

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Wednesday, July 31, 1957

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The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Mus-selman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

| | | | |
|---------|-----------|------------|-----------|
| Adams | Carlton | Getzen | Morgan |
| Barber | Carraway | Hair | Neblett |
| Beall | Clarke | Hodges | Pearce |
| Belser | Connor | Houghton | Pope |
| Bishop | Davis | Johns | Rawls |
| Boyd | Dickinson | Johnson | Shands |
| Brackin | Eaton | Kelly | Stenstrom |
| Branch | Edwards | Kicklitter | Stratton |
| Cabot | Gautier | Knight | |

—35.

A quorum present.

CHIEF JUSTICE TERRELL: We will have the Prayer by Senator Edwards.

SENATOR EDWARDS: Our Father, we thank Thee for this opportunity to come to Thee this morning very humbly and sincerely. We are human and weak. We have many times said things that we should not have said; we have had thoughts that certainly were not in keeping with Thy desires, and we have done things that we should not have done. We seek forgiveness for all of our sins. We also seek Thy wisdom and knowledge, and desire to do justice and to do good in order that we might live a life which be pleasing to Thee and in keeping with Thy will.

We give thanks to Thee for this privilege of being able to come to Thee in prayer, in the twinkle of an eye. We give thanks to Thee for our country and our government. We pray for those who are in authority, that they may be fair and exercise their power with the spirit of the Golden Rule and of brotherly love.

We thank Thee this morning for our families, loved ones and friends. We especially pray for those who are in trouble, sick and afflicted.

We ask for peace on earth and good will towards men.

This we pray in the name of Jesus Christ, who died on the Cross in our stead.

Amen.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the

House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Tuesday, July 30, 1957, was dispensed with.

The Senate daily Journal of Tuesday, July 30, 1957, was corrected and as corrected was approved.

MR. BEASLEY: Mr. Chief Justice, yesterday afternoon the prosecution announced that it rested, and we discovered that we had failed to introduce a matter in evidence which we would like now to ask that we be permitted to withdraw our rest and just introduce this paper in evidence.

CHIEF JUSTICE TERRELL: There being no objection, that will be the order.

MR. BEASLEY: Mr. Chief Justice, at this time the prosecution wishes to offer in evidence portions of the Canon of Ethics, which applies to Circuit Judges, or to Judges, and those complained of in the Bill of Particulars, of which we say that Circuit Judge George E. Holt violated.

These are Canons 4, 12, 16, 24 and 26, 32 and 33.

That is one exhibit.

(Whereupon, said Canons of Ethics were received in evidence as House Managers' Exhibit 44).

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Will the Chair give us about three minutes, please, sir, to discuss a matter with the attorneys for each side?

CHIEF JUSTICE TERRELL: Yes. The Court will be at ease for about three minutes, according to Senator Davis.

Whereupon, beginning at 9:35 o'clock, a.m., the proceedings of the Senate were suspended for a few minutes.

CHIEF JUSTICE TERRELL: Order in Court. Quorum present.

MR. BEASLEY: Mr. Chief Justice and Members of the Senate, the prosecution now rests.

MR. HUNT: Your Honor, I have a motion to present which, with the permission of the Court—it is very short—I will read it as a part of my presentation.

MR. BEASLEY: May we have a copy of it, Judge?

MR. HUNT: Yes. We have sufficient copies to go around, if Mr. Davis is available.

(Whereupon Mr. Linn, Assistant to Secretary Davis, distributed documents to the Senators and others present).

MR. HUNT: Mr. Chief Justice, Members of the Senate sitting as a High Court of Impeachment:

Upon this occasion the Respondent, at the conclusion of all the State's evidence, comes forward to lay before you, as Judges of this Court, his motion for judgment of acquittal. It is presented by way of renewal of motion to dismiss which was incorporated in the answer. With your permission, I shall read it:

"Comes now the Respondent in person and by his undersigned counsel and moves the Senate sitting as a Court of Impeachment to enter a judgment of acquittal, and assigns the following reasons therefor:

"1. The Managers on the part of the House of Representatives have failed to prove that the Respondent is guilty of misdemeanor in office.

"2. The evidence before the Senate is legally insufficient to support the single charge of misdemeanor in office or to warrant continuance of further proceedings herein.

"WHEREFORE, the Managers of the House of Representatives having failed to present a case of constitutional misdemeanor in office against Respondent, or evidence of sufficient probative force and value to warrant a continuance of the proceeding, the Respondent, without waiving his right to present evidence in his own behalf if necessary or required, now prays that the Senate enter an order of acquittal herein."

At the outset I would like to make the observation that for the first time in history the Members of this august body find themselves transmuted or transferred, by operation of law and by force of your several oaths to Almighty God, from political Senators of the State of Florida to judicial Senators of the State of Florida, than which this state has no higher office.

You will recall that in order to accomplish this transmutation from political to judicial office, you were required to take a second oath and to pledge a second covenant with Almighty God. That oath required that you judge this case not upon political considerations but upon the evidence and in accordance with the laws and the Constitution of this state.

Mention has been made previously of the situation which exists in the Senate upon receipt of a communication from the Chief Executive having to do with his suspension from office of some State official not subject to impeachment but subject to suspension for any of the six stated constitutional grounds found in our Constitution.

I call your attention to the fact that when any such communication is received here, it is received and acted upon by way of confirmation or rejection of the judgment of the Chief Executive of this State, and I call your attention to the fact that any judgment entered by the Chief Executive of this State on those matters is preceded by an orderly trial, under the law, where the Respondent, called before the Chief Executive, is accorded counsel, the right to summon witnesses, the right to be heard at length, and all due process and forms of law are accorded to a man hailed up before the Governor in that situation; and there and then his trial takes place.

Under the current situation involving Judge Holt, he has for the first time the opportunity to face a trial. The House did in no wise try this case. The House did not pretend to try this case. The Article of the House, sent over here, is likened to the accusation or the information of a State's Attorney, sent to a Circuit Judge, to place any defendant on trial, or it may be likened to a Grand Jury indictment laid before a Circuit Court to place any defendant on trial; and when that paper is laid before any such trial judge of this state that judge sits there impartially as between the State's Attorney and the defendant or the Grand Jury and the defendant, as the case may be, and he knows it is his duty and the duty of his Court, under the law and under his oath and under and by virtue of his Commission to that public trust, to accord that defendant a full, fair and impartial trial under the laws and the Constitution of this state. There is where justice resides—in the trial court, not in the accusatory body or in the State's Attorney's office or in the County Solicitor's office. Those people, for the most part, are expected to be more or less partisan in the way they tear out after people and put them on trial. They represent the state's side of an issue, and we must have courts, we must have Judges, who are not overcome by the fact that an indictment has been laid upon the Bench for trial or that an information or other type of accusation has been brought forth, charging a man with the crime, because under the old-fashioned American concept every man is presumed to be innocent until the State has, by competent evidence, proved his guilt beyond a reasonable doubt.

Now, this defendant comes before you under law and pursuant to a passage in the brief submitted by the Chief Justice, which you will find on Page Fifteen, sub-paragraph seven:

"A reasonable doubt of guilt must result in an acquittal."

Stated otherwise, this holding follows the ancient common

law that in any penal case it is incumbent upon the prosecution to prove the defendant's guilt beyond a reasonable doubt, and that failure to establish any material allegation of the indictment or charge must be resolved in the defendant's favor by a verdict of acquittal. That is the law.

This holding further means that the defendant comes before the Court cloaked in a legal presumption of innocence, and the gentlemen of the Senate will recall that, by the justiciable ruling of the Honorable Chief Justice, newspaper clippings and expunged, outlawed Grand Jury reports are stopped at the portals of this chamber of justice, and they have never entered here. They are not to be considered; they are not here as evidence; and it is the conscientious duty of each and every Senator, in trying this Respondent, to erase from his mind that which the local political enemies of the Respondent here on trial—with which they have brain-washed the public for the last year or so. Those matters are not before you as legal evidence, and if you have any consideration for them in your consideration and deliberation over the issues of this case, you will work an injustice to the Respondent and to your oath to try him upon the evidence only and under the laws of Florida.

The Respondent comes before the Court cloaked in the legal presumption of innocence, and this presumption attends him and abides with him through every stage of the trial until the State has, by competent evidence, removed the cloak of innocence by establishing guilt of wrongdoing, within the accusation and beyond every reasonable doubt. Any doubt as to the defendant's guilt or innocence which is based upon the evidence or lack of evidence is a reasonable doubt and must result in the defendant's acquittal under the law of the land.

Circumstantial evidence properly connected with the charges and germane to the issues is legal evidence and may be considered. However, when such evidence is relied upon by the prosecution, such as shoving in all these Kurlan files and just asking you to take pot luck on whatever conclusion you might come to on it—the facts and circumstances which are submitted to establish a circumstance tending toward guilt of the accused must, in their over-all aspect, be consistent with guilt and inconsistent with innocence.

Circumstantial evidence which may be considered consistent with guilt but equally consistent with innocence is not sufficient to establish guilt, for indirect evidence of this type must be positively inconsistent with innocence and wholly consistent with guilt of the accused to be acceptable as a lawful predicate for conviction.

Any doubt which remains in the mind of any member of the Court after consideration of the law and the facts and consultation among his fellows, who are associates on the Court, may be considered as a reasonable doubt and one which establishes the failure of the prosecution to prove the defendant's guilt beyond a reasonable doubt. We have never accepted the rule that it is up to the defendant to establish his innocence but, rather, the rule that he is presumed innocent and that the burden is entirely upon the prosecution to establish guilt.

These considerations proceed from the constitutions of the Federal and State governments and the laws of the State of Florida, and are bedded in the moss-bound American tradition that every man, for any offense under the law, is presumed to be innocent until his guilt has been established by competent evidence beyond every reasonable doubt.

Now, on the matter of wrongful intent. The Senate will recall that at the outset of this hearing, an argument upon the insufficiency of the Article of Impeachment, we contended that the Article was insufficient because it charged no wrongful intent, wrongdoing, any corrupt act, any dishonest act, immoral act, any illegal act or unlawful act, any evil act—anything of that nature. You will find in the brief submitted by the Chief Justice, at Page fifteen, sub-paragraph eight:

"There must be showing of wrong intent."

I would pray that the members of this Senate recall that. It goes on:

"While one may be presumed to intend the necessary results of his voluntary act, it is only a presumption and may not at all times be inferable from the act."

Without belaboring the matter, not one witness has taken the stand to testify as to any wrongful, corrupt or dishonest intent on the Respondent's part in respect to one single transaction brought before this Senate. The suspicions, innuendoes and inferences of the prosecution's arguments constitute the sole sounding before the Senate of improper conduct on the part of the Respondent which in any way touches upon impeachable misdemeanor in office.

The attention of the Senate is respectfully invited to the fact that statements of counsel are far from being legal evidence and that a conviction is never warranted upon conclusions or theories or arguments of prosecuting attorneys, where there is lacking credible evidence of such substantial nature as to prove every material allegation beyond a reasonable doubt.

In a brief discussion of the evidentiary considerations before the Court, number one, the charge that the Respondent borrowed money from an attorney.

In the first place, there is no evidence that the loan transaction between the Respondent and the witness Gersten was a dishonest, immoral, evil, corrupt, unlawful or oppressive act, or one which involved moral turpitude or misdemeanor in office on the part of the Respondent. I wouldn't say that to borrow funds honestly from an attorney on the part of a Judge—one attorney, one borrowing in sixteen years' service—without any showing of a pattern, with no showing whatever of any intent to repay that loan by judicial favor, or for any consideration except the cold cash of the realm—I wouldn't say that from that single isolated occurrence you could possibly assume immorality or corruption or oppressiveness or evil motives or misdemeanor in office.

In the second place, the evidence in this matter shows conclusively that within nine days of the \$2,185 transaction the Respondent, by a check signed by his wife, duly repaid a portion of the loan. Mrs. Holt sent Gersten her check for \$400 within nine days from the borrowing of the \$2,185; and the Respondent, by a negotiable and ordinary and customary promissory note, bearing interest at six percent, duly delivered to the lender, obligated himself to pay the balance of \$1,785 upon demand. Thereafter, following an interruption of time and of the Respondent's normal pursuits by a severe brain injury requiring hospitalization and medical attendance for a considerable period, with resulting costs and outlays for hospital bills, physicians' bills, nursing charges and convalescent expenses, the Respondent began, without demand, to make payments upon said note obligation and by, to wit, April 11, 1957, had discharged and satisfied said note obligation by payment of principal and interest in full. I am sure that since the repayment of the \$400 portion of that loan transaction took place in February, which was many months before the first wildcat Grand Jury in Dade County ever began operation—I am satisfied that the members of this Court will accept that as an indication and as evidence of good faith and an intent on the part of these good people to repay that loan, and not give any favor or barter away any of the powers of his office in any way in repayment of that loan. The payment of that \$400 many months prior to the first Grand Jury situation which developed in our County bespeaks volumes as to the sincerity of the Respondent and his wife in connection with that transaction. There is no mala fides of any kind in connection with it.

Now they place in evidence a file showing that Judge Holt appointed Gersten as guardian ad litem. The evidence shows that the Respondent on one occasion appointed the lender, Gersten, to act as guardian ad litem in an estate case, a curatorship involving upwards of three million dollars in value. The evidence shows that the Respondent had first appointed another attorney to that position, to wit, the Honorable John G. Thompson, of the firm of Smathers, Thompson and Dyer, and that the Respondent only appointed the lender as guardian ad litem when it became known that the said Thompson was unable to serve. This is in the order which is before the Senate, reciting that Thompson had been appointed but he was unable to serve; thus negating the idea that the Respondent entertained any intent to enrich or favor the lender.

The said lender, according to the files and records of the case, performed his duties as guardian ad litem in a manner conformable to law and recognized procedure and with efficiency and ability, which were approved and commended by all parties to the litigation, including the wife-curator of the incompetent.

The evidence conclusively shows that the compensation awarded to the lender by the Respondent for his time and services not only was reasonable and fair but that same was fixed without the presence or participation of the lender himself in any way, upon a motion presented before the Respondent by Mr. Brunstetter, whose name has been mentioned, the attorney for the wife-curator, and that the amount met the complete satisfaction of the wife-curator, who promptly sent her check, with a note of thanks, to the lender.

That in these circumstances, gentlemen of the Court, we submit there is no evidence before the Senate, sitting as a Court of Impeachment, of any act on the part of the Respondent which constitutes misdemeanor in office.

On the question of excessive and unnecessary fees, the Honorable Members of the House and the Honorable Managers of the House more or less have constituted themselves into an appellate tribunal, to pick up dry, unspeaking court files and make at least a preliminary determination, to their own satisfaction, as to whether the Respondent has been guilty of awarding excessive and unnecessary fees.

In that connection, I call the Senate's attention to the fact that there is no evidence that the allowance of compensation to Court appointees by the Respondent was dishonest, immoral, corrupt, evil, unlawful or oppressive, nor that said allowances amounted, per se, upon their own face, to misdemeanor in office.

The evidence affirmatively shows that compensation allowances to Court appointees by the Respondent were made only after due and proper application and proof, duly submitted in open Court and hearing and in the exercise of judicial judgment and discretion duly vested in the Respondent by law as Circuit Judge.

In this connection, the Managers of the House have introduced before the Court several files, in which a Reserve Navy Captain named Kurlan had been appointed by the Respondent to serve the Court. If any of the members of the Court care to have any of the figures which I am about to roughly and briefly detail and which you will find upon examination of each one of those files, you might get it as you travel along with me.

There are three Belmont cases. If counsel for the opposition only have two, I'm sure that if they will examine those two they will find that, somewhere, there is a missing third. That case was filed as a mortgage foreclosure of some several hundred thousand dollars by the Blackwell, Walker and Gray, one of the leading law firms in Miami, on behalf of First Federal Savings and Loan. Now, the so-called Belmont cases have, as the plaintiff, First Federal Savings and Loan. There are three related cases.

The final decree in case number one—I leave off the odd dollars—was \$255,000. The decree, by the way, was entered July 13, 1954.

The decree in case number two was \$260,000, and the decree in case number three—this was a whole bunch of apartments—in number three was \$511,000, making a total of \$1,028,471.

Upon application of the First Federal Savings and Loan to the Court, the complaint recited that the construction on this job had stopped. The property had never been completed and had been deserted by the mortgagor. Upon such an application, Judge Holt appointed two receivers, one an attorney who also holds a Degree in Engineering, named Didrence, and the other Mr. Kurlan.

The file will reflect that the property was completed by those two gentlemen and opened up in a manner which was completely satisfactory to Blackwell, Walker and Gray and to First Federal Savings and Loan of Miami, and that those people themselves set as fees for the receivers and paid as fees for the receivers \$10,000 to Mr. Kurlan and \$5,000 to Mr. Didrence. There was no appeal whatever. They were completely satisfied with the fees and, in fact, negotiated the fees with the receivers themselves. The files, as I say, reflect no appeal.

At the final sale the total bid for those properties was \$800,000. The receivers had been appointed January 18, 1954 and placed under a \$50,000 bond each.

So it is that in the largest and most impressive case, in

amount, before the Senate from Mr. Kurlan's standpoint, someone who just wants to look at the big figures and criticize somebody, has raked up this case and cast it against Judge Holt. You won't find any of the parties complaining; you won't find any of the attorneys complaining, and you won't find any exception to anything that Judge Holt did in the case; and if it satisfied the attorneys and if it satisfied the parties, who owned the property and owned the money that was dealt in, I should say that a lot of people have been wasting a lot of valuable time.

The second case is Oceanic Villas versus Malloy. That involved a \$225,000 mortgage foreclosure. Now, Judge Holt did not appoint Mr. Kurlan in that case. In that case Mr. Kurlan was selected by another Judge. Judge Wiseheart, the present senior Judge of the Eleventh Circuit, appointed Mr. Kurlan on June 1, 1955, in that case. He served until January 26, 1956.

The final decree entered in the case was for \$155,166. Upon Master's sale on the Court House steps, the property brought \$158,500. Upon application, a receiver's fee of \$8,500 was agreed to by the parties and ordered, by way of approval, by the Court. There was no appeal, none whatever.

So there, again, both the attorneys and the parties who owned the property and owned the money dealt with before Judge Holt, were perfectly satisfied with what happened, and they haven't pretended to produce a witness yet to the contrary.

Case number three, the Mayflower case, involving the Variety Hotel. Judge Holt appointed Mr. Kurlan receiver on April 15, 1954, and he served until October 15, 1954. He was appointed at night around nine-thirty, according to the notation on the file. Judge Holt was the emergency Judge. They are assigned by the week, and they rotate. He was the emergency Judge for that particular time. Mr. Kurlan took charge around nine-thirty p.m.

A law firm on Miami Beach, headed by an attorney named Morris Berick, who is on our witness list, handled the entire transaction; and there, again, a fee to Mr. Kurlan of \$5,000 was fixed by the parties and the attorneys involved, and the fee of \$5,000 was awarded to Mr. Berick's firm.

Now, that case was appealed, gentlemen of the Senate. It went to the Supreme Court of Florida, and the decision of the Supreme Court upon the appeal was entered July 27, 1955 and is to be found in 81 Southern (2d) 719, in which the Court affirmed Judge Holt. So there is appeal number one and affirmance number one from an order of Judge Holt involving Mr. Kurlan.

The fourth case is Perriau versus Czaplicki. We more easily refer to that as the Salem Inn case. That case, upon being filed in the Clerk's office, was processed to the division of Circuit Judge Pat Cannon in the first instance. Circuit Judge Pat Cannon, over his own signature, which you will find in the file, acknowledges personal friendship for one of the parties and recused himself. The file thereupon was laid before Judge Holt as senior Judge.

Judge Holt acted upon the application and appointed Mr. Kurlan on the 25th of October, 1954, and he served to May 27, 1955.

Now, the Salem Inn was a small-type bar-restaurant on the banks of the Miami River. Some of you may have been acquainted with it in the older days, when you could go in there and eat a fish. However, it was an empty transaction by the time one of the partners undertook to take his complaint before a court of equity to prevent the other partner from completely ruining it.

Mr. Kurlan, as I said, served until May 27, 1955. There was an attempted sale of assets, by agreement, but there were no bidders for the assets.

Finally, the parties composed their differences, and the parties fixed Mr. Kurlan's fee at one thousand dollars and an order was entered to that effect. There was no appeal whatever. There was not even a final decree. The parties composed their differences; so there is another instance of where people, bent upon mischief, undertaking to hurt this Respondent, have raked up a case, which he handled to the entire satisfaction of the attorneys and parties involved, but not to the satisfaction of those who would like to boot him out of his office.

The next case is Basso versus Basso and St. Lucie—well, I don't have the rest of it in my notes. That started out as a divorce action. Kurlan was appointed receiver of what turned out to be an empty corporation. The action was removed to the United States District Court, where Judge Barker appointed Mr. Kurlan to be his Trustee of those assets and, so far as I know, it still rests in that condition; and, so far as I know, the files reflect the payment of no fee to Mr. Kurlan. He received no compensation in that case, so why it is included by the House Managers to begin with is a mystery to me.

The next and final case in the Kurlan category was the Flame Restaurant—and you gentlemen will remember the rather interested and biased witness that we had here on the stand for awhile. The hatchet that he brought in here with him practically stuck out of his pocket—but you will recall that Judge Holt appointed Mr. Kurlan and he, in turn, placed these two gentlemen on that day and night operation, located sixteen miles south of Miami. You will recall that the receivership lasted approximately twenty-two days.

There was an appeal from the order appointing the receiver. This was an employment agreement squabble, and there was also an appeal from an order entered by Judge Wiseheart which denied a supersedeas bond. The Supreme Court reversed Judge Wiseheart and ordered a supersedeas bond pending the appeal. The bond was provided, and, on the twenty-second day from the filing of it, preempted Mr. Kurlan and ended his twenty-day receivership.

The Supreme Court ultimately ruled, in 82 S (2d) 371, that the complaint and evidence were insufficient to warrant the appointment of a receiver.

Now, the fee situation in that case, of \$2,200, was assessed by Judge Holt against the plaintiff. You will recall that the very interested and ambitious young man before the Senate represented the defendant. The attorney for the plaintiff is on our witness list. You will recall that the plaintiff paid that \$2,200 as a part of the costs in this case—not the client of Mr. Keith, who came up here to testify, but the plaintiff who brought the suit improperly finally had the cost assessed back against it, and was completely satisfied, as was his attorney—witness the fact that there was no exception and no appeal—to pay the \$2,200 to Mr. Kurlan.

So there, once again and finally, so far as the Kurlan phase is concerned, is another case where none except the political enemies of this Respondent, who seek to pick out some of the over-all big stuff, you might say—some of the attractive goodies that they can think of and that human ingenuity can mass together, with which to attack the Respondent under this particular section of the charges.

If the Senate will, on its own, examine those files you will find that I have not exaggerated or misquoted any situation—that is, I'm not conscious of it.

Now, on the question of these allowances—I'm not going to beg the proposition too long—I think it is interesting to read from the old Florida Assembly Journal of 1871, Pages thirty-five to fifty-six—the final disposition of the Impeachment Articles which previously had been voted against Circuit Judge James T. Magbee in 1870. In 1871 the Assembly—it seemed to meet every year in those days—a survey committee was appointed by the House to see, in effect, if the Assembly had done the right thing in voting impeachment charges against Judge Magbee. The report back had primarily to do with the legal status of a discretionary act. In this case before this Honorable Court the discretionary acts upon which we are attacked have to do with orders involving allowances—allowances of compensation to Court Appointees. In the Judge Magbee case, Judge Magbee seemed to have some predilection to sentencing attorneys for contempt of Court and putting them in jail, and I believe his ordinary sentence was for ten days, and my guess is that in those days, by the time a fellow could get a buggy up to Tallahassee and get a supersedeas he would easily have served the ten days, so it was a right effective judgment.

But, anyhow, the House Survey Committee reported to the House. The gravest charge contained in the charges is the punishment of William B. Henderson for alleged contempt of Court and the Committee finds upon examination of the proceedings that the act of Judge Magbee is sustained thereby; that, at the most, the execution of the power of the Court to punish for contempt is in great measure undefined, and

being not expressly limited by any statutory enactment—the same situation that we have in fixing compensation—we believe that the execution of a power so undefined and unlimited as shown in this case, not to be a proper ground for impeachment. We therefore find it inexpedient to further prosecute.

Now then, that may be said to be the beginning of the Florida situation upon that point, and I would like to call the Senate's attention now to what may be considered as the end, the most recent decision of our Supreme Court upon the subject.

In this case, State versus Interim Report of Grand Jury, 93 S (2d) 99,—the case grew out of an appeal by former State Attorney Brautigam from the refusal of one of our Circuit Judges to reject a proffered Grand Jury Report—the same one which later was taken out of the public records after the Circuit Judge had permitted it to be filed. Upon the point in hand, the Supreme Court of Florida said this, on Page 103 of the Report:

“The decisions made by the trial Judge—” and before the Court was squarely nothing but this so-called Dowling case. That was the entire subject of the first outlaw Grand Jury Report in Dade County, as this case will disclose—and I trust you gentlemen of the Senate will listen to this, because this is the law upon which you gentlemen have a covenant to try this defendant:

“The decisions made by the trial Judge, were, however, the exercise of a discretionary power vested in him by our organic law and from which no appeal was taken by the interested parties. It is not official misconduct for a Judge to make a mistake on operating within the scope of the power vested in him by law.”

Now, that is saying the same thing that that old House Survey Committee reported back to the Assembly in the year 1871—that it is not official misconduct for a Judge to make a mistake when operating within the scope of power vested in him by law. In other words, when there is no fixed law, no fixed statute, to guide his allowance of awards of compensation to court appointees, it depends on the particular Judge it is before as to what amount will be granted.

You gentlemen know from experience that various Judges, just like varying lawyers, arrive at various and varying decisions. There is no rule of thumb by which, lacking corruption or dishonesty, any man can be criticized for even being wrong in the exercise of a lawful discretion which the law vests in him. If the contrary were true, you gentlemen know, as reasonable men, that you could not find Judges to sit upon the Bench. You would have to define everything that they did and have them purely more or less active in a ministerial capacity in checking the statutes and setting out what the Legislature had determined. But so long as we operate under the ancient common law practice of England to any extent, just so long will you vest discretion in your Judges, and so long as we have the system of popular election, the measure of that discretion will, in good part, depend upon the measure of discretion and judgment and wisdom of the people that the people themselves exercise at the polls.

Your Judges are no stronger than your elections, and never will be; and when the people, under our American system, select a Circuit Judge or a Supreme Court Justice, they act with the view that there is a man in whom is to be reposed some of the highest trust within the gift of a free people, and in whose discretion not only property rights but even life itself often depend.

Some of you gentlemen may have never been faced with the proposition of placing a human being in the electric chair. I have. I know you have one member of the Senate who has; and there, gentlemen, you search deep into your soul for the exercise of all God-given discretion and judgment which you can bring to bear upon the consideration at hand. Life itself depends, under our system, at times, upon the degree and quality of consideration and judgment and discretion that a Judge exercises when he signs his name to an order, and we always hope that he is always right, but, since he is a human being, not given to any of the qualities of immortality, they often make mistakes. They often make mistakes, and those mistakes must be corrected by appellate procedures. We have these checks and balances, and God pray that the day never arises that we lop off a man's head because he has entered a discretionary order, which we, in our casual view of the

situation, not being present, not having heard the witnesses, not having the feel of the fast-growing large community, not being in a position to judge the matter as the Judge was in a position to judge it—God save us the day that people ever sit in such a remote place and deprive a worthy public servant of an office to which the people have elected him successively, on a matter involving discretion, and one which is entirely unconnected with even an allegation, let alone proof, of any immoral or corrupt or dishonest act.

Now, recurring to excessive fees for a moment, you will recall the big telephone figures laid before you by the House Managers with reference to the Peoples Water and Gas Company case, something that developed some seven years ago, and you will recall that Mr. Whiteside was questioned about the participation of his firm in that case, and he made it abundantly clear that the order of Judge Holt fixing costs as impositions against the consumers came about as a matter of law, and that his firm had, over the years, which he detailed, date by date, received its entire agreed compensation of \$50,000, with the exception of some \$15,000, and that came along about that time and had nothing to do with whether or not Judge Holt allowed all costs as impositions against the consumers.

Now, in that same regard—I know that some of the members of this Senate were aware that the venerable Ben Shepard, City Attorney of the City of Miami Beach, was called up here in connection with that case and for days walked the hallways out here with a cane, and was finally excused and sent back home without being placed on this witness stand. I know that many members of this Court are aware of the fact that a very prominent Miami attorney, a leading Mason, a statewide civic leader, Louis Bandel, who was the Master in that case and who eventually received a fee of \$50,000, spent half a week up here, and, for some reason or another, was finally excused and sent back home. We thought that the House Managers would attempt to prove their case as far as the fees in the People's Water and Gas case were concerned, and, certainly, when the suggestion was made yesterday that they delete or withdraw or abandon some of their so-called specifications, which they could not even remotely hope for this Senate to agree with—we thought that they would certainly strike out the People's Water and Gas case, having sent the witnesses back home and having only talked to Mr. Whiteside about his participation in it; but they didn't. We have to question their sincerity in expecting this Senate to take very much notice of the People's Water and Gas assessment, under those circumstances.

There is no evidence, gentlemen of the Court, that the Respondent, in any manner or fashion, received personal reward or enrichment as a result of any compensation awards to Court appointees. Oh, yes, they try to show that at such and such a time when this appointment was on or when this one was off or when this one was about to be made, that Judge and Mrs. Holt took a trip to Europe. I think the Senate is convinced by the evidence before it, by Miss Frank's testimony, who was produced by the prosecution, that according to all the records and to her personal recollection, Judge and Mrs. Holt paid their own way completely, and Mr. Kurlan, by check, paid his way; that Judge and Mrs. Holt paid partially by some \$800 in cash, a check signed by Mrs. Holt in the sum of \$199.60, I think it was, and, thirdly, a \$1,700 pay-as-you-go borrowing plan through the Pan American people themselves, which they paid out, as we assume—and it is the truth—on the basis of \$158 a month.

Now, that doesn't sound much like Judge and Mrs. Holt intended to take their trip on the beneficence of Mr. Kurlan. They paid their own way and, as I stated, there is no one except those who would like this man's office and like him off the Bench who ever suggested that the fact that he took a trip with the man whom he had appointed several times as receiver, of itself and upon its own face, with no further proof, denotes and proves immorality, corruption, or dishonesty. I am sure that the members of this Court will arrive at no such conclusion, in the complete absence of any evidence bearing upon that subject.

There is no evidence whatever that the Respondent knowingly permitted waste or dissipation of any estate or property under his control as Circuit Judge. This is not the case of Judge Archbald, where the man was actually a crook and put his hands in the pockets of litigants and forced some litigants to settle cases, bought property from others at a price which he himself named; this is not the type of a rascal

that they had to deal with, deal with even in the Swayne case—who, by the way, was acquitted upon trial. He took an entire railroad train from Jacksonville to California, of a receivership under his control—stocked it with groceries and servants belonging to the receivership, invited his family and his friends, and had a real jamboree, and later approved the receivership bills for that entire thing. He also turned in some four or five false vouchers for traveling expenses to Waco and Tyler, Texas, where he was supposed to hold Court, but the technical situation was that he forgot to go to Texas—but he collected the money anyhow.

You don't have anything like that in this case, or even remotely connected with it. In each and every instance of a compensation allowance to a Court appointee, the Respondent exercised a discretion vested in him as Circuit Judge under the laws of Florida, and there is no evidence that Respondent's acts in any case before him proceeded from corrupt or dishonest motives or were of such an unlawful or oppressive nature as to constitute misdemeanor in office.

Now, briefly under the subject of personal relations.

There is no evidence that Respondent has at any time permitted his personal relationships with individuals to unduly and improperly influence his judicial appointments and the allowance of fees to such appointees.

There is no evidence that persons appointed to Court service by the Respondent failed or neglected to bear out and perform their duties and responsibilities to the Court and to the litigants with efficiency and good judgment. They only say he appointed him all these many times. Well, I don't know how it is in other Federal jurisdictions, but the records will show—and what the records show the world knows, and the Senate will take cognizance of the fact—that the Federal Courts in the Southern District of Florida, throughout my experience in Florida have had one or two individuals serve as trustees and receivers in bankrupt estates, feeling that that is the best way to conserve assets before the Court. It seems to be a manner of opinion as to whether a Judge will scatter these appointments among a whole host of friends—maybe political supporters—or whether, for efficiency's sake, he will take one or two or more and limit his appointments to those people who, in the course of time, become familiar with the manner in which to take over a property, to serve the order, to appraise the assets, to report to the Court, and all the many things that are required of a Court officer taking charge of a going property; and it becomes a matter of choice.

The Judge is responsible, in the long run, for what? Not whom he selects. That goes into personalities. I might like him and you might not like him—but for what those files reveal, for the manner in which he discharges and performs that Court service on behalf of the litigants and under the direction of the Court. It doesn't make any difference whether his name is Kurlan, Jones, Hunt or Smith. The Court itself is responsible for the results, and who can criticize the Judge anywhere that he places his confidence and his trust in people well known to him to have the fitness and qualifications for the job and in whose judgment he is willing to rest his own responsibility to the litigants and under his Commission to office.

It has not been established that a Circuit Judge is precluded from selecting as appointees persons of known efficiency and ability, and in whom the Court, in discharging his own responsibility, is willing to entrust the duties imposed upon the appointees.

It has not been established that a Circuit Judge in Florida is guilty of misdemeanor in office for appointing to Court service capable friends or acquaintances of said Judge, known by him to be qualified and capable to handle and discharge the responsibilities and duties required in the particular circumstances expressed in the order of appointment, that any rule, law or custom requires that a Judge refrain from appointing friends or acquaintances of known ability to such offices.

And, once again, I have never heard of a Judge appointing an enemy or someone he didn't know to any of these Court appointments. I believe that same theory runs all the way from Washington, down through the entire system.

Now, under "Gifts and Favors."

There is no evidence that the Respondent accepted gifts or

favours from attorneys of such real, considerable or substantial value or nature as to constitute misdemeanor in office.

There is no evidence that any gift or favor from an attorney was conferred upon or received by the Respondent, with the expectancy or solicitation on his part; nor is there any evidence to show that, in consideration for any such unsolicited gifts or favors from attorneys, that the Respondent bartered away, abused or misused the powers of his office.

There is no evidence that the occasional acceptance by the Respondent of unsolicited and unexpected gifts or favors, of minor and unsubstantial value, at customary and usual times common to the American social tradition, such as Christmas and Wedding Anniversaries, constitutes misdemeanor in office within the letter and spirit of the Constitution of Florida.

There is no evidence that, in return for any unsolicited gifts or favors, the Respondent committed one single unlawful official act, or any conduct which was, within itself, inherently dishonest, immoral, corrupt or oppressive, in the discharge of his duties as Circuit Judge.

On this question of the purchase of two Jaguars, one for Judge Holt's brother in June and the second for Judge Holt's family in July of 1955—Judge Holt knew that his lifelong friend, Thurman Whiteside, was the attorney for that company. He called him by telephone, probably to see what kind of a price he could get, and Thurman Whiteside called his client and asked him to sharpen his pencil, do as good for the Respondent as he could. I think his testimony was that he asked Mr. Watts to sharpen his pencil. He did it not only on the first occasion, but he did it on the second occasion. He did it as a favor to a friend and not as a favor to a Judge. Thurman Whiteside, with an average over the past five or six years of a hundred and twenty-five or a hundred and thirty thousand dollars gross income, that he testified to before the Senate—he needs nothing that Judge Holt has except his friendship. He has none of his appointments, he wants none of them. He regarded him as a friend and has since boyhood, and if it is a sin for anybody, Judge or Priest, to call a friend and ask him if he can help him shave a price on an automobile, a Frigidaire, or anything else, then I am guilty of it, and I'll venture my soul that every man in the Senate is guilty of the same thing.

There is no law or evidence before the Senate that an isolated and single investment of personal funds by the Respondent in a novel brokerage undertaking to purchase outmoded aircraft parts, war surplus, from local war surplus sources, and arrange sales for same to different Canadian agencies for agreeable profits, constitutes impeachable misconduct in office.

The man, as he said, Mr. Whiteside, offered his friend Judge Holt a flier in such amount as he felt he could afford to lose, with the thought that if they hit, so to speak, the return should be substantial; if they didn't hit, the investment would be lost, because of complete lack of a market for that particular outmoded aircraft cylinder. They happened to hit, they happened to make a profit. It was acknowledged on all hands, and if the House Managers would return to us, as we requested in pre-trial conference, a box of cancelled checks and all the income tax reports of the Holt family, that they have in their possession, the gentlemen of the Senate would find—and I am sure the House Managers, if they would check, would agree with me—that the first payment to Judge Holt by Mr. Whiteside, in the year 1952, appears on his 1952 Income Tax return. Later on Judge Holt was advised to hold off, because the final sale had not been consummated, under the testimony of Mr. Whiteside, and at the final conclusion a long-term profit situation would be reported. For that reason, there were no further reports until Mr. Whiteside made his final report to Judge Holt. He took the blame for the long delay himself, and sent him a check for fifty-two dollars and some odd cents, in final payment for the interest which Judge Holts' investment had purchased.

Now, those are the simple facts of the case. There is no concealment. On the other hand, there is complete revelation by the Respondent and his wife as far back as the very year that he made his initial investment and got his initial check back from Mr. Whiteside. Crooked, dishonest people don't act in any such fashion.

Now, I am not going to beg the question about the Canon of Ethics. As I have stated before the Senate, I have read to you from the Report of the American Bar Association,

over the signature of the distinguished William Howard Taft, the Chairman of the Committee, that the Canon of Ethics was never devised to have force of law in this country.

At the outset of this hearing I called your attention to the one and only decision of any Court of Last Resort of this country which we were able to find, and it is in my brief—the Supreme Court of Colorado, and I read you honestly the cogent and applicable parts of that decision.

I recall that, in response, one of the professional prosecutors who were up here from the Executive branch of the State, cast against this defendant, took me more or less to task for leaving out certain portions of that decision. I say to the Senate that I have practiced law for some thirty-three years. I had to arrive at my thirty-three years of practice before being accused of misstating a case or leaving out anything in any statement that I have ever made before any Court, in his response. I invite the gentleman professional prosecutor from the Executive Department to read the entire decision to the Senate. If he can find the relevancy and applicability of the rest of that lengthy decision, and you gentlemen have the time and patience to listen to it, I ask him either to recede from the statement that he made to the Senate about my only reading a part of that case in a way to cast an aspersion upon my good faith, or to read the entire case on his own time.

At this point I would like, Mr. Chief Justice, to have permission for Mr. Summers to make a few comments about the legal aspects of the initial situation in the House of Representatives, as it developed from the time of the first Resolution.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I move that the Senate stand in recess for ten minutes.

CHIEF JUSTICE TERRELL: So ordered.

Thereupon, beginning at 11:00 o'clock a.m., the Senate stood in recess for ten minutes.

CHIEF JUSTICE TERRELL: Order in Court. The Chair declares a quorum present.

Mr. Summers, you will please proceed.

MR. SUMMERS: Mr. Chief Justice and Senators:

Very briefly, I want to trace the history of this impeachment through the House of Representatives, solely for the purpose of testing the legal sufficiency of this Article as it relates to the motions now pending before the Senate as a Court of Impeachment.

I will say first, though, that I couldn't talk about this case as long as Judge Hunt did if my life depended on it, so you can be sure that I will be in my seat in just a moment.

On April 5, 1957, the House of Representatives passed a Resolution, House Resolution Number 63, which the Managers on the part of the House of Representatives introduced in evidence here and which called for an investigation by a select Committee of the House, of certain charges.

Now, the Resolution recites these things:

"That whereas, the Grand Jury on April 26, 1956, stated," etc. and

"Whereas, the Grand Jury in its presentment of May 8, 1956, stated, "something else and

"Whereas, the Grand Jury in its presentment of September 21, 1956," stated other things, and whereas, by reason of all this, and so forth,

"Be it resolved that there is hereby provided and constituted a Committee of the House of Representatives of the State of Florida, consisting of seven members, to be forthwith appointed by the Speaker of the House of Representatives, whose duty it shall be to conduct a thorough investigation into the said charges of official misconduct of Circuit Judge Holt, in and for the Eleventh Judicial Circuit, made by the Dade County Grand Jury, in and by its presentments of April 26, 1956, May 8, 1956 and September 21, 1956, mentioned in the preamble to this Resolution."

Now, Senators, I would call your attention to the fact that the Supreme Court of this State had, prior to that time, by its mandate to the Circuit Court of Dade County, directed that these Grand Jury Reports of April 26 and May the 8th, 1956, be physically and manually expunged from the records of that Court, and that thereafter, on the 8th day of April, 1956, Circuit Judge Luckie, in Jacksonville, by his order directed that this third presentment be struck, physically and manually expunged, from the records of the Circuit Court of Dade County.

Now, I submit to you that when those orders expunging those three Grand Jury Reports were entered and those Reports were physically and manually expunged from the record, that there remained nothing for the House Committee to investigate under and by virtue of the authority vested in it under this House Resolution Number 63, all of which orders were entered prior to any testimony having been taken before that Committee, and that when those orders were entered they, in effect, removed from the public records of Dade County the charges against Judge Holt as of the very moment that they were born. They did not exist on the date that this Resolution was introduced and that, therefore, the House of Representatives, the select Committee of the House of Representatives, was without any lawful authority whatsoever to make this investigation.

But be that as it may, commencing on the 8th day of May they began to hear witnesses. Now, let's see what transpired then.

The Committee, in its Report, to which this single alleged Article of Impeachment is attached and made a part and which must be considered along with the Committee's Report, were filed May 27, 1957. Let's see what the Committee said in its report in the first paragraph thereof:

"After giving thorough consideration to the various matters and things covered by the testimony available, the Committee determined to proceed with public hearings related to the subject matter of the investigation."

Now, Senators, what was the subject matter of the investigation? I submit to you that there was no subject matter at that time, because the thing and the only thing that they were empowered to do was to investigate charges of misconduct as contained in three Grand Jury Reports that theretofore had been physically and manually expunged from the record and had died a death at the same moment that she was born. There was nothing to investigate. The Committee was without any authority to conduct this investigation.

But, going on, the Committee says that they are acting under certain provisions of the Constitution relating to the power of impeachment and a decision of the Supreme Court of Florida in re investigation of a Circuit Judge of the Eleventh Judicial Circuit of Florida, 93 S (2d) 601, and they quote from that particular decision, and I choose to read one paragraph therefrom, which was also contained in their Report:

"Under Section Twenty-nine, Article Three of the Constitution, impeachment is imposed only for misdemeanor in office. Misdemeanor in office as ground for impeachment has a much broader coverage than the common law misdemeanor, as usually defined and applied in criminal procedure.

"As applies to impeachment, misdemeanor in office may include any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, is performed by virtue of authority of office. Misdemeanor in office is synonymous with misconduct in office and is broad enough to embrace any wilful malfeasance, misfeasance or nonfeasance in office. It may not necessarily imply corruption or criminal intent."

Now, further in the Report they say only this:

"That the incidents to which reference will be made hereinafter, taken collectively, show a course of conduct pursued by Judge Holt tending to degrade the Judiciary and cause distrust in its decisions and might well result in the public losing both respect and confidence in the judiciary involved.

"Such conduct tends to arouse suspicions of the public that Judge Holt's social and business relationships constitute an influence in his judicial conduct and constitute misdemeanor in office."

They do not say that it did or that it will. They say that it might.

Now, in reference to some of the things that are before the Senate, viewed in the light in which they were before the House, I wish to call your attention to the Committee's Report as in sub-paragraph number eight. There they discuss the relationship with Judge Holt and Mr. Whiteside. In the same paragraph they discuss the appointment of Mr. Prunty and Mr. Heller as curators in the Dowling case. They state that the fees paid in that case were \$93,000, and then they add this thing, which I consider to be very, very important:

"In the opinion of the Committee, the fees were excessive and constitute an abuse of judicial discretion."

Now, Judge Hunt has quoted to you at some length the opinion of the Supreme Court, entered when the matter was before it on the question of expunging the first Grand Jury Report, wherein that Court said that it is not misconduct in office for a Judge to make a mistake. That was the effect of it—or for him to do that which—to enter a discretionary order which may subsequently be found to be wrong.

Gentlemen, looking at the Dowling case one step further, Judge Holt appeared before the Committee. He testified for some two hundred and eight pages, for some five hours, before the Committee. I would ask a member of the opposing table, a Manager on the part of the House, to point out in that extensive record one single question that was asked Judge Holt in reference to the Dowling case.

Judge Prunty, one of the curators of the Dowling case, appeared there before the Committee. I ask the Committee to point out one single question that was directed to Judge Prunty, one of the curators in that case, concerning any of his doings as a curator in the Dowling case.

The sole thing before that Committee in reference to the Dowling case was this thing brought there by Judge Giblin, which is a transcript of a radio broadcast that he made down in Miami. That was how the Dowling case was before the House Committee.

I submit to you gentlemen that it was the intention of the Committee in filing its Report, which appears at Page 1688 of the Journal of the House of Representatives of May 27, 1957, to try to allege that this was another one of those things flowing from an improper relationship, an alleged improper relationship, between the Judge and Mr. Whiteside. That case was not gone into.

Now, taking that one step further, if the Managers would examine the testimony that was given by Judge Giblin they will find that the Committee advised him that they were investigating the same seven areas that they advised us yesterday, that Judge Hunt advised the Senate yesterday that we were apprised would be investigated. Judge Giblin stated there before the Committee that he could cover the Dowling case in one minute. He covered the Dowling case by bringing this thing there.

That Committee didn't discuss fees. They didn't discuss anything concerning the work that was done there or anything else. I submit to you that the question of the fees in the Dowling case was therefore, by the very nature of this Report, not before the House of Representatives and, therefore, it is improperly before the Senate.

Now, gentlemen, we could take this Committee Report, to which this Article was attached and which must, therefore, be read in relation to it, and show that many of the things now before the Senate were not before that Committee. But, be that as it may, let's look into this thing a little bit further as it was before the House of Representatives on that particular day.

In the Journal of May 27, 1957, at Page 1727, appears the vote of the House on this particular Article of Impeachment. Certain statements were made and certain persons read prepared statements on the floor, and I think that it is important that one member of the Committee inserted into the record a prepared statement—and I might add that that was Mr. Herrell, the force that has been behind this thing from April 3rd up to the present time, and he says there:

"You will note that the Report of the Committee did not charge Judge Holt with criminal intent, but the chronological charges do show a very definite course of conduct which seems

to violate his public trust and does reflect irrepute on the Circuit Court of this State."

Now, gentlemen of the Court, it is obvious that the House of Representatives, through its Committee, was improperly trying to use the Ritter case as a basis for this particular impeachment. I say "improperly" for this reason: I call your attention to the fact that a Federal Judge is appointed for a tenure of office that runs during good behavior. The Constitution uses the words "good behavior." There are only two ways to get him out—for him to die or be impeached.

Now, that is the great distinction between that case and this. In the case before us we have a Respondent who is elected for a fixed term, which will expire on a fixed date, elected by a vote of the people of his Circuit. A Federal Judge is appointed and the people never have any chance to pass upon the work that he is doing on the Bench. In that respect I would like to quote from a statement from one of the Managers on the part of the House of Representatives, made before the Senate in the Archbald case, where several things, taken together, were considered misbehavior, considered that it brought the Court into ill repute, and so forth, and that was from Senator George W. Norris, who was then in the House. He has this to say:

"To hold that an officer whose tenure in office is definite and fixed and who will necessarily go out of office within the course of a year or two, should not be impeached and removed from office for misbehavior, that does not reach, in magnitude, an indictable offense, is entirely different from holding that an officer whose term of office ordinarily lasts for life shall not be so impeached and removed."

And our forefathers evidently had this in mind when they applied exclusively to Judges that provision of the Constitution which provides that Judges shall hold their offices during good behavior.

Our Constitution does not provide that this Respondent hold his office during good behavior. It provides that he hold it for a fixed term, during which time he must submit himself and his record to the electorate of his Circuit.

I submit to you gentlemen that on the basis of this Resolution, which was predicated upon outlawed Grand Jury Reports, Reports which had been likened by the Supreme Court of Florida—those Reports having been expunged prior to the time that Committee took any testimony, that this Article of Impeachment is improperly before the Senate of this State, that it was improperly sent here by the House of Representatives, and for that reason, the Respondent in this case is entitled to be discharged and acquitted.

Thank you.

MR. BEASLEY: Are the attorneys for the Respondent through with their arguments?

CHIEF JUSTICE TERRELL: They have finished their opening argument, as I understand it. They have the conclusion. It is now up to the Managers.

MR. HOPKINS: May I inquire of counsel for the Respondent if they have completed all the phases of their argument on motions now pending before the Court?

MR. PIERCE: It is my understanding, Mr. Chief Justice and Senators, that all phases of the various subdivisions of the single Article of Impeachment were fully gone into by Judge Hunt and Mr. Summers. The extent of that might vary, but they were all covered.

CHIEF JUSTICE TERRELL: Your argument, in the main, will be a response to the argument of the Managers?

MR. PIERCE: Exactly, Your Honor.

MR. HOPKINS: May it please the Chief Justice, and Members of the Court:

Before we go too much further in the arguments in this case I would like to remind the Court that the real question before the Court is whether or not this office has been brought in disrepute.

We want to remember that the framers of the Constitution laid down ways to remove officers who had betrayed their trust, those officers, other than the Judiciary, being removed by the Governor and reviewed by the Senate.

In this case, a case of a Circuit Judge, he has already been impeached by the House of Representatives. The question before us is not the question of impeachment, because he has already been impeached, after a hearing before the House of Representatives of the State of Florida. The only question before this Senate is the question as to whether or not they will confirm that impeachment.

Another premise that we think should be clarified just a little bit at this time is the fact that it has been laid down as the law and recognized as such throughout this trial that this Respondent does not have to be convicted of a misdemeanor in office for his impeachment to stand. The only question before this Senate is whether or not his actions have been such as to bring his office in disrepute.

By that I don't mean to concede that we have not presented testimony here that would be sufficient in any Court and before any Jury to convict him of wrong beyond a reasonable doubt, but in the law of this case the question as to whether or not he has been guilty of a misdemeanor, as it is known in the criminal law, is not before this Senate for consideration.

The only question here today is whether or not the House Managers have made out a prima facie case with those Rules that I have just laid down. It is not a question as to whether or not the impeachment is asked at this time, but it is a question as to whether or not the Senate would hear the testimony of the defendant and give him a chance to defend against these prima facie issues as they are established.

For that reason we find it advisable, probably, to go into the testimony just a little bit on our side of this argument, and I would like first to go into the question of Mr. Kurlan, the testimony that has been covered by Judge Hunt. It will take some study of those files to get the real story of Kurlan, but we submit that this is our story as presented by the files.

He first comes into the picture on January 18, 1954, and Judge Holt appoints him as receiver of the Belmont Park Hotel—January 18, 1954. He serves in that capacity, and in the same year, in April, on April 15, 1954, he was still serving as receiver of the Belmont Park. He is appointed receiver of the Variety. A very short time after being appointed the second receiver at the same time of the Variety Hotel, he begins planning a trip and planning an itinerary for Judge Holt and himself and a party to go to Europe.

Remember, this is the second appointment in this same year, on April 29, 1954. That trip is planned completely by Kurlan, who makes the plans, who arranges for the tickets and arranges this trip to Europe.

Immediately prior, however, to making this trip to Europe, on May 28, 1954, forty-three days after the appointment in the Variety Hotel case, he is ordered and paid by other people's money, under order of Judge Holt, the sum of \$5,000 for forty-three days, just before that trip.

While he is still supposed to be the receiver for the original hotel, the Belmont Park, he departs on this trip with the man who appointed him in these receiverships. He is gone and out of the country for more than thirty days, and he couldn't possibly be serving in his receivership for the Belmont Park Hotel, and upon his return from this trip he is rewarded for that trip, for the time when he was on the trip, the sum of \$10,000 by an order of Judge Holt.

That is your Kurlan story. This trip was paid by a check in the sum of \$1,600 by Kurlan, the sum of some \$800 in cash, and Judge Holt paid \$199 and some odd cents, according to this testimony. I don't say that Judge Holt didn't pay for that trip, but I say that the question is whether or not he is bringing the Court in disrepute in this instance. Is it bringing it in suspicion that he pays his receiver the sum of \$10,000, and most of the time he is in Europe, gallivanting around with him, with the man who appointed him.

That question is whether or not the Court has been brought into suspicion in that case. This thing was brought right on down to date with this man Kurlan after he gets back.

Now, I hate to take up too much of your time on one phase of this case, because it is so large, and we think that we will have a chance to make a final argument after this respondent has had a chance to answer some of these charges. He hasn't even denied them up to the present time.

Let's get to the rape of the Flame Restaurant by this same man, Kurlan, who made the trip to Europe with Judge Holt. That case gets nearer down to date, the appointment on May 25, 1955. This thing happened at night, gentlemen. A petition is filed before Judge Holt at six-thirty p.m., according to his own mark on the file, they appoint this fellow Kurlan to go out there and take over this man's business at night, without any service on him whatsoever. He goes out there and takes over the business that the man had some sixty-nine to seventy thousand dollars in, on the petition of a man who had \$350, cash, in the business, and was supposed to work there and was fired because he was drunk.

The only conceivable excuse for appointing a receiver, if you recall, was something about a gambling game, and it developed that it was a little pool game that they were playing among the employees—a baseball pool, that we're all familiar with and have seen in offices here in the city. Not only that, but it developed in the testimony that the man who complained had played the game and after he left that the pool had stopped.

Even with that, after the man had said, "let me put up a bond and I'll break my own business," and it had been denied by the order of this man. Then the Supreme Court came back and said, "You've got to let him make bond," and it granted supersedeas.

What did he do then? He orders that, before supersedeas can be granted, as a part of the same order, that they must pay this fellow Kurlan \$2,200.

Another appeal was necessary. They came back to the Supreme Court again, and the Supreme Court in that instance said—it quashed that part of the order allowing the \$2,200 fee to this man.

Then when they went back and, we say, in compliance with an order of the Supreme Court, Judge Holt, in an effort to see that this man with whom he had gone to Europe got his money, did not follow the mandate of the Supreme Court and refused to make Kurlan return the \$2,200.

A third appeal was necessary, and that time the Supreme Court completely knocked the case out and said it was unjustified.

Then you ask why didn't some of these people appeal? That man appealed some three times within a period of just a few months. He had to appeal twice before he ever got the receiver out, the receiver staying there some twenty-two days.

What's the testimony in that case about this fellow Kurlan? The testimony is that he appeared there a few times. He charged some articles in the sum of \$134, including the tabs from the bar. He left owing that \$134 and some odd cents. He was paid the sum of one hundred dollars a day to operate that place of business, and very seldom showed up there.

In passing from the Kurlan case, let me have this to say: If Mr. Kurlan is such a good man to be appointed as receiver, if he is such an honest and upright man, why isn't he in the State of Florida today, so that a subpoena might be served on him? If he is the good, loyal friend who had been appointed from time to time and available for these receiverships, if he is honest and has the integrity that a man should have to act as receiver, why isn't he present in the State of Florida today, so that he could appear before this Senate to see that justice is done?

If he is such a good friend of Judge Holt's, why isn't he here to explain that trip?

It is going to be hard to cover this case—and I notice that I have just thirty minutes to do it, until time to adjourn, but I would like to take just a few minutes on the Weesner case.

In that case, here is the story, taking that case, brought down to a nutshell, this man Weesner has a case pending before Judge Holt. He owns a hotel in Haiti. He arranges for tickets for Judge Holt and his wife and a party, including his own lawyer, who is going to present the case to Judge Holt, to go to Haiti. He has them entertained as very important guests in the hotel in Haiti. When they leave the bill is not paid. The only instance that Mr. Weesner even claims he had payment for that bill was the fact that when the fee was set for the handling of that case by the attorney, Perkins, that the amount of the hotel bill was taken into consideration.

I don't know what the facts are, but it certainly brings the Court into a peculiar situation when such an action is had while a case is pending.

I'm going to try to cover this Stengel case just a little bit. We bring into play our friend Heller, who testified here for so long. Here is the Stengel case in a nutshell:

We have in Miami a very refined, reasonably well-to-do old lady, eighty-six years of age. She is living there with her son, in a very fine home, costing some \$56,600. She has in that home beautiful furniture, antiques accumulated by her family over a period of fifty years. She has a Cadillac automobile that this son drives her around in. She is in very good circumstances. The only income she has is the income from her stocks up north someplace, that amounts to about \$15,000 a year. That kept her very comfortable.

Upon the petition of a granddaughter, Mr. Heller was appointed curator of this estate. It wasn't but a very short time until Mr. Heller, in his own words, that I think he used in several cases, began to "liquidate" the estate. The old lady, the petitioner, the defendant, everybody in the family soon found themselves fighting Heller, with Judge Holt sitting as referee. They left and went back to the jurisdiction of another Court and left the assets that they had in Florida here at that time. Orders were sought to declare the petitioner, Mrs. Gay, in contempt of Court. A contempt order was issued, ordering her to jail for sixty days. She was out of the state. Later an order was issued against the son, who had been taking care of the old lady and had carried her to her home in New Jersey, giving him thirty days in jail—again, an abortive order—but it had a very important effect on the rest of the case. They were not allowed to return to the State of Florida to handle their case, to appeal it or otherwise, and it didn't take but a few days, if you remember that file—it didn't take but a few days by our friend Heller for him to start liquidating that estate.

First he started on the birds, as you remember. She had an aviary there. She liked the birds. He got \$275 for the birds.

Next, he got all the furniture, the furniture accumulated by this family over a period of fifty years, and he sells the furniture to this fellow Hart for \$4,500—the same man who sold furniture back to the Dowling estate, as you remember, for some \$16,000. He sold the furniture, and there was nothing left but the home, and he put that on the block and sold that. This home that she had paid, two years before, some \$56,400 for was sold for \$42,000, after giving an exclusive sales agreement to some real estate agent; and they gleefully—I think the word "gleefully" appears in the report—they gleefully report that that agent had agreed to take only a thousand dollars as commission.

So what is the net result? The net result is that they sell everything the old lady has—and these are the people that are supposed to be the curators, the preservers, the protectors of this old woman, to see that she enjoys her property. When they get through they have got \$5,312.71 and they have used up everything that the old lady had in the State of Florida.

Well, did they let it go at that? No, they go and apply for attorney's fees. The curator is granted, in the face of that, the sum of \$10,000 as curator fees, for selling those three pieces of property. The attorney—and, incidentally, remember that Mr. Heller told you that he is a pretty good lawyer himself—he hired an attorney himself in that case and the attorney was allowed \$6,000. There was another \$4,000 attorney's fee, and then another \$500 attorney's fee.

What was the result of that case when they got through with it? They have used everything the lady had in the State of Florida, every penny's worth of property. They had paid it all out as fees and left a deficit of \$15,187.29 still due them for cost of handling.

And I tell you, Members of the Court, that they then went to the State of New Jersey and, under the full faith and credit clause of the United States Constitution, had these judgments recognized, and collected it out of that lady's income up there.

Is that preserving the property? Is that the purpose of a curatorship? I don't know if there's any wrongdoing in that case as far as the Judge is concerned, but if there is anything that will ever bring the Courts of this state in disrepute, that kind of conduct certainly will.

Let's see where we go from there as far as our friend Heller is concerned. That happened in a period of a couple of months, or, at most, three months, the handling of the Stengel case and the liquidation of all the assets.

Let's go back and say they didn't sell the property, just a minute. Think about it just one minute. Suppose they preserved this \$15,000 for this old lady and let her keep her home, her beautiful home to live in, instead of putting her in this institution that there is some testimony about drunks, and so forth, going to. Suppose they had just gotten their hands on that \$15,000 a year. Did it ever occur to you that it cost \$20,500 in fees to handle this estate for that last six months? \$15,000 a year was not enough to pay the fees, and, when you think back, how simple it would have been to have had a guardian for this old lady and let her keep that.

I had planned to cover, actually, in my part of this case, a number of other instances, but I will have to leave that for associate counsel. I do submit to you, though, in order that I may close in time, that it is more reprehensible for there to be misconduct with color of authority than it is otherwise. Misconduct with authority, I think, is the very worst kind. This issue in this case and this impeachment proceeding are bigger things than Judge Holt. I feel sorry for Judge Holt as an individual. I sympathize with him. I sympathize with Mrs. Holt, whom we have allowed to sit at counsel table beside her husband through these proceedings, contrary to the Rules of the Senate.

But these hearings and this impeachment proceeding is greater than Judge Holt; it is greater than the participants in this case; it is greater than those who are listening; it is greater than those who come in to hear these proceedings, both downstairs and upstairs. It involves the integrity of the entire Judiciary of the State of Florida.

I remind you again that the question is not whether Judge Holt is guilty of any crime, but is merely the question as to whether or not he has brought the Court in disrepute.

In closing, just let me call your attention to one matter to think about, this wreck case. It is unthinkable to think that this case would be dismissed at this date, because you would be putting your stamp of approval, without it even being denied, on the Senior Circuit Judge of the most popular Circuit in this State, in going to a party where hundreds of people are attending, where he got under the influence of liquor to such an extent that a member or a guest at that party was willing to come here and testify that he remembers the occasion particularly because he was surprised that a man of that standing in life should be so under the influence of whiskey so early in the evening.

You would be putting your stamp of approval, without even a denial, on this same man being in such a condition that he is brought out manually and carried by two of his friends and put in his automobile.

You would be putting your stamp of approval without even a denial on a man in that condition, to where a filling station operator says, "I made the prediction at the time that he couldn't get far."

You're putting your stamp of approval on a man in that position being allowed to drive that automobile down the street at some seventy miles an hour, in the City of Miami, to go across a stop light, be on the wrong side of the road, and, except for the Grace of God, kill a human being. I don't know sometimes but what this young fellow might be better off if he were dead. His condition is such that he can never again be the same. He has been in the psychiatric ward, he has suffered every bruise and break that a human being could suffer.

And I might say, in closing, this:

If one Senator votes to discontinue these proceedings at this stage, I will say that we have failed to start that man to thinking.

Thank you very much.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I move you that we do now recess until 2:00 o'clock, P. M.

CHIEF JUSTICE TERRELL: You have heard the motion. Those in favor will vote "aye." Those opposed "no." The motion is adopted.

We will recess until 2:00 o'clock P. M.

Whereupon, at 11:56 o'clock A. M., the trial was recessed until 2:00 o'clock P. M. of the same day, to-wit, July 31, 1957.

AFTERNOON SESSION

The Senate reconvened at 2:00 o'clock, P. M., pursuant to recess order.

CHIEF JUSTICE TERRELL: The Court will come to order. Unless a question is raised the Chair will declare a quorum present.

MR. BEASLEY: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Beasley.

MR. BEASLEY: Mr. Chief Justice, Members of the Senate, sitting as a Court of Impeachment:

I assure you that it has been with a great deal of displeasure to me that I have participated in this trial as one of the prosecutors on the part of the House of Representatives in the impeachment proceedings against Circuit Judge George E. Holt. I say that because, in 1939, I had the pleasure of serving in the House of Representatives with Judge Holt, at which time I regarded him as a very close friend, a high-class Representative and a distinguished citizen of Florida. I also knew Mrs. Holt well at that time, too; so I have received no satisfaction out of my duty as a Manager on the part of the House, to assist in the prosecution of Judge Holt; but, after the Speaker appointed me as a member of this Committee of Managers to proceed with this impeachment proceeding before this body, I could do nothing else than my best.

I hope I have done nothing less than my best in our undertaking to present this case to you in an intelligent a manner as possible.

Mr. Musselman and I, who were appointed Managers on the part of the House, sought and obtained two of what we thought were the best trial lawyers in the State, Mr. Hopkins and Mr. Johnson, and they have done an excellent job, in my judgment, in helping to bring this matter fairly before the Senate.

In assisting in this prosecution and in taking the position that I have taken I have no ill feeling toward Judge Holt or anyone else. It is a matter of doing my duty, and in trying this case and in voting your convictions it is a matter of simple duty to you, and if you fail to do your best to arrive at a just and fair verdict in this case—and I am sure you will—you would not be doing your best, you would not be doing your duty. I believe that every Member of this Senate, sitting as conscientious, impartial judges of the man on trial before you in this impeachment proceeding, will give him a fair trial, and that is all the Managers on the part of the House of Representatives are asking you for.

I wouldn't undertake to enter into a discussion of this case, such as Judge Hunt did this morning, which was a fair, very fine, and scholarly discussion; but he evaded the facts as much as possible. He may later, and he should, discuss the Dowling case with you, because soon I expect to speak at length about what happened in the Dowling case and in other cases which have been brought to your attention in the testimony offered by the State in this case.

I want to say that I am seriously concerned about this case, because it affects the Bench of the entire State of Florida. It not only affects the Bench of the Eleventh Judicial Circuit, it affects the Bench in your circuit. The same things could happen in your circuit that happened in the Flame Restaurant and in the Stengel case and in the Dowling case. I don't believe that you, as honest citizens of this State, want to see that kind of court in your circuit, and we can't afford to sit complacently by and allow those things to go on in other circuits, and do nothing about it.

Some of us might say, "Well, why should we wash the dirty linen of the Eleventh Judicial Circuit?" Well, I say that it is the responsibility of every citizen in this State to help see that the courts of this State are carried on in an honest and honorable way.

You know, complacency has caused more grief than everything else combined. An Italian sat down and wrote a letter one day and he said to a friend, "Nothing much happened in Rome today," yet on that day Mussolini took over the Italian Parliament and dissolved it.

A Jew in Berlin one day wrote a friend that everything was quiet in Berlin that day; but that very day Hitler and his gang burned the Reichstag.

A Frenchman wrote in his diary that nothing particularly happened in Paris that day; but that very day they stormed the Bastille and set off the greatest revolution, one of the greatest and bloodiest revolutions, that the world has ever known.

I say to you that those are good examples of men living in complacency and doing nothing about the wrongdoing that is going on around them, and especially in their government, and I want to repeat that this is a matter that everyone of us must be seriously concerned with, because of the power of the courts of this State.

The courts of this State have power of almost life and death over the citizens of the State. The courts have power to confiscate your property, to take the things that you have lived for and worked for and tried to provide your family with after you are gone, and dissipate them. Members of this Court, I want to say to you that it is my considered opinion, on the basis of the testimony that we have offered to you in this case, that Judge George E. Holt, as one of the Judges of the Eleventh Judicial Circuit of Florida, has been a party to estates of people who have lived to accumulate something that they may need for their families, being dissipated, and there is no escape from it on the basis of the testimony that we have offered you here in this case.

You heard them talking about the Flame Restaurant. Mr. Hopkins ably presented that to you. There was a little business where a man had a small amount of money involved, and he came in and he brought this suit against the people who had worked and built this restaurant and, without any notice to anybody, an injunction was granted against the people who owned the principal portion of it and a Receiver was appointed—and all of it was done without notice.

If a thing like that were to happen in my circuit or your circuit what would you think about it? You would think that the judge who was appointed to it and responsible for it should be impeached. I think I would. And who did they appoint as Receiver? Kurlan, the man that we were unable to reach with a subpoena to come here to testify before this Senate, the man who is in Casablanca and refuses to come to the State of Florida to testify before you, the man who took this trip to Europe with Judge Holt and Mrs. Holt, and the man who was on numerous occasions appointed Receiver by Judge Holt and was awarded fees.

But the Stengel case, next to the Dowling case, is the one that strikes me as being the grossest miscarriage of justice that I have ever heard of. As Mr. Hopkins told you this morning, Mrs. Stengel was an honest, law-abiding lady who lived in Dade County. Her estate was taken over, and Daniel Neal Heller—I would like to call him "Danny Boy"—Daniel Neal Heller was allowed a \$10,000 fee as curator of her estate when, actually, after they sold her property here in Florida there was only a little over \$5,000 in the estate; and they were not satisfied with getting all that she had here in this State. Judge George E. Holt entered a personal judgment for the balance of what remained unpaid after they had appropriated every bit of her property and everything that she had in this State to pay those fees in the sum of \$20,000, leaving a deficiency there to be justified out of the estate in another jurisdiction and, as Mr. Hopkins told you this morning, under the full faith and credit clause of the Constitution of the United States, they took those judgments to New Jersey and recovered the balance of those fees.

I ask you if, in your conscientious and well-considered judgment, if that is not sufficient to bring a court into shame and disrepute among the citizens of Dade County? And in considering this matter, if you think the conduct of the Judge was such as to bring his court into shame and disrepute, he should be impeached.

Why, the attorneys for the Respondent are asking you now to dismiss these charges without even giving the Respondent an opportunity to be heard. Let's see what he says about it

—the Respondent. Let's see what he says about it. I think you are entitled to that information.

But there are some facts especially that I want to bring to your attention. Now, you remember that after Daniel Neal Heller and John W. Prunty were appointed as curators of the estate of Jewell Dowling, later on they decided that they wanted to be appointed as curators of the estate of Mrs. Dowling, too, and there is no statute, there is no provision in the statutes, for a curator to go into a court and ask that they or anybody else be appointed as curator—but they did, and I can't help but believe that Judge Holt knew that there was no such provision in the Statutes as that.

And then I believe that in about three days, or a very short time thereafter, they went into court and obtained an order awarding them a fee—I believe it was \$7,500 apiece—some big fee—for their services. They went into court with a petition asking the Court to award them a fee for their services as curators for the estate of Ina I. Dowling. I ask you if you think that's right, and ask you if you think that sort of conduct on the part of a circuit judge isn't enough to cause the people of his district and his county, where he holds court, to hold his court in shame and disrepute.

Then, 13 days later, Heller goes back before the Judge and gets another order awarding him a large sum of money out of the Jewell Dowling estate; and in all of these orders—and I want to call this to your attention, too—that these orders were typed on stationery or paper that apparently came from Daniel Neal Heller's office, because a lot of them have got his name on the bottom; and he is the one that bragged on himself so about the fine services that he had rendered in procuring curators for the estate of Ina I. Dowling. He is the one that told the Judge in his petition about what a fine job he had done, and then the Court recited in the order that he had done a fine job in procuring these curators—and they procured themselves.

Now, if a thing like that were to happen over in the First Judicial Circuit I think that I could safely tell this Senate now that Judge Gillis wouldn't do a thing except, when I presented my petition there for a fee for having myself appointed as curator of the estate of Ina I. Dowling — he wouldn't do a thing but take that and turn it over to the Grievance Committee of the Bar over there, and I would be in trouble—and I should be. A lawyer's got no right to conduct himself in that way, and even less does a judge have a right to conduct himself in that way.

And then you remember that Daniel Neal Heller said that he is still curator of the estate of Ina I. Dowling in this State, and I don't know what other fees he may get out of this estate. There is still that house down there that hasn't been sold yet, I think, and I would just about guarantee you that before that thing is over that he will go before some other judge, if he doesn't go before Judge Holt, with a petition stating all the work that he has done in conserving this estate, to help these old people enjoy their money, and get another order awarding him another fee, if he can.

In addition to awarding all of these fees, to the tune of some \$92,000, representing, I believe, about 42 per cent of the Dowling assets in Florida, why, Daniel Neal Heller goes out to a hardware store there, where he sold the property that belonged to the people in the Stengel case, and he pays \$16,000 for new furniture to furnish this home, which he says they had prepared for the Dowlings so they could enjoy their money, and he said they did that because the furniture in the old home was old. Well, I wonder what happened to this \$16,000 worth of furniture after they put it in there.

Then he tells you this eight thousand and some odd dollars to get these sandspurs off the lawn and put some dirt in there. Well, if he had got a boy with a wheelbarrow and given him a grubbing hoe and put him in there he would have gotten those sandspurs out mighty quick, and he could have hauled a little dirt in there, and he wouldn't have spent any \$8,000.

But they were helping the Dowlings enjoy their money—by throwing it away and getting the Judge to give it to them. Well, that's not the way people enjoy their money. I'll tell you right now, I may not have much when I die or if I go crazy later on, but I don't want any judge appointing Daniel Neal Heller as curator of my estate, because if I knew my wife and child were going to be put in that kind of a situation they wouldn't have anything left; and I don't think we should

allow it down in Dade County. That is as much our responsibility as it is that of the people down in Dade County.

This is the only place it can be attended to. There is no other forum that you can go in to deal with a circuit judge who does those things. You can't disbar him and get him out. There is no other forum where you can go and deal with a man that does that kind of a thing when he is a circuit judge except before the Legislature of the State of Florida. You have a tremendous responsibility, and I know you are going to do your duty and I know that you are going to live up to your responsibility, that you are not going to shirk it.

In 1944 there was an attorney in Dade County, and he was brought before Judge Holt on a disbarment proceeding in 1944, and in that case Judge Holt said:

"The Court must keep one paramount thing in mind—protection of the public from lawyers who cannot or will not conform to the high standards of the legal profession, and the lawyers, individually and as a body, must be afforded safety from classification with such practitioners.

"It is to the courts, and the courts alone, that such safety and protection both as to the public and the bar must emanate. It is a serious matter for any lawyer to be even suspected of wrongdoing. The slightest breath of suspicion or scandal will in most instances be sufficient to irretrievably harm his practice and his future. While Abraham Lincoln has been quoted to the effect that a lawyer's time is his greatest stock-in-trade, it must be admitted that his most precious possession is his reputation. To shadow that, or even becloud it will result in disastrous consequences.

"With these thoughts in mind, and applying them to the case at hand, it appears that the respondent has no conception of his office as attorney, its duties, responsibilities and attributes. He has gone beyond the bounds of all reason and common sense. He looks upon his profession as a tool with which to dig out and procure anything he wants or desires, regardless of the consequences. Trust and confidence is a lawyer's fundamental foundation. The State certifies that each member of the bar possesses such requirements. When it appears that these are lacking, the State must take away that which it gave—permission to practice law. This is not a right within the regular meaning of the word. Authority to practice law is permissive only, and to withdraw permission is not punishment in any sense."

How much more that statement by Judge Holt himself in that disbarment case would apply to a circuit judge!

And then I would like to read to you what Judge Martin, the first Chief Justice of the State of Louisiana, had to say:

"All those who minister in the Temple of Justice, from the highest to the lowest, should be above reproach and suspicion. None should serve at its altar whose conduct is at variance with his obligations."

That was in the impeachment trial of a circuit judge in Louisiana.

That is what I think about judges. They should, especially, more so than any other group of people, conduct themselves on a high plane at all times. They should certainly never be guilty of any conduct that would cause the public to be suspicious as to whether or not they could get justice in their court.

I say to you that Judge Holt so conducted himself, as a private citizen and as a circuit judge, in awarding the successive fees, without hearings, and allowing these receivers to be appointed without hearings, and granting these injunctions without hearings or granting these large fees without obtaining testimony as to the reasonableness of them, except from Heller himself—I say that he has conducted himself so that the people of Dade County cannot help but feel that his office is not a place where justice can be had. I can't help but feel that the people of Dade County now hold the office of Circuit Judge Holt in shame and disrepute. I know they would in my circuit. Don't you believe they would in yours, if a circuit judge were to conduct himself in that way?

That is the question that you must decide in deciding on this motion and, of course, on final argument. I say to you that nothing can be more wrong than the misconduct of a

judge, when he is dealing with the things that men have worked for during their lives and tried to save.

Oh, they might say that the Dowlings' property was going to charity anyway. Well, if the Dowlings wanted their property to go to charity that's where it should have gone, instead of to Daniel Neal Heller. When a man gives his life to his work, is thrifty, he don't want a circuit judge taking it away from him and giving it to somebody who is not even entitled to it. It's not right; and I say to you, as members of this Court, that you can't help but believe—there's no question about it, there is no reasonable doubt, there is no doubt at all—that Judge Holt is guilty of misconduct in office when he allowed Daniel Neal Heller to take this money that these old people had worked for, when he allowed him a \$10,000 fee out of an estate where there was only \$5,000 in the State of Florida, and then gave him a personal judgment against the people, against some property that they owned in another state. There is no doubt that he has done wrong; there is no doubt that he has conducted himself in such a way that the people of his district and his county hold his office in shame and disrepute—and that is the test as to whether or not you are going to grant this motion.

That concludes our argument, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Pierce.

MR. PIERCE: Mr. Chief Justice and Senators:

It is painfully difficult, if not, in fact, manifestly impossible, to come anywhere near covering this case, even in answer to the very fine arguments of adversary counsel, within the few minutes that may be allotted to me.

At the beginning, however, while it is still fresh upon my mind, I want to answer one or two isolated statements that were made by the two gentlemen who have just preceded me. Taking them in reverse order, my friend Mr. Beasley mentioned something about going crazy later on. Of course, I know that he was facetious in that remark, and I guess I may be permitted to be at least partially facetious in reply, by saying that he at least has gotten off to a running start, first by having had the audacity and temerity sometime ago to announce for that back breaking job, the Chief Executive of this state, entailing, as it does, a back breaking campaign—but perhaps they grow a little harder over in West Florida, in Walton, than they do in Hillsborough or down in Dade.

Secondly, I think that he is maintaining his fast pace towards that very improvident situation that he mentioned when he even presumed, Senators, to compare, to seriously compare, to your thinking minds, the work involved in a curatorship in Dade County, Florida, with the work involved in a curatorship in DeFuniak Springs. I doubt very seriously if there has ever been a curatorship in Walton County in many years. Certainly, I can fairly safely assert, and I dare say, that there has never been one in all the history of that area of Florida that even approaches the magnitude or the volume or the complexity of situation as was involved in the Stengel and the Dowling cases, or in many of the other curatorships that have arisen, unfortunately, in that great metropolitan area, attracting, as it does, the wealthy and the very wealthy, the people who have retired, the people who have been living and who are living upon the products of past generations of industry and effort, and who, unfortunately, have seen the family tree deteriorate.

That is one of the unfortunate things that have been brought out in this trial. I hate to see it in our American way of life, but we know it is true. We can only hope that those instances remain as few and as isolated as possible. It is the case, viewed in all fairness, impartiality and honest judgment, that those facts did apply and do pertain in both the Stengel case and the Dowling case.

My friend Mr. Hopkins, one of the crows on the other side, made at least, I believe, three statements that I deem it necessary to answer, just as briefly as I can and as briefly as he made them.

One is, he referred to the fact of this man Kurlan, and he waved his arms and he yelled out in a high voice to you Senators, "Where is Kurlan? Why isn't he here?" That is the first statement, and I will reply to it as I go.

Senators, the House Managers know, and what the public knows you Senators know, and the public also knows this: Mr. Kurlan, or, I believe, Commander Kurlan, as they have

referred to him in this testimony—I have never seen or known the gentleman—is known by the House Managers and by the public and hence by you Senators to have appeared and to have given voluminous testimony on at least six different previous occasions. He was before the House Investigating Committee; he was before that committee and this group and that group, this grand jury.

Now then, it isn't a question that a man conveniently disappears and doesn't testify at all. They've got his testimony. He has testified at length. It seems to me like that somewhere along the line anybody, even Mr. Kurlan, is entitled to some leave of absence, when he has already testified some six or seven times previously.

But, in addition to that, let me ask the House Managers a question. Why, they are talking about "the missing Mr. Kurlan"—what about these missing 35 or more witnesses that were subpoenaed upon authorization of this Senate and paid for by the taxpayers, by all the people of Florida. They were paid their attendance, they were paid their per diem, they were paid their mileage from their homes in Dade County and surrounding areas to this State Capitol and return. Where are they now? They have been released and have gone home.

Now, the obvious conclusion from that is what? The Managers here were trying to pick up the fragments of what was left for them by the House, fragile and nebulous as it was, and trying to pick up a case and make up a case by what is known in legal circles, and always has been known, as a "fishing expedition." The House didn't vote all these 18 pages of so-called "Bill of Particulars," which they labeled that for want of a better term. There is no such document known in the law of impeachment—certainly not without motion of the Respondent and his attorney.

So they were trying to get all the witnesses that they could think of, and they finally pounced upon some eight or ten, which they have produced, most of which, the majority of which, proved far more favorable to the Respondent than to the Managers.

Now, there was another statement, I believe, that was made by my friend Mr. Hopkins. Mr. Hopkins said—and I thought I was misinterpreting what he said until I verified it. He says that Judge Holt has already been impeached, has already been impeached by the House, and all that you Senators have to do is to determine whether or not you want to affirm what the House did.

I label that as an untruth and a misleading statement of the position of each and every Senator here. You Senators here, gentlemen, are here for the purpose of giving this man, Judge Holt, who, frankly, I never knew until this proceeding began—of giving him what he has never had before, namely, a trial, and, first, to find out what the nature and effect and the weight of the so-called charges against him amount to. He has been, so-called, "tried," by the newspapers. And why do I say "so-called tried"? Well, a kangaroo trial would give him a better trial than they gave him. Even a Kefauver hearing would give him a better trial than that, where they get the people they want to get and they get from them the statements that they want to get and they take out the excerpts of all of those statements that they want to take out, and they brandish it and flash it in glaring headlines. That's the kind of trial he has had.

What other kind of trials has he had? He has had TV trials, which were a mockery of justice. Unfortunately, some of those, I understand, were indulged in and engaged in by a fellow member of the judiciary in Dade County. I am told that this gentleman, who has been a figure of controversy, who has thrived on controversy for the last 30 or 35 years, both with fellow lawyers, with the Bar Association, with petty juries, with grand juries, with the lower courts and with the high court, and even with the newspapers, even appeared, in a kind of a ham dramatic performance, on TV in Dade County, taking off his robes, and all that sort of stuff. I didn't see it, but I am reliably informed that.

That is the kind of a trial that Judge Holt has had in the TV area. He has also had what was known as a grand jury trial. My goodness alive! It was so bad and was so rotten that the Supreme Court put it right where it should have been in the beginning—in a coffin—and buried it. But that same so-called expunged report—and I believe it was after it was expunged, it was after it was dead; it was no longer alive,

it was not even breathing; it was the same as if it had been stillborn. And that was used, Senators, as the primary basis of so-called House charges. That is the kind of a trial he has had heretofore by the so-called grand juries.

Now then, he was supposed, they say, to have had a trial in the House Investigating Committee and in the House. You Senators heard, as a part of the trial procedures heretofore had in this cause before you, the fact that the Attorney General of this State, by a written communication signed by him, set forth and outlined, carefully and in detail and in numbered paragraphs, the seven areas of permissible investigation. None of those areas encompassed one iota of what happened in the Stengel case or the Dowling case, or in any other of the so-called matters of what they say were excessive fees, and it was only after this opportunist judge came, voluntarily and insistently before—and this was brought out in the proceedings before you, Senators—appeared voluntarily and insistently before the Committee of the House, elbowing his way in, bulling his way in, you might say. I don't mean that in disparaging language, but in language that we know what it means; elbowing his way in and saying, "Listen to me. I'll tell you what to do." And against the written advice of the Attorney General of this State, given to the House for that purpose and defining and delineating their areas of investigation—he proceeded to embark upon an entirely foreign area, namely, the so-called Dowling and Stengel cases. And that, according to the proceedings before you Senators—and you will remember it. It was in an interchange, I believe, between one or two of the House Managers—I believe Mr. Musselman. By the way, I don't think he is the "Muscle man" that came between Jayne Mansfield and Mae West. You have heard a lot about the muscle man there: this is not the gentleman. This is a very fine practitioner and I have enjoyed listening to him, and I look forward to enjoying many, many years in the future of acquaintance and friendship with him.

I believe it was an exchange between Mr. Musselman and the chief counsel here, Judge Hunt: that it was only after this controversial figure from Miami, who has always got to be against something or against somebody—and you ought to see the clippings and the headlines that we have here, something over 50 or 60, embodying his headlines in the newspapers for the last 25 or 30 years—and they are only a portion—controversies with everybody. It was only after he appeared, gratuitously and insistently, himself, not upon the invitation of anybody, that the so-called Dowling and Stengel cases come into existence.

So much for the trial. But before I leave that, I want to say this: this is the first and only time that Judge Holt has been accorded anything like a trial under the laws and the constitutions as we know them to be and according to the American traditions of fair play and honesty and impartiality of justice. He is accorded now the right to be represented by counsel, to cross examine witnesses against him, to be confronted with witnesses against him, and also to see, by the rules of law as laid down by the Chief Justice here, who is my number one candidate for the Hall of Judicial Fame in Florida—the first time that he has been accorded anything resembling a trial and to have brought before you, with some semblance of law and order, the nature and character of the actual charges against him, not rumors, not gossip, not some opportunist's opinion.

They say that a half truth is no truth at all. That is absolutely fundamental. It was borne out also in this case when you heard Mr. Heller testify, I believe on last Thursday, when it sounded all one way. All they wanted to produce was figures; and also his testimony later on, Monday, when it contrasted like night contrasts with day, when you heard the explanation of the case, what it was all about, when he was on the witness stand all day Monday and, I believe, a portion of yesterday.

So you've got a situation here now where this case is being tried for the first time by an impartial body, namely, you Senators, who are upon oath to act impartially and with good conscience, as I know you will. It's not being tried by the press table over here, it's not being tried by the newspapers, or one of them, in Miami; it's not being tried by any TV opportunist commentator or commentators; it's not being tried by a hand picked grand jury; and it's not being tried by the House Investigating Committee, that allows a third party opportunist person to come in and, contrary to the advice laid down by the chief law officer of the State of Florida, namely, the Attorney General, as to what they should do, and to presume to tell them what he thinks they ought to do.

Now then, there was one last statement that I wanted to refer to, by my good friend Mr. Hopkins. I believe—and I have had this quoted by the court reporter in order that my recollection would not be entirely depended upon—you will remember that Mr. Hopkins made this statement—and I am quoting:

"I might say in closing, this: if one Senator votes to discontinue these proceedings at this stage, I will say that we have failed to start that man to thinking. Thank you very much."

Senators, I don't believe that Mr. Hopkins meant to make that statement as he said it. He may have been carried away with the enthusiasm or emotions of the moment. I prefer to believe that way, but I will say this: taken upon its face and if Mr. Hopkins, my friend, did mean to say that—now, I don't like the word "insult." I don't think that is proper in this very deliberative and august body. I don't like that word, but I will say unqualifiedly that I do think it was an affront to each and every individual Senator here, who is called upon, not to do his bidding or the bidding of any of those Managers at the other table, anymore than you are called upon to do my bidding or the bidding of any other gentleman at our table.

Each of you has taken an oath, and that oath is to speak your conscience—not in those words, perhaps, but that is what it amounts to—and you don't need Mr. Hopkins or Bill Pierce or anyone else, not even the Chief Justice, this venerable gentleman who sits presiding before you - - - to start you thinking. You were thinking when you came here, you were thinking when you took your oath, you are thinking as you listen to the testimony and the humble arguments of counsel, and you will be thinking when you deliberate upon this motion.

Now, Senators, the Dowling case was discussed briefly by Judge Hunt on the question of excessive fees allowed. It was further discussed and referred to by Mr. Summers when he referred to the House proceedings which initiated this proceeding, when he referred to the fact that the Dowling and Stengel cases only came in by virtue of this outside influence which I have previously adverted to. Both the House Managers or, rather, the House Manager and his professional friend, dwelt upon the Dowling case. Let me take about three minutes to briefly give my reactions to the testimony in the Dowling and Stengel cases, which I heard for the first time in these proceedings.

First, were the fees excessive? I don't think so. You Senators heard Mr. Heller's testimony on both Monday and also a portion, I believe, of yesterday. You heard about the 50-plus hearings he had before Judge Holt, as taken up one at a time by Judge Hunt. You heard about the several trips that he had to make, either individually or with his co-curator, Judge Prunty, to the Commonwealth of Massachusetts. You heard the fact that on practically each and every occasion there were always estimates procured before they went in before Judge Holt for any advances or for confirmation of payments expended to preserve and protect and improve the property and improve the station in life and the happiness of the Dowlings. You heard, Senators, by Mr. Heller, supported by the record—and he testified directly from the record, and when they would ask him some question that he didn't have the record before him, because it had somehow disappeared or had become mislaid in the hands of the House Managers or their agents, he declined to testify or was very much against testifying, because he wanted whatever he said to be directly from the record and as shown affirmatively by the record itself.

You heard him talk about the expert surveys that were made, which are somewhat unusual in curatorships. You heard him talk about and even produce here voluminous photographs that were taken of the sea wall, the house, the inside of the rooms and various portions of the inside of the house, the front driveway, the yard, the landscaping, and so forth, and all of these various photographs which were first taken by photographic experts and all produced; the estimates, the surveys, the CPA's reports, and so forth, all of which were produced before Judge Holt at each and every hearing where there was thought that they were necessary in order to confirm and bolster and fortify the sworn statements of the curators, Mr. Heller and Mr. Prunty.

Now, I have been, and so have, undoubtedly, the lawyer members of this body, in other curatorships. I don't remember the painstaking efforts that were made, that were begun

to be made, in any other curatorship that I have ever heard of, as were made in the Dowling case. You heard testimony that Judge Holt threw out bids, even though those bids had been advertised and were sealed bids and were opened before Judge Holt, and even where sometimes, or at least on one occasion, someone came in and tried to put in what has been referred to as a "sneak bid." In other words, that was to get title to the property and ownership and possession of the property at a bid higher than that which had come in in the usual way, conformable to law, in the way of sealed bids; and you have heard how Judge Holt threw those bids out, and you have heard how Judge Holt put what is known as an upset price, namely, the highest figure that was offered at such hearings. You have heard also how those same properties or property was sold later at a much higher figure than the highest bid offered, even by the sneak bid. You have heard sworn testimony—and it's not denied. It is supported by the record and cannot be denied—that brokerage fees were saved in the sum of over \$17,000; that attorneys' fees, always incidental or usually incidental to brokerage fees, in the sum of about \$5,000, likewise were saved, making a total of a little over \$22,000 that was saved.

All of this speaks to Judge Holt's credit, not to his detriment. You talk about mistakes. I don't even think there was a mistake there. He went far beyond the call of duty when he required all that material to be presented before him, and when he took the responsibility of throwing out bids he was acting in the highest judicial tradition, to conserve and preserve and protect property, not let it be dissipated.

Who got the benefit of it? The owners, the Dowlings, did. You have heard testimony that Mr. and Mrs. Dowling were, upon all occasions, frequently consulted as to their wishes in this and that, and that their wishes were deferred to and acknowledged and acted upon by the curators. Their wishes were paramount. You have heard testimony, which is undenied, that the Dowlings were always pleased when anything was done with reference to their estate—the improvements, the painting, the landscaping, the building of the separate room. You recall that Mr. Dowling didn't want an elevator, didn't like it, for one reason or another, notwithstanding the fact that it was perfectly safe, with alarm bells and everything. No, he wanted a level with the floor of the downstairs part of the house, and they built it not even one step higher or lower.

You have heard testimony and you have heard it read to you and exhibited before you—the complete CPA report of Wasserman and Associates in connection with the Dowling case. You have heard about other sales of portions of the Dowling property, where even, contrary to the contract brokerage fee of seven and a half per cent, which the brokers were entitled to, they received less because of the action of Judge Holt. In dissipating the property? No, in conserving it for the protection of the Dowlings, rather than to the contrary.

Last but not least as to whether these fees were excessive or not, I think the standard of Miami fees was pretty well set by the House Managers themselves, in insisting through the witness Feitelson, in telling you Senators how much his lawyers got for putting him in a padded cell and filing a complaint. It didn't even come to trial. It was settled, and they got some \$25,000—and that was in Miami. Now, at whose insistence was that brought out? We brought out the fact that the suit had been settled for some \$49,000. The House Managers then insisted, in answer to that question, insisted upon Mr. Feitelson answering a question, "Well, how much net did you get out of it," and he said, "Fourteen thousand and some odd dollars." They were looking only to the net. They overlooked and forgot completely where the difference went. If they had thought twice, two seconds instead of one second, they would never have insisted on bringing out the proposition that the standard of fees in Miami, from their own witness, Mr. Feitelson, is very, very high.

I think Mr. Heller himself very well established that and laid the predicate, the foundation and the reasons for it. What may be a reasonable fee in Miami is one thing; what may be a reasonable fee in DeFuniak Springs is another—or even in Tampa is another. And let me tell you, Senators, we don't have small fees in Tampa. In Hillsborough County we don't have small fees. These fees do not seem out of line to me, in my 33 years of practice in Tampa, fairly active. They don't seem to be out of line at all. Certainly not; certainly not, when you consider the enormous amount of work, the large amount of money and properties that were involved, proper-

ties as far away as the Commonwealth of Massachusetts, embracing also the proposition of one of the wards giving powers of attorney. That was Mrs. Dowling, and I don't believe that at that time she was a ward. There was a curator for her husband; and, lo and behold, she gives a power of attorney to her chauffeur-handyman for everything she's got, and it comes to light that she, under oath, denies that she even signed it, until it was presented to her at a hearing before Judge Holt—before Judge Holt it was presented—and she couldn't believe that she had signed it.

Then, or shortly thereafter, and properly so, a curator was ordered for Mrs. Dowling.

They talk about \$5,000 left in the Dowling estate. My heavens, Senators, the house is still there! You have heard the testimony. Mrs. Dowling, while she is not physically in the house today, still owns it, still has the fee in it. And when the word "fee" was used in the CPA's report I was very insistent that it be brought out that it is not to be confused with any other kind of fees that the Managers talk about. We lawyers know what the fee in real estate means, and there might be some misunderstanding on the part of non-lawyers. The fee in real estate means the full title. Briefly, that is what it means—the full right and title, to have and to hold; and Mrs. Dowling still has that and the other assets up in Massachusetts are still intact also.

CHIEF JUSTICE TERRELL: You have used 35 minutes, Mr. Pierce. I don't want to cut you off.

MR. PIERCE: Thank you. Senators, I expect to be through in not over ten more minutes.

Articles of impeachment in this state are the strongest and most serious form of accusation known to the law. Impeachment articles are not contained in the statutes or the common law as we know it. It is a thing contained only in the Constitution. Those articles of impeachment embrace only four classes of officers: first, the Governor; second, the executive officers of the State; third, the Supreme Court Justices and, fourth, circuit court judges.

Now, what is the standard of proof and the necessary elements to convict on impeachment? The word "conviction" also includes sufficient prima facie showing of the charges, which is what is before the Senate at this time.

Judge Terrell's brief very amply reflects that, when he says that the Managers must prove, first, that the Respondent is guilty beyond every reasonable doubt, and if he is not, it must result in acquittal. That is Subsection 7, on page 15 of Judge Terrell's brief.

Subsection 8 says that there must be a showing of wrong intent. While one may be presumed to intend the necessary results of his voluntary act, it is only a presumption and may not at all times be inferable from the action; and, (9), precedents have due weight.

Now, Senators, what are the grounds and reasons contemplated for impeachment? I will say it is not ordinarily misconduct or, certainly, mistakes of judgment, either by a lawyer or by a judge, to either be disbarred or disrobed. I could give my humble opinion, and I submit it to you Senators as to whether or not it is reasonable. My deep seated conviction of the scope of impeachment and what it is now and was when adopted, what it intended to reach, is that it must be the most flagrant misconduct in office; something approaching bribery, something approaching corruption, something approaching graft, something approaching continuous drunkenness on the bench, something approaching continuous browbeating and bullying and bulldozing of jurors, witnesses and litigants, lawyers in the courtroom and something, Senators, that can't wait until the next election by the people who come before him, namely, the people of his judicial circuit. That is my conception of what is meant by Articles of Impeachment and the grounds or reasons for it; and the same grounds or reasons must apply here that would apply to a Governor, that would apply to an executive officer of this state, a cabinet officer; that would apply to the Supreme Court Justices, because they are all dealt with in the same impeachment article. There can't be grounds or reasons for one and grounds and reasons for another. What is grounds for one must be held to be grounds for all.

Can you imagine, Senators, acting upon any further, a mere showing of what you have heard here so far, as grounds

for impeaching a Governor in the exercise of his executive judgment and discretion, or the same for a Supreme Court Justice, Supreme Court Justices as a whole, who might be, so to speak, thrown back by the Supreme Court of the United States, even on integration or any other issue as not conforming to what that higher court did? Could you imagine that, or could you imagine also that it would apply to circuit court judges? I say that the same standard of charges, the same standard of conduct, must pertain here and must obtain here before you can further entertain an impeachment trial here with reference to Circuit Judge Holt as you would further entertain as against the Governor or executive officer or a Supreme Court Justice.

In closing, I will say this:

I would say that the very fact that there has never been previously an impeachment trial in the history of Florida, and the very fact that I hope a kind Providence never allows one in the future to be held, is that very fact to which I have alluded, namely, the serious nature, the serious character, of the charge or charges that must be preferred and must be at least prima facie proven against the officer sought to be impeached.

That brings me to my final thought, Senators, and that is this: what happens to Judge Holt in this case is strictly incidental, strictly secondary. I join with some of the Managers of the opposition when they say that what is important is its effect upon the judicial system of this state. I differ in how that effect is to be felt.

I say that if a circuit judge or a Supreme Court Justice or an executive officer of this state, or the Governor, as the chief executive of this state, is placed at the mercy of disgruntled litigants or disgruntled applicants for favors, or is placed at the mercy of the exercise of his discretion, whether it be executive or judicial, and in danger thereby of ruffling someone's feelings, at the expense of the possibility of impeachment—if he is not allowed to have friends and cannot converse with friends and commune with friends, as would the ordinary person; if he is not able to enjoy any of the freedoms of pleasure or relaxation or conversations with other men—and I don't care whether it's over a bottle of Scotch or over a bottle of perfume that they have given to someone who is dear to them, or from someone that is near to them—I say, Senators, in all seriousness of thought, then we are in a precarious condition.

The answer to it is this: the impeachment article of the Constitution was never intended and is not now intended to reach such as that. It is intended to reach corruption in office, bribery in office, undercover kickbacks in office, if you please; drunkenness on the bench or in the executive mansion. Those are the things that impeachment articles, the impeachment articles of this constitution, were intended to reach, not such things as a sport coat or a bottle of perfume.

Senators, I close with appreciation and confidence—appreciation of your patience, your attention to this trial, and appreciation of the fact that you are conscientiously taking seriously the oath which each of you took; and confidence, Senators, in the result of your deliberations upon this motion. I say to you in all honesty, this impeachment trial has gone far enough for you to know that the grounds, the causes, the reasons of the so-called impeachment, are not here as they were contemplated by our founding fathers.

We respectfully submit, Senators, for a vote granting our motion to dismiss.

CHIEF JUSTICE TERRELL: That concludes the argument. What is the pleasure of the Court?

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Members of the Senate would like to take a ten-minute recess.

CHIEF JUSTICE TERRELL: So ordered. Court will recess for ten minutes.

Whereupon, beginning at 3:15 o'clock p.m., the Senate stood in recess for about ten minutes.

CHIEF JUSTICE TERRELL: The Court will come to order. The Chair declares a quorum present. What is the pleasure of the Court?

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: It is my understanding that at the beginning of this trial an answer was filed which incorporated a motion to dismiss, and that motion to dismiss is still pending before the trial court. This morning a motion for a judgment of acquittal was filed. For the purpose of the record, we would like to inquire of both sides whether or not these motions are to be considered as one. I think that that has been previously agreed to.

MR. HUNT: Mr. Chief Justice, that is my understanding.

MR. BEASLEY: Yes, that is my understanding too.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I would like to call to the attention of the Senate Rule 19, which provides as follows:

"At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open unless the Senate shall direct the doors to be closed while deliberating upon its decision."

According to my interpretation of that Rule, it will take a motion, made by some member of the Senate, passed by a majority, to close the doors of the Senate for the purpose of deliberation. Should and in the event that the doors of the Senate be closed, then and in that event the motion will only be deliberated at the closed-door session; then it will be necessary to call the roll, in open session and not in the closed-door session.

Mr. Chief Justice, at this time, now, as I see it, the Senate is ready to deliberate. Whether or not they wish to go behind closed doors is a matter that the Senate should decide.

MR. MUSSELMAN: Mr. Chief Justice, may I make an inquiry of the Court, please?

CHIEF JUSTICE TERRELL: Yes.

MR. MUSSELMAN: The motion for a judgment of acquittal being considered at this time, do I understand that no final arguments will be granted whatsoever; that the matter is concluded if that motion is considered at this time?

CHIEF JUSTICE TERRELL: It is my understanding that the motion to dismiss and the motion for a judgment of acquittal will be considered together, and that the Court then deny or grant either of those motions, as they see fit.

MR. MUSSELMAN: I am sorry, Sir. We were under the feeling that there would be a final argument also, as well as an argument upon the motion to dismiss.

CHIEF JUSTICE TERRELL: My understanding was that the argument applies either to the motion to dismiss or to the motion for a judgment of acquittal. If the Senate, though, has a different view about it, I will be glad to hear their views upon it.

MR. HUNT: As far as we are concerned, we have had our argument and we have submitted the motions to the Senate.

SENATOR BRACKIN: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: I move that the Senate do now go into executive session.

CHIEF JUSTICE TERRELL: You have heard the motion.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: It has been moved and seconded that the Senate go into executive session. All in favor of the motion let it be known by saying "aye."

(Those in favor of the motion so voted.)

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes in opposition to the motion.)

CHIEF JUSTICE TERRELL: The "ayes" have it, and it is so ordered.

Whereupon all those not members of the Senate, except Chief Justice Terrell and Secretary Davis, were excluded, the doors of the Senate were closed at 3:35 o'clock P. M., and were reopened at 4:05 o'clock P. M., when the Senate became again in open session.

CHIEF JUSTICE TERRELL: The Chair declares a quorum present. What is the pleasure of the Court?

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: It is my understanding that at the present time there is a motion for a judgment of acquittal pending before this body, and that all that will be necessary in this motion is to call the roll, because the motion is pending before the Court. In the event the Members of the Court, or Members of the Senate, are in favor of the granting of the motion, which will be the same as an acquittal, your vote will be "aye." In the event you are not in favor of granting the motion for acquittal, your vote will be "no."

I respectfully request that the Secretary of the Senate call the roll.

CHIEF JUSTICE TERRELL: The Secretary will call the roll.

Secretary Davis called the roll and the vote was:

| | | | |
|---------|--------|--------|--------|
| Belser | Branch | Knight | Morgan |
| Brackin | Johns | | |

Yeas—6.

| | | | |
|----------|-----------|------------|-----------|
| Adams | Clarke | Hair | Pope |
| Barber | Connor | Hodges | Rawls |
| Beall | Davis | Houghton | Shands |
| Bishop | Dickinson | Johnson | Stenstrom |
| Boyd | Eaton | Kelly | Stratton |
| Cabot | Edwards | Kicklitter | |
| Carlton | Gautier | Neblett | |
| Carraway | Getzen | Pearce | |

Nays—29.

CHIEF JUSTICE TERRELL: The motion is denied.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I would like to move that the record show that the motion to dismiss, which was incorporated in the answer, be denied by the same vote and the same roll call.

SENATOR BELSER: Mr. Chief Justice, a point of inquiry: was not that question decided previously?

CHIEF JUSTICE TERRELL: I think Senator Davis makes this motion for the purpose of keeping the record straight, and for that reason I think it is a proper motion.

SENATOR BRACKIN: I am under the impression, Mr. Chief Justice, that that motion was decided, with only two dissenting votes, and I believe that the record will show that, earlier, at the beginning of this trial.

CHIEF JUSTICE TERRELL: Senator Brackin, at that time I don't think this motion was before us, was it? This motion came along with the motion here for acquittal. They both have the same effect, and I think that was agreed to here by Mr. Hunt and counsel for the Managers, too.

A SENATOR: I second the motion.

CHIEF JUSTICE TERRELL: Any question?

(No response.)

CHIEF JUSTICE TERRELL: All in favor of the motion made by Senator Davis let it be known by saying "aye."

(Those in favor of the motion so voted.)

CHIEF JUSTICE TERRELL: Opposed, "no."

(Those opposed to the motion so voted.)

CHIEF JUSTICE TERRELL: The "ayes" have it. The motion is adopted.

What is the pleasure of the Court?

SENATOR KNIGHT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: I want to move you that certain of the Articles contained in the Bill of Particulars supporting the Articles of Impeachment be deleted from further procedure, in order to—and I think that each of them will have to be voted on separately by the Senate. In my humble way, I have gone down the list. The House Managers have deleted three articles from the charge, from the Bill of Particulars. They have deleted I(b)2; they have deleted I(d)8 and I(e)1.

Then I have certain others that I would like to move you, Sir, at this time be deleted from further consideration in this proceeding. First, I move you Sir, that—

CHIEF JUSTICE TERRELL: Senator Knight, I think that the three that the House Managers here indicated that they abandoned yesterday—I think those three are out.

SENATOR KNIGHT: Yes sir. I'm not going to make a motion in reference to those.

I move you now, Sir, that I(e)2, which has reference to the acceptance from John W. Wright of a gift of two shirts and a sportcoat, which is I(e)2, be now deleted from the Bill of Particulars and no more testimony taken on that; and I(e)3, which has to do with Joseph A. Perkins giving to Judge Holt four bottles of whiskey—I move that that be deleted, and that a vote be taken on them separately.

SENATOR SHANDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: Will someone give us the ones that were agreed on that were eliminated yesterday?

SENATOR KNIGHT: I will give you those. They were I(b)2, I(d)8 and I(e)1.

SENATOR SHANDS: What was it?

SENATOR KNIGHT: I(b)2, I(d)8 and I(e)1. Those three have already been deleted.

Now I move you that I(e)2 be deleted from further consideration. That has to do with the two shirts and the sportcoat.

CHIEF JUSTICE TERRELL: Gentlemen, you have heard the motion.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: As one member of the Senate, I would like to get the idea of the Court about these particular charges at this time.

SENATOR KNIGHT: My purpose is that it will expedite the proceedings, and, taken for their full worth, they do not constitute improper conduct.

SENATOR DAVIS: I would like respectfully to ask the Chief Justice for his opinion on this matter.

CHIEF JUSTICE TERRELL: I think those items should continue. As I said awhile ago, you have not heard any of the defendant's testimony on those, and he may eliminate them completely by his testimony.

SENATOR BARBER: I second the motion.

CHIEF JUSTICE TERRELL: What is the substitute? Was there a substitute?

SENATOR DAVIS: There is no substitute.

CHIEF JUSTICE TERRELL: You second the motion to delete?

SENATOR BARBER: Yes, sir.

CHIEF JUSTICE TERRELL: All in favor—

SENATOR KNIGHT: That is I(e)2.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

SENATOR DAVIS: Mr. Chief Justice, is this one motion or is it three motions—or two?

CHIEF JUSTICE TERRELL: It is one at a time; it is one item, as I understand it.

SENATOR KNIGHT: One item at a time.

CHIEF JUSTICE TERRELL: This is on I(e)2.

SENATOR KNIGHT: I(e)2, page 8 of the Senate Journal of July 8th, in the right-hand column—I(e)2.

Secretary Davis called the roll and the vote was:

| | | | |
|---------|-----------|------------|----------|
| Barber | Carlton | Hodges | Pearce |
| Beall | Clarke | Johns | Pope |
| Belser | Connor | Johnson | Rawls |
| Bishop | Dickinson | Kicklitter | Stratton |
| Boyd | Eaton | Knight | |
| Brackin | Gautier | Morgan | |
| Branch | Getzen | Neblett | |

Yeas—25.

| | | | |
|----------|---------|----------|-----------|
| Adams | Davis | Houghton | Stenstrom |
| Cabot | Edwards | Kelly | |
| Carraway | Hair | Shands | |

Nays—10.

SENATOR KNIGHT: I move you, Mr. Chief Justice, that item I(e)3, which is on the bottom of the page, page two, that has to do with four quarts of Scotch, be deleted from further consideration.

SENATOR BARBER: Second the motion.

CHIEF JUSTICE TERRELL: Do you want a roll call?

SENATOR KNIGHT: Yes, sir.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

Secretary Davis called the roll and the vote was:

| | | | |
|---------|-----------|------------|----------|
| Barber | Branch | Getzen | Morgan |
| Beall | Carlton | Hodges | Neblett |
| Belser | Clarke | Johns | Pearce |
| Bishop | Dickinson | Johnson | Rawls |
| Boyd | Eaton | Kicklitter | Stratton |
| Brackin | Gautier | Knight | |

Yeas—23.

| | | | |
|----------|---------|----------|-----------|
| Adams | Connor | Hair | Pope |
| Cabot | Davis | Houghton | Shands |
| Carraway | Edwards | Kelly | Stenstrom |

Nays—12.

Chief Justice Terrell: The motion is adopted.

SENATOR KNIGHT: I now move you, Mr. Chief Justice, that item number I(c)1 be deleted. That is the item with reference to the borrowing of \$2,185 from Joseph J. Gersten. I think that has been sufficiently explained as not constituting an offense.

SENATOR BRACKIN: I second the motion.

CHIEF JUSTICE TERRELL: You have heard the motion. Call the roll, Mr. Secretary.

Secretary Davis called the roll and the vote was:

| | | | |
|--------|---------|--------|--------|
| Barber | Bishop | Hodges | Morgan |
| Beall | Brackin | Johns | Rawls |
| Belser | Branch | Knight | |

Yeas—11.

| | | | |
|----------|-----------|------------|-----------|
| Adams | Connor | Getzen | Neblett |
| Boyd | Davis | Hair | Pearce |
| Cabot | Dickinson | Houghton | Pope |
| Carlton | Eaton | Johnson | Shands |
| Carraway | Edwards | Kelly | Stenstrom |
| Clarke | Gautier | Kicklitter | Stratton |

Nays—24.

CHIEF JUSTICE TERRELL: The motion is lost.

SENATOR EATON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: I would like to make a motion, at the expense of being accused by some persons as being technical, and before I make it I want to make some brief remarks, for the purpose of clarifying the record of this trial. I doubt that the use of the words "delete from" is proper, under the Constitution of Florida—I just wish to clarify the record and not change the vote in any way.

The Constitution says that the bringing of Articles lies within the authority of the House of Representatives. In theory, at least, this Bill of Particulars defines the issues and is a part of the charges, and I do not think that the Court can delete.

I therefore move you, for the purpose of clarifying the record, that the votes that have just been taken, as proposed by the Senator from the 25th be more properly labeled "votes granting motion to dismiss" those particular Articles upon which we voted, rather than the use of the term "delete," because we do not and cannot frame Articles nor can we bring Bills of Particulars.

A SENATOR: I second the motion.

CHIEF JUSTICE TERRELL: Do you want a roll call on that?

A SENATOR: A voice vote.

CHIEF JUSTICE TERRELL: All in favor of the motion let it be known by saying "aye."

(Those in favor of the motion so voted.)

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes in opposition to the motion.)

CHIEF JUSTICE TERRELL: The "ayes" have it. Motion adopted to change the verbiage.

SENATOR BISHOP: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Bishop.

SENATOR BISHOP: I move you, sir, that Items I(a)3 and 4 also be deleted. That deals with the Jaguar automobile.

SENATOR BARBER: I second the motion.

SENATOR POPE: Mr. Chief Justice, just as a point of order, I hope we vote on these things separately. Do both of them deal with the same Item?

SENATOR BARBER: Two different automobiles.

SENATOR EATON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: Will the gentleman yield?

SENATOR BISHOP: Yes.

SENATOR EATON: Give us the number again.

SENATOR BISHOP: I(a)3 and I(a)4, pages 5 and 6.

SENATOR EATON: Mr. Chief Justice, before we put the question may we have just a minute to read those specifications? We can read them to ourselves, but I thought we would just take a minute to read them before we vote.

CHIEF JUSTICE TERRELL: Suppose you send them to the desk here and have them read.

SENATOR KNIGHT: I believe I can read them within the hearing of the Senate, Mr. Chief Justice.

I(a)3 provides:

"Thurman A. Whiteside, an attorney in Dade County, Florida, and practicing before George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida, at the request of and as a favor to Circuit Judge George E. Holt, arranged for the purchase of a Jaguar automobile from Waco Motors, Inc., of Miami, Florida, a client of the said Thurman A. Whiteside, at a discount below the regular retail price of said Jaguar automobile; that as a result of said favor and arrangements aforesaid, the purchase of said Jaguar automobile was made on or about June 6, 1955, and title to said Jaguar automobile

was taken in the name of James F. Holt, brother of the said Circuit Judge George E. Holt."

That is a reading of the entire section.

SENATOR KNIGHT: I second the motion to dismiss that.

CHIEF JUSTICE TERRELL: You have heard the motion, gentlemen, on that first item. Call the roll, Mr. Secretary.

Secretary Davis called the roll and the vote was:

| | | | |
|---------|-----------|------------|-----------|
| Barber | Branch | Johns | Rawls |
| Beall | Dickinson | Johnson | Stenstrom |
| Belser | Eaton | Kicklitter | |
| Bishop | Gautier | Knight | |
| Brackin | Hodges | Morgan | |

Yeas—17.

| | | | |
|----------|---------|----------|----------|
| Adams | Clarke | Hair | Pope |
| Boyd | Connor | Houghton | Shands |
| Cabot | Davis | Kelly | Stratton |
| Carlton | Edwards | Neblett | |
| Carraway | Getzen | Pearce | |

Nays—18.

SECRETARY DAVIS: 17 yeas and 18 nays, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: The motion is lost.

SENATOR BISHOP: Mr. Chief Justice, I ask for a verification of the roll call. I got a different roll call.

THE SECRETARY: Those voting in the affirmative were Senators Barber, Beall, Belser, Bishop, Brackin, Branch, Dickinson, Eaton, Gautier, Hodges, Johns, Johnson, Kicklitter, Knight, Morgan, Rawls and Stenstrom, seventeen.

Those voting in the negative were Senators Adams, Boyd, Cabot, Carlton, Carraway, Clarke, Connor, Davis, Edwards, Getzen, Hair, Houghton, Kelly, Neblett, Pearce, Pope, Shands and Stratton, eighteen.

CHIEF JUSTICE TERRELL: The motion is lost.

The following explanation of votes on the preceding roll calls was filed with the Secretary of the Senate:

EXPLANATION OF VOTES

In view of the statement of the presiding Judge, Hon. Glenn Terrell, to the effect that, in his opinion, at this stage of the trial various charges made in the bill of particulars should not be dropped but, be considered after all evidence had been submitted by both sides, we voted against motions made by Senator Knight and Senator Bishop, and to sustain Judge Terrell's position.

WILSON CARRAWAY
Senator, 8th District

L. K. EDWARDS, JR.
Senator, 20th District

W. A. SHANDS
Senator, 32nd District

W. T. DAVIS
Senator, 10th District

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I have been advised by an attorney for the defense that he has two witnesses whose testimony will be very short. They are two doctors, and they are anxious to put them on as witnesses today, so they can be discharged and return.

For that reason, I personally will not make the motion for adjournment until after we hear those witnesses.

MR. HUNT: Will you call Dr. Von Storch, please.

Thereupon,

DR. THEODORE J. VON STORCH,

a witness called and duly sworn in behalf of the Respondent, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Doctor, will you please state your name?

A My name is Theodore J. C. Von Storch.

Q Are you a practicing physician in the City of Miami, Doctor?

A I am.

Q If you have a specialty will you state what it is?

A I am a neurologist, which is a doctor concerned with the medical practice of the nervous system.

Q Doctor, do you or did you on December 20, 1955, practice in partnership or in conjunction with Dr. Tracy Haverfield?

A I did.

Q Where was your office located at that time?

A My office was 1017, 18 and 19 DuPont Building, Miami.

Q And where is your office at the present time?

A The same location.

Q For what period of time have you practiced in Miami?

A I have practiced in Miami since 1954.

Q Will you please state your background, your medical education and experience prior to that time?

A Previously I graduated from Johns Hopkins University, Medical School, in Baltimore, in 1931. I had internships and residency in Boston City Hospital, neurological service, in Boston. I taught at Harvard University. I then taught at Boston University Medical School and then Albany Medical College, as a part of Union University. Then I was in charge of a unit during the war, abroad, and, returning to this country, became professor of neurology at the College of Physicians and Surgeons, Columbia University, in New York.

I then came down here, where I am presently associate professor of neurosurgery and lecturer in neurology at Miami University Medical School.

Q Are you actively engaged in the practice at the present time, Doctor?

A That is correct.

Q Did you, during the early morning of December 21, 1955, have occasion to be called to Jackson Memorial Hospital to attend Judge George E. Holt?

A I did.

Q Will you state to the Senate, Doctor, in your own words, about the time of your arrival at the hospital and everything you observed and did on that occasion?

A I arrived, I think, about 1:00 or 1:15 in the morning of the date mentioned. I found Judge Holt in bed, and I believe there were one or two nurses in attendance at the moment.

His left ear was badly lacerated—almost torn off; his eyes were swollen. He was bleeding a little from the nose.

He was incoherent, very restless at that time, and was out of contact.

I performed a neurological examination at that time, which led me to believe that he had a contusion, which is a bruising of the brain, and I knew previously that he did not have a skull fracture.

Q Doctor, what do you mean by the term "out of contact"?

A I mean that the Judge obviously didn't know where he was; he had been, quite obviously, badly injured in regard to his head and brain, and he was not very cooperative, as is quite usual with patients who have a severe brain injury.

Q Was he at that time in the emergency ward or had he been removed to a room?

A He had been removed to a room. I saw him in a room.

Q Now, will you state to the Senate what medical attention or service you proceeded to devote to Judge Holt?

A I examined him at that time from the neurological point of view, and examined his eyes and his reflexes and his neck, and looked him over, and found what I have just described—a person as I have described him. Subsequently, advice was given with regard to the proper medication, and then I saw the Judge off and on until, I believe, the 7th or 8th of January, and I think I saw him after that up to the date of his discharge, but I am sure I saw him up until the 7th of January.

Q Doctor, how long after your arrival at the hospital did you perform the neurological examination of which you speak?

A Practically immediately.

Q Will you state to the Senate of what that consisted?

A This would be very detailed, tiresome, and—

Q With respect to the examination of the eyes, particularly.

A With respect to the eyes, one uses an instrument called an ophthalmoscope, with which one looks into the other person's eye. You put it up against your eye and then up against the other person's eye and look into the eye, for the purpose of finding if there is any hemorrhage or swelling or evidence of pressure. This I did on both sides.

Q Doctor, during the course of that eye examination was your face brought in close touch or close contact with the patient's face?

A Yes, it was. My nose would be as close to his nose as my nose is to this microphone.

Q Would you mind standing up, Doctor, and briefly demonstrating, on me, the approximate distance that you would have been from Judge Holt's mouth and face during that examination?

(The witness arose and stood face to face with Mr. Hunt.)

A It would be approximately there, right there.

Q In each eye?

A In each eye.

Q Doctor, I will ask you to state to the Senate whether or not in the course of that examination you had occasion to smell Judge Holt's breath at that close proximity?

A I did have occasion to smell his breath as I examined each eye for a period of approximately a minute, at least, on each side.

Q Will you state to the Senate whether or not you detected any smell of alcohol on Judge Holt's breath?

A I did not detect any smell of alcohol on Judge Holt's breath.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. HOPKINS:

Q Doctor, how long have you known Judge Holt?

A I have known Judge Holt since the night of the injury, as a patient. Previous to that I might have appeared in his court as a witness, but I don't remember whether I did or not.

Q What time of night did you see him?

A Approximately, it was in the neighborhood of 1:00 o'clock in the morning.

Q Do you know whether or not he was X-rayed?

A I knew from the record, from the emergency room record.

Q Was he X-rayed prior to the time you saw him?

A I presume he must have been, because it was already in the record.

Q Were you looking particularly to see whether or not there was any smell of liquor?

A Beg pardon? I didn't hear you.

Q Were you looking to find out whether or not he had been drinking?

A I was not concerned primarily with whether or not he was drinking.

Q Did you take any blood test on him to see whether or not he had an alcohol content?

A There wasn't any indication for this test, from a medical point of view.

Q The answer is that you did not?

A The answer is I did not.

Q Were you requested to do so by the police of the City of Miami?

A I was not.

Q Doctor, do you recall where you had been that night prior to going to the hospital on that occasion?

A Where I had been?

Q Yes.

A Yes. I believe that I was entertaining a visiting professor from London, and I had been to dinner at the Top of the Columbus, which is on the roof of the Columbus Hotel. I took this chap home and got him safely to bed, and I went out on a couch, just about the time he got to sleep, despite the whistles, and so on, I had a telephone call and went to the hospital. To the best of my knowledge, that is the occurrence that preceded my going to see the Judge.

Q Did you have a drink, yourself, prior to going to see Judge Holt?

A I certainly did, before dinner.

Q How many drinks had you had prior to seeing Judge Holt on that occasion?

A This was a rather formal occasion. The Dean of the Medical School was there, and I was completely sober. I entertained at dinner, and I think I had two cocktails.

MR. HOPKINS: No further questions.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Doctor, what time had you had dinner?

A I can't say exactly. I don't know. I had been to a cocktail party before, at which I had had the cocktails that I mentioned, and then went to dinner. I imagine it was somewhere around 7:00 or 8:00 o'clock.

Q And then you reported to the hospital somewhere around 1:00 a. m. Is that correct?

A That's correct, to the best of my knowledge.

Q Doctor, I hand you what appears to be a photostat of certain hospital records of the Jackson Memorial Hospital, beginning December 21, 1955 and appearing to run through December 28, 1955, with the patient's name "George E. Holt" up at the top. I would like for you to examine these records and state to the Senate what they are, if you know.

A (After examining documents) This first sheet is the front sheet of the usual Jackson Memorial Hospital record, and it states the diagnosis made upon discharge of the patient, and his condition. The diagnosis is contusion, cerebral, severe, which, in ordinary language, means severe cerebral bruising or bruising of the brain. There was laceration of the left forehead and left ear.

The second sheet is the emergency room record, which is made out, presumably, in the emergency room—made out when the Judge was admitted to the emergency room.

The next is the attending resident's note, with his diagnosis and a statement of what had been done. It is here that I see

that the skull and the next X-rays—the cervical spine, that is—and the chest films, were normal.

Then following this there is a series of notes, of progress notes, my notes—the first one, my note stating my examination and stating that he was seen by Dr. Sheffel Wright, my diagnosis and what I thought his condition was.

Then there are subsequent notes by the resident, and then there are notes by Sheffel Wright concerning his condition from day to day.

Q He was a doctor of internal medicine, was he?

A He is a doctor of internal medicine; and then there are notes by Dr. Keedy, who was associated with Dr. Haverfield and myself at that time, and a note by Dr. Haverfield concerning a spinal puncture, which may be interpreted, with the information stated here, as indicating that there had been bleeding in the head, inside the head.

Then there are further notes concerning his condition, and the final discharge on the 17th of January.

Q Doctor, will you state to the Senate if you know, the practice in the making up of the hospital records with reference to the detection of alcohol upon an admitted patient, under those circumstances?

A The practice would be for the admitting intern or resident on the emergency floor to smell the patient's breath for alcohol and for acetone and for other disorders. There would be no blood alcohol performed unless there was a request for it or unless the situation was one of acute and, I should say, pre-mortal alcoholism.

Q In the event of the detection of alcohol on the breath of a patient admitted under those circumstances, under the practice at Jackson Memorial Hospital, would an entry have been made upon those records?

A An entry would have been made.

Q And what particular entry? Is there a particular symbol or letter, or something of that nature?

A There is one, which I believe is "HBD," or something like that.

Q What does "HBD" denote?

A It indicates "Has been drinking."

Q Do you find any such notation on that record?

A No, I do not.

MR. HUNT: We would like to offer the record in evidence.

MR. HOPKINS: May we see it?

MR. HUNT: Yes sir.

(The records referred to were examined by the Managers and their counsel.)

(Whereupon, there being no objection, said hospital records were received in evidence as Respondent's Exhibit 6.)

RECROSS EXAMINATION

BY MR. HOPKINS:

Q Doctor, you were not present when this patient came into the hospital, were you?

A I was not.

Q You talked about normal procedure and not what happened in this case. Is that correct?

A That is correct.

Q Did the record indicate that the police requested a blood test?

A The record did not—that is, these sheets of record which I have seen.

Q Does the record normally reflect that, if such request were made?

A This I don't know. I don't think it would normally. It could be used, but it would depend largely on the efficiency

of the young man in the admitting room whether it was done or not.

Q We were talking about the normal procedure in the keeping of the records.

A Well, the proper and normal procedure would be of that type, yes.

Q Doctor, are there ways of determining whether or not a man has been drinking?

A I'm sorry. I didn't understand you.

Q Are there methods recognized by the medical profession for determining whether or not a man is under the influence of whiskey?

A Is under the influence or has been drinking, as I first understood it?

Q Let's put it both ways.

A The answer to one, there are ways, commonly accepted ways, of determining whether a person has been drinking. You smell alcohol on his breath, first of all, and then a blood alcohol might—well, not "might," but is the means of determining whether there is excessive alcohol in the blood; and then this can be done through a balloon test, in which one breathes in and out of a balloon and the alcohol is detected.

Q Now, if there were any reason to really determine whether or not a man had been drinking, what test should be used?

A It would depend upon which test was available, really. In the police station they use the balloon test. In certain hospitals they use the blood alcohol, by determining the blood directly by analysis.

Q Actually, Doctor, does alcohol have any smell?

A Alcohol itself?

Q Yes sir.

A I think that all alcohols, themselves, do have a smell, each of which varies a little bit. Now, you used this word "smell." This is a combination of odor and a tactile sensation, which is perceived by the nerves in two different fashions.

Q Whether or not there was a note as to whether or not he had been drinking would depend on the efficiency of the intern on duty. Is that correct?

A I should think so; but this is so common a procedure that I think the intern would be quite out of order if he didn't mention it.

Q Would that be the same in regard to a request of the police department for a blood test?

A That would be a much more unusual request than I, personally, might give an intern.

Q Doctor, if one person had been drinking, himself, would it not be more difficult for that person to smell beverages on another who had been drinking?

A That would depend on how much and how long previously, and what was drunk.

MR. HOPKINS: No further questions.

CHIEF JUSTICE TERRELL: Doctor, one of the members of the Court sends up this question:

"Can you say, as a matter of fact, that the accused had not been drinking earlier in the evening, at the time of the wreck?"

THE WITNESS: No, I cannot say that. All I can say is that I did not smell alcohol on his breath at the time.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Doctor, what would be your answer to that if you were told that the accused, by certain persons, is supposed to be under the influence of alcoholic liquor an hour or an hour and a half before you smelled his breath?

A I would consider it highly unusual and practically im-

possible that I did not smell alcohol on his breath a little later, an hour after he was said to be obviously drunk.

Q Will you state whether or not it is usual or customary practice upon the admission of an unconscious patient to take a blood alcohol test without his permission?

A It is not at all usual. We are not concerned with that. We are concerned with the patient's medical condition.

MR. HUNT: That is all.

MR. HOPKINS: No further questions.

MR. HUNT: Thank you, Doctor. May this witness be excused?

MR. HOPKINS: We have no need for him.

(Witness excused.)

MR. HUNT: Will you call Dr. Zundell?

SENATOR SHANDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: I would like to move that the time for adjournment be extended until the completion of the examination of the next witness. I understand that the witness will be a very short one.

CHIEF JUSTICE TERRELL: If there is no objection, that will be the order.

(There was no objection.)

Thereupon,

DR. WARREN ZUNDELL,

a witness called and duly sworn in behalf of the Respondent, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Warren Zundell.

Q Dr. Zundell, what is your profession?

A I am a physician.

Q Will you speak right in that microphone, please.

A A physician.

Q Where do you practice?

A In Coral Gables and Miami.

Q Were you during the evening of December 20, 1955, and the early morning of December 21, 1955, on duty at Jackson Memorial Hospital in Miami?

A I was.

Q State to the Senate what your position was and where you were located and what your duties were.

A I was the physician in charge of the emergency room at Jackson Memorial Hospital.

Q Do you recall your hours of duty on that evening and early morning?

A Yes; midnight to eight in the morning.

Q I will ask you to state whether or not you recall that sometime shortly after midnight in that early morning of December 21, 1955, you had occasion to see and to perform any services in connection with Judge George E. Holt?

A Yes. I was the first physician to see Judge Holt when he was brought into the emergency room.

Q Now, will you detail to the Senate, Doctor, in your own words, what you observed and what you did with respect to Judge Holt when he was brought in?

A This patient was brought into the emergency room shortly after midnight. He was unconscious and was bleeding from the nose and mouth, and had a lacerated left ear.

Q And what happened?

A Well, when I saw him it was probably less than a minute after he was brought in. I did not do any complete examination, but I did determine immediately that this was a patient requiring the care of the Neurological Service at the hospital. I also, in looking at the patient, stuck my nose in his mouth to see if I could smell any odor peculiar to a person who might have been drinking. This is the routine examination of any patient brought to the hospital in such a state.

Q And did you smell any odor of alcohol when you tried to smell it on Judge Holt's breath?

A I smelled no odor that was peculiar to the breath of a person who is known to have been drinking or who was admitted drinking.

Q Do you mean by that that you did not detect the odor of alcohol on his breath?

A That is correct.

Q What did you then do?

A I don't recall whether I personally called or had somebody else call, at the time, the resident physician of the Neurological Service to come down and take charge of this patient.

Q Well, did that resident physician of that Service come down and take charge?

A Yes. He was there within a few minutes.

Q I believe your duty was that of supervisor of the emergency area?

A That is correct.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. JOHNSON:

Q How do you spell your name, Dr. Zundell?

A Z-u-n-d-e-l-l.

Q Who was the intern on duty at the emergency room at that time?

A I couldn't say. I don't remember.

Q How long had you been practicing at that time, Dr. Zundell?

A Since July, 1953.

Q Who is Dr. Mark Brown?

A He was the neurosurgical resident at that time.

Q Did he come down and examine Judge Holt?

A Yes sir.

Q Was he one of the first persons to examine Judge Holt?

A Yes sir.

Q Actually, your position—you were a resident physician. Is that correct?

A No. I was physician in charge of the emergency room.

Q Your position is in charge of the emergency room?

A Yes.

Q Did you supervise and check the emergency room operation? Is that correct?

A Yes.

Q Did you personally observe and examine each patient that was brought into the emergency room during the time you were on duty?

A No.

Q That is ordinarily done by nurses. Is that correct?

A What is it?

Q The examination, the initial examination on all patients?

A No. Most patients are initially examined by an intern.

Q Is your job more of an administrative job?

A Mostly, yes.

Q Why, in this particular case, did you personally examine Judge Holt, rather than have an intern do it, as is customary?

A On serious cases I try to see the patient through. There was nothing, I mean, about the case that made me wish to examine the patient.

Q Did you examine Mr. Feitelson or Miss Martin at the same period of time?

A I didn't examine him, as I remember.

Q Well, he came to the hospital at approximately the same time, didn't he?

A Approximately, yes.

Q Did you personally smell his breath?

A No.

Q Wasn't he very seriously injured at the time you saw him?

A When he first came in, as I recall, whoever saw him first didn't think he was too seriously injured, but shortly after that he had a convulsion and then, of course, it was known that he could be seriously injured and he was turned, I believe, over to the Neurological Service.

Q He was in a rather critical condition for quite some time, was he not?

A I don't know. I had no contact with him after that.

Q Did you personally examine Miss Mary Martin, who was brought in at the same time as a result of the same accident?

A No.

Q Who examined her? Who smelled her breath?

A I don't know.

Q Where did you testify before about this, Dr. Zundell?

A I haven't.

Q This is the first time you have testified?

A Yes.

Q When was the first time you discussed this case with anyone else?

A The first time?

Q Yes sir, in relation to the question of drinking or not drinking?

A I don't recall.

Q Has it been recently or was it sometime ago?

A Fairly recently.

Q Within the last month?

A Yes.

Q As I understand your testimony, it is only within the last month that you have had occasion to discuss your recollection concerning how Judge Holt's breath smelled that night that he was taken to the hospital. Is that correct?

A You mean—no, the night he was in the hospital, when I called Dr. Brown, shortly after he examined this patient he asked me—I don't recall whether I asked him or he asked me—but we agreed that neither of us smelled any peculiar alcoholic odor at the time.

Q Did you make a note on the emergency room chart to negative the fact that there was any alcohol present?

A I did not.

Q You made no note?

A No.

Q You are testifying now solely upon your memory. Is that correct?

A That's right.

Q As administrative head of the emergency room, did you talk to Detective Berquist, of the Miami Police Department, shortly after the accident?

A I don't recall.

Q Is it not true that he requested a blood alcohol test to be performed?

A That I don't know. If he had, then we would have refused it.

Q You have no independent recollection of that, do you, sir?

A I don't recall anybody requesting that a blood alcohol - -

Q Is it possible?

A If it had been requested we would have refused it, refused to draw blood.

Q Well, if it was important enough to smell his breath - - stick your head in his mouth - - wouldn't it be more important to determine accurately the question whether he was drinking or had been drinking?

A A blood alcohol is a little more accurate than smelling the breath, yes sir.

Q Couldn't you tell definitely, beyond any question, whether he was under the influence if you had taken a blood alcohol test?

A No.

Q You can't determine the percentage of alcohol in his blood in proportion to the weight of the blood and determine thereby how much he had been drinking?

A No, blood alcohol is not that accurate. It also is not the amount of blood alcohol that is important. It is the percentage of alcohol in the brain that is important.

Q Well, isn't it true that the percentage of alcohol in the blood has a direct bearing on the percentage of alcohol in the brain?

A An indirect relationship, depending on the previous alcoholic experience of the person.

Q Isn't it true that the blood alcohol test is accepted by courts throughout the length and breadth of this country as a proper indication of whether a man has been drinking?

A I don't know about the courts.

Q You have no knowledge of that. Is that your answer?

A That's right; but at that time it was illegal to draw a blood alcohol without written permission.

Q You mean in the course of treating a patient you could not take an alcohol sample to determine the percentage of various substances in the blood?

A That's right.

Q Don't you customarily draw blood in the usual course of treating patients, to make a number of tests of the blood?

A That's right.

Q And you say it is illegal?

A Blood alcohol, I say, without written permission.

Q If a man comes in unconscious and you feel it is necessary to determine his condition, you mean that you cannot take a blood sample from him?

A For a blood alcohol. That is correct.

Q Dr. Zundell, isn't it true that if a person has been drink-

ing vodka, generally you are unable to smell alcohol on his breath?

A No, that is not true. It is a popular notion, but it's not true.

Q You are basing your testimony today upon your personal recollection of events that occurred on the night of December 20, 1955?

A It was the early morning of December 21st.

Q What I mean is, you are not basing your recollection upon any notes that you made at that time?

A No. I have no notes on it.

Q After you examined Judge Holt did you order any further treatment or examination made?

A Yes. I called the - - I don't recall whether I called, myself, or had somebody else call the Neurosurgical Resident for further care of this case.

Q Did you arrange for X-rays to be made, to determine the extent of brain damage and chest damage?

A I believe the neurosurgical resident did that.

Q Were X-rays made before or after you made your inspection of Judge Holt's mouth?

A After that.

Q Afterwards?

A Yes sir.

MR. JOHNSON: That is all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Doctor, did you know Judge Holt before this occasion?

A No.

Q Have you seen him or spoken to him since?

A No sir.

MR. HUNT: That is all.

CHIEF JUSTICE TERRELL: Doctor, I have two or three questions. One of the members of the Court sends up this question:

"When a man is so drunk that he can't stand up, how long can you smell liquor on him? About how many hours?"

THE WITNESS: That varies with the individual. We know that people burn alcohol in their bodies at a certain rate which is almost fairly constant from person to person. We also know that there is a certain saturation required by brain tissue before a person is in a condition corresponding to the question asked. If a person is a continuous fairly heavy drinker he will burn alcohol at a faster rate than a person who is not used to heavy alcohol consumption; but, by and large, just to give a general answer to your question, it probably would be several hours, with individual variations.

CHIEF JUSTICE TERRELL: The next question:

"Would not a tremendous shock tend to sober an individual up?"

THE WITNESS: What sort of a shock?

CHIEF JUSTICE TERRELL: Well, by "would a tremendous shock tend to sober an individual up," I take that to mean the shock from being struck, in an accident.

THE WITNESS: If I have to give a yes or no answer to that question, I would have to say no.

CHIEF JUSTICE TERRELL: Senator Connor sends up this question:

"What about Mr. Feitelson's unconsciousness at the time he was brought to the hospital?"

THE WITNESS: I don't recall for sure, but I believe at the time he was brought into the hospital, at that moment he was unconscious.

CHIEF JUSTICE TERRELL: The next question, by Senator Brackin:

"In your opinion, isn't it more important to you to try to save a human life than to spend time drawing blood for alcoholic tests?"

THE WITNESS: I think the answer to that is obvious.

BY MR. HUNT:

Q The answer to that would be "Yes," Doctor?

A Saving human life is more important than anything else in the world.

MR. HUNT: Was that the end of your questioning, Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Yes.

BY MR. HUNT:

Q Doctor, I think you stated in answer to a question on cross examination that if the Miami Police Department had requested permission to take blood alcohol, you would have refused it?

A That is correct.

Q Would that same answer and position have applied to any patient, regardless of who he was, in that condition?

A That is correct.

MR. HUNT: That is all.

CHIEF JUSTICE TERRELL: This question: "would the odor of blood obscure or diminish the odor of alcohol?"

THE WITNESS: No, sir.

RE-CROSS EXAMINATION

BY MR. JOHNSON:

Q Dr. Zundell, blood does have a definitely pungent odor, does it not?

A No sir.

Q Well, maybe I use the wrong phrase. Does blood have a definite odor?

A Yes sir.

Q Well, isn't it true that Judge Holt was bleeding badly around the face and had a severely lacerated ear, that was almost torn off?

A Not as bad as you make the question sound.

Q Is that what you stated before - - that he had a lacerated ear and was bleeding around the face?

A Yes.

Q That is true?

A Yes.

Q One other question: do I understand it to be your testimony and opinion as a medical man that a blood alcohol test is not helpful in determining the question of whether a man has been drinking heavily?

MR. HUNT: Your Honor please, that is repetitious. He has been over it time after time, and the witness testified. We would like to get on, please.

MR. JOHNSON: I would like to find if that is his opinion. If it is, I want to know.

A It is illegal.

BY MR. JOHNSON:

Q No, that wasn't my question. My question is, is it your opinion that a blood alcohol test is not helpful in accurately determining the amount of alcohol in a man's system?

A There have been times when we would have liked to know a person's alcohol content, for medical reasons, but we could not do it.

Q No, that wasn't my question. My question is, does the test decide the question pretty definitely?

A No sir.

Q Is it your contention that a blood alcohol test should not be used to determine the amount of alcohol in a man's system at the time the test is made?

A The blood alcohol test is not a highly accurate test, but there have been times when, for medical reasons, we would like to know approximately what the alcohol content is, in our methods of diagnosis, but we could not do it because it was illegal.

MR. JOHNSON: That is all.

MR. HUNT: That is all, Doctor. Thank you very much.

SENATOR DAVIS: Mr. Chief Justice, a point of order.

CHIEF JUSTICE TERRELL: The point of order is well taken. The Senate is adjourned until tomorrow morning at 9:30.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:15 o'clock p. m., until 9:30 o'clock a. m., Thursday, August 1, 1957.