is any reference to professional football here, no.

Q. Well, you meant careers as coaches in the profession, did you not?

A. I am talking here only about college football. I don't know what professional hiring standards are or anything. I say: "A great sport will be permanently damaged. For many people the bloom must pass forever from college [fol. 917] football." That is all that I was thinking of.

Q. But you just said, sir, at the beginning of that paragraph: "The chances are that Wally Butts will never help any football team again." And that would apply to any football team?

A. I said "the chances are."

Q. So that you were not limiting—

A. I wasn't thinking of that. I was thinking of college football.

Q. Your article did not mention that?

A. It only says college football.

Q. Does it say "any"?

A. The first sentence, yes.

Q. Does that include pro?

A. Yes.

* * * * *

(In chambers)

The Court: What I got you in here for was on the question of impeachment of Mr. Carmichael. I think probably I was in error in regard to larceny not being a crime involving moral turpitude. After looking at the charge, I think it is a crime involving moral turpitude, but the period of time of 30 years, I feel, renders that testimony inadmissible, and I will be glad to cite you some cases on that. The Fifth Circuit says—

Mr. Cody: I think it is largely a discretion—in the discretion of the Court, isn't it?

[fol. 918] The Court: If it had been in the last five years, I'd have no hesitancy, but that boy was 18, according to the thing, he was 18 years old, and that was—occurred in 1933, September of '33, almost 30 years ago. There are some Supreme Court decisions on that, and my ruling on that would be that the crime for which—charged against Mr. Carmichael to which he entered a plea of guilty does involve moral turpitude, but the lapse of time which shows by the record that he entered a plea or was tried, convicted, I don't remember which, was in September, 1933, and being so remote, I do not feel that it would be proper to impeach him by a crime of such—which occurred over such a long period of time ago. The law, I think, permits a man to make amends at some time. If you have got anything in the last five or ten years, I will let you—

Mr. Cody: I haven't.

The Court: All right, sir. But I think I placed my ruling on the wrong ground. I was almost sure it was a year and a day, but larceny is not such a crime, and it would be proper if it is that period of time. I'd like the record to show that.

Mr. Schroder: I don't know that there is any place in the record for what I am going to say, but Mr.—

The Court: All right. What did you want to say?

[fol. 919] Mr. Schroder: Mr. Cody just indicated before we discussed the point that you just completed that some, if not all of his rebuttal evidence would be to the effect that the Plaintiff—I mean, would go to the Plaintiff's—character witnesses against the Plaintiff, and I don't think that would be proper rebuttal testimony.

The Court: I do, Mr. Schroder, for this reason, that the burden is on Mr. Schroder to establish the truth.

Mr. Schroder: No, sir; "Cody."

The Court: Mr. Cody, I beg your pardon, I was looking at him and—

Mr. Schroder: The record wouldn't show it.

The Court: And then the burden is on you to show damages.

Mr. Schroder: Yes, sir.

The Court: Punitive damages and general, and I think properly in mitigation of damages character evidence would be admissible.

Mr. Schroder: Would that be made clear, of course, to the Jury?

[fol. 920] The Court: I am going to charge them.

Mr. Cody: You can't offer character evidence, Your Honor, against the Plaintiff until he testified.

Mr. Strubin: It goes to credibility.

Mr. Cody: It goes to credibility too. If you made a charge to the Jury that such as that is in mitigation of damages, I think you would be committing an error.

Mr. Lockerman: Of course, when you—

The Court: What I was advancing was a theory, I don't recall exactly—

Mr. Cody: There is—

The Court: My charge to the Jury is going to be to the effect that a man with a good character is entitled to recover more than a man with a bad character. That is my theory.

Mr. Strubin: That is all right.

[fol. 921] Mr. Schroder: No, no.

Mr. Cody: That is different from what we are talking about.

Mr. Joiner: Impeachment.

Mr. Cody: It also comes under impeachment, and the Jury has got a right, if they think he has been successfully impeached, not to believe him at all.

The Court: Well, what is going to be the nature of your impeachment? There is two different—you can ask one question: Do you know the Plaintiff? How long a period have you known him? Do you know the character and reputation which he bears in the community in which he lives? Is that good or bad? And that is it.

Mr. Joiner: Would you believe him under oath?

The Court: And you can proceed on the other: Do you know the Plaintiff? How long have you known him? Do you know his reputation of truthfulness or truthfulness and veracity? Would you believe him under oath? I don't know which one you intend to proceed under.

Mr. Cody: That might vary, depending on the witness. [fol. 922] The Court: We will have to get to that bridge when we—cross that bridge when we get to it. You have got me talking—

Mr. Cody: You can never offer evidence of that type regarding the Plaintiff until he has already testified in the case.

Mr. Lockerman: Except in the case where the issue is reputation, such as this, and you carrying the burden.

The Court: Well, I don't believe that is the burden he carries under a plea of justification. I don't believe he gets into character. I think it is admissible.

Mr. Schroder: Well, we may have—

Mr. Cody: I have nothing else.

Mr. Schroder: We may have a discussion as to whether or not the character is being—character evidence is being offered to impeach him as a witness or to go to mitigation.

Mr. Cody: I don't think I have to commit myself on that.

The Court: I don't think so, Mr. Schroder.

[fol. 923] Mr. Schroder: Just let it be known sometime before the charge to the Jury.

The Court: I believe he—I believe my charge will cover that point. If it doesn't, you call it to my attention and except to it.

Mr. Schroder: I have to—

The Court: This is not on the record.

* * * * *

FRANK GRAHAM, JR., testified further by deposition as follows:

Cross examination (continued).

By Mr. Schroder:

Q. In the paragraph I just finished when I was discussing the careers of Wally Butts, or the career, there is this statement about two-thirds of the way down: “. . . Motion pictures of other games are being scrutinized.” What is the source of that information?

A. Furman Bisher.

Q. Is that your language?

A. Yes. I don't remember the words—writing the word “scrutinized.” I might have.

Q. Do you know what other games motion pictures of were being scrutinized?

[fol. 924] A. No, we just heard that pictures of all Georgia games—

Q. “We heard”?

A. Yes, I got that.

Q. Who heard?

A. I heard it from Bisher.

Mr. Schroder: Page 144, Line 14.

By Mr. Schroder:

Q. Have you looked into whether or not the so-called betting line changed in any degree before the game?

A. I heard it did not.

Q. From whom did you hear that?

A. From Pierre Howard and also by checking the newspapers. There was no indication that the betting line had wavered on that—

Q. Do you know what effect upon the betting line a substantial bet one way or the other will have?

A. A very large bet in a national game might have some effect on it or it might—a very large bet might even prompt some of the bookmakers to take the game off their boards.

Q. Was this game taken off the boards?

A. No, it wasn't.

Q. According to the information that you have there—strike that, please. According to the information that you have there was no change in the betting line prior to the Alabama game?

A. As far as I know there was no change. I mentioned in here there was 14 to 17 points. It may have fluctuated slightly. I saw it at different times, at different points, [fol. 925] but so far as I know there was no major significant shift in the betting spread.

Q. Let me ask you this: Was there, according to your information, any shift, and if so, when did it occur?

A. None whatsoever.

Q. Now, before you wrote your article for the Curtis Publishing Company, also at the time you were writing it, and furthermore, at the time that you had completed it and submitted it to Curtis Publishing Company, you had told them and they knew that you did not have available to you at any time the so-called notes that were taken by Burnett during this conversation?

A. That's right. We kept trying right up until the last moment to get them.

Q. Before you wrote your article, at the time you were writing it, and after you had completed it and delivered it to the Curtis Publishing Company, they knew about John Carmichael and they knew that he had not been interviewed by you or anyone else for them?

A. They did. Carmichael was mentioned in the affidavit.

Q. They knew what I just said?

A. Yes.

Q. That you had not interviewed him, nor anyone else for them?

A. That's right.

Q. Is that correct?

A. That's right, so far as I know.

Mr. Schroder: Page 148, Line 9.

Q. Mr. Graham, in researching this article before you [fol. 926] wrote it, did you review any articles written about the games played by the University of Georgia in the year 1961?

A. No, I didn't. I stayed with 1962.

Q. When they telephoned you from Curtis Publishing Company, when they first contacted you to come in, that they had an assignment for you, did I understand it correctly when you testified this morning that you were to go to Atlanta and to make negotiations or to negotiate for Curtis regarding the acquisition for them of the exclusive right to publish this story and also to undertake whatever research down there was necessary to substantiate it?

A. Chiefly I was told to go there, hear what the story was about, and if necessary get an affidavit, which was set up for me between Mr. Beddow and Mr. Howard, and then to come back to New York after talking to all of these principals originally named, Howard, Flack and Burnett, and let them—let the Post see what I had.

Then at the same time when I was down there, I was told to offer this money to Burnett or Howard.

Q. In other words, your mission to Georgia was not only to negotiate for the—shall we call it purchase of the story, but also to verify it through talking to these other people?

A. Yes, to talk to them.

Q. And to check it out with them?

A. Yes.

Mr. Schroder: Dropping down to Line 24.

[fol. 927] By Mr. Schroder :

Q. Have you written any articles in the past on football and, if so, what are they?

A. I have never written a major article on football. When I was at—at Sport Magazine, I was assistant managing editor, and I covered various events and talked to football players and coaches, as part of my duties. But I never—

Q. How long ago was that?

A. That was from 1955 through 1958, the beginning of 1958.

Q. Can you identify for the record any football coaches and football players that you interviewed at that time?

A. I can't at the moment.

Q. Sir?

A. I can't at the moment. I am trying to think.

Q. Have you ever authored any article that might deal with a so-called fixed or rigged athletic event?

A. No, I haven't.

Mr. Schroder : Page 153, Line 10.

By Mr. Schroder :

Q. Have you ever in your history as a sportswriter, ever heard of a football game even attempted to be fixed by coaches and not players?

A. I have never heard of it. This is the first—

Mr. Schroder : Page 154, Line 19.

By Mr. Schroder :

Q. One more question, Mr. Graham. What have you [fol. 928] been paid by the Curtis Publishing Company in connection with your services in writing this article?

A. Two thousand dollars.

Q. Their agreement was contingent upon your furnishing a story that fitted in with their policy—

A. I was told—I have been working regularly on repeated assignments for the Post since December. In fact, I now have a contract which guarantees me so much a year from the Post, and I was told to go down and investigate this story and I would be paid whether or not the story was published.

Q. But the amount would be contingent upon the type of story that you ended up with?

A. We didn't discuss that. They just told me that I would be paid, but it would be no money out of my pocket, because if this story didn't work out, I would be immediately assigned to another one, which I was right after this.

By the time the story came out, I was in Florida working on an auto racing story.

Mr. Schroder: Page 156. Mr. Cody asked a couple of questions which I want to read. This question is by Mr. Cody.

The Court: I believe Mr. Cody probably should ask his own question; I mean, any that you want to omit, I will let Mr. Cody ask, but any question Mr. Cody asked, I think it would be proper for him to read it.

Mr. Schroder: Every one I have read up to now is by me. If he doesn't read it I will have the chance?

[fol. 929] The Court: You will have the privilege of coming back; yes, sir.

Mr. Schroder: All right, sir.

The Court: Mr. Cody, did you wish to read part of the deposition at this time?

Mr. Cody: Just a moment, Your Honor.

The Court: All right.

Mr. Cody: I don't believe so at this time, Your Honor.

The Court: You don't care to read any of it? All right, Mr. Schroder, I will let you read those two questions.

Mr. Schroder: "By Mr. Cody."

Mr. Lockerman: What page?

Mr. Schroder: 156.

[fol. 930] By Mr. Schroder :

Q. I have one or two questions to ask you, Mr. Graham.

A. Yes, sir.

Q. In your direct examination by Mr. Schroder you mentioned that you had access to the Atlanta newspaper in preparing some portions of the article. Where did you go to get access to those papers?

A. To the public library.

Q. In Atlanta?

A. In Atlanta.

Q. In this article that you wrote, did you intend in any way to suggest that Coach Butts or Coach Bryant bet on any particular game or any game?

A. Not after looking over all the information. I had—of course, this was in my mind at all times. When I got through with the article, when I had gone over all the information and had re-read the article and brought it in here, I didn't intend to—I certainly—there was no idea of making an accusation.

Q. Did you make any such intimation in the article?

A. No, I don't believe I did, because I don't know that these two men bet on the game.

* * * * *

CLAY D. BLAIR, JR. called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified by deposition as follows :

[fol. 931] Cross examination.

By Mr. Smith :

Q. State your name, please, sir?

A. Clay D. Blair, Jr.

Q. Are you employed by the Curtis Publishing Company?

A. That's right.

Q. In what capacity?

A. I am editor-in-chief of the Curtis Publishing Company, sometimes called editorial director, also.

Q. How long have you been with Curtis, Mr. Blair?

A. Since March of 1957.

Q. What was your job—what were you employed as, that is, what position did you occupy, when you were first employed?

A. I was first—I was a staff writer in the Washington office.

Q. Who was editor of the Saturday Evening Post at that time?

A. Mr. Ben Hibbs.

Q. Who was president of Curtis?

A. Robert E. MacNeal.

Q. Mr. Culligan is presently president of Curtis?

A. Mr. Matthew J. Culligan, I believe—I believe the Board of Directors made him Chairman of the Board this week. I think Chairman of the Board is his correct title.

Q. Who is President of Curtis?

A. I think he is President and Chairman of the Board.

Q. When did Mr. Culligan first come with Curtis as President?

A. July 9, 1962.

[fol. 932] Q. And he replaced—

A. Mr. Robert MacNeal.

Q. Was there also an editorial change made at the time Culligan came with the Post, or who was out at that time?

A. The editor of the Post at the time Mr. Culligan came to Curtis was Mr. Robert Lee Sherrod, born in Georgia.

Q. Mr. Sherrod is no longer with the Post.

A. Yes, he is. He is the editor-at-large of the Post.

Q. Editor of what?

A. Editor-at-large. He is a roving editor, around the world.

Q. Who is presently editor of the Saturday Evening Post?

A. I am.

Q. How long have you been editor?

A. Well—

Q. Of the Post, that is.

A. Well, let me see. I have to think a minute. In March of 1962, I was made managing editor of the Saturday Evening Post, and in June of 1962, I was promoted to Vice-President and Editorial Director of Curtis, and on or about October 24th, when Mr. Sherrod began his travels. I assumed the responsibility as the chief executive of the Saturday Evening Post, editorial executive. So that in effect I have been the editor since October of 1962, although it really doesn't show in the masthead that way.

Q. Are you also editor of the other four publications or any one of the other four Curtis publications?

A. No, I am not. I am editorial director and, as such, I have responsibilities for the editorial content of the other Curtis publications, but I am not a day-by-day editor of [fol. 933] the other four magazines, as I am on the Post.

Mr. Smith: Go to Page 11, line 17.

By Mr. Smith:

Q. Were you directly involved in the employment of Mr. Graham to write this Butts story, this Butts-Bryant story, in his selection as a writer?

A. No.

Q. You were not?

A. No.

Q. Who—

A. Let me make this clear. As Chief executive officer of the Saturday Evening Post I bear the responsibility for what is published in the magazine. I do not—I cannot, on a day-to-day basis, make assignment of articles or editors and so on.

Q. I can appreciate that.

A. Yes.

Q. What I want to know is who was directly in charge of that particular piece of writing?

A. That particular project?

Q. For you or for the magazine?

A. For me?

Q. Yes.

A. Well, directly responsible to me would be Davis Thomas, who is the managing editor of the magazine.

Q. Was he more or less in touch with this particular article, in making the decisions concerning the article, for you and thus for the magazine?

A. Yes.

Q. Was Roger Kahn working with him in that direction?
[fol. 934] A. For him. Roger Kahn is a sports editor who works under Thomas, and, of course, Graham was working for Kahn, in effect.

Q. Did you have anything to do with the decision, the final decision to publish the article?

A. Yes, I did. Before the article was committed to—irrevocably committed to press, I read it, all of it, and at that time I could have made the decision to pull it out, but you might say by not making the decision to pull it out, it had my approval.

Q. In other words, Davis Thomas made the decision to publish it and you didn't veto it; is that right?

A. That's about it.

Mr. Smith: All right. Page 17, Line 4.

By Mr. Smith:

Q. Will you list the five magazines that the Curtis Publishing Company publishes?

A. Yes. The Saturday Evening Post, The Ladies Home Journal, the American Home, Holiday and Jack and Jill, a children's publication.

Q. Are any of these five magazines what you might call showing a profit at this present time, operating in the black?

A. However, I will answer the question this way: that for the first quarter of 1963, Curtis Publishing Company

showed a loss of about \$1.1 million, compared to a loss in 1962 for the same quarter of \$4.7 million.

Mr. Smith: On Page 20, Line 9—Line 8.

[fol. 935] By Mr. Smith:

Q. From 1962 to 1961, there was a decline of approximately eighteen million in advertising revenues. Is that true?

A. In the 1961, by the same PIB figures, I believe the figure was eighty-six million.

Q. Do you also recall what it was for 1960?

A. I think it was one hundred, six million.

Q. One hundred, six million?

A. Yes.

Q. I believe you said that Mr. Culligan came in as President of Curtis in March of 1962?

A. No, in July.

Q. In July of 1962?

A. Yes.

Q. Now, you were made a vice-president in June of 1962?

A. That's right.

Mr. Smith: Go to Page 29, Line 4.

By Mr. Smith:

Q. Now, what connection is there between circulation and the amount of lineage and the revenue that you can expect from advertisers? What importance is placed on circulation by advertisers?

A. Well—

Q. Is this not one of the factors that affects advertising revenue?

A. In marketing advertising?

Q. Yes.

A. Definitely so. Your demography, the profile of your subscriber, where he is, who he is, whether or not he lives in a metropolitan or rural area, the very size and numbers; [fol. 936] and also part of the demography would be the

income level, education level, et cetera, et cetera. The size of your circulation. The entire advertising rate structure is based on how big your circulation is. In other words, if you have a circulation of three million, then an ad might cost fifteen thousand dollars in your magazine. But if you have a circulation of six million, it costs thirty thousand dollars. So that it is absolutely vital. Together with the demography, I mean. I mean, all circulation in Russia would not be appealing to General Motors.

Mr. Smith: Page 31, Line 10.

By Mr. Smith:

Q. Well, your advertising revenue has fallen considerably, as you testified, since 1960, to a—from an all-time high?

A. No. One hundred six million to, 1960—fell to eight-six in 1961 and about sixty-six or sixty-eight or sixty-nine in 1962. That is revenue.

Q. So that you aren't satisfied with that trend, are you, Mr. Blair?

A. I mostly certainly am not, no.

Q. And were you—

A. Would you be, if you were a responsible—

Q. No, sir, I would be most unhappy, as I am sure you are. Is that not a fair statement?

A. Right.

Q. I mean, this is an integral part of running a profitable operation, is it not?

A. Absolutely. Let me say that I am not unhappy, but I would be hopeful we could have more advertising revenue in the Post.

[fol. 937] Mr. Smith: Page 40, Line 13.

By Mr. Smith:

Q. There is one further statement I wish to ask you about, and that is in the March 29, 1963 issue of Time. You were quoted as saying:

“‘The final yardstick,’ said Blair, in a memo to this staff, ‘is the fact that we have about six lawsuits pending, meaning that we are hitting them where it hurts . . .’”
Did you make such a statement?

A. I didn’t make the statement, but I wrote a memo—

Q. I am sorry, you did or didn’t make it?

A. I wrote a memo. I didn’t make the statement. I wrote a memo. But that statement is not accurate. The quote is not correct.

Q. Was the statement taken from a memorandum?

A. Yes.

Q. Was the memorandum in writing?

A. Yes.

Q. Do you have a copy of the memorandum?

A. I could get you one. I don’t carry it around with me.

Q. Sir?

A. I could get you one. I don’t carry it around with me.

Q. All right, sir, will you make that available to us?

Mr. Smith: Mr. Strubing said “Yes”.

A. (By the witness) Yes, surely.

“The final yardstick is the fact that we have about six [fol. 938] lawsuits pending, meaning that we are hitting them where it hurts . . .”

Now, where is that incorrect? How is it inaccurate?

A. I think—I would have to get the memorandum, but I think the sentence goes on to say:

“ . . . with solid, meaningful journalism.”

Q. Well, who is them, “hitting them”?

A. “Them” is the general phrase to refer to the whole United States of America.

Q. Hitting everybody in America where it hurts? Is that the meaning that you intended to convey?

A. Not quite so literally as this. You are really asking me now about the whole philosophy of this magazine when

you ask a question like that. I can't answer without telling you what my philosophy is.

Q. Is the quote about the number of lawsuits incorrect?

A. Yes.

Q. There are more than that?

A. Less.

Q. Less than that?

A. Yes.

Q. All of these are libel suits?

A. Yes.

Q. Sir?

A. Yes. But I mean the figures aren't accurate.

Q. Among them is the one Wally Butts filed against the Post—

A. No, no.

Mr. Smith: Page 43, Line 10.

[fol. 939] By Mr. Smith:

Q. Do you recall the writer that interviewed you for that article or that quotation?

A. No one interviewed me.

Q. No one interviewed you?

A. No.

Q. You made the memorandum available?

A. I certainly did not. Somehow the memorandum found its way to Newsweek.

Q. It wasn't intended, really, for publication?

A. Absolutely not. The entire memorandum, if you read it, as I assume you will in time, was meant to be a laudatory, congratulatory memorandum to the staff on the magazine that they were putting out, and the lawsuits, I think that was actually a facetious—to tell you the truth, I think that was actually facetious.

Mr. Smith: Next page, Line 17.

By Mr. Smith:

Q. And you were not being facetious when you used the phrase, "sophisticated muckracking"?

A. No.

Q. You meant it then?

A. Yes.

Q. And you mean it now?

A. I mean it now.

Mr. Smith: Page 48, Line 11.

By Mr. Smith:

Q. To get away from muckraking, sophisticated or otherwise, you have been quoted as being concerned with the [fol. 940] image of the Post and in trying to get a new image, portray a different type of magazine; is that correct?

A. Very definitely, yes.

Q. Generally speaking, you want to change the image of the Post?

A. I did change the image of the Post.

Q. All right.

A. "Image" is very bad. It is worse than "muckraking."

Q. I agree. Is the March 23, 1963 issue of the Post representative of the new type magazine that Curtis is interested in publishing, that is, the history—

A. Could I refresh my memory by looking at it?

Q. Yes.

A. Does this contain an article of some interest to you?

Q. This is the Butts issue.

A. Oh, yes. I would say that we have perhaps come perhaps 25 per cent of the way with this issue.

Q. This is not representative of the "image" that you are trying to—

A. I would say we have gone 25 per cent toward the goal of the magazine that I envision.

Q. In other words, this issue is a step in the right direction, in your opinion?

A. Yes, along the way, yes.

Mr. Smith: Page 53, Line 8.

By Mr. Smith:

Q. I am reading now from—I think it is one edition of Webster's Dictionary, in which it is stated:

[fol. 941] "The original allusion . . ." and this is "muck-raking" ". . . was to a character in Bunyan's Pilgrim's Progress so intent on raking up muck that he could not see a celestial crown held above him." I believe you alluded to that yesterday, did you not?

A. Yes.

Q. You have no quarrel with that particular statement?

A. No. That is the origin of that.

I am not sure. It might have been in Shakespeare prior to that; I don't know.

Q. The dictionary states further,

"On April 14, 1906, President Roosevelt delivered a speech in which he used the term 'muckraking' in attacking the practice of making sweeping and unjust charges of corruption against public men and corporations, after which the term obtained wide currency." Do you have any quarrel with that particular definition of muckrake," or the use of the term "muckrake"?

A. No. I mean that was the way Roosevelt used it. I am pretty sure of that. I have never read the speech or anything.

Q. You were acquainted with the term, were you not, Mr. Blair, prior to using it in the interview which led to the article in Newsweek on November 19, 1962? You were acquainted with the term? The most common usage of the term "muckrake" at that time?

A. I was, yes.

Q. And this you testified yesterday, by adding to the term the word "sophisticated" you sought to alter the most common usage of the term "muckrake"; is that correct?

A. That is really correct, yes.

Q. Now, let me ask you if you agree with this. I am [fol. 942] reading from the same dictionary, which, as I

said, is an edition of Webster's. Here the term "sophisticated" is defined, one, as follows:

"Not in its natural, pure or original state, adulterated, amended unwarrantedly." Do you have any quarrel with that particular definition of "sophisticated"?

A. Well, let me say this, that the word "sophisticated" has many connotations, and very definitely I won't prolong this with argument and semantics here, but as for that definition that was not the definition I had in mind when I used the word "sophisticated."

I was thinking in terms, for example, you would talk about the Nike Zeus or the Skybolt as being a very sophisticated weapons system. By that I meant to imply complex, high order of development, rather than that.

I believe the word "sophisticate"—the origin of that word must be sophistry, is it not?

Q. Let me read this. "Sophistication" is defined:

"1. sophistry; sophistical reasoning; misrepresentation or falsification and argument, also a quibble; a sophism."

Do you adopt that definition of the term "sophistication"?

A. Well, I know that is—I mean, I can't quarrel with the dictionary, but very definitely, you must know that in common usage in our language, if you talk about a sophisticated person or a sophisticated society or a sophisticated weapons system, as I was with the Newsweek people, and I went on in this quote as to what I meant by "sophisticated," I was talking about something else, which is, you know, not quite—

Q. Well, you were speaking in the sense of expose, were you not, and in the sense of provocation?

[fol. 943] A. I was speaking in the sense of—if you want to use the word "expose", I want to look that up.

Q. Did you use the word yourself in this interview?

A. "Expose"?

Q. Yes.

A. I probably did.

Q. I am reading from the Newsweek article and I have written it down in longhand and I think it is accurate—this is from Newsweek, November 19, 1962:

“Blair says he intends to ‘restore the crusading spirit. . . .’”

A. Right.

Q. (continuing) “. . . the sophisticated muckraking, the expose in the mass magazines . . .”

A. Yes.

Q. Is that accurate as far as you can recall?

A. I am sure it is. The interview was an hour and a half or something like that, and I certainly would not quarrel with the fact that I said that during the course of it.

Mr. Smith: Go to the bottom of that page, Line 22.

By Mr. Smith:

Q. In the same sentence with “sophisticated muckraking,” the term “expose in mass magazines” was used?

A. Right.

Q. And these were used in aid of one another; is that right? “Expose” is a further amplification of your use of the term “sophisticated muckraking”; isn’t that true?

[fol. 944] A. Talking precisely to the point here, yes, but I think in all fairness, we are just dealing with words, and you have to—maybe that is what you lawyers do. I am sure you do.

Q. You are very much concerned with words yourself, are you not?

A. Yes, but I am also concerned with the development of what are we talking about, rather than just the words themselves.

Mr. Smith: All right; go to Page 59, Line 10.

By Mr. Smith:

Q. Further quoting from this same Newsweek article of November 19, 1962, the writer says, and I quote directly from the article, which is quoting you:

“We are going to provoke people, make them mad.’”

A. Yes.

Q. Did you make such a statement?

A. I am sure I did. I would not quarrel with that.

Q. You don't quarrel with the statement now, do you?

A. No.

Mr. Smith: Page 70, Line 5.

By Mr. Smith:

Q. A statement is contained in the Butts' article:

“But careers will be ruined, that is sure.” You have already testified that you read the article prior to publication.

A. Yes.

[fol. 945] Q. Do you have any quarrel with that statement?

A. May I see the statement?

Q. Right here.

A. Oh, I see, it is the windup, yes.

Q. Right here?

A. Well, I have no quarrel with that.

Q. Is there any question in your mind but that careers have been ruined as a result of this article?

A. Well, I really don't know, because I don't know the status of the employment—career—here I use the term “career” to apply to employment—I don't know the status of all these people.

Q. This statement says, “. . . careers will be ruined, that is sure,” and it can't apply but to two people, and that is Wally Butts and Bear Bryant. Would you not agree with that?

A. Well, I would say that they were the principal figures in this story and I can't quarrel with that, no.

Q. Butts' career is one of the careers that reference is made to in that statement, isn't that correct?

A. I think so.

Q. Is there any question in your mind about that?

A. I don't think so.

Mr. Smith: Page 73, Line 8.

By Mr. Smith:

Q. Were you also concerned that this matter be checked out thoroughly?

A. Absolutely.

Q. As to the truth of the article, prior to publication?

A. Absolutely, as we do with every article.

Q. Did you impress this on your staff, that they must [fol. 946] be absolutely certain of what they published in this Butts article, to satisfy you as to the truthfulness and accuracy of it?

A. Absolutely, as we do with every article.

Mr. Smith: 75, Line 14.

By Mr. Smith:

Q. Yesterday I asked you about an inter-office memo which was reported in one of these national publications, a quotation from you, and you have been kind enough to supply that to me today, which I have identified as Exhibit P-2. Is that the memorandum?

A. Yes, it is.

Q. Is that your memorandum?

A. That is my memorandum.

Q. These are your words?

A. My words.

Q. This is the entire memorandum?

A. My words, not very brilliant, but mine.

Q. This was not prepared for publication, but in some fashion it leaked or got out of the office here; is that right?

A. That's right, yes—no, it was strictly a strictly inter-office—I believe I started the memo by saying "I wish I had time to visit each one individually," but I didn't.

Q. One statement in the memo which we discussed yesterday, and I don't recall just what you said, but it is my im-

pression that there was some question as to whether or not it was accurate.

A. Yes.

Q. Here is the statement. Let me read it again:

“The final yardstick: We have about six lawsuits pending, [fol. 947] meaning we are hitting them where it hurts, with solid meaningful journalism.”

A. Yes.

Q. Now, that is an accurate quotation, is it not?

A. That is exactly what I wrote, yes. What I guess is inaccurate about it, I guess, is the number of lawsuits.

Mr. Smith: 81, top of the page.

By Mr. Smith:

Q. Do you remember a phone call from Wally Butts' daughter? Did you have a phone conversation with Jean Butts?

A. Yes, I did.

Q. Do you remember about when that was?

A. This is the girl that lives in Mississippi?

Q. Yes.

A. Yes. I really don't remember when that was. It was—I have a recollection it might have been like a Thursday or sort of in the middle of the week, like.

Q. Was it prior to the publication of the Butts' story?

A. Yes, it had to be, yes.

Q. What was—

A. She wanted—she was trying to find out if we were doing the story, I think, or if we were, when it would be out, something like that. It was a very incoherent conversation because she was very emotional and crying, and I had a hard time determining exactly what her point was here.

Q. The substance of the conversation was a request on her part, was it not—

A. Well,—

[fol. 948] Q. (continuing) —direct to you?

A. Well, my impression was that she was trying to find out (a) if we were doing an article involving her father, and (b) if we were, when it was coming out. It seemed to me that was what she was trying to get at, but it would be presumptuous here or any other time for me to try to interpret what any woman is really getting at when she talks to you.

Q. Well, you told her (a) that you were going to do an article, and (b) that it was coming out soon, didn't you, or gave her the publication date, perhaps?

A. No, I don't think I did give her the publication date.

Q. Did you tell her an article was going to be published concerning her father?

A. I swear to you, I can't remember. I am not trying to dodge your question. I am—I get a hundred phone calls a day, you know, more or less, and it is hard to remember, but I—I don't know whether I told her specifically whether we were coming out with this article or not. Definitely, I know I would not have told her when, you know, if I said we were publishing it, because we don't ever give a release as to when we are going to publish something, to anyone.

This was a strange and almost incoherent telephone conversation, where I couldn't really figure out what she was after. She was crying through the whole thing and—

Q. You got the impression that she was asking you not to publish the article?

A. Oh, beyond any doubt, that if we had any—I mean, her whole thing was to try to find out if we were, and certainly the undertones of the thing, all this weeping and crying was that if you—you know—"Please don't."

[fol. 949] Q. If you do publish—

A. "If you plan to, please don't."

I didn't make any notes on this conversation or anything else, I mean. And I don't know when the telephone conversation took place, and I am sure that you could look it up in the—I understand the Telephone company keeps very accurate records of the telephone conversations, long-distance calls.

* * * * *

ROGER KAHN, called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified by deposition as follows:

Cross examination.

By Mr. Lockerman:

Q. Will you state your full name, please?

A. Roger Kahn.

Q. How old are you?

A. 35.

Mr. Smith: Line 19.

By Mr. Lockerman:

Q. How long have you been with the Post?

A. Since January 1st of this year.

Q. What is your title with the Post?

A. On the masthead it is listed as senior editor and in my contract with the Post it is listed as sports editor. You can probably define it as senior editor in charge of sports.

[fol. 950] Mr. Smith: Page 7, Line 13.

By Mr. Lockerman:

Q. When did you first receive any information concerning the Wallace Butts-Paul Bryant matter that was the subject of the article in the Post of March 23rd of this year?

A. It was on a Tuesday. Without a calendar—

Q. Here is a calendar.

A. Thank you.

It would have been on Tuesday, February 19th.

Q. How did you receive the information that you did get on February 19th, concerning the matter?

A. I was about to go to lunch when Davis Thomas, the managing editor of the Saturday Evening Post, came to my office and reported to me that he had heard this—had

heard of the phone call, and that we were to talk after lunch, which I indeed agreed we ought to.

Mr. Smith: Line 16.

By Mr. Lockerman:

Q. Then I assume you did go to lunch and conferred with him again after lunch?

A. Yes, after lunch, Mr. Thomas, Mr. Don A. Schanche, who is the executive editor here—the three of us met, conferred, and discussed what we had and what we ought next to do.

Mr. Smith: Next page, Line 16.

[fol. 951] By Mr. Lockerman:

Q. Did Mr. Thomas tell you where he had gotten the information that he was then giving to you?

A. Yes, sir. From Mr. Strubing.

Q. Who is Mr. Strubing?

A. Mr. Strubing is an attorney for the Saturday Evening Post.

Q. Mr. Strubing wasn't present, was he?

A. No, he was not.

Q. What did Mr. Schanche have to say about the matter at that time?

A. Well, we all felt, each of us, that it was well to look into and it is hard to recreate what each of us said, but we did feel a certain skepticism about the story at that time, but it was a story that had to be checked out.

We realized that it was a very unusual story, not something that was in any way routine. But we did feel, the three of us discussing this, that we had indeed to proceed on investigating the story.

Q. But you were quite skeptical about it, the correctness of what had been told to you?

A. Not quite skeptical. Skeptical and surprised.

Q. On that date of February 19th, when you were conferring with Mr. Thomas and Mr. Schanche, were you aware of the lawsuit that was pending against the Saturday Evening Post and Furman Bisher, the sports editor of the Atlanta Journal, involving an alleged libelous matter at that time?

A. I was aware of it in broad outline. I had not been sports editor when Mr. Bisher's article appeared, so that I was not conversant with all the details. But I was aware that there was such a suit, yes.

[fol. 952] Mr. Smith: Page 12, Line 3.

Q. Had you discussed with Mr. Thomas and Mr. Schanche the fact that Frank Graham was your choice?

A. Yes, I did.

Mr. Smith: Page 14, Line 15.

By Mr. Lockerman:

Q. Had you ever used him on any assignment in which you anticipated or knew that by writing the type of story that would be involved, that careers and characters would be ruined?

A. I didn't really know what type of story Mr. Graham was going to write. Mr. Graham didn't have an assignment to write a story. Mr. Graham had an assignment to investigate as well as he could and if in his judgment there was a story, he was to proceed.

Mr. Smith: Page 17, Line 24.

By Mr. Lockerman:

Q. Did you instruct him that you wanted him to make a very thorough investigation of this matter?

A. As thorough as he could.

Q. As thorough as he could?

A. As thorough as he could make, yes.

Q. I believe you used the expression a moment ago, in speaking of what you wanted Mr. Graham to do, the term

that you wanted him to go down there and dig; is that correct?

[fol. 953] A. I don't know if I used that term, but that would be a fair paraphrase of what I meant, yes.

Q. By using that term, you meant to really dig into the story and find out all the facts about it?

A. All the facts that were available, yes, indeed.

Mr. Smith: Page 21, Line 21.

By Mr. Lockerman:

Q. Going on with that same discussion, what else was said by Mr. Thomas or Mr. Schanche to you and Mr. Graham about this matter?

A. It was general agreement that Frank's first course of investigation should be with Mr. Howard and with Mr. Burnett. There was probably some fee discussion for Mr. Graham.

Q. Give us your best recollection of that.

A. I said something like, "I won't give you a fee now. If the story does not work out, Frank, it will depend on how much time you spend and how hard it is."

It is standard in many magazine relationships that you don't have a contract. You have a handshake.

Q. A what?

A. Handshake. Agreement between writer and editor who have worked together before. You don't have a formal contract on most magazines.

There was some discussion about the fee to be paid Mr. Burnett. I believe that was handled by Mr. Thomas. Mr. Schanche was going to work on the contract which was to be made—drawn between Mr. Burnett and the Saturday Evening Post, and we told Frank that if the story seemed to be working out, not to worry about money, that that was [fol. 954] not his function. Not to worry about a rate for what Mr. Burnett would be paid. That was the Post's function and not his.

Q. Then it was your understanding at that time that the story was for sale to the Post; that is correct, is it not?

A. That Mr. Burnett's information was for sale, yes.

Q. By Mr. Burnett?

A. By Mr. Burnett or Mr. Howard.

Q. Or Mr. Howard?

A. Yes.

Q. And that was on February 20th?

A. That's right.

Mr. Smith: Page 28, Line 4.

By Mr. Lockerman:

Q. Now, what instructions did Mr. Thomas or Mr. Schanche give either you or Mr. Graham in that conference about what the two of you were to do on this very unusual matter?

A. Frank was to go to Atlanta. If an affidavit were obtainable from Mr. Burnett, he was to get the affidavit. He was to determine all of the circumstances that he could determine about the intercepted phone call. He was, if possible, to get a copy of Mr. Burnett's notes on the intercepted phone call. He was to check the library and the newspapers for information on the game; and he was, generally, while down there, since he had never covered SEC football, to familiarize himself with newspaper clips, through newspaper clips, as best he could with the teams.

[fol. 955] Mr. Smith: Page 30, Line 5.

By Mr. Lockerman:

Q. What, if any, instructions were given by either you or Mr. Thomas or Mr. Schanche as to whether or not Mr. Graham should refrain from interviewing Coach Bryant?

A. Well, at this point he was going only to Atlanta to see what he could get on the story in Atlanta. A trip to Alabama I don't believe was mentioned.

Q. You had previously already told Mr. Graham not to interview Coach Butts?

A. Yes.

Q. I believe you just stated that a moment ago.

A. Yes, that's right.

Q. Are you familiar with the geographical relationship of Birmingham with reference to the City of Atlanta, generally?

A. Yes.

Q. Were you familiar with the fact that either from Atlanta to Birmingham or to Montgomery is only a matter of about less than an hour's flight time by air?

A. I knew it was a short flight.

Q. You did know that?

A. Yes, I did.

Q. You were also familiar with the fact that telephone communications could be had from Atlanta to almost any point in Alabama?

A. Yes.

Q. That goes without saying, doesn't it?

A. Yes, indeed.

Q. And you were familiar also with the fact that the Town of Athens, Georgia, where the University of Georgia [fol. 956] is located, is also a very short distance from the City of Atlanta?

A. Yes.

Q. And that Tuscaloosa is a very short distance from Birmingham?

A. I don't know where Tuscaloosa is, but I will take your word for it.

Q. You knew it could be reached in a relatively short time?

A. I knew it was in the same state, yes.

Q. Did you specifically instruct Mr. Graham to go only to the City of Atlanta?

A. Only to the City of Atlanta? I believe I did, yes. Bearing in mind that this was in the nature of a preliminary—could have been a preliminary investigation. We

had no idea for sure what Mr. Graham would get. It's in the nature of journalism that you first familiarize yourself with as much background as you get before you make any decision on how you will finally handle the stories, so that these instructions were to go to Atlanta, see Mr. Howard, see Mr. Burnett and if Mr. Graham called and said, "I have to go somewhere else," that could have been changed.

Q. There would have been no objection to his going somewhere else?

A. No economic objections, no, it would depend on how the story developed.

Q. Of course, the story, as you already said, was a very unusual type of story, wasn't it?

A. I have never seen another story like it.

Q. Did you place any time limitation on how much time Mr. Graham was to spend in Atlanta or on this investigation?

A. On this story, I think we wanted him to move with all deliberate speed, and get back as quickly as possible [fol. 957] after doing as complete an investigation as he could. There was no specific date, no.

Q. But you wanted him to make a complete investigation?

A. Yes.

Q. Then he was not given any time limitation within which to do that, was he?

A. I don't believe he was, no.

Q. Now, have you told us all that was said by Mr. Thomas and Mr. Schanche or yourself to Mr. Graham on February 20th, when you were discussing this matter?

A. There was a little small talk—not small talk really: "Be careful, Frank, this is a big one." Which I said in more of an informal way to him. You know, "Be careful, do a good job and let me hear from you." That was about all.

Q. And to dig into the story and make a thorough investigation and get all the facts?

A. "Be careful, Frank, this is a pretty big story." I said something like that to him.

Q. And you had reference to making a careful investigation; is that right?

A. Oh, yes.

Q. Because you were interested in getting the truth of the entire matter, weren't you?

A. Yes, sir.

Q. What amount was discussed as to what would be paid for the facts that you understood at that time to be for sale by Mr. Burnett?

A. I believe Mr. Schanche drew the contract between—I don't know whether it was between Mr. Howard—I guess it was between Mr. Burnett and the Post—and the sum I think was \$500—I am sorry—\$5,000.

[fol. 958] Q. Was that contract drawn at that time for Mr. Graham to take along with him?

A. No, it was not.

Q. And that would have been on the 20th; is that right?

A. On February 26.

Q. Was there any breakdown of the five thousand dollars in any periodic payments or was it just a lump sum of five thousand dollars?

A. I believe really Mr. Schanche would be the best source because I believe he wrote the contract, but I believe that it was in two installments, one of which would be payable on the furnishing of information which in our editorial judgment constituted a story, a printable story, and the other sum would be paid on or about the publication date, when the story was exclusively in the Post.

Q. And of course it was—provision was made for it to be an exclusive matter, wasn't it?

A. We aren't against exclusives, no. Certainly we were not upset that the story wasn't everywhere else.

A. We would like it to be. We wanted to have it to ourselves, yes.

Q. And that is the way it turned out, wasn't it?

A. Yes, it was. Although there were numerous offers of "Please make a deal and let us have your story" before the story came out, from other magazines.

Q. Now, what discussion was had at that time, still talking about the 20th, about a party by the name of Milton Flack, in this matter? You remember his name, don't you?

A. Yes, indeed. It is a very unusual name for a publicity man. I know that the name amused us. Flack, in the show business argot, is a publicity man.

[fol. 959] Q. Is that why you say it was unusual?

A. Yes, it is kind of funny, because a move press agent is called a flack.

Q. What does that mean?

A. It is a press agent and not a public relations counselor. A flack is someone who comes around from the studio to push the picture. I am not sure—I guess it is spelled "f-l-a-c-k," too. It is a kind of Hollywood term.

Q. Does it have the same connotation as a promoter, so to speak?

Q. Works for a promoter?

A. A press agent.

Q. A press agent is more or less a promoter, too, is he not?

The Court: What is the purpose of going into what Mr. Flack's name means? We are wasting time here. Let's go on.

Mr. Smith: I think we have just about run out of that, Your Honor.

The Court: All right, sir.

Mr. Smith: Line 20.

By Mr. Lockerman:

Q. What was said about payments to be made to Mr. Flack for whatever part he played in this matter?

A. At that time there was no contemplation of paying Mr. Flack.

[fol. 960] Q. Well, when did the contemplation of paying him money in this matter come up?

A. Some time afterwards, and Mr. Thomas handled that particular payment, and you would have to get from him

exactly when. I am sure there is a record of when he was paid.

Q. But Mr. Flack was paid some amount of money?

A. I believe five hundred dollars eventually, yes.

Q. Your recollection is five hundred dollars?

A. Yes.

Q. Eventually?

A. Yes, sir.

Q. What is your understanding as to the purpose for paying him five hundred dollars?

A. Gosh, I think, you know, something would go with the check which would explain that. Payment for editorial services rendered, for helping.

Q. Did he render editorial services in connection with this matter?

A. I think, yes, he talked with Mr. Graham.

Q. He talked with Mr. Graham?

A. Yes.

Q. Do you call that editorial services?

A. Backgrounding is a service for which we will pay under many circumstances.

Q. Speaking of background, what did you know about the background of Mr. Milton Flack?

A. Personally, nothing, nothing about his background.

Q. What do you know about his background now?

A. Well, that he has been involved in a number of adventures, that germicidal venture of his—well, that he has been involved in a number of business ventures, that is all that I can really say.

[fol. 961] Q. But at that time you didn't know anything about Mr. Flack?

A. No.

Mr. Smith: Drop down to line 20.

By Mr. Lockerman:

Q. You knew at the time that you were having these discussions with Mr. Graham on the 19th and the 20th that

this alleged intercepted telephone conversation had arisen in a rather unusual manner, didn't you?

A. Yes.

Q. I assume, then, that you knew that Mr. Burnett was claiming that he had listened in on an alleged conversation between Coach Butts and Coach Bryant?

A. Yes. Now, at one point we had been told that the conversation was overheard, and I had the initial impression that it was a conversation overheard—I believe we were told “by a student, and—”

Q. By a student?

A. By a student at the University of Georgia. The initial report was not what the facts later brought out.

Mr. Smith: Next page, Line 3.

By Mr. Lockerman:

Q. When did you get the information about Mr. Burnett allegedly overhearing it?

A. I believe on the 20th.

Q. Where did you get that information from?

[fol. 962] A. I heard it from Mr. Thomas.

Q. Well, had you in the meantime talked with Mr. Howard?

A. No.

Q. Mr. Thomas was doing the talking?

A. Yes.

Q. During that period of time?

A. Yes.

Q. With Mr. Howard?

A. No. With Mr. Strubing.

Q. Mr. Thomas was calling Mr. Howard about this matter in Atlanta?

A. No.

Q. And then you learned, apparently, that one George Burnett had allegedly intercepted a telephone conversation between Coach Butts and Coach Bryant?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. When did you understand that the interception of the telephone conversation had taken place?

A. Eight days before the game, which I believe at that —at that point I don't believe I knew the date, any more than that it was several days in advance of the game.

Q. And you are now referring to the 1962 game between the University of Georgia and the University of Alabama?

A. Yes, sir.

Mr. Smith: Next page.

[fol. 963] By Mr. Lockerman:

Q. Now, knowing that Mr. Burnett occupied the status of an eavesdropper onto an alleged telephone conversation between two coaches in the Southeastern Conference, being made from one state to the other, what instructions did you give Mr. Graham about making a thorough and complete investigation of the eavesdropper?

A. I told him to—along the lines of—“check out Mr. Burnett.”

Q. Is that about all you told him?

A. That's right.

Mr. Smith: All right, go to page 51, Line 11.

By Mr. Lockerman:

Q. I believe that you had something to do with the editorial that appeared in the April 27, 1963 issue of the Post entitled “The Name of the Game”?

The Court: Just a moment. Are we going into that editorial?

Mr. Lockerman: That is in the deposition, Your Honor.

The Court: All right, sir. I was under the impression that you were not going to get into that editorial.

Mr. Schroder: There were two of them.

[fol. 964] Mr. Smith: This will prove relevant.

The Court: I thought the editorial in the issue of April the 27th, that is the one I am referring to.

Mr. Schroder: The one we went into this morning was the other one.

Mr. Cody: My understanding is that that is out.

The Court: Sir?

Mr. Cody: My understanding is that that is out.

The Court: There was some discussion; I don't know which one it was. Could I see that one? I think it had some statements in there you wanted to exclude, but if it gets in there is going to be a wide door open.

Mr. Schroder: Probably still be here next week.

The Court: Yes, sir.

Mr. Smith: Well, that covers only about one reference there which—

[fol. 965] Mr. Schroder: Pass on to the next one.

The Court: I would instruct the Jury to disregard the last question and answer propounded by Mr. Smith to Mr. Schroder who was reading the deposition in regard to any editorial later printed by the Saturday Evening Post.

Mr. Smith: We will go to Page 54, Line 11.

By Mr. Lockerman:

Q. After Mr. Graham got to Atlanta and undertook this investigation, when did you next hear from him?

A. There was a party in Brooklyn—as a matter of fact, it was for my sister's birthday, and I had said to Mr. Graham, "When you get back to New York, get in touch with me right away."

At this party, which was on the Saturday night which was the day after Washington's Birthday, February 23rd, I went to the party and Mr. Graham arrived presently and I said, still with a kind of journalistic skepticism, still with the skepticism of somebody who does indeed believe in football coaches and in integrity, I said, "Nothing much down there, Frank?"

And Frank said, "Nothing much except this affidavit," and he reached for it in his pocket as I am doing now, and held out a paper, and I said, "We will talk business on Monday."

Q. That was the first word that you had from Frank Graham from the time he left to go to Atlanta on this matter?

[fol. 966] A. Yes, myself, yes.

Mr. Smith: Page 56, top of the page.

By Mr. Lockerman:

Q. So that then he, so far as you know, was in Atlanta on the 21st?

A. Yes.

Q. The 22nd?

A. Yes.

Q. Of February?

A. Yes.

Q. And then he was back in New York, and at the party in your sister's house or for your sister on the 23rd?

A. On the evening of the 23rd, having, I believe, taken a late plane on the 23rd. By "late plane," I mean a plane at about the dinner hour.

Q. So that you didn't discuss the matter with him any further at the party and you told him that you would see him later?

A. That's right.

Q. When did you see him next?

A. Monday, on Monday, the 25th. He had been working through the weekend on a rough draft of his story. On this same Monday I received a call from Furman Bisher, who was known to me as a good reporter and a sports editor of the Atlanta Journal.

Mr. Bisher called. He was in town on some business. I don't remember exactly. He was in New York on some business, I don't remember exactly, and he called me and he mentioned vaguely a major story in the South involving

colossi of Southern Football, and did I know about it, and [fol. 967] was I interested in it? These were questions that Furman Bisher asked me.

Since at this time we were not certain what the story was or would be, and had decided on a policy of not discussing any of our reports with anybody, I said no, I didn't.

Mr. Smith: Go to Page 60, top of the page.

By Mr. Lockerman:

Q. Did Mr. Bisher name any names of the colossi that were involved?

A. No, sir.

Q. He didn't?

A. No. He just said he had a big story and I ought to know about it.

Mr. Smith: All right, sir, 63, Line 13.

By Mr. Lockerman:

Q. After talking with Mr. Thomas about your call from Furman Bisher, did you then call Bisher back that day and change the appointment that you had made for the 26th, or did you keep that appointment?

A. No, I changed it to the 25th.

* * * * *

ROGER KAHN, testified further by deposition as follows:

[fol. 968] Cross examination (continued).

By Mr. Lockerman:

Q. Did you or did you not feel that quotes from Alabama players, would also be significant as a part of this story?

A. Yes, I did.

Mr. Smith: Page 81, Line 23.

By Mr. Lockerman:

Q. You also knew at that time that Mr. Graham had reported to you that a man by the name of John Carmichael was supposed to have been present when the alleged telephone conversation was intercepted. You knew that, didn't you?

A. Yes, sir.

Mr. Smith: Page 100, Line 22.

By Mr. Lockerman:

Q. What do you mean when you say he would talk with those players or those coaches that good journalism would indicate?

A. If we could get Alabama players to talk about the specific coaching that they were given in the days leading up to the game, that would be helpful, too.

Mr. Smith: Page 112, Line 11.

By Mr. Lockerman:

Q. To what extent did they tell you that it was a fact [fol. 969] that Georgia didn't have anyone who could quick kick?

A. This is Graham quoting George Burnett.

Q. That is Graham quoting George Burnett?

A. Yes.

Q. And beyond that you did not go in your investigation to determine whether or not it was, in fact, true, did you?

A. No, sir, we accepted the statement from Mr. Burnett.

Q. You accepted that from Mr. Burnett?

A. Yes.

Q. Dealing next with the second point that you made, upon which you based your conclusion to accuse him of fixing and rigging, I believe you stated that it was based on the statement, again presumably by Burnett, that,

“Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by

the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off.”

That was very significant, I guess, from what you have said in convincing you that the game had been fixed and rigged?

A. It's one fact in many, is what it was.

Q. One fact in many?

A. One fact in many facts.

Q. It was one of the facts among those that you just named as having led you to this conclusion?

A. Yes, one of a half dozen facts.

Q. One of about a half dozen facts?

A. A half dozen or so, yes.

[fol. 970] Q. Did you check with Mr. Burnett any further to determine whether or not he had in fact heard Coach Butts make any such statements as that which I have just read and quoted from?

A. No, sir, I did not check any further.

Q. You now know, don't you, as a matter of fact, that no such statement was made by Mr. Burnett to Mr. Graham, don't you?

A. No, sir, I don't know that no such statement was made. I am under the impression that the statement, as published here, is incorrect, but I don't know whether it was an error by Mr. Graham, by Mr. Burnett. I understand, as I say, that this statement apparently is wrong.

Mr. Smith: Page 115, Line 17.

By Mr. Lockerman:

Q. Did you check to see whether or not in fact any passes were thrown to Woodward?

A. Into Woodward's zone?

Q. Into Woodward's zone.

A. No, sir.

Q. You didn't check on that?

A. No.

Q. Did you have anyone check on that?

A. No, sir.

Q. Did you, at any time before you made these charges for fixing and rigging against these two coaches, did you or did you have anyone review the films that were made of the game involved, to see actually what did happen?

A. I asked that that be done and I believe Mr. Bisher said they were unavailable.

[fol. 971] Q. But you did ask that that be done?

A. Yes.

Q. Who did you ask?

A. I think Mr. Bisher. I think on the Monday, the 25th, in that discussion, I think I asked Mr. Bisher to take a look at the movies.

Q. So you went ahead, though, and printed the story without having looked at the movies or without having had anyone look at them?

A. Yes, sir.

Mr. Smith: Page 118,—make that 121, Line 10.

By Mr. Lockerman:

Q. Then it is not unusual for one college football team to be defeated by another by such a lopsided score as thirty-five to nothing, is it?

A. No, it's not at all unusual.

Q. In the editorial block that you wrote for this story, on Page 80, to which we have referred, you meant by what you said there, did you not, to imply that this game had been fixed and rigged by these coaches because of some betting angle, betting by the coaches, didn't you?

A. No, I did not.

Mr. Smith: 129, top of the page.

By Mr. Lockerman:

Q. Did you have any information that there was any payment of any money or any other consideration that

passed between Coach Bryant and Coach Butts for the [fol. 972] fixing that you say that they entered into?

A. No, sir. No indication of any money changing hands.

Mr. Smith: Page 130, Line 13.

By Mr. Lockerman:

Q. Do you know now that since the publication of this article, that Coach Griffith has disclaimed having said that you quoted him as having said, that is:

“I never had a chance, did I? I never had a chance.”?

A. I understand he has and I understand that Mr. Bisher, who was the source of that remark, affirms that it was said.

Q. But you do now understand that Coach Griffith denies that he made any such statement?

A. Yes, sir.

Mr. Smith: 134, Line 11.

By Mr. Lockerman:

Q. So the fact is that you had no evidence of any motive whatsoever for the fixing and rigging, as you claim, of the game?

A. No evidence of motive.

* * * * *

WILLIAM C. HARTMAN, JR. called as a witness on behalf of the Plaintiff after having first been duly sworn, testified as follows:

[fol. 973] Direct examination.

By Mr. Schroder:

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

A. William C. Hartman, Jr.

Q. Where do you live, Mr. Hartman?

A. 342 Dearing Street, Athens, Georgia.

Q. Are you a graduate of the University of Georgia?

A. Yes; I am; Class of 1937, B. S. in Commerce.

Q. While at the University of Georgia did you play football?

A. Yes, sir; I did.

Q. What position did you play?

A. I played fullback most of the time. In my senior year, I played quarterback, halfback and fullback; not at the same time of course.

Q. You were the captain of the team in your senior year?

A. Yes, sir.

Q. And after you left the University of Georgia, did you play professional football?

A. Yes; I played tailback for the Washington Redskins in 1938.

Q. Where were you born, Mr. Hartman?

A. Thomaston, Georgia.

Q. You have been a Georgian most of your life?

A. Yes. I have lived in Thomaston, Madison, Milledgeville, and Athens.

Q. After you retired or left the pro ranks, did you then engage in coaching?

A. I became backfield coach at the University of Georgia January 1st, 1939.

[fol. 974] Q. How long were you on the University of Georgia coaching staff?

A. I was there from that date until January the 16th, 1942, when I was ordered to active duty as a Second Lieutenant in the Reserves. I returned about February 1st, 1946, and remained on the coaching staff until about December, 1956.

Q. And you then retired from the coaching profession?

A. Yes.

Q. And your business is now what?

A. I am a life insurance agent.

Q. And your headquarters are in Athens?

A. Right.

Q. How long have you known Coach Butts?

A. Since 1928.

Q. 1928. That was before he came to the University of Georgia?

A. Yes, sir. When I was playing high school football in Madison, why he was coaching at Madison A & M.

Q. When you were on the coaching staff there at the University, was Coach Butts at that time the head coach?

A. At Madison A & M. I did not go to Madison A & M.

Q. I don't believe you understood. When you returned from the Washington Redskins and joined the University coaching staff, who was the head coach at that time?

A. He had just been selected as head coach at the University of Georgia.

Q. Was Coach Butts the head coach during the entire period that you served on the staff?

A. Yes.

[fol. 975] Q. Did you—your name was mentioned here previously by Mr. Bolton, I believe, as being one that attended a meeting in the office of Mr. Barwick that was attended by Coach Butts?

A. Yes.

Q. Did you attend more than one meeting—

A. Yes.

Q. On this subject?

A. Yes.

Q. Now, Mr. Hartman, I think the meeting that was attended by Coach Butts, he only attended one meeting, did he not?

A. Coach Butts only attended one meeting.

Q. And that would be on Washington's Birthday, February 22?

A. It was Friday, February the 22nd.

Q. Will you, Mr. Hartman, tell us what was said by Coach Butts at that meeting as best you can recollect what it was.

A. Well, we started the meeting shortly after 10:00 o'clock, and we moved over from Cook's individual office

to Alexander Wilson's office across the hall, because it was a larger office. At the meeting, I was there, Cook was there, Dr. Aderhold was there, Mr. Bolton was there, Mr. Colwell was there, Jim Dunlap was there, Bernie Moore was there, and Coach Butts and myself.

Substantially what was said, Dr. Aderhold opened the meeting by stating to Coach Butts that they had had a very serious situation arise and he guessed that Coach Butts wondered why they had asked him to come over all the way from Athens to Atlanta to this meeting, and that Cook, as a law member or the only lawyer on the Athletic Board had done most of the investigation in this situation, that he [fol. 976] would ask Cook to state and give him some idea of what the meeting was about. And so, Cook took over and related to him that on such and such a date that a man had come forward named—no, he didn't call his name, I don't believe, at that moment—and stated that he had come forward with a story that he had overheard a telephone conversation between Coach Butts and Coach Bryant of Alabama, and that during the course of that conversation he had made certain notes on football terminology which he had brought forward to the University's attention, and that was the reason for this meeting.

Q. What did Coach Butts say when he was presented with that statement?

A. Well, actually, I believe, when Cook got to that point he either handed or handed the notes to someone and asked Coach Butts to look at them, and I was watching fairly closely at the time, because—if I may digress a moment, Coach Butts didn't have glasses, and he can't read that type of information without his glasses.

Q. How do you know that? Do you have some background?

A. Well, from 1950 to 1956 it was my duty in every game that we played to type on cards about that size—I don't know what dimension they would be, but cards that you could carry in your pocket, the offensive information and plays that we wanted to use in the game and the de-

fensive information and plays that we wanted to use in the game. This presented quite a problem, because if you were in San Francisco or Los Angeles, or wherever you might be, you had to look up a public stenographer, and it was always a real problem to get a public stenographer who had a typewriter with large enough type so that he [fol. 977] could see it, and we did type that information which is similar information to that contained in the notes on these cards, and we would give him a copy and he would keep them in his pocket, and we'd give a copy to several of the coaches, and the reason that, as I say, that I was wondering how he was going to read that, we had to double space the cards during the course of these ball games over a period of six years in the largest type available, and I was watching him at that point, and I believe, if I am not mistaken, that he borrowed J. D. Bolton's glasses to look at them, and my impression was that he looked at the front page and then he riffled through these succeeding pages, and I didn't think that he really had much knowledge of what information was contained in those notes at that point.

Q. What, if anything, did he say after he had, as you say, riffled through the notes or the sheets?

A. At about the time he got the notes and after he had looked at the front page, his remark was that he had talked with Bryant many times and that it was possible that a telephone conversation could have been overheard, and that he didn't even want to know the name of the individual concerned who overheard the conversation, but that it had been misconstrued, that he had—he had made many telephone conversations to Bryant, and I broke in at that time and I said I could—I knew from my own knowledge that since about 1948 or 1950 that Coach Butts had talked with Bryant many, many times and usually the football—the discussion was about football.

Back in, oh, the later 40's or the early 50's we had a play at Georgia called "37-H," which is a fullback off tackle with the right halfback diving into the line and blocking the de-

fensive guard. At that time it was a right unusual play, [fol. 978] because you didn't usually call on your half-backs to block a big guard as he dove into the line. And Kentucky, when Bryant was in Kentucky in the late 40's, actually that was the first time I ever saw that play, and I saw it in the movies of the Kentucky games, and I remember specifically at that time we took the play from the movies and used it, and I know at that time they had some discussion about 37-H, and over a period of time and since that time to the present he has talked to Bryant many times on football terminology.

Q. You being a coach in the past and being associated with coaches in professional and college ranks, is there anything unusual about coaches talking at some length about football in general?

A. It has always been true, and since World War II, when the T-formation came into play in the American picture, 98 per cent of the teams used the T-formation. That is the first time they had a real common language, because most of all of your T-formation plays have common names. A 29-tear play is probably the 29-tear play at Wisconsin, and this T-formation terminology came into being shortly at the end of the War or after the War.

Now, before that you had your single wing back; you had your double wing back; you had your short front; you had your Notre Dame box. Those plays were not easy to relate to each other.

When I was at Georgia playing under the Notre Dame box, running off a tackle was a 21-1 play; at the same time Alabama using the Notre Dame box it might be a 38 play. There was no similarity at all. But since the advent of the T-formation, there is a common language, and I met a high school coach on the street today, the chances are be- [fol. 979] fore we had talked very long I would ask him how the 31 trap was doing this year, and he would say, "pretty good," or "we are not getting the timing on the guard pulling."

Q. Does the University of Georgia, like universities throughout the country, hold any clinics during the summer attended by these high school coaches and other coaches throughout the area?

A. Since about 1946 or '47 we always had a clinic at the University and used the Georgia coaching staff in the lectures. I think probably that has been discontinued about 1960, but certainly from the time, a period of ten or eleven years there, we did have a coaching clinic, and attendance would be anywhere from 150 to 200 coaches, mostly high school coaches, in some cases college coaches, and the Georgia staff would lecture.

For example, if it was my job to lecture on pass defense, I would get up and say, "Here we are using a 5-4 defense pass, and if you are going to stop a 29 tear pass, you have to do this." The exact terminology is used that we used at Georgia, and it was copied down in many instances, and in many instances by the coach attending the clinics.

Q. The effect of which would be that high school coaches throughout the State would know the designation of Georgia plays?

A. Without question. They would have that in their notebooks by name, number and terminology. I was curious about this about three weeks ago and was playing golf with a high school coach and asked him what the 29 tear pass meant, and he said, "Of course, I know. I have got it in my notebook from your clinics." And I said, "How many [fol. 980] high school coaches would know that?" And he said, "Everyone, practically, that ever went through your coaching clinic."

Q. In these clinics, do the high school coaches throughout the area, are they also taught about the various formations that are used by the University of Georgia?

A. They are given verbatim our complete offense and defense. At that time it was generally in the spring and summer. There are really no secrets in football or any more since the moving picture taking of the games have

come into play. I would be able to almost diagram a Tech off tackle play right now, having seen them in the Georgia Tech-Georgia game. It is all basic terminology.

Q. After Coach Butts borrowed from J. D. Bolton his spectacles or glasses, as you say, to take a look at the notes, what did he say?

A. He said—

Q. Or have I gone into that?

A. He said substantially that, "I have talked with Bryant many times, and it is possible that this gentleman, whoever he is, I don't want to know his name, could have overheard a telephone conversation and misconstrued the football language that was in the conversation."

Q. Was there any suggestion by anyone present at that meeting that Coach Butts sign an affidavit?

A. Absolutely not. There was never a mention made of an affidavit, except in one connection, and that was with the affidavit that Burnett had made me ten days or two weeks previously, and there was no mention of an affidavit being required of him by anyone in the room.

Q. You, or are you familiar with the notes which Mr. [fol. 981] Burnett said that he made at the time of the telephone conversation?

Mr. Schroder: And, Your Honor, I do not intend to go through them one by one. I think we have had enough of that. But I did want to ask him some general questions.

The Court: Let me ask him something.

Examination.

By the Court:

Q. Mr. Hartman, you said the only mention of an affidavit in that conference was with reference to an affidavit which this other party, Burnett had signed; that is the only time?

A. That is the only time the word "affidavit" was used in reference to Burnett's affidavit.

Q. I believe you said his name wasn't mentioned at that time?

A. His name was not mentioned at that time.

The Court: What was your question, Mr. Schroder?

Direct examination (continued).

By Mr. Schroder:

Q. Take a look at Defendant's Exhibit No. 12, please, sir, which you now hold in your hands, and tell me whether or not you are familiar with copies of those that you have seen?

[fol. 982] A. Well, I have seen these and also copies too. Of course, it's been some time since I have seen them. There are two items in this that are untrue. One is "can't quick kick." I assume they are talking about Georgia. Well, everybody knows that a T-formation quarterback from the T, lining up in the quarterback position, can't quick kick; he'd kick his center in the rear if he did, because there is only one foot behind; he is only one foot behind him, but everybody in the Southeastern Conference in the business of coaching football knows that the University of Georgia did quick kick, and they quick kicked by using that second string quarterback Saye, and they would put him about six to eight yards back of the center in a double wing formation or a shotgun formation or a short punt formation or some similar formation of that type where he would take the direct snap from the center and would have room to quick kick.

If I had been coaching Alabama and Coach Butts had told me that Georgia can't quick kick, I would have thought he was setting me up for a kill, because Georgia can quick kick and has done so in 1961.

Q. If you were, as you say, coaching the University of Alabama in preparation for a game to be played with the University of Georgia, and the information contained in those notes which you have there in your hands was given

to you nine days or eight days before the football game to be played, state to the Court and Jury what assistance that would be or would not be to you in preparing your team to play the University of Georgia?

A. Well, I don't think it would be of any significance at all, because most of the technical information in these notes are basic T-formation plays. The University of Alabama, LSU, or anybody else, anybody in the United [fol. 983] States, somewhere in their offense has all of these plays.

And Georgia, for example, there is a lot of reference in here to slot right and things of that type. Georgia, in 1961, did use a slot right, and Alabama must have seen at least three or four movies, if they follow standard procedure on scouting, they saw the spring practice game of Georgia in 1962, and Georgia, in 1961, did use a slot right, and Alabama opening game of the year, would have to use slot right in the practice or they would not have been prepared to play it the first game.

So that if I had been Bryant, and my assistant coach had been scouting Georgia through movies or through the spring practice game, by August the 15th or certainly August the 25th, I think I would have known that Georgia had been in a slot right so many times, had been in a slot left so many times, that from slot right they would run a 27 play so many times from slot right, they would run a 46 play so many times. That is the type of statistical information that you really need to know in order to know the pattern that your opposing team is going to take.

Another item in this thing is a well disciplined football team; a "well disciplined ball club" is the way it reads. That is not true, because Georgia was not a well disciplined ball club, and most of your references here to personnel would be a matter of opinion.

Now, here is one. I don't know whether they go together or not, but there is a line that says "29-0 series, Babb catches everything they throw." If that term "Babb catches everything they throw" is related to 29-0 series, it would

be impossible. 29-0 series is a series which means 29 over-[fol. 984] pass. The 2 back, the halfback, that is part of the designation of the signal. The 9 means the hole, the widest hole to the right. It means the 2 back and the 9 hole is going to catch the overpass. I will coach it by going out and lining up as a flanker or they will put him in motion in the 9 hole. The 29-0 series, it would be very unlikely the end would catch the pass. It is designed to go to the man in motion or the man flanking.

Q. Then your testimony is, as I understand it, that if you were preparing to play the University of Georgia's football team, and that was given you, those notes were given you, you do not feel that you would make any use of them because they wouldn't be of any help to you?

A. No; I don't think it would be of any help to me. I would rely on my own scouting information I had gotten through statistical study.

Q. I forgot to ask you this a minute ago. Since your graduation from the University of Georgia, had you any connection with the Alumni Association?

A. Yes. I was President of the University of Georgia Alumni Society in two years and running; I think it was '51 or '52. I was President of the entire University of Georgia Alumni Society, and I am on the Board of Trustees now of the University of Georgia Foundation. I am at the present time Joint Chairman for the Georgia Side of the Joint Tech-Georgia Development Fund Drive over the State outside of the Atlanta area, and I did that job last year also, and I am repeating it this year.

Q. Since Coach Griffith became head coach at the University of Georgia, have you on occasion had the opportunity of discussing the team or the coaching staff with Coach Butts?

A. Yes, sir; I have.

[fol. 985] The Witness: Could I get a glass of water?

The Court: Sure. Bring Mr. Hartman a glass of water.

The Witness: You want me to go ahead and start answering or wait?

Mr. Schroder: You better wait.

The Witness: What was that question, now?

Mr. Schroder: Read it back.

(Whereupon the last propounded question was read aloud by the Reporter.)

A. (By the witness) Yes. Coach Butts and I, of course, have been talking about football for twenty years or more, and it is very seldom that we get together that the discussion doesn't get around to some sort of technical football discussion. Back when he resigned as head coach, whenever it was, '61, maybe, we were discussing the change in the coaching staff, and Johnny had just been made head coach at Georgia, and Coach Butts' statement to me at that time was that he thought Johnny was a conscientious young fellow who was a good organizer and who would do well in recruiting in his contacts with the Alumni, and [fol. 986] he thought the cause of his organization ability that he had a good chance of being successful. At the time I didn't agree with him, and we don't always agree on football, because I thought that he lacked—that he lacked Southeastern Conference experience, but he had mentioned to me a number of times since then that he thought that he would do a good job from the standpoint of being willing to work and having the organizational ability, and given time that he would be successful. And I always said, "I hope so." But I didn't know because the lack of coaching experience is a big factor when you get in the SEC.

Now, from time to time we have discussed the defensive and offensive plays of the football team from a professional objective standpoint. Most of the time Coach Butts would say, "Now, you can't talk about this to the man on the street because they wouldn't understand. It would have to be confidential." But we discussed the end play on the loose 6, the tackle play on the loose 6, the line backer play of the loose 6, and among other things, reference to defense, and we thought the tackle play was not good, that they were not getting across the line of scrimmage and

not making contact and were ending up in the defensive secondary lot. The linebacker in many instances was being caught on the inside on a lot of things, and it was that type of professional criticism. We do the same thing about Auburn. We do the same thing about Georgia Tech. Any good football teams in this area, when two coaches get together, you are bound to get into a professional critique, you might call it.

One of the last discussions we had was on Lotheridge at Tech, and we agreed he did a real good job when he im-[fol. 987] proved and got to running around back there, but he probably ought to get back in the pocket quicker and stand up straighter and improve his basic techniques. That is not a criticism of Lotheridge; that is just us two football coaches talking.

Q. Making an observation?

A. Yes.

Q. When Coach Butts was head coach at the University of Georgia, who was his most severe critic?

A. He was. Also my most severe critic at times from a football standpoint.

Q. Well, you have, from what you have said, gathered the impression that Coach Butts was a supporter of Coach Griffith at the University?

A. In all my conversations with him he was—he has, certainly up until recently, he has said he still thought that the boys on the coaching staff were—would hustle enough and would be organized enough to come out on top, and certainly he—he made that statement many times in the face of much opposition from a lot of people.

Q. Coach Hartman, over the years has Coach Butts or not had, shall we say, clear sailing with some member of the Board?

A. Well, anytime you are trying to build a successful team in the Southeastern Conference, it is a terrific job, and I would say that over a period of time from 1939 until 1958 or '59, '60, along in there, it's been a terrific struggle because of the dollar problem. The University of Georgia