

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

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Wednesday, August 7, 1957

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. Musselman, 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	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	
Carlton	Getzen	Morgan	

—34.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Edwards, will you pray?

SENATOR EDWARDS: Our Father, who art in Heaven, we come to Thee this morning seeking Thy guidance and wisdom.

We thank Thee for the desire we have to do right, and earnestly solicit your help in distinguishing between right and wrong.

Help us to fulfill Thy great commission. Forgive us of our known and unknown sins.

Hallowed be Thy Name. Thy kingdom come, Thy will be done, on earth as it is in Heaven.

Give us this day our daily bread. Forgive us our trespasses as we forgive those who trespass against us.

Lead us not into temptation, but deliver us from evil, for Thine is the kingdom and the power and the glory forever and ever. 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, August 6, 1957, was dispensed with.

The Senate daily Journal of Tuesday, August 6, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: Counsel will proceed.

MR. SUMMERS: Call Morris Berick.

Thereupon,

MORRIS BERICK,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Morris Berick.

Q Where do you reside, Mr. Berick?

A 4501 Royal Palm Avenue, Miami Beach, Florida.

Q Miami Beach?

A Yes sir.

Q How long have you resided in Dade County, Florida?

A Since 1942.

Q What is your profession or occupation?

A I'm an attorney.

Q Were you an attorney prior to 1942, prior to your coming to Florida?

A Yes sir.

Q Will you please state from what state you came to Florida, and where you received your legal education?

A I received my legal education at Boston University, and was admitted to the Rhode Island Bar in 1927, and actively engaged in practice of law, both in the State Courts and Federal Courts and the Supreme Court of the United States.

Q Have you ever held any official positions, either under State Government or otherwise?

A Under City Government in Rhode Island.

Q What position did you hold there?

A I was Judge in the Coroner's Court for a period of four years.

Q Pardon?

A I was Judge of the Coroner's Court for a period of - - -

Q Wait just a minute. Has that microphone gone out again?

Your official position, now, please sir?

A Under the City Government, I was Judge of the Coroner's Court for a period of four years.

(At this point, some adjustments were made in the P. A. system in the Chambers.)

THE WITNESS: Shall I continue?

BY MR. HUNT:

Q Will you repeat your answer to that last question, please?

A I was Judge of the Coroner's Court in Rhode Island for a period of four years.

Q And you came to Miami Beach when, Mr. Berick?

A In 1942, sir.

Q And you - - -

A Although I had been living in Florida since 1935, I moved my office permanently in 1942.

Q Where did you live in Florida prior to coming to Miami?

A I lived in Miami Beach all the time.

Q I beg your pardon.

Have you held any position in the Dade County Bar Association?

A I did, sir. I was a member of the Courts Committee for, I believe, either two or three years, of the Dade County Bar Association.

Q Are you also a member of the Miami Beach Bar Association?

A I am, sir.

Q And of the Florida Bar?

A Yes sir.

Q Mr. Berick, there's a case before the Senate entitled "The Mayflower Case," which involved the - - - an action on a lease upon the Variety Hotel, in which I believe you appeared in a professional capacity, is that correct?

A Yes sir.

Q Was a Mr. Kurlan appointed receiver in that case?

A Yes sir.

Q Would you state to the Senate what the issue was, very briefly, as framed in the complaint filed in the Court?

A Yes sir.

A Mr. Nathan Schwartz originally owned this hotel known as the Variety Hotel - - -

Q Where is that located?

A - - - and Mayflower, Arthur Mayflower.

That's located on Alton Road, near Dade Boulevard.

Q Well - - -

A At the Beach.

And he sold this hotel to a man by the name of Henry Elliott, and organized a corporation and took back a ninety-nine year lease under which he was supposed to pay a certain amount of rent net to Henry Elliott. By that, I mean he was to pay Henry Elliott so much per year, pay the existing mortgages, taxes, interest, and so forth.

He failed to pay the taxes and other obligations under the lease, and Mr. Elliott exercised the rights under this ninety-nine-year lease in terminating this lease.

Q So the complaint was for the termination of the lease and the appointment of a receiver, pending the litigation, is that correct?

A The appointment of a receiver was under the provisions of the lease; the lease provided for the appointment of a receiver.

Q Under the terms of the lease, in the event of actionable default, there was an automatic provision for the automatic appointment of a receiver?

A Yes sir, with or without notice.

Q I'll ask you to state on what date the complaint was filed for the termination of that lease?

A Well, I'll have to go back a little, sir.

In February of 1954, I underwent cataract operations in

both eyes, and I was out of the office until about the middle of April, and I came back to the office in the middle of April, and I think it was about April 16 that the bill of complaint was filed.

MR. HUNT: Mr. Davis, may we have the file in that case, please sir, the case of Henry Elliott versus Mayflower Associates, Number 168318?

BY MR. HUNT:

Q Here are the files in the case, if you need them to refresh your recollection.

A Judge Hunt, according to the file you gave me, the filing date was April 15, 1954.

Q April 15, 1954?

A Yes sir.

Q Was that matter presented to Judge Holt in the evening, do you recall?

A I wouldn't know anything about it, sir, because I did not file the case, nor present it to the Judge.

Q Will you look on the complaint and see if you find a notation as to the time and date of presentation to Judge Holt?

A It reads:

"Before me, nine-thirty p.m., 15 April, 1954"; looks like "Holt."

Q "Circuit Judge"?

A Yes, yes sir.

Q Did - - - do you know whether or not at that time Judge Holt was the weekly emergency Judge?

A I do not, sir.

Q What action did Judge Holt take upon the presentation of the complaint?

A He appointed Commander Louis J. Kurlan as the receiver, of which I was informed the following day.

Q Was a bond required of Mr. Kurlan?

A Yes, a bond was required, but he had, I believe, forty-eight hours in which to file it.

If you want me to check it, - - -

Q In what amount?

A - - - I'll be glad to check it.

Yes, a \$10,000 bond was required, and he had two days in which to file it, sir.

Q Does that complaint allege that the '53 taxes were unpaid?

A Both City and County, yes sir.

Q And what was the amount of the mortgage on the property, if the file reflects it? And as you go through the files, Mr. Berick, you might also note whether or not the mortgage holder filed a notice of foreclosure.

A That I do know, sir.

Q The mortgage, also, then was in default?

A Yes sir, one of the mortgages was in default.

Q Do you know in what amount?

A Not unless I look through the file, sir.

I'm looking through the file, sir.

I find that on May 19, 1954, I filed an amended bill of complaint to appoint receiver and terminate lease, and for a permanent injunction for restraining mortgagee from foreclosure.

It recited that the appointment of the receiver - - -

Q Just a minute, Mr. Berick. Something happened to the mike there. We're dead again.

A (Continuing) It recites that on the 15th day of April, 1954, the Court appointed a receiver, and then proceeds to say that on Friday, April 23, 1954, the Plaintiff, that is, my client, received a copy of registered letter addressed to Mayflower Associates, who were the lessee, from the law offices of Lane, Muir, Wakefield, Frazier & Lane, which states that they represent Hanna Levitt, Joseph Rambam, as trustees for the benefit of Beatrice Rambam Bornstein and Marian Rambam, and Louis Landaw, Administrator, as Administrator, C. P. A., of the Estate of Ida Hertz, deceased, the owners and holders of the mortgage, stating that there was a defaulted payment, in the amount of \$833.33, due on April 3, 1954.

Q What was the amount of the mortgage?

A The amount of the mortgage was \$96,646.42, sir.

Q Now, referring to the file, again, did Judge Holt enter an order enjoining at that time the foreclosure of the mortgage?

A Oh, may I go back and say that there was another mortgage, the first mortgage, to the Gulf Life Insurance, of \$50,000.

Q \$50,000?

A Yes sir, and this \$96,000 was a second mortgage.

Q Very well.

Was an order entered by Judge Holt, temporarily enjoining the foreclosure of the mortgage?

A No, there is no such order.

It's my understanding and recollection that the attorneys representing the second mortgagee verbally agreed not to prosecute the foreclosure of this mortgage pending the outcome of this case.

Q Can you state whether, during the course of the receivership, it was necessary for the receiver to borrow money to pay taxes and other claims against the property on the receivership?

A Yes sir, under what is known as receiver certificates, money was loaned to the receiver by my client.

Q And your client was whom?

A Henry Elliott, sir.

Q Did he reside in the hotel itself?

A Yes sir, he moved into the hotel after the receiver was appointed.

Q Immediately after?

A Yes sir.

Q Now, for what period of time was Mr. Kurlan a receiver for that property?

If it will help you, I think you'll find an order on 15 October, 1954.

A Until May 28, 1954.

On that day, or the following day, he operated the hotel, and then he remained as receiver, continually remained as receiver of certain furniture and fixtures that were later sold at an auction sale; and then, the final release and discharge was some time in October, if my recollection serves me correctly.

Q Did he handle the auction which you have mentioned?

A Yes sir.

Q And when was Mr. Kurlan discharged as receiver? See if you find an order of 15 October.

A 15 October, sir?

Well, I see that on the 15th day of October, Judge Holt entered an order authorizing the receiver to accept the high-

est offer, of \$500, and to execute the delivery and the receiver's bill of sale.

It was sometime subsequent to that that he was finally discharged.

Q You don't find the order of discharge in the file?

A No sir, no sir.

SENATOR DAVIS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - I notice that the Defendant is not in Court.

I don't think there's any question, but to avoid any question, I think we'd better ask the defense if they waive his appearance here at this time.

CHIEF JUSTICE TERRELL: Mr. Hunt, Senator Davis wants to know if you waive the appearance of the Respondent here at this time.

MR. HUNT: Oh, yes sir. He's temporarily in the witness room, yes sir. He'll be in in just a short time.

CHIEF JUSTICE TERRELL: I might state that I've been reading these cases tried by the United States Senate, and I notice that a number of times, the Respondent was not present at all.

MR. HUNT: That's correct.

BY MR. HUNT:

Q Mr. Berick, eventually, did Judge Holt enter an order in favor of the Plaintiff, reclaiming the property from the lease?

A Yes sir.

Q Was that matter appealed to the Supreme Court of Florida?

A It was, sir.

Q Did the Supreme Court, by opinion of 15 August, 1955, in Case Number 26428, by opinion written by Justice Thornal, affirm and uphold Judge Holt's decision?

A Yes sir.

Q Now, subsequent to that, the receiver was discharged?

A Yes.

Q Do you find in that file an order which fixes fees for the receiver?

A The fees were fixed in May, sir, of 1954.

Q I'll ask you to state to the Senate what the procedure was in the matter of fixing fees for the receiver, and I believe the same order fixed fees for the Plaintiff's attorney, did it not?

A Yes sir.

Q Will you state to the Senate what the procedure was?

A After I filed the - - - a motion for summary judgment, I had a conference with my client, Henry Elliott, and we discussed the question of what might be and what would be reasonable fees for the purposes of presenting it to the Judge at the time of the hearing, in the event that he decided in our favor in granting us a motion for summary judgment; and Mr. Elliott, who had lived in the hotel and witnessed the work, effort, expended by the receiver in the operation of the premises, suggested an amount of \$5,000.

I told him that all we could do would be to present it to the Court, and that's how that \$5,000 came about, in presentation to the Court.

Q Were you present when the matter was brought on for hearing before Judge Holt?

A Yes sir.

First - - -

Q Go ahead.

A I'm sorry, sir.

First, there was the argument on the question of the merits of the case - - -

Q Well, now, that had to do with a motion by you for summary judgment?

A Yes sir.

Q What, briefly, is a motion for summary judgment?

A Well, a motion for summary judgment is a motion that is filed - - - either can be filed by the Plaintiff or the Defendant, and in which you present to the Court and state to the Court there is no genuine issue for the Court to decide, and therefore, an automatic judgment, either for the Plaintiff or for the Defendant, should be immediately granted.

Q That, does it not, have the effect of presenting early in the litigation an opportunity to the Court to enter final judgment without carrying the case on through to the ordinary final hearing?

A It's to avoid dilatory pleadings on either side.

Q Did Judge Holt grant your motion, and enter a summary judgment?

A Well, first there was argument presented by me, and there was argument presented by Montague Rosenberg, who was the attorney for the Defendant, and the arguments, as I recall it, lasted about three-quarters of an hour to an hour, and Judge Holt sat up and listened through it, and after we got - - - cases were cited, and after we concluded our arguments, he granted my motion for summary judgment.

Q Was it then that the matter of discharging the receiver and allowing the - - - fixing the fees was brought up?

A I brought that matter up, sir.

Q Yes. And how did you present it to Judge Holt?

A I presented it to Judge Holt by advising him that the time has now come for the receiver's fee to be fixed; advised the Court that my client had lived in the hotel all this time, and that the Defendant corporation is practically defunct, bankrupt, no money, and that whatever judgment might be rendered against the Defendant could never be realized; that my client will have to pay for it, regardless of what the amount may be; and he would have to pay for it by advancing the money to the receiver for the purposes of closing the estate, and that my client felt that \$5,000 was fair and reasonable.

My client was present, and he affirmed my statement.

Judge Holt then turned around to Mr. Rosenberg, attorney for the other side, and asked if he had anything to say in reference to fees, and he said, no. The only thing he had to say was that he thought that Judge Holt was wrong in granting the summary judgment, which is nothing unusual for a loser to say.

Q He did not - - - he did not protest the suggestion of the \$5,000 fee?

A No sir, he didn't, didn't say - - - didn't say, good, bad, or indifferent, anything about it.

Q And his appeal to the Supreme Court later did not involve the award to the receiver?

A No sir.

Q And the amount which was fixed by Court order was negotiated and established by your own client, out of whose pocket the money was to come?

A I wouldn't say "negotiated"; it was suggested by my own client, because he felt that it was fair and reasonable for the work that was done by Commander Kurlan, witnessing - - - living in the hotel and witnessing the work being done.

Q Was he well pleased with Mr. Kurlan's services?

A Yes sir.

Q And - - -

A There was a lot of work done there; it would take, oh, fully a half hour to go through it, explaining it.

Q What size property is that, briefly, Mr. Berick?

A Oh, it's a good-sized - - - good, big hotel, with store-rooms in there. I don't recall how many rooms.

Q It was in actual operation?

A It was, or it was losing money. Had they been making money, there would have been no receiver, but it didn't end the litigation, that didn't end the litigation, sir, in the Supreme Court of the State of Florida; the case also went to the Federal Court.

Q What happened there?

A A day or two subsequent to Judge Holt entering the motion for - - - granting my motion for summary judgment, the Defendant corporation, through its counsel, Mr. Rosenberg, filed an - - - unbeknown to the receiver or myself, filed a petition for reorganization under the Federal laws, in which he alleged that the equities of the Defendant corporation to be worth a half million dollars.

Judge Holland automatically, without notice, appointed a receiver, and the receiver went over to the hotel to take possession, and that was the first knowledge that we had of it, and thereupon, I filed a motion to vacate that appointment and to dismiss the case because the same was not filed in good faith.

It was set down for hearing before Judge Holland, at which time the receiver appeared; Judge Holland heard arguments for both sides, granted my motion and vacated the appointment of the receiver, and dismissed the case.

Thereupon, the case - - - an appeal was taken to the District Court of Appeals, in New Orleans, and they didn't prosecute it, and the Court in New Orleans went ahead and dismissed it upon my motion.

Q So, the appeal to the United States Circuit Court of Appeals was abandoned, and eventually dismissed upon your motion?

A Yes sir.

Q Have you or your client ever complained of any improper or overreaching judicial action in this case - - -

A No sir.

Q - - - on Judge Holt's part?

A No sir.

Q Were you, as well as your client, who paid the money, well satisfied with the action taken by Judge Holt in the matter?

A Well, we - - - after Judge Holt rendered this decision for him, and he thought that \$5,000 was fair, because he said it, in the first instance, and it was submitted to Judge Holt for approval, and when Judge Holt heard no objection, he granted it.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Berick, I understand you represented the second mortgage holder, is that correct?

A No sir.

Q Well, who did you represent in the case?

A Henry Elliott.

Q What interest did he have in the Variety Hotel?

A At the time of filing the suit, he was the owner of the fee, and lessor, under a ninety-nine-year lease.

Q On what ground did he bring his suit?

A The ninety-nine-year lease provided for - - - in addition to the payment of a fixed amount for rent, that the lessee was required to pay taxes and pay insurance and pay the existing mortgages, and so forth.

Q All right. Now, how far behind was he with the rent?

A Well, his rent was not behind, as I recall.

Q Well, on what grounds did you bring the suit, then, if the rent was not behind?

A Failure to pay the taxes, city and county, for the year 1953, with the default date of April 1, 1954, having expired, so the taxes were in default.

Q And those were the principal grounds?

A Yes sir.

Q Now, who presented this matter to Judge Holt at nine o'clock at night, for the appointment of a receiver?

A My then office associate, Herbert S. Shapiro.

Q Well, did you consider that such an emergency existed then that the matter couldn't have waited and been filed in Court in the regular order of business, and placed in the proper division?

A We did consider that, sir, but we were in fear of property, furniture, and so forth, being removed.

Q Now, had you waited until the next day and filed this case, and it had been assigned to the regular division, under the rule down there it may have gone in some other Judge's division, hadn't it?

A I wouldn't know, sir, because - - -

Q You don't know?

A No. The reason I don't know was that I had just come back to my office after having taken several months' leave, being ill, and who was on emergency and who was in the regular calendar, I wouldn't know, sir.

Q Did your associate go to Judge Holt's home to get this order appointing this receiver at nine o'clock at night?

A I wouldn't know where he went, sir.

Q You never did learn about that?

A No sir, never bothered.

Q You never discussed that matter with your associate?

A No sir. My associate was one of those gentlemen, sir, that was - - - just didn't talk much, said very few words.

Q Now, I understood you to testify that during the time he was receiver, that Mr. Kurlan operated the Variety Hotel?

A I didn't understand your question, sir.

Q Did I understand you to testify that during the time he was serving as receiver, that Colonel Kurlan, or Major Kurlan, whatever it is, operated the Variety Hotel?

A I testified that during the time that the receiver was operating the hotel, my client, Henry Elliott, lived in the premises.

Q Who actually operated the hotel during that time?

A Henry Elliott, sir—I mean the receiver did.

Q Major Kurlan?

A Yes sir.

Q Isn't it a fact that during that time that there was about a month and a half that Major Kurlan and Judge Holt were in Europe together?

A When did Judge Holt go to Europe, sir?

Q I'm asking you if you know.

A I don't know, sir.

Q Well, do you know, as a matter of fact, that during that

time, Major Kurlan did go to Europe, and stayed - - - was over there, or gone on the trip, about a month and a half?

A From what I read in the newspapers, sir, that they went to Europe sometime in June or July, but I don't know, sir.

Q Of that year?

A Yes sir, but I don't know definitely whether they did or they didn't go.

I'm no social friend of Judge Holt's sir.

Q Do you know that, as a matter of fact, that during the time that Commander Kurlan was receiver for the Variety Hotel, he was also receiver for the Belmont Park Motel?

A I don't know of my own knowledge, but from hearsay, I so understand.

Q Do you know also that, as a matter of fact, that two or three days before Commander Kurlan and Judge Holt went to Europe, that Commander Kurlan was awarded \$10,000 in fees on these receiverships?

A I do not know, sir, that, other than reading in the newspaper, as an ordinary layman.

Q That's generally understood by the people in Miami, though?

A I don't know what the people in Miami generally understand, sir.

MR. BEASLEY: That's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Do I understand, Mr. Berick, that even if Commander Kurlan did take a few weeks leave of absence, it was perfectly satisfactory to your client, and that your client himself fixed his compensation?

A Well, sir, I want to make myself understood.

I have no interest in the outcome of this case. I didn't even know that I was going to be summoned as a witness until - - - for either side, until only about a week or two ago, when I picked up the newspaper and read that I'm a witness.

The fees that were set by my client for the work done by the receiver was sometime during the week immediately preceding the entering of the motion - - - the judgment, summary judgment; and Henry Elliott considered that the fee of \$5,000 up to that time was fair and reasonable, and about Commander Kurlan going to Europe, if he went to Europe with Judge Holt, if the newspapers report is correct, it was sometime subsequent to that. So, the \$5,000 that was set was set up to the time of the entry of the motion for summary judgment. What happened afterwards was immaterial.

Q And will you state again the date of the order fixing the fee?

A Well, my recollection is May 28, but I'll - - - let me recheck it, sir. I think if I looked at my briefcase, sir, I think I could get the date on that.

Q That's all right.

A Do you want me to?

Q No.

A I believe it's - - - my recollection is that it was May 28, 1954.

Q And I understand, then, that the fee awarded to Commander Kurlan by that order was agreed to and perfectly acceptable to your client?

A He's the one that suggested it, sir.

MR. HUNT: That's all.

MR. BEASLEY: No further questions.

MR. HUNT: Thank you.

THE WITNESS: Am I excused now permanently?

MR. HUNT: Yes sir.

(witness excused)

MR HUNT: Call Mr. Hackney, please.

Thereupon,

JOSEPH A. HACKNEY,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Joseph A. Hackney.

Q Mr. Hackney, where do you reside?

A At 274 Ocean Boulevard, Golden Beach, Florida.

Q Is that in Dade County?

A Yes sir, it is.

Q What is your profession or occupation?

A I am a lawyer, sir.

Q How long have you practiced your profession in Dade County?

A For nine years.

Q Where did you receive your legal education, Mr. Hackney?

A At the University of Miami, in Coral Gables.

Q Have you been practicing in Miami continuously since your graduation from law school?

A Yes sir.

Q Have you had occasion to appear before Circuit Judge Holt in the course of your professional career?

A Yes sir, many times.

Q Did you have occasion, in the year 1954, to file and to present before Judge Holt for the appointment of a receiver and subsequent proceedings in a case entitled "Paul Perriau and wife versus Irene Faust - - -

A Czaplicki.

Q - - - Czaplicki, C-z-a-p-l-i-c-k-i?

A I did, sir.

Q When was that suit filed by you, Mr. Hackney?

A Am I at liberty to refer to this Court file - - -

Q Please do.

A - - - you've given me?

Q Please do.

A I filed this suit on October 22, 1954.

Q What was the nature of the complaint?

A We were confronted with a complete and absolute division of the stockholders, directors and what-not.

In other words, the people I represented had exactly fifty per cent of the control of the corporation, and the Defendant had fifty per cent of the control; so, under the statute which provides for such procedure, I brought action, seeking a dissolution of the corporation, and of course, a distribution of the assets.

MR. PIERCE: Talk a little closer to the mike, if you will, please, Mr. Hackney.

BY MR. HUNT:

Q Pull it up closer.

Do I understand, then, that the Plaintiff owned an even fifty per cent of the Salem Inn property?

A To the best of my recollection, Paul Perriau owned forty-nine shares of stock, his wife owned one share, and the Defendant owned the remaining fifty shares.

Q And your suit was for a dissolution of the partnership, and the winding up of the affairs of the corporation?

A That's correct, sir.

Q Now, when that suit was filed, will you state to the Senate in which division of the Circuit Court it was processed by the Clerk?

A I don't recall the division number. It was assigned to Judge Pat Cannon. I don't know what his particular division was then. I believe it was Division I.

Q Do you find a notation on the jacket of that file, over the signature of Judge Pat Cannon?

A On the inner cover, I find a notation.

Q What is the notation written? Is it written in long-hand by Judge Cannon?

A Yes sir.

Q Will you read it?

A "I hereby recuse myself from considering this cause because of personal friendship for one of the parties.

"/s/ Pat Cannon.

"October 22, 1954."

Q Now, when Judge Cannon entered his recusal from the consideration of the case, what did you then do under the rules of practice?

A Under our local rules down there - - - it may be the rule statewide - - -

Q Would you please speak a little louder?

A - - - I took it to the senior Judge, senior Circuit Judge, who, of course, was Judge Holt.

Q And what action did Judge Holt take?

A Judge Holt assigned the case to his own division and appointed the receiver, which I had requested as ancillary relief.

Q Whom did Judge Holt appoint?

A Himself - - - oh, as receiver?

Q Yes.

A Louis J. Kurlan.

Q Had you known Mr. Kurlan prior to his appointment as receiver in that case?

A No sir, I never saw him or heard of him until he was already appointed receiver for me.

Q Was he placed under bond?

A Yes sir.

Q Do you recall the amount?

A I think it was \$5,000.

Q And will you state to the Senate - - -

A That's right.

Q - - - the general nature of the operation of the Salem Inn? Just what did it consist of?

A The Salem Inn was a bar and restaurant.

They had a - - -

Q Where was it located?

A On Northwest South River Drive.

Q Near the Fifth Street Bridge, on the banks of the Miami River?

A Yes sir, about half way between the Fifth Street Bridge and Flagler Street.

Q Now, the nature of the operation; go ahead.

A It was a restaurant and bar, which specialized in sea foods.

They had a beer and wine and whiskey license. In fact, they had a five o'clock license, which entitled them to stay open until five o'clock in the morning.

Q Stay open until five in the morning?

A Yes sir.

Q Was that license - - - has that license in any way been placed in jeopardy by the operation?

A No sir.

Q What did the receiver do, if you know, or according to the files, upon his appointment?

A The receiver took possession of the premises, I didn't go with him.

Do you wish me to refer to any report he may have filed in here?

Q I don't believe that's necessary.

Do you know that he did immediately take possession of the operation?

A Yes sir, he did.

Q Now, the suit was filed on October 22, 1954?

A Yes sir.

Q On what date did Judge Holt enter the appointment of Commander Kurlan as receiver?

A On October 25, three days later.

Q Referring to the alcohol situation, had that operation been blacklisted, so to speak, under State Beverage Department rules, at that time?

A Yes, it had.

Checks had been written in payment of whiskey orders - - - I understand it is the practice for such customers to pay up once a week; and the checks were drawn on insufficient funds, and of course, that automatically blacklisted them under the State Beverage regulations.

In fact, they couldn't even buy whiskey C. O. D. until that blacklist was removed.

Q Well, then, at the time the receiver took over, the credit of the institution was nil, is that correct?

A Yes sir, that's a good way of putting it.

Q It was on a C. O. D. basis?

A They couldn't even - - - you can't even buy whiskey C. O. D. if you're on the blacklist. You have to clear up your arrears first.

Q The bad checks had to be cleared up first?

A Yes sir.

Q Now, what happened to the property and to the litigation, generally, after the appointment of the receiver? Just state to the Senate, in your own words, what the problems were, and what developed, in relation to the attempt to sell the assets, and other matters that occurred in that case.

A Well, it was my understanding; and it is my belief, that Commander Kurlan did everything he could to put this on a paying basis, but you can sell just so much beer and sandwiches and boiled shrimp, and unless you can sell hard liquor, you just can't make money in a place like that.

Q Were attempts made to refinance and to rescue the business from its financial situation?

A Yes, I believe everyone involved tried. I know I tried; the Defendant's lawyer, Mr. Chester Abney, tried to find some person who would purchase certificates of indebtedness from the receiver, and Commander Kurlan tried.

Q Were those efforts at refinancing successful?

A No sir, we only had one offer that materialized to any extent.

Q Let me ask you this, Mr. Hackney:

Did the parties stipulate to conduct a public auction of the assets of the business? Will you refer to the Court files if you don't remember?

A Frankly, I don't remember; so, I should look.

Sir, are you referring to a sale by the receiver - - -

Q Yes. What- - -

A - - - at the best price obtainable?

Q What preceded that? Was there a motion or a stipulation?

A I can't find either one. They're obviously here somewhere.

Q Would the opening portion of the order, Mr. Hackney, recite what the Court had before it?

A To go back to your last question - - -

Q Yes sir.

A - - - Commander Kurlan, as receiver, prepared a petition to sell the assets of the corporation, and I notice at the bottom of it, I, as attorney for the Plaintiffs, and Mr. Abney, as attorney for the Defendant, joined in the motion, and immediately following it is an order, directing the receiver to sell at a public sale - - -

Q To sell - - - the net effect, then, of the matter that the Court had before it, upon the entry of the order to which you have referred, was a recommendation by the receiver, which was joined in and consented to by both parties, is that correct, sir?

A Yes sir, that was the only logical thing that could be done with it.

MR. HUNT: Your Honor, I noticed that Senator Davis stood up. I don't know whether he wishes to make a point of order, or recess, or - - - this witness might take some little time, Senator.

SENATOR DAVIS: Well, I'll make the motion, then.

Mr. Chief Justice, the P. A. system has been cutting out, and the Secretary of the Senate advised me that the repairman is here at this time, and asks for a short recess, and I so move, that we do now stand in informal recess for a period of ten minutes.

CHIEF JUSTICE TERRELL: Without objection, that will be the order.

Whereupon, the Senate stood in recess from 10:35 o'clock, a.m., until 10:45 o'clock, a.m.

CHIEF JUSTICE TERRELL: Order in Court.

The chair declares a quorum present.

Are you ready?

MR. SUMMERS: Mr. Chief Justice, under the rules, I think Judge Hunt must complete the examination of this witness. I'll see if I can locate him.

MR. HUNT: (Entering the chamber) Your Honor, I was unavoidably detained for a few minutes. I'm sorry.

BY MR. HUNT:

Q Then, as I understand it, Mr. Hackney, the parties jointly joined with the receiver in suggesting that a sale be attempted of the assets of the corporation, is that correct?

A That is correct, sir.

Q Was a sale attempted, and if so, under what proceeding?

A A sale was attempted. Everyone involved, I believe, did their level best to find some buyer, without any success.

We talked to various persons who ordinarily deal in this type of business. Commander Kurlan placed an ad in the Miami Herald, I believe, fixing a specific day and time, some date during the month of December, 1954, and on that occasion, he attempted a receiver's sale.

Q Was that attempted on the Court House steps in Miami?

A No sir, right at the premises.

Q At the premises?

A That's right, in the large diningroom.

Q Will you state whether or not there were any bidders at that attempted sale?

A No sir, there were no bidders.

Q Well, what next happened, Mr. Hackney?

A Well, the receiver struggled along, selling beer and sandwiches there, for a while longer, and then it became so apparent that it was costing more to run the place than they were taking in that he closed the place, he locked the doors, discharged the help.

Q Was that closed during the month of February, 1955?

A To the best of my memory, it was sometime during February.

Q Now, what was done after that?

A Insofar as the receivership was concerned, sir?

Q Yes sir.

A Nothing further was done, except just to keep an eye on the premises.

Q Well, so far as the negotiations of the parties for a settlement of the litigation, or an amicable arrangement of its assets, what was done?

A I don't know the beginning date, but after the place was closed and locked, a Mr. Dave Bird, who - - - well, he described himself as power of attorney for Mrs. Czaplicki, the actual owner of the other fifty shares of stock, located a purchaser, a man and wife - - - I don't recall their names - - - and in substance, these new persons bought out the interest of my people.

Q Bought out the interest of the Plaintiff?

A Yes sir.

Q Now, were those negotiations and settlement agreements terminated by a stipulation for dismissal, of 25 May, 1955?

A That's right, sir.

Q Was an order of dismissal entered on May 27, 1955?

A That's right, sir.

Q Now, I understand that upon the conclusion of the litigation by stipulation, that Mr. Kurlan, as receiver, was paid a fee of \$1,000, is that correct?

A That is correct, sir.

Q Will you state to the Senate how that came about, and what Judge Holt had to do with it?

A Judge Holt didn't have anything to do with it.

In the sale of such a business, of course, there are numerous conferences with lawyers and their parties. I think most of them occurred right in my office, and some of them in the office of Mr. Nat Williams, who represented these newcomers who bought us out.

On whatever day it would have been, I met the whole bunch

of them in my office, and in their presence, I called Commander Kurlan on the telephone. - - -

Q You called Mr. Kurlan on the telephone?

A Yes sir.

Q Go ahead.

A And told him what we were doing, that we were selling out, and that the net result would be a termination of this law suit, and asked him what he thought a reasonable fee would be for his services; and he asked me right back if I thought a fee of \$1,000 would be proper under the circumstances - - - by "circumstances," I mean this was a sort of a poverty-stricken operation by that time - - - in fact, from the time we started it, and I told him I thought it was all right, and then I turned to all the persons present, and they all agreed that Kurlan would get a \$1,000 fee.

Q Did that include all the litigants and their attorneys?

A I am pretty sure that the Plaintiffs, the Defendant, the new buyers, and at least the Defendant's attorney were present; I'm not sure whether counsel for the new purchasers was there or not.

Q Did Mr. Kurlan - - -

A I had them in two rooms in my office, that's how many of them there were; I had two rooms full.

Q And in the course of settling up the case, you called Mr. Kurlan by telephone, and he suggested a \$1,000 fee, is that correct?

A That's right. He asked me if I thought it was a fair fee. I told him I certainly did.

Q And did you hold him on the phone while you discussed it with the other people?

A Yes sir.

Q Did they all agree that \$1,000 was a fair fee?

A Yes sir.

Q Is that the fee he was eventually paid?

A He received a check for \$1,000. I believe it was paid through Mr. Nat Williams' trust account.

Q Did Judge Holt have anything to do with it?

A No sir. All Judge Holt had to do then was to sign an order of dismissal.

Q Now, that litigation apparently ranged from October 22, 1954, to May 27, 1955.

I'll ask you to state, Mr. Hackney, if you had occasion, on or about May 23, 1955, to appear before Judge Holt in connection with a suit brought against the Flame Restaurant operators?

A I'll have to check the files on that here.

That's correct, sir, May 23.

Q Do you find a notation on the complaint, over Judge Holt's signature?

A Yes sir, on the first page.

Q What does it state, please?

A "Before me, 23 May, 1955, six-thirty p.m. George E. Holt, Circuit Judge."

Q Do you recall where Judge Holt was located on that occasion?

A You mean where this was written?

Q No, where he was when you presented the complaint and - - -

A Well, he was at his home in Miami.

Q Do you recall whether or not Judge Holt was the regular emergency Judge on that occasion?

A Yes sir, he was. Had he not been, I would have gone to some other Judge, who may have been so assigned.

Q Did you consider the emergency such as to reasonably require a prompt presentation of the complaint?

A I did. I was preparing it as an emergency action, and whether it was just the slowness of my office procedure, or what, we didn't have it ready in time to file it before five o'clock that day, and the Clerk's office has no emergency assignment, so, when we did finish it, I rushed it right out to Judge Holt's home.

In the Miami Review, the legal publication which most lawyers take down there, they show, each day, who is the emergency Judge for after hours.

Q Are those assignments rotated among the Judges on a weekly basis? Are they not?

A As I understand, each of our fourteen Circuit Judges is emergency Judge every fourteenth week.

Q Now, state to the Senate what happened when you presented the complaint to Judge Holt, the emergency Judge, at his home?

A Well, he issued the order that I had prepared and brought with me. If I may find it here, "Order Appointing Receiver and Granting Temporary Injunction."

Q Did he fix the bond of the receiver?

A Yes sir, \$5,000.

Q Whom did he appoint?

A L. J. Kurlan.

Q Well, upon the signing of that order, what happened?

A You mean after he signed it?

Q Yes.

A As best I recall it, sir, Judge Holt called Commander Kurlan on the phone, and notified him of this appointment, and whether I then got on the phone with Kurlan, or whether the Judge - - - we relayed it through the Judge, I don't recall, but I - - - in whichever way I made arrangements with Commander Kurlan to meet me down at the Flame Restaurant somewhere around eight o'clock that evening, either a little before or a little after eight.

Q Was there any discussion between you and Judge Holt as to who the receiver should be?

A Yes sir.

Q What was the discussion?

A I requested Commander Kurlan.

Q You requested that he appoint Commander Kurlan?

A Yes sir.

Now, I don't recall whether I just took it on my own and said, "Judge, if you enter this order, how about appointing Kurlan?" Or whether the Judge said, "Joe, do you have any preference?" But whichever way it went, I did request Kurlan; I wanted him as receiver.

Q You had been working with him in the Salem Inn matter?

A Yes sir.

Q Were his services completely satisfactory in the Salem Inn case?

A Yes sir. I consider him completely underpaid for the services he rendered in the Salem Inn.

Q Did you find him energetic and competent in every way?

A That's one of the most energetic persons I've met in a long time.

Now, I am not, myself, an expert businessman - - - I suppose few lawyers are. I can only go by results and external appearances, but I was quite pleased with Kurlan's receivership of the Salem Inn.

Q And you wanted him for the second time, in the Flame Restaurant case, and so notified Judge Holt?

A Yes sir.

Q Now, what happened next in that case, Mr. Hackney, with respect to the litigation?

A You mean after Kurlan took possession of the premises?

Q After he took possession of the Flame.

The litigation in the case was vigorously contested, was it not?

A Yes sir. I think, by the time we were through, there were about eight lawyers on the other side.

Q Went to the Supreme Court a time or two, did it?

A It went to the Supreme Court once on an actual proceeding in the nature of an appeal; it went once on their application for supersedeas bond, but only once on its merits did it go to the Supreme Court.

Q Now, did the Defendant file a motion to dismiss and a motion to dissolve the temporary injunction?

A That's correct.

Q Was that heard before Judge Holt?

A Yes sir.

Q Did he, on May 31, 1955, enter an opinion and order? Will you refer to that order, please?

A I - - - May 31, sir?

Q Is that not the date of the opinion and order?

A No sir. I find one here, entitled "Opinion and Order," dated May 27.

Q Is it so stamped by the Clerk?

A Oh, maybe - - -

Q I mean, as to the filing date?

A It is stamped by the Clerk, May 31 - - -

Q Now - - -

A - - - but Judge Holt entered it on the 27th.

Q - - - will you refer to that order?

A Yes sir.

Q Which, apparently, was signed on May 27, and entered in the Clerk's Office on the 31st?

Did it, in part, deny the Defendant's motions to dismiss and to dissolve?

A Yes sir, it definitely did.

Q Did Judge Holt file that order also, increasing the receiver's bond from \$5,000 to \$20,000?

A Yes sir, he did that at my suggestion.

Q Did that order also order the receiver to cease payment of \$150 per week to a lady by the name of Eleanor Duncan?

A Yes sir.

Q And now, will you check the next pleading for me, Mr. Hackney, and state whether or not the Defendant then moved for an order fixing a supersedeas bond on the 1st of June?

A Yes. Just a minute; I think the date is wrong.

Q Well, in any - - -

A Motion for Order Fixing Amount and Conditions of Supersedeas Bond, was filed before Judge Wiseheart, in person - - -

Q On what date?

A 6/1/55.

Q That's June 1?

A Yes sir.

Q And did Judge Wiseheart hear that motion for supersedeas?

A Yes sir, he heard it in my absence. I had to be somewhere else; so, he just went ahead, with my agreement, and heard it himself.

Q What order did Judge Wiseheart enter on that application?

A He denied their application.

Q Did they then move in the Supreme Court of Florida for a supersedeas?

A Yes sir.

Q Did the Supreme Court grant a supersedeas order?

A Yes sir, the Supreme Court fixed a supersedeas bond in the amount of \$20,000.

Q Did the Supreme Court set the terms and conditions of the bond, or provide that should be done by the lower Court?

A It left it up to the lower Court.

Q Now, the bond was filed on or about what date, if the files reflect it?

A This file has a plain, flimsy copy of a bond - - - the bond wouldn't be in the file, sir; the Clerk's Office locks all bonds away in a safe.

Q Well, that's correct. Let me ask you this:

Do you find a motion and order, discharging the receiver, upon the posting of the bond?

A I find an order on June 15, signed by Judge Holt, approving the bond and suspending the receiver of all further duties.

Q Do you not find a discharge of the receiver? What was the date of that order, Mr. Hackney?

A June 15.

Q And that discharged the receiver?

A No sir, it suspended and relieved him of all further duties. It doesn't use the word "discharge."

Q I see. Well, now, by what order did Judge Holt fix a fee for the receiver?

A By that same order.

Q Were you present at that time?

A Yes sir.

Q Will you state to the Senate how a fee of \$2,200 was arrived at at the hearing before Judge Holt?

A Surely.

Commander Kurlan and I discussed the question of his fee, I believe, probably, in the anteroom of Judge Holt's Chambers. Kurlan asked me if I thought a hundred dollars a day would be fair, and I told him, yes, I agreed to it, and I so stated to Judge Holt.

Q Well, had he served approximately twenty-two days up to that point?

A Yes sir, we computed it on that basis. We took twenty-two - - - the receiver twenty-two days, and we paid him a hundred dollars a day.

Q Now, state to the Senate what type of an operation the Flame Restaurant was.

A It was - - - I understand you don't have them here in Leon County, because it is a dry county, but it was primarily a large, rather luxurious steak house, with a very elaborate bar, and it is, to this time, one of the most attractive steak houses or supper clubs that you will find in Dade County.

Q Where is it located, Mr. Hackney?

A It's located on U. S. Highway 1, in the 141000 block; that is down, I believe, a little bit below Kendall.

Q Considerably south of South Miami, is it not?

A Oh, yes sir, it's way down in the county.

Q Would you say it's sixteen or eighteen miles south of Miami?

A I don't know if it's that far, but it's a good distance.

Q Down around Kendall, or Perrine?

A Yes sir.

Q And located on U. S. Number 1, south?

A That's correct, sir.

Q Now, at the hearing before Judge Holt, then, on the matter of compensation, do I understand that you had discussed the matter of compensation with Commander Kurlan before it was ever taken up with Judge Holt?

A That's correct, sir, I always try to discuss those things, rather than have some dispute later.

Q And did Judge Holt inquire about the matter when it was presented to him?

A Inquire about what matter, sir?

Q The matter of compensation to Mr. Kurlan; or did you tell him that you had agreed with Commander Kurlan on the compensation on the basis to which you have testified?

A I imagine - - - as best I recall - - - I don't know who said it, me or Kurlan, but the two of us were there, and we told him that we felt that was a reasonable fee.

Q That operation was a daytime and a nighttime operation, was it not?

A Yes sir. It also had a five o'clock license. It didn't have it in the beginning, but we were able to get it extended.

Q Was there a package store operation in connection with the bar?

A There was a package store in the front; there was a large, elaborate bar in it; there were two diningrooms; there was a service bar at the end of one of the diningrooms.

Q Do you know approximately the number of people the diningroom would seat?

A Judge, it would just be a guess; the two diningrooms together, plus some of the booths out in the bar, should seat well over a hundred, possibly as much as a hundred and fifty people.

Q Now, did Judge Holt then, upon your suggestion, or recommendation, and Commander Kurlan's approval, fix his compensation at \$2,200?

A That is right, sir.

Now, we counted it as twenty-two days, at a hundred dollars a day.

Q Now, what developed, insofar as the legal proceedings in the case were concerned, briefly, after that?

A Defense counsel, who were at that time Mark & Keith, associated the very capable firm of Sibley & Davis, and I believe Mr. Marion Sibley carried the load in appealing it to the Supreme Court on interlocutory certiorari.

As long as the appeal was pending, there wasn't much that could be done in a practical sense, in the lower Court. We had to kind of mark time until the Supreme Court's opinion came down.

Of course, during that time, the operation of the place was back out of our hands and out of the receiver's hands.

Q By reason of the supersedeas order and bond, is that correct?

A Yes sir.

Q Did the Supreme Court, during the month of September, 1955, reverse the order appointing the receiver?

A Yes sir.

Q And was that opinion and order on the general basis that the complaint and the testimony did not warrant the appointment of a receiver?

A Now, again, I'm only giving my impression, and I don't like to give mere impressions, sir, but, as I understood the Supreme Court's opinion, they felt that the stock interest of my client was so small in comparison to the stock interests of the Defendant, that that mitigated against us; and I believe they also reviewed the testimony which was taken at the time Mr. Keith sought to dissolve the injunction and remove the receiver, and found that that testimony was inadequate to back us up.

Q Do I understand that out of a hundred shares, your client owned sixteen and two-thirds shares?

A That is right, sir.

Q And the Defendants, between them, owned the remaining eighty-three and one-third shares?

A That's correct, sir, that's the way it was at the time we started this suit.

Q At the hearing before Judge Holt, on 31 May, 1955, or at least the order which was entered in the Clerk's Office on that date, can you state why Judge Holt increased the receiver's bond from \$5,000 to \$20,000?

A I suggested it to him because we found greater assets than we had anticipated.

Q What do you mean by that? What greater assets?

A Well, I was very amused the next morning, when Kurlan called me on the phone and told me that he had found a lot of cash money, mostly in silver, in a piano stool, one of these types where you lift up the lid - - -

Q In the piano stool?

A Yes - - -

Q A bench - - -

A - - - where you ordinarily would put sheet music. The piano stool was full of money, I don't know how much, a thousand dollars, or something of that nature; and the cash bank assets were considered, and the size of the operation, placed it as a fine business.

Q And you suggested yourself that the bond should be increased?

A Yes sir.

Q And Judge Holt increased Mr. Kurlan's bond to \$20,000?

A That's correct, sir.

Q Now, when - - - after the Supreme Court reversed the order appointing the receiver, did Judge Holt then enter a final decree in conformance with the opinion and judgment of the Supreme Court?

A Yes sir I wouldn't call it a final decree. He entered an order in conformance with the mandate, but the suit was still pending then for at least several days thereafter before a final order of dismissal was made.

Q Now, would you refer to the October 18 order entered by Judge Holt?

A Yes sir. Let me find it.

I have it.

Q Will you state the effect of that order, without reading it?

A The Court simply recited that it had reviewed all the pleadings - - -

Q Let me ask you this:

Did the Court enter a decree on the pleadings, in favor of the Defendants?

A Yes sir.

Q Was that in conformance with the judgment of the Supreme Court of Florida?

A Not necessarily in that order, no sir. The order removing receiver was the one which was the direct result of the mandate.

We had a further, brief hearing; there was no testimony, just argument of counsel on the Defendants' motion for a decree on the pleadings, and the Judge granted their motion.

Q Did the Judge at that time attach the costs of the litigation against the Plaintiff?

A Yes sir, he sure did.

Q Was the Plaintiff your client?

A Yes sir.

Q Did that include the \$2,200 fee which had been awarded to Mr. Kurlan?

A Yes sir.

Q Now, Mr. Hackney, did the Defendants then ask the Court, by petition or motion, to set off a \$5,000 note which they owed to your client, the Plaintiff?

A Yes sir. My client held a \$5,000 note of the corporation, which I believe was payable in four or five years from then.

The Court taxed \$3,000.54 costs against my client, and we set it off against what he had coming from that note, and that was done in the presence of - - - I believe Defendants' counsel, by that time, was Mr. Ben Cohen, and although there's no written record of the hearing, Mr. Cohen agreed to it.

Q Do you find an order of Judge Holt's, of December 5, 1955?

A Yes sir. That's the one I was referring to.

Q Did that order assess against your client, the Plaintiff, \$3,000.54 as costs?

A Yes sir.

Q And was that amount, by that order, set off against the \$5,000 note - - -

A Yes sir.

Q - - - To which you have referred?

A I obtained the note from my client, and either delivered or mailed it to the office of Mr. Seymour Keith, and had him put such endorsement on the back as he thought proper, and then I had my client sign it - - - of course, my client had the note himself then, unless he hypothecated it in some way.

Q Will you state whether or not the award of \$2,200 as a fee to Mr. Kurlan by Judge Holt, to which you had previously agreed, was also satisfactory to your client?

A Yes sir, it was satisfactory to him.

Q And he paid it?

A It's paid in the manner we just discussed.

Q Was there any further appeal or exceptions or petitions for rehearing, or anything of that nature?

A No sir. The original basis of this suit was for an accounting and for specific performance of an employment contract under which my client was to manage this Flame Restaurant.

After all, he was more or less the father of the thing; he dreamed it all up.

We did, thereafter, file a new action on the law side, for damages, but my client kind of lost interest, and we never did pursue it.

Q To your knowledge, were Mr. Kurlan's services in the Flame operation as satisfactory as you found them to be in the Salem Inn case?

A I was completely satisfied with him in both cases, sir.

As I mentioned before, I'm just a lawyer, not a businessman; so, I have to go on what I see, and things like that. I'm not qualified to be a receiver myself, of some business operation, but I had been told by Kurlan previously that he had a wide experience in the liquor business, and in matters pertaining to the operation of hotels.

I was satisfied.

Q Were you - - - did he ever mention the Saxony Hotel, at Miami Beach?

A Yes sir, he mentioned to me once - - - Kurlan, that is - - -

Q Yes.

A - - - he mentioned to me once that he had been, I believe, retained, and as best I recall - - - now, I hope I'm right, that he had, perhaps, been the receiver of the hotel, and then, thereafter, when the receivership was terminated, why, the management kept him on as a consultant of sorts.

Q Well, in any event, Mr. Hackney, did you and your client in the two cases about which you have testified, find Commander Kurlan's services, as receiver, to be completely satisfactory?

A Of course.

Q Would you, if occasion were presented, nominate Mr. Kurlan for future receiverships?

A If I needed a receiver tomorrow, I would ask for Commander Kurlan.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Hackney, did - - - when the case was assigned to Judge Cannon's division, that is, the Salem Inn case - - -

A Yes sir.

Q - - - and he declined to serve because of his friendship with some parties to the suit, and you took the case - - -

A It was a little bit on my side.

Q Took the case to Judge Holt - - - and you did?

A Yes sir.

Q And then he took it himself?

A Well, there was a little roundabout procedure on it. I think it was one of those innocent little mistakes that - - -

MR. HUNT: Will you talk out, Mr. Hackney?

A (Continuing) Yes sir.

I think it was one of these little mistakes you're apt to make when you're in a hurry.

Q Well, who do you think made that mistake?

MR. HUNT: Wait a minute, let him answer the question.

MR. BEASLEY: Well, I want to ask the questions.

MR. HUNT: I want him definitely to answer the question, if Your Honor please.

CHIEF JUSTICE TERRELL: Counsel will please let the witness answer, and not argue back and forth.

BY MR. BEASLEY:

Q Who do you think made the little innocent mistake?

A Judge Cannon.

Q How?

A It's a procedural one.

At that time Senator Eaton, here, was a Circuit Judge, and he was Pat Cannon's alternate. So, when Judge Cannon released himself, he told me to take it to his alternate.

Well, you don't very well sit there arguing with Judges over things like that; so, I took it on to Judge Eaton, and he said, "Well, I can't take the case. Under our rule, it's got to go back to the senior Judge for reassignment."

Q All right, and then you carried it to Judge Holt?

A Judge was busy; so, I left the petition and the order with May Potter, his secretary.

Q Now, Judge Holt could have as easily referred that to some other division as his own, could he not?

A Of course.

Q But instead, he took jurisdiction there, or took charge of the case, and appointed Commander Kurlan - - -

A Yes sir.

Q - - - as receiver.

Now, who did Commander Kurlan place in charge of the Salem Inn while it was under receivership?

A By "place in charge," I don't know what you mean.

Q Well, who operated the place while it was being operated?

A He had a Mr. Neil Merritt.

Q Did a Mr. Craig have anything to do with it?

A No sir.

Q Now, with reference to the Flame Restaurant, as I understood you to testify a moment ago, your client had a one-sixth interest in that - - -

A That's right.

Q - - - business?

A In the beginning, he had one-sixth; his wife had one-sixth, and Bob Jones, the Defendant, had the other two-thirds, but my client and his wife were divorced and Mr. Harvey didn't have the ready money to purchase his wife's share, and Mr. Jones bought it.

Q The other stockholder bought it - - -

A Yes.

Q - - - and at the time you brought the suit, they owned eighty-three and a third per cent of the stock?

A Yes sir, of the corporation.

Q And at the time you brought this suit by Harvey against Jones, you didn't make the Flame Restaurant, a corporation, that was entitled "Emalf," a party to the suit, did you?

A No sir, I didn't.

Q Now, you knew it was a corporation, didn't you?

A Yes sir. I formed the corporation.

Q Yes sir. And then, you only made the individual stockholders parties to the suit?

A And that is something that I will be ashamed of as long as I practice law, pulling a stupid mistake like that in drafting instruments.

Q And in your bill of complaint, or in your complaint, you just alleged that certain conditions existed, and asked that a receiver be appointed, and that a temporary injunction be entered in the case, didn't you?

A Yes sir.

Q You didn't give anybody any notice?

A No notice.

Q Your motives were not inquired about by the Judge when you presented the petition?

A What do you mean, sir, by my motives?

Q I mean the motives for bringing the suit for the injunction, and asking that a receiver be appointed. It was granted without inquiry, was it not?

A As I recall, sir, we had some discussion. I doubt that it was of any great length.

Q Yes.

A He probably just read over the petition.

Q And signed the order without making any inquiry as to an emergency, is that correct?

A I don't recall.

As I understand my petition here - - - which he just walked away with (indicating Mr. Hunt) - - - I think we made some allegation regarding emergency.

Q Now, what time did you go to Judge Holt's home?

A It was a little after six, to the best of my recollection.

Q About what time do you think he signed the order appointing the receiver and granting an injunction?

A Well, after seeing this file here today, I can see it was six-thirty.

Q Six-thirty?

A Yes.

Q About what time was Kurlan notified that he was the receiver?

A Right then.

Q That was at six-thirty?

A Within a matter of minutes.

Q Pardon?

A Within a matter of minutes.

Q What time did you make arrangements to meet Kurlan at the Flame Restaurant?

A It was - - - as best I can remember, sir, it was around eight o'clock.

Q Who was present?

A A few minutes either way.

Q Was he there when you got there?

A Yes sir, he got there first, because I had something else to do that night, and I was a little bit late.

Q Well, who else was there with him?

A He had with him Neil Merritt, I'm certain, and I'm not sure of this, but I believe Mr. Mooers.

Q B. E. Mooers?

A B. E. Mooers, yes sir.

Q Before you went to Judge Holt's house to get this order signed, had you discussed this with Mr. Kurlan?

A No sir.

Q Did you know that Mr. B. E. Mooers testified that he was asked by Mr. Kurlan in this case, that he testified in this case that he was called by Mr. Kurlan about five-thirty in the afternoon, and asked to meet him at the Flame Restaurant about eight o'clock?

A No sir.

I don't wish to contradict you, or in any way impugn Mr. Mooers - - - I hardly know him - - - he seemed like a nice fellow to me - - - but I can't understand how he could have been called at that hour.

Q Now, at the time you had - - - at the time the first order was entered, ordering that Kurlan be paid a fee of \$2,200 as receiver in this case, you thought then that the receiver fee was going to be paid out of the assets of the corporation, did you not?

A As best I remember, yes sir.

Q Of course, you agreed to that, since your client owned a one-sixth interest, and the Defendants owned a five-sixth interest?

A Well, you do understand, sir, that those things are not finally taxed until the end of the case.

MR. HUNT: Will you speak out, sir. We can't hear you.

THE WITNESS: I'm sorry.

BY MR. BEASLEY:

Q You knew, as a matter of fact, that your client had, actually, in cash in that business, \$300, or about that much, and the balance of it was on a long term promissory note as his interest in the business?

A No sir, I didn't know it exactly that way.

Q You learned that later, did you?

A No sir. The first time I heard of that \$300-odd was when I read it in the Miami Herald, one day last week.

Q But when the business was finally settled, the receivership was finally - - - the receiver was finally discharged, you did discover that the \$5,000 promissory note was there?

A I knew of that, but by the same token - - -

Q Well - - -

A - - - I don't wish to interrupt you - - - Mr. Jones had notes.

Q Yes. But it was out of the \$5,000 promissory note which he owed the corporation - - -

A No, which the corporation owed him.

Q Yes, which the corporation owed him, that he paid the receivership fee, and so forth?

A Yes.

Q And at the time the receivership fees were awarded - - - that is, the order entered, allowing Kurlan \$2,200 for his services, was that vigorously resisted by the Defendants in the case, or by their attorneys, by their attorney?

A No.

Q I'm talking about the first order.

A The order which, among other things, awarded the \$2,200 fee?

Q Yes sir.

A No sir.

Q Well, didn't they appeal from that order?

A They appealed the entire thing.

Q Yes.

A On the - - - but as I recall their appeal, now, I'm having to go back about two years to remember all this, and I can't get all of this out of the Court file, sir, as I remember, they appealed on, primarily, the necessity of a receiver ever being appointed.

Q And the Supreme Court decided there was no necessity, didn't they?

A That's correct.

Q And also, later, they quashed the order awarding Kurlan a \$2,200 fee out of the assets of the corporation, didn't they?

A I don't recall that, sir.

Q Well, they - - -

A Shall I look for it?

Q Yes sir.

A I find here the September 16, 1955, opinion of the Supreme Court, wherein they briefly reviewed the petition and the proceedings up until that time.

Q Yes, two orders prior to that?

A Oh, there's one before that?

Q Yes sir.

A All right.

Q There was one order granting the supersedeas.

A Yes sir.

Q And then, the other one, quashing that portion of the order allowing this \$2,200?

A Well, I'll find it here in just a minute.

Q All right.

A That would be July 28, 1955.

Q Yes. What does that order say, in effect?

A They recite their previous order, fixing a supersedeas bond, and they mention that when the bond came before the Court for approval on June 15, that the Court - - - meaning the trial Court, engrafted a condition to the effect that the receiver pay himself \$2,200 for his services; and the petitioners, who were the Defendants below, claim that it was a dispute - - - an abuse of his discretion to make the payment of the \$2,200 a condition of the supersedeas bond.

The Court said they agreed with it; they think it was well taken, in other words.

Q They quashed that?

MR. HUNT: Would you speak up, Mr. Hackney? We can't hear you.

THE WITNESS: I'm sorry, sir.

MR. HUNT: Pull that microphone down there. Pull it down. It will stretch.

A They say the requirement works an undue hardship on Petitioners, and then the validity of the receiver's appointment is in litigation; the matter of the payment should be left open until the question of his appointment is settled and it will be determined.

So, they modified Judge Holt's order concerning supersedeas by quashing the order awarding the \$2,200 fee.

Q Did Judge Holt later refuse to enter a remittitur as to the receiver's fee in that case?

A There was no remittitur ordered by - - -

Q It was never ordered, was it?

A No sir. The - - -

Q There was a petition for it, wasn't there?

MR. HUNT: Let the witness answer.

MR. BEASLEY: Will you be quiet until I get through?

MR. HUNT: Won't you be a little bit courteous, and permit the witness to answer you?

CHIEF JUSTICE TERRELL: Counsel will please not argue back and forth; let the witness do the talking. The Court can't make up its judgment with all these rackets, and I can't hear but one at the time.

THE WITNESS: Some application was made by counsel for a remittitur of the fee.

BY MR. BEASLEY:

Q And the Judge never entered the order, did he?

A No sir, he entered a lengthy instrument, entitled "Opinion and Order," dated August 12, 1955, on the subject.

Q The first order that Judge Holt entered in that case after he appointed the receiver was authorizing that the receiver be paid a fee of \$2,200, is that correct?

A You say the first order that he entered in the case?

Q After he appointed receiver and entered the injunction.

A No sir.

Q Well, what - - -

A No, wait a minute, I'm getting confused.

Yes sir, that would be the next order.

Q And the Supreme Court disagreed with him on that and ordered that - - - there was an application made for a supersedeas made, and Judge Holt denied that, didn't he?

A Well, Judge Holt was out of town for - - -

Q Well, Judge Wiseheart?

A Judge Wiseheart did it.

Q Then, the Supreme Court, in its decision, said, in effect, that he should have granted the motion for supersedeas, sent it back down there, and Judge Holt, in fixing the condition of the bond, said that before the supersedeas would be operative, that the business must pay to Kurlan this \$2200, is that correct?

A I'll have to look at the order to be certain.

Q Well, isn't that your recollection?

A No sir.

Q You can't recall?

A I can't quote you from memory.

Q Well, look in the order; see if it isn't written in there in ink by Judge Holt?

A No sir, the mandate came down, directing the Court to enter an order for a \$20,000 supersedeas bond, and left the terms and conditions up to the Court.

Now, I think I've found Judge Holt's order here, and I'll be happy to read it to you, sir.

Q Well, read that part of it concerning the supersedeas.

A "It is thereupon ORDERED, ADJUDGED AND DECREED that the supersedeas bond shall be filed herein by the Defendants in the penal sum of \$20,000 with a good and sufficient surety company to be approved by the Clerk of this Court, conditioned to pay to the Plaintiff all costs and damages, including a reasonable fee for the services of his attorney in the Appellate Court," and then in parentheses, he gives some citation.

Q Well, you needn't read the citation.

A Sir?

Q You needn't read the citation.

A All right, sir; and then, resuming:

"- - - which he may sustain by reason of the stay of these proceedings in the event the order appealed from shall be affirmed, or the petition for writ of certiorari denied."

Q All right. Now, turn to the next order, approving the bond.

A All right.

I'm sorry, I haven't found it yet.

Q I think we can locate it for you.

A All right, if you will give me the order.

(An instrument was handed to the witness by counsel.)

THE WITNESS: Thank you, sir.

BY MR. BEASLEY:

Q Will you read the condition there on which the bond was approved?

A Leaving out the preamble at the top of the order:

"It is ORDERED, ADJUDGED AND DECREED as follows:

"1. The supersedeas bond herein filed in this cause by the Defendants be and the same hereby is approved.

"2. The receiver be, and he hereby is forthwith suspended and relieved of all further duties and obligations on" - - - I'm sorry - - - yes - - - "on account of his application" - - - "his appointment heretofore made, and said receiver is instructed to forthwith deliver to Emalf, Incorporated, the care, custody and control of the business premises known as the Flame, together with all books, records, documents, keys, goods, chattels and assets thereunto belonging.

"3. The receiver be, and he hereby is granted a receiver's fee in the sum of \$2,200 for his services rendered in this cause, and he is hereby authorized to pay same to himself out of the funds now in his hands from the operation of said business prior to operation of said supersedeas."

Q In other words, that was a condition before the operation of the supersedeas - - - before the supersedeas would be operative, that he first pay himself the sum of \$2,200 out of the business of Emalf, Incorporated, is that correct?

A I don't know how else you could construe that.

Q Well, that's correct, isn't it?

Was that decision appealed from? Was that order appealed from?

A I don't think so - - - yes sir, it was. I'm sorry.

We were talking about what happened - - -

Q What happened to that - - - what happened to the conditions of that order on appeal?

A As I recall, when we looked at that Supreme Court opinion a few minutes ago, they expunged, or struck - - -

Q Quashed - - -

A - - - that portion.

Q Quashed that part of the order.

Did they get the \$2,200 back after the Supreme Court quashed that part of the order?

A No sir.

Q But they ordered that it be deducted from the note which they owed - - -

A The Plaintiff.

Q - - - to Harvey. Through that method, they got it back?

A (The witness nodded affirmatively).

Q Did you know, as a matter of fact, that Kurlan left that place of business owing them some \$135 for liquor and other things that he got out of the business while he was receiver, and that that has never been paid?

A I don't know it as a fact, sir. The first I ever heard about it was when I read a lengthy recital which Mr. Keith made before this body several days ago.

Q Yes.

A I read the newspaper version of it.

Q And as a matter of fact, at the time you started this suit against Jones, instituted by Harvey, who owned a one-sixth interest in the corporation, it was a going concern, wasn't it?

A It was up until they took Harvey out as manager.

Q It was even a going concern after that, wasn't it?

A Well, if I say that, sir, it's - - - I'm using the word awfully loosely. It was going, but it was going down fast.

Q There was no indication that this business was becoming insolvent or anything to that effect, was there?

A That business, in another thirty days, at the way it was going after the removal of Ed Harvey as the manager, would have had to lock the doors unless they found a whole lot of money.

Q On what do you base that statement?

A I base that on some financial records that I subsequently had prepared.

Q Did you base that on Mr. Jones' statement of the operation of the business? You knew he knew what the business was doing, didn't you?

A Jones?

Q Yes sir.

A He doesn't know what that business is doing, sir.

Q Well, he is the man that owns the principal interest in the business, isn't he?

A That's right, but Mr. Jones is a builder, a very fine builder. He doesn't know the operation of a bar and restaurant.

Q The business is still operating, isn't it?

A Yes sir, under a lease.

Q And Mr. Jones is the man that owns the principal interest in the business now, so you understand it, is he not?

A He has the base lease on the improvements, but it's leased out to other persons, however.

Q O. K. Did the Court set your fee also in this case?

A No sir.

Q Mr. Harvey paid your fee, didn't he?

A Would you like to know what I made out of this case?

Q No sir, I just want to know who paid your fee. I'm asking you the questions.

A Nobody paid me a fee, because I never have received a fee in that case.

Q All right, sir.

Now, after the Court entered an order - - - I mean the Supreme Court entered an order, quashing that part of the fee, or that part of the - - - Judge Holt's order requiring that Kurlan pay himself \$2,200 out of the assets of the business - - -

A Yes sir.

Q - - - before the supersedeas could become operative, then there was a petition filed, asking that Judge Holt enter an order in this case, requiring Kurlan to remit the fee that he had paid himself through the corporation, wasn't it?

A I don't think it was before, sir. I think that - - -

Q Well, that petition is in the file there, isn't it?

A Well, I have it right in front of me.

Q Yes sir. Well, it's in the files, which was filed after the Supreme Court entered its order quashing that part of Judge Holt's order requiring that Kurlan pay himself the \$2,200 before the supersedeas was to become operative; then, there was a petition filed, asking that Judge Holt enter an order in that case, requiring Kurlan to remit the \$2,200, wasn't there?

A Sir, you lost me about two minutes ago on that question.

Now, I think I can straighten you up here if you will tell me what you are referring to.

In this June 15 order which you found for me, Judge Holt approved the supersedeas bond, and directed the receiver to get out and turn things back over, and directing the receiver to pay himself \$2,200.

Q Yes sir.

A Now, that was June 15.

Q Yes.

Now, Mr. - - -

A I'm trying to find the rest of the answer to your question, sir.

Some application for a remittitur of the fee was filed.

Q By Mr. Jones' attorney?

A That's correct.

Q And Judge Holt - - -

SENATOR DAVIS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: The point of order is well taken.

Court is adjourned until 2:00 o'clock.

Whereupon, at 12:00 o'clock, noon, the trial was recessed until 2:00 o'clock p.m. of the same day.

AFTERNOON SESSION

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

The Chief Justice presiding.

CHIEF JUSTICE TERRELL: Court will be in order.

Unless there's an objection, I declare a quorum present.

MR. HUNT: Would you recall Mr. Hackney, please.

Thereupon,

JOSEPH A. HACKNEY,

resumed the stand and testified further as follows:

CROSS EXAMINATION (CONT'D)

BY MR. BEASLEY:

Q Now, Mr. Hackney, when we quit at noon, we were trying to find the petition of the Defendants in the Flame Restaurant case, asking the Court, that is, Judge Holt - - - now, don't lose the place there - - -to enter a remittitur of the receiver's fee. That's on Page 59.

Will you tell the Senate - - - will you read that petition to the Senate, that motion?

A The motion for - - -

Q Yes.

A - - - remittance of - - -

Q Yes.

A - - - the fees to the receiver?

Q Yes sir.

A It's rather lengthy. Do you want the entire thing?

Q Well, read - - - yes sir, read it.

A All right.

"Come now the Defendants, by their undersigned attorneys, and would show unto this Court:

"1. That by order dated June 15, 1955" - - -

MR. HUNT: If Your Honor please, may I at this time interpose an objection to having the witness read a lengthy document from the record, which was filed by the Defendants in the case.

It's before the Senate. The witness has heretofore been asked to state the crux of the pleadings, and not to take the time of the Court reading them in detail.

CHIEF JUSTICE TERRELL: Can you state the substance of the pleadings, Mr. Hackney?

THE WITNESS: Well, I can ad lib it a bit, Your Honor.

CHIEF JUSTICE TERRELL: I didn't understand you.

THE WITNESS: I say, I could, perhaps, relate it in my own words.

It's their pleading, though.

CHIEF JUSTICE TERRELL: You say "their." Do you mean Mr. Beasley?

THE WITNESS: It's the Defendants' pleading.

CHIEF JUSTICE TERRELL: Defendants' pleading?

THE WITNESS: Yes sir.

CHIEF JUSTICE TERRELL: Is the substance of it sufficient, Mr. Beasley?

MR. BEASLEY: The substance of it is sufficient, if we can get it.

THE WITNESS: Well, I'll do my best.

In the first paragraph, they recite that on June 15, 1955, the Court awarded a \$2,200 receiver's fee to Mr. Kurlan, and authorized him to pay to himself, out of the funds in hand from the operation of the business, prior to the operation of the supersedeas.

They further recite that the receiver so paid himself \$2200 from the funds realized in the operation of that corporation.

On - - - then they recite that on October - - - I'm sorry, that on July 28, 1955, the Supreme Court of Florida reviewed that particular order, or so much of it as authorized the payment of that \$2200 fee and quashed that part.

Then they simply pray that the Court require Commander Kurlan to pay the money back.

BY MR. BEASLEY:

Q All right, sir.

Now, would you turn to Page 67, and tell the Court what the order of the Court was on that occasion?

A Sir, I don't have any numbers on these pages.

Q Yes sir, they're numbered in ink down at the bottom.

A Oh, all right.

Sir, this is a four-page opinion and order - - -

Q I'd just like for you to tell the Senate, as briefly as possible, what that order is?

A It appears to be an order in response to that instrument we were just reviewing.

Q Does, anywhere in that order, does the Court order Commander Kurlan to remit the receiver's fee which he received?

A May I have about one minute to - - -

Q You may, yes sir.

A No, this order does not require the receiver to pay any \$2200 back.

I think, in all fairness to the order itself, though, it should be construed as an entirety. It's not up to me to decide, but it is lengthy, and - - -

Q Well - - -

A - - - give reasons.

Q Yes. Well, the attorney for the Respondent objects to reading these orders, but I just want to get your opinion of it.

Are you familiar with any order in that case, requiring the receiver to remit that receiver's fee?

A No sir.

Q You spoke this morning of the Miami Review giving

the names - - or the name of the Judge in the Eleventh Judicial Circuit who was the emergency Judge, who would be the emergency Judge?

A Yes sir.

Q How often is that printed, the Miami Review?

A The Miami Review is printed five days a week.

Q The Miami Review is printed five days a week.

Now, how far in advance does it give the name of the Judge who is to be the emergency Judge for any particular time?

A I'm going to have to take a guess on that - - -

Q Well, estimate it.

A - - - because I don't know.

I believe it first appears under the column entitled "Bar Association Notes," on Monday of each week, and remains in that column through Friday.

Q Then, how far in advance can you tell by that who is going to be the emergency Judge down there, under the old rule?

A I don't know of any way we could.

MR. BEASLEY: Take the witness.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Mr. Hackney, do we understand that your client, the Plaintiff in this case, was more or less the founder of the Salem Inn - - - pardon me, the Flame Restaurant?

A Yes sir.

Q How did he start that business?

A Well, he's a member of a rather prominent family down there. His uncle is the Mayor of Miami Beach. He knows many people. His mother is a prominent business woman; and he himself well knew the people who owned the land upon which this Flame Restaurant is built, however. It is owned by Mr. E. L. Cotton, an old time realtor down there.

So, through this friendship, he negotiated what he and I both thought was a mighty fine lease, with certain option provisions at the end of it, and talked the Cotton family into advancing some of the monies to construct the building, and at least put up the outside shell.

Now, Ed Harvey, by having worked in his mother's business years ago, is a very talented decorator, interior decorator, because that is his mother's business right now. So, he himself selected everything that's inside of the building; the wall furnishings, the carpets, tables, chairs, bar, everything, and of course, that takes a little money. So, that's where he had to go find some other investor, and he settled on Bob Jones, who was also a very good friend of his at the time.

Q The bullder?

A Yes sir.

Q Is he a bullder?

A Yes sir, he is with Jones-Frederick Builders.

Q And was it about at that point that Jones came into the deal and supplied funds with which to complete the Flame Restaurant?

A To do the interior work.

Q And the stock division was made sixteen and two-thirds shares and eighty-three and one-third shares about that time?

A Not at that time.

Q Later?

A Yes sir.

In the beginning, Ed Harvey had sixteen and two-thirds shares. His then wife, Stephania, had an equal number, and all remaining shares were placed in Mr. Jones' name.

At one time - - - I don't know when, because I didn't handle it - - - Mr. Jones did put some amount of his shareholdings in the name of this Miss Eleanor Duncan, which - - -

Q Who is Miss Eleanor Duncan? Is she - - - I notice, under one of Judge Holt's orders, that the receiver was ordered to cease paying her \$150 a week.

Will you state to the Senate who she was, and what she was doing on the property?

A Well, sir, I certainly don't want to embarrass Miss Duncan, but she was a close personal friend of Bob Jones'.

Q Close personal friend of Mr. Jones?

A Yes sir.

Q Had he placed her in that restaurant?

A Yes sir.

Q And put her on the payroll?

A She had no other means of support.

Q Did she live in the vicinity, or do you know?

A Yes sir, she lived very close by.

Q Do you know whether or not Mr. Jones constructed, or had anything to do with the house in which she lived?

A Mr. Jones built the house that she was living in. It was a very fine home, with a swimming pool, and I don't know who made the mortgage payments.

Q Now, when the restaurant was taken over, did it appear that Eleanor Duncan was the one who was attempting to run the property?

A Immediately after Ed Harvey's removal, some person of a foreign name - - - I can't recall it - - -

Q You say "Harvey's removal."

Do you mean by the Board of Directors?

A Yes sir, by majority - - - a special stockholders meeting, right in my office.

Q Yes sir.

A Special directors and stockholders meeting.

Q Well, just state what Miss Duncan was doing there at \$150 a week?

A Well, sir, I wasn't there a lot, now, so, some of this is going to be based on what my own client told me - - -

MR. BEASLEY: We object to any - - -

BY MR. HUNT:

Q You can't - - -

CHIEF JUSTICE TERRELL: Don't state what anybody else told you, Mr. Hackney, just simply what you know.

THE WITNESS: All right, sir.

The few times I went in there, Eleanor Duncan was, perhaps, sitting at the bar having a cocktail, or maybe she was in the little package store in front, anticipating some customer coming in, or something of that nature.

BY MR. HUNT:

Q Did you approve of eliminating Miss Eleanor Duncan from the payroll, at \$150 a week?

A I certainly did, sir, because it was a new business, and it can't - - - a new business can't afford those things.

Q Now, to sum up this situation, as I understand your testimony, Judge Holt's order appointing the receiver was eventually reversed by the Supreme Court?

A Yes sir.

Q And irrespective of all the pleadings and legal maneuvering in the case, is it true that you nominated and requested Mr. Kurlan as receiver for that property?

A Yes sir.

Q And is it likewise true that you agreed, and in fact, fixed and recommended his fee as \$2200?

A Yes sir. I felt that the sum of \$100 per day was reasonable compensation for him.

Q And is it likewise true that your client paid that \$2200?

A Yes sir. He didn't pay it in cash, but as I - - - we discussed before - - -

Q It was offset against a note?

A It was offset against an asset.

Q And it's likewise true that your client agreed to Mr. Kurlan's fee, that \$2200?

A Yes sir.

Q And there were no exceptions, no petitions for rehearing, and no appeal?

A None whatsoever.

MR. HUNT: That's all.

RE-CROSS EXAMINATION

BY MR. BEASLEY:

Q Now, Mr. Hackney, you testified that - - - about Eleanor Duncan.

The fact of the business is, she owned fifty per cent of the stock in that business, didn't she?

A No sir, she didn't own it. It was Bob Jones' money, and it was - - -

Q I'm talking about whose name was the stock in?

A He placed it in her name later.

Q Yes, but she owned it, didn't she? Didn't she have the stock?

A Sir, I don't wish to quibble on a technical meaning.

Q Well, would you just answer my question?

A Well, my answer, then, is going to have to be "no."

Q All right. You say, then, that she didn't own fifty per cent; that's your testimony?

A I stated that her name was on the certificate of stock - - -

Q Yes, I understand that.

A - - - and that was the end of it, sir.

Q Yes sir. You testified that when you went there, that she did nothing but sit at the bar and drink a cocktail, at \$150 a week. That's what Kurlan was doing at \$700 a week when he was receiver, wasn't it?

A If it is, I don't know it, and in quoting my testimony, I further said, sir, that she did preside over the package store in the very front of the premises.

MR. BEASLEY: That's all.

MR. HUNT: That's all, Mr. Hackney. Thank you, sir.

CHIEF JUSTICE TERRELL: Mr. Hackney, Senator Connor - - -

MR. HUNT: Oh, excuse me. One question from the Senate.

CHIEF JUSTICE TERRELL: Senator Connor, a member of the Court, sends up this question:

"Is there any reason why a man who owns eighty-three and a third per cent of the stock in any business puts someone of his own choice in charge of the business?"

Is there any reason why one who owns eighty-three and a third per cent of the stock in a business should be permitted to put someone of his own choice in charge of the business?

THE WITNESS: You mean, why he should not be able to?

CHIEF JUSTICE TERRELL: Yes.

THE WITNESS: I see nothing wrong with it, so long as he doesn't jeopardize the interests of any other stockholder, however small, and as we mentioned earlier, we were also involved here with an employment contract, which we felt was being violated.

That was the basis, in fact, of our entire suit.

CHIEF JUSTICE TERRELL: That's all.

MR. HUNT: Thank you, Mr. Hackney.

Will you excuse this witness?

MR. BEASLEY: Yes sir.

MR. HUNT: Thank you.

(Witness excused)

MR. HUNT: Will you call Mr. Horwitz, please?

Thereupon,

LEWIS HORWITZ,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Lewis Horwitz, L-e-w-i-s H-o-r-w-i-t-z.

Q Mr. Horwitz, where do you reside?

A 9350 East Bay Harbor Drive; that's in the Town of Bay Harbor Islands, in Dade County.

Q What is your profession or occupation?

A I am a lawyer, sir.

Q Are you associated with some firm in Miami or Miami Beach?

A Yes sir, I am.

Q What is the name of the firm?

A Broad & Cassel.

Q Are you a member, or an associate of that firm?

A I'm a member of the firm.

Q How long have you practiced law in Dade County?

A I've practiced law in Dade County since December of 1948.

Q Where did you obtain your legal education, Mr. Horwitz?

A Harvard Law School, sir.

Q And when did you graduate?

A I graduated in 1936, May of 1936.

Q And where did you practice after graduation?

A I practiced in New York after graduation, until the war.

Q Was your practice continuous there until you came to Miami Beach?

A It was continuous until 1942, when I enlisted in the Air Corps, and I was in the Air Corps for five and a half years. After that, I practiced in Dade County.

Q Mr. Horwitz, does your firm represent the Mercantile National Bank in some of its litigated matter?

A Yes sir, it does.

Q Can you state whether or not you, as a member of that firm, had occasion to handle the case entitled Mercantile

National Bank of Miami Beach vs. J. Alex Malloy and others?

A Yes sir.

Q As last trustees of Oceanic Properties, Incorporated?

A Yes sir, I did.

Q Do you know when that complaint was first filed by your firm?

You may refer to the file or any memoranda of your own.

A It was filed on June 2, 1955.

Q In the clerk's office?

A Yes sir.

Q It was filed on June 2?

A Yes sir.

Q And had the complaint been previously submitted to one of the Circuit Judges of the Eleventh Circuit?

A Yes sir, on the evening before, June 1, 1955.

Q And to whom was that complaint submitted on the evening of June 1, 1955?

A Judge Wiseheart.

Q Do you recall where Judge Wiseheart was at the time it was submitted to him?

A Yes sir, Judge Wiseheart was in his home.

Q Do you recall whether or not Judge Wiseheart was the regular emergency Judge for that week?

A Yes sir, he was.

Q What was the nature of the complaint, briefly, and what did it seek?

A The complaint was for foreclosure of a mortgage.

Q The amount?

A The amount of the original mortgage was \$255,000, and there was \$105,000 principal due on it, plus other amounts, for interest and so forth.

Q Now, will you, by brief reference to the complaint, state to the Senate whether or not, in addition to the default in the payment of principal and interest of the mortgage, the taxes were past due?

A Yes sir, the county and city taxes were past due.

I can remember that without actual reference to the file; and I also know that the insurance had not been paid, and the payment due on the first mortgage had not been paid.

I was seeking foreclosure of the second mortgage on this property.

Q Do you recall whether or not a tax sale had been effected for delinquent taxes at the time you filed the suit?

A Sir, I don't remember whether or not there had actually been a tax sale of the property, but I know that the taxes were due and unpaid.

Q The taxes for the preceding year?

A That's correct.

Q And this was filed on the 1st of June, 1955, is that correct?

A Yes, that's correct.

Those were the taxes that were unpaid. I think, by reference to the final decree here, that there will be revealed the exact amount of these taxes, because actually, we had to pay them.

Q You had to pay them?

A There was approximately \$12,000 in taxes that we had to pay.

At the time the suit was filed, however, those remained unpaid.

Q What was the condition of - - - with reference to insurance premiums?

A The premiums on the insurance had not been paid, and - - -

Q That amounted to a substantial amount of money?

A A substantial amount of money.

Q Around \$3,000?

A I would say it was around \$3,000 to \$5,000, approximately that amount; and the payments on the first mortgage had not been paid, and actually, I believe the period of grace had expired on the first mortgage.

Q Yours was a foreclosure of a second mortgage?

A Correct, we were foreclosing the second mortgage.

Q Now, upon presentation of the - - - strike that question.

Will you state, by brief reference to the file, if it's necessary, whether or not your mortgage also covered the personal property and the rent issues and profits - - -

A Yes.

Q - - - of the building?

A It covered the personal property, yes sir.

Q Will you state also whether or not the mortgage contained a receivership clause for the automatic appointment of a receiver in the event of default?

A Yes sir, it did. I don't see, quickly, where that provision is, but I recollect that it did contain such a provision.

Q Well, upon the presentation of the complaint to Judge Wiseheart, do I understand that he appointed a receiver that evening at his home?

A Yes sir, he did.

Q And whom did he appoint?

A He appointed Mr. Kurlan, Louis Kurlan.

Q Well, now, upon the appointment of Mr. Kurlan as receiver for the property, what next happened, from your standpoint?

A I got in touch with Mr. Kurlan, and I informed him that he had been appointed receiver, and I told him to quickly take possession, to get his bond and take possession, and see if some of the money that had been collected by the owner and not paid over to either the first mortgagee or to us for payment of taxes, if he could get some of that money, and I also told him to see if he could collect any of the rents from the tenants that were there.

Q Was the property then in operation?

A It was in operation, yes sir.

Q Describe the property, briefly, to the Senate. What did it consist of?

A I would call it a combination of a hotel, motel and apartments.

Q Where was it located?

A It was located on Collins Avenue, roughly, at about 60th Street, on the west side of Collins Avenue; that's not the ocean side.

Q On the bay side of Collins Avenue?

A Yes sir. Although it didn't stretch to the bay, it was on the west side of Collins Avenue; and the improvements there were pre-war. I don't know exactly how old they were, but they were pre-war; it was not a modern motel.

And it didn't consist entirely of motel rooms or many apartments. It was - - -

Q Now, will you - - -

A - - - scattered; it wasn't a single unit.

I can't recollect the exact number of units. It would be difficult to say, because many of the units consisted of three and four and even, perhaps, five rooms, because it consisted of kitchens, kitchenettes; some had living rooms, bedrooms, and so on.

Q What was the amount of the total mortgages on that property originally, roughly, first, second, and I think there was a third mortgage?

A Well, at the time I started this foreclosure suit, I know that the balance on the first mortgage was, in round figures - - -

Q No, the original amounts.

A The original amount of the first mortgage, I don't know.

Q Can you give us some idea of the cost of the property, initially?

A I can't tell you the initial cost of the property, except I could say that it was - - - you mean the pre-war cost of it, or - - -

Q I'm trying to get some idea about how large an operation it was.

A Well, perhaps it would give you some idea if I told you the price that it brought at the sale on the Court House steps, and of course, that was a price that was dictated by all the circumstances.

Q What was the price?

A It brought \$158,500, subject to the first mortgage and the balance - - - the balance due on the first mortgage at that time was slightly in excess of \$105,000. So, from that, you could say, roughly, on a sale under pressure, it brought a quarter of a million dollars.

Q Very well.

Now, what did Mr. Kurlan do after his conversation with you?

A He took over possession that very morning, and he immediately ascertained that some of the rental money had been deposited in the North Shore Bank. He informed me of that fact, and I tried to obtain that money from the North Shore Bank on merely presentation to officers of the bank - - - through him - - - actually, he did it - - - of certified copies of the order of receivership, but the bank didn't want to pay him on that basis, and later, we arranged for a turn over order.

He also took stock of what was there, decided what had to be cleaned up, determined what facilities were broken down, because at that time it was in relatively bad shape; and he put his own clerk in there, and he did everything that was necessary in the taking over of a hotel.

Q Well, now, how long did Mr. Kurlan continue to operate that hotel?

A He operated it from the day he took over until the date of the sale on the Court House steps, and that was very close to Christmas time, December.

Q I'll ask you to state whether or not your action in that case was defended by the fee owners?

A The fee owners put in an answer, and in that respect, it was a contested proceeding.

Also, they appeared at the hearings. However, I wouldn't say that they put in evidence, any facts that would constitute a defense, but I would consider that it was a litigated proceeding, so far as the record indicated. They filed pleadings, and we had a full hearing.

In fact, there were three separate hearings before we finally concluded.

Q Did you have hearings before a Master, as well as before Judge Wiseheart?

A Yes sir.

Q And who was the Master?

A George Talianoff.

Q Will you spell "Talianoff"?

A T-a-l-i-a-n-o-f-f.

Q Did Judge Wiseheart appoint him Master?

A Yes sir.

Q Now, then, did the Master find in favor of your client, the Plaintiff, the Mercantile National Bank?

A Yes sir, he did.

Q Was the Master's report filed before Judge Wiseheart?

A The Master's report was filed in the clerk's office of the Circuit Court.

Q Was a hearing held before Judge Wiseheart at the time of the entry of the final decree?

A No sir, there was not. There was a notice of hearing, made returnable before Judge Wiseheart, but on the return day, Judge Wiseheart was not present in the Court. In fact, I don't know where he was at that time.

And I brought all the proceedings to Judge Holt, including the mass of the entire file, and the proposed final decree.

Q Was Judge Holt the alternate Judge for Judge Wiseheart?

A Yes sir, he was.

Q Now, going back to the institution of the suit, I note that it bears the Clerk's inscription, evidencing the processing in Division C of the Court. Is that correct?

A Yes sir.

Q And who presided over Division C of the Court?

A Judge Milledge.

Q Was Judge Milledge present at that time?

A No sir, he was not.

Q Was he out of town?

A Yes sir.

Q Who was Judge Milledge's alternate?

A Judge Carroll.

Q Was Judge Carroll in his office at the time you filed this case?

A Judge - - - I filed the case on June 2, and at that time I made no attempt to find out whether or not Judge Carroll was in his office, because I had no occasion, at the time I actually filed the complaint, for the services of any judge.

Q The emergency judge had already acted on the complaint?

A Yes sir.

Q Judge Wiseheart?

A That's correct.

Q Very well.

Now, then, how long did Mr. Kurlan serve in that case?

A From June 2, 1955, until, I believe it was, December - - - I believe the sale took place December 5 - - - December 5, 1955.

Q Which Judge entered the final decree, and when?

A Judge Holt entered the final decree on December 5, 1955.

Incidentally, Mr. Kurlan, after December 5, 1955, I believe did some accounting work in order to make a final report, but I believe that he turned over possession on December 5, 1955 to the new buyer.

Q Was the property sold, under the final decree, on the Court House steps?

A Yes sir, it was.

Q And what price did you say it brought?

A \$158,500.

Q Subject to - - -

A Subject to the first mortgage, and in round figures, the first mortgage balance was \$105,000.

Q So, that would work out approximately \$263,000?

A That's correct. There may have been some interest also due on that first mortgage, but in round figures, that's correct.

Q Yes.

Did Judge Wiseheart require a bond of Mr. Kurlan when he appointed him?

A Yes sir, he did.

Q In what amount?

A I believe it was \$5,000.

Yes sir. Well - - - yes, yes sir, \$5,000.

Q Now, were you present at the hearing before Judge Holt, when Mr. Kurlan's fee, of \$8,500, was fixed?

A I wasn't present on that occasion.

Q Do you know what proceedings led up to that hearing, with respect to the amount of Mr. Kurlan's compensation?

A Well, I know that Kurlan was in charge of the property up until then. I know the work he did there.

There were hearings on the entire matter, and I know that Mr. Kurlan made an application for his fee - - - in that respect, I know about it, but I wasn't present at the actual hearing itself.

Q Was some member of - - - some other member of your firm present, do you recall?

A No sir, I don't believe that there was anyone present from my firm at that time.

Q Well, did you learn what order had been entered on that fee?

A Yes, yes sir, I did.

Q What was your reaction to it, as far as the amount was concerned?

A I considered that it was reasonable.

Q Did you report the situation to your client?

A Yes sir, I did.

Q Did your client consider it as reasonable for Mr. Kurlan's services over that period of time?

A Yes sir, my client certainly did.

Q Was there any objections or exceptions filed in the case as to that award of compensation to Mr. Kurlan?

A No sir, I don't believe there ever was any, and as I look over the file, I don't see any.

So far as I know, there never was any objection from any of the parties, or from anybody else.

Q Did one of the attorneys at one point file an exception to an amended receiver's report, and if so, what was the basis of that objection?

A Yes sir, there is a motion here on the part of the attorney for the third mortgagee.

Q Did he object to the amended receiver's report because he had not received notice of it?

A That's correct, but incidentally, I don't believe that any objection was made to the receiver's fee.

The motion recites that objection is made because of certain vouchers and statements, regarding certain expenditures, were not attached, and I don't see - - -

Q There's no mention of the fee award, is there?

A No sir, and I don't know of any objection made to it. It certainly doesn't appear here that there was any.

I see a notice of hearing, but I don't see any order on that motion.

Q Was your law firm, and your client, the Mercantile National Bank of Miami Beach, satisfied fully with Mr. Kurlan's services?

A Yes sir, they were.

As a matter of fact, at the time these proceedings were commenced, we were concerned that the property wouldn't realize enough to pay off the principal and interest on the second mortgage, together with costs, but we were very agreeably surprised to find what it did bring, and I attribute a lot of the credit to Mr. Kurlan taking care of the grounds, fixing it up, and actually, he took an interest in seeing that there were people who might buy at the Court House steps.

For example, before the sale on the Court House steps, he listed it with brokers, and there was a great deal of interest at the sale; there was spirited bidding for it.

Q There was competitive bidding at the sale?

A Yes sir. As a matter of fact, we were all gratified at the sales price that was brought for it.

Q There was no appeal taken from that case at all, was there?

A No sir.

MR. HUNT: That's all.

THE WITNESS: In fact, there was no opposition, except for the rudimentary answers that were filed.

BY MR. HUNT:

Q Did you ever hear of any opposition to anything in them until this matter developed, Mr. Horwitz?

A No sir, I did not.

MR HUNT: That's all.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Horwitz, you carried that case to Judge Wiseheart's home to get a receiver appointed?

A Yes sir, I did.

Q You didn't give anybody any notice of the appointment of the receiver?

A No sir, I didn't.

Q How did it get in Judge Holt's division for the purpose of awarding Mr. Kurlan's fee?

A I can't answer that question, because I don't know.

In other words, I was not the attorney for the receiver.

MR. BEASLEY: Would you let me see the file just a minute?
BY MR. BEASLEY:

Q Did you have any notice from Mr. Kurlan, or his attorney, that they were going to ask Judge Holt to award the receiver's fee?

A So far as I can recollect, Mr. Kurlan didn't have an attorney.

I had notice that he was going to apply, because he told me so.

Q Did he give you any notice in writing and put it in the file?

A I can't recollect any notice in writing; he just told me that he was going to apply.

I might add this, by way of further detail:

Everyone was extremely anxious to have this sale take place as soon as possible, because we felt that the highest price could be obtained for it, the sooner the sale was held. We realized that the season was about to start; this sale took place in December; and we were all most anxious to expedite all of these proceedings in order that a sale take place at least a few weeks before the start of the Christmas season, so whoever bought it could fix it up, and thereby, whoever bought it would be willing to pay a much higher price on it.

Q How much fee was Mr. Kurlan awarded in that case?

A \$8,500.

Q Do you know what Mr. Kurlan does now?

A No sir, I don't.

Q Do you know whether or not he works for a bank there in Miami?

A He doesn't work for any bank in Miami.

MR. BEASLEY: That's all.

MR. HUNT: That's all. Thank you, sir.

Do you excuse this witness?

MR. BEASLEY: Yes, we are through with him - - - oh, wait just a minute, Judge.

MR. HUNT: What is it?

MR. BEASLEY: Hold him just a few minutes. I mean, he can go outside, but we want to check on a matter; it won't be but just a few minutes, and we'll excuse him right away after we see what we want done.

THE WITNESS: I want to say this, that there won't be anything misleading:

I know that Mr. Kurlan is a director of a building savings and loan association, but I don't consider, in that sense, he is working.

MR. BEASLEY: We still want to check with him just a few minutes.

(Witness temporarily excused)

MR. HUNT: Your Honor, may we have about five minutes to prepare for the next phase here? Counsel can do his checking at the same time, because a lot of these witnesses want to catch a plane back, and as many of them as we can, we - - -

CHIEF JUSTICE TERRELL: Court will be at ease for five minutes.

Whereupon, the Court stood at ease from 2:35 o'clock, p.m. to 2:40 o'clock, p.m.

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

MR. BEASLEY: We want to call Mr. Horwitz for further cross examination.

Thereupon,

LEWIS HORWITZ

was recalled and testified further as follows:

FURTHER CROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Horwitz, your law partner is Mr. Shepherd Broad, is he not?

A Yes sir.

Q Now, is he president of the American Savings Building & Loan Association, of Miami Beach?

A Yes sir, he is.

Q What position do you hold in the American Federal Savings and Loan Association of Miami Beach?

A Sir, it isn't the "Federal," actually; it's a state institution, American Savings Building & Loan Association.

Q Yes.

A I'm the assistant secretary.

Q Who is the secretary?

A Mr. Kurlan is the secretary.

Q Louis J. Kurlan?

A Yes.

Q That's the man that was appointed receiver in the case you just testified about, is it not?

A Yes sir.

I believe he's the secretary.

Q I'll hand you a pamphlet issued by the American Savings & Loan Association of Miami Beach, and ask you if this is a pamphlet containing the names of the officers of that association?

A Now that I see this, yes, it is - - - I see that he's the treasurer, not the secretary.

Q Yes sir. What's the date of that pamphlet? If you'll turn it over on the other side, look right there at the top.

A June 30, 1957.

Q This year?

A Yes sir.

Q And Louis J. Kurlan is treasurer - - -

A He's the treasurer, yes.

Q - - - of the building association that your law partner is president of - - -

A Yes sir.

Q - - - and that you are assistant treasurer of?

A I'm assistant secretary.

Q Assistant secretary?

A Yes sir.

MR. BEASLEY: That's all.

If it please the Court, we'd like to offer this in evidence.

MR. HUNT: No objection.

(Whereupon, the instrument was received and filed in evidence and marked House Managers' Exhibit Number 46)

MR. BEASLEY: Did you want to see it?

MR. HUNT: No.

MR. BEASLEY: It's been identified.

MR. HUNT: That's all, Mr. Horwitz. Thank you.

(Witness excused)

MR. HUNT: Call Bishop Louttit, please.

Thereupon,

HENRY LOUITTIT,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Henry Louttit.

Q Will you please state your profession, occupation or calling?

A I am the Bishop of South Florida of the Episcopal Church.

Q How many divisions of the Episcopal Church are there in Florida?

A Two, the diocese of Florida and the diocese of South Florida.

Q And you are the Bishop of the diocese of South Florida?

A South Florida.

Q Bishop Louttit, where do you reside?

A Winter Park, Florida.

Q Where did you study for the ministry?

A At the Virginia Theological Seminary, Alexandria, Virginia.

Q And did you - - - have you been engaged in the ministerial field since your graduation from that seminary?

A I have.

Q Did you have service in the armed forces during World War II?

A Yes sir.

Q In what capacity, and in what theatre?

A Chaplain, 31st Division, Pacific, four years.

Q Four years in the Pacific?

A Not - - - no, not four years in the Pacific, four years in service.

Q Did you win any award or citation for service in the Pacific?

A A Bronze Star.

Q Bishop Louttit, have you ever resided in Miami?

A Yes sir.

Q For what period of time?

A I went to Miami in 1925, and was there until about 1927, when I went to the seminary.

I was there during vacations, while at the seminary, two summer vacations; I was there approximately a year after I was ordained, which was in 1929.

Q Well, now, over the course of the past few years, how often have you had occasion to visit Miami?

A Well, since I have served as a Bishop, I suppose I am in Miami fifteen to twenty times a year.

Q I'll ask you to state, Bishop Louttit, whether or not you know Judge George E. Holt?

A Yes sir, I do.

Q Do you know his wife, Christine Holt?

A Yes, I do.

Q Do you know their children?

A Yes, I do.

Q Did you have occasion to preside at the baptism of any of the children or grandchildren of Judge and Mrs. Holt?

A Yes, I - - - I'm not positive, sir, whether I baptized Christine or not, but I know I baptized two of her children, and I married Christine.

Q You married Christine - - -

A Yes sir.

Q - - - and Henry Kurtz?

A That's right.

Q Have you known Judge Holt rather intimately for some period of time?

A Since 1928.

Q Since 1928? That's almost thirty years.

A Approximately.

Q Have you had occasion to follow his professional and judicial career on the Bench in Miami?

A Well, I'm not sure exactly what that question means, but I, naturally, being a friend of mine, I have followed his career with reasonable interest, both personally, and what I read in the papers.

Q Have you known Judge Holt as a member of your congregation in Miami?

A Yes sir.

Q Can you state whether or not, over the period of years, at least, up to the time of the automobile accident, he was active in the Episcopal Church in Miami?

A Yes, he has been.

Q Was he at one time, for a number of years, a Sunday School teacher?

A I believe he was, at Trinity Church, Miami.

Q Was he also, over a period of a number of years, a vestryman in the Church?

A Yes, he was.

Q Bishop Louttit, will you state, if you know, the reputation which Judge Holt bore for judicial integrity up to the time of the April 30, 1956 Grand Jury report, which has since been expunged, by law, I might add?

A May I - - - by that, do you mean what reputation he bore with me, or with people I talked to?

Q With you, and among the community, and the people that you know with whom he moved and associated?

A Well, I would say he had a very fine reputation among the people I know in Miami.

Q Is it your feeling or not that Judge Holt has high honor and integrity?

A It is not my feeling, it's my belief.

Q It's your belief?

A That he is a man of integrity.

MR. HUNT: That's all.

MR. BEASLEY: No questions.

THE WITNESS: Thank you very much.

MR. HUNT: Thank you, Bishop.

THE WITNESS: Is that all?

MR. HUNT: Thank you very much, sir. Yes sir.

(Witness excused)

MR. HUNT: Call Judge Emmett C. Choate.

Thereupon,

EMETT C. CHOATE,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Judge Choate, will you please state your full name?

A Emmett C. Choate.

Q Are you at the present time in a judicial position in Florida?

A I'm Federal Judge in the Southern District of Florida, Miami Division.

Q Prior to becoming Judge of the United States District Court in Miami, did you practice law, with law offices located in Miami, for some period of time?

A Yes, since the year 1925.

Q Judge Choate, I'll ask you to state for what period of time you have known the Respondent, Judge Holt?

A Since the thirties.

Q Since when?

A Since the nineteen thirties.

Q Since 1930?

A Somewhere in the thirties; I don't recall the year.

Q Yes sir.

Did you know Judge Holt during the period he served in the Florida Legislature?

A Yes, I knew him, and I was in attendance at the legislative session in which he served.

Q Do you, likewise, know Mrs. Holt?

A Yes, I know - - - I've known Mrs. Holt as long as I've known the Judge, and I, of course, knew her family too.

Q Do you know their children?

A Yes, I do.

Q I believe you have a son of the approximate age of their son, do you not?

A He's a little older than young George.

Q Have you, since Judge Holt was appointed to the Bench by Senator Spessard Holland, in 1941, had occasion, on many times, to appear and practice before his Court?

A Yes, quite often.

Q Have you known Judge and Mrs. Holt socially in Miami, as well as knowing Judge Holt in a professionally or business way?

A Yes, I have had occasion to see them socially several times each year, at least.

Q Judge, I believe I learned from you at the noon hour, for the first time, that you were in attendance at the Dodge party on the night of December 20, 1955, when Judge Holt was injured?

A Yes.

Q Will you state to the Senate whether or not you saw and talked to Judge Holt on that occasion?

A Yes, I saw Judge Holt during the course of the evening, and spoke to him casually, like in passing, and then, when I was leaving with my wife, I met him near the place of the exit.

Q You met him where, Judge?

A Where we were leaving, just the exit to the driveway.

Q Near the front exit?

A That's right.

Q And do you know whether or not he was leaving, or preparing to leave?

A Well, I had a conversation with him, and I made it known that we were leaving, and he said that he was waiting to get his party together and expect to leave, and we talked about the party being such a pretty party, and the fact that the children - - - it was a party for them, largely, that they were enjoying things that we didn't enjoy when we were the same age.

Q The children were enjoying things that the two of you did not enjoy when you were young?

A That's right.

Q And for what period of time would you say you talked with Judge Holt?

A Oh, just, say, two or three minutes, I'd say.

Q Did you observe his condition, Judge Choate, with respect to sobriety, normalcy, at that time?

A He was perfectly normal. He certainly was not intoxicated at that time.

Q Will you tell the Senate about what time that was you were preparing to leave, and last talked with Judge Holt?

A About 8:30.

Q About 8:30?

A I couldn't pin it down to the minute, but I would say it was very close to it.

Q Now, in the course of your active practice at the Miami bar, and before the Court in which Judge Holt has presided for some sixteen years, will you state his - - - the general reputation which he enjoyed prior to April 30, 1956, in the community, for judicial integrity and honor?

A I don't know as I ever heard it discussed prior to that time, although I'm quite sure it was very good.

Q Had you ever heard anyone place him under attack for anything, Judge Choate?

A No, I never had.

Q Well, then, prior to the time of the so-called Dowling Grand Jury report, would you say that he had enjoyed a good reputation for judicial integrity and performance of duty on the Court?

A I would say yes, he had.

Q Will you state to the Senate your observation of the manner in which Judge Holt conducted his Court, both in the Court Room and in Chambers, the manner in which he treated witnesses, jurors and attorneys?

A My observation of Judge Holt was that he conducted his Court in a dignified manner.

He dispatched business quickly, and I thought he had very considerable judicial ability; that was my impression of him.

Q Is that still your impression, Judge Choate?

A Still my impression.

MR. HUNT: Take the witness.

MR. BEASLEY: Excuse us just one minute.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Judge Choate, about what time did you get to the Dodge party?

A I think somewhere between 7:00 and 7:30.

Q You stayed something more than an hour?

A I say that because that's generally the time I usually got around to these different parties.

Q You stayed something more than an hour?

A Yes, I did.

Q Now, you don't know how long Judge Holt stayed there after you left, do you?

A No, I would have no way of knowing.

Q Did you see Judge Prunty there?

A At a distance I saw Judge Prunty.

Q Was - - - at the time you left, or right about the time you left, did you see Judge Prunty around?

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

Q You don't recall seeing him out in front about that time?

A No. The reason I recall Judge Holt was because of the paper the next day, that caught my eye, the situation that happened that night.

Q Did you go to the Astor party, the John Jacob Astor party sometime prior to this?

A No, I did not.

Q I believe you testified that you had never heard Judge Holt's reputation as a Judge discussed up until April of 1956?

A Yes, that's correct, although I heard some political campaigns, in which there was some discussion, but they didn't - - - I don't think they involved his character.

Q Now, since April of 1956, you've heard it discussed a great deal, have you not?

A Oh, yes. The papers have been full of pros and cons.

Q And the people have been talking about it a great deal, haven't they?

A For a while they did. Lately, it seems to me that people have lost some interest in the matter.

Q Isn't it a fact that after April of 1956, when a lot of this excessive fee business was brought out down there, that there appeared a great deal of distrust among the people for Judge Holt's Court?

A I - - - no, in my opinion, that is not correct.

Q Which one of the rooms - - - can you describe the room in the Dodge home where you talked to Judge Holt?

A It wasn't in a room, it was in the yard; you go through the yard toward the entrance.

Q In the back?

A That's right.

Q Was that where the tent was?

A Yes, they had a tent, and - - - I think they had two tents, if I remember correctly, and a couple of orchestras.

It was a children's party, largely. The adults were also invited.

Q Was it in one of these tents, or the tent?

A Oh, no, it was outside of the tent, and over toward the house itself, the house proper.

Q It was in back of the house?

A That is right.

Q Wasn't near the front?

A Well, no, it was near the front. You see, the back of it is on the bay, and that's really the front of the house.

This was towards the street.

Q That's a two-story building, isn't it?

A That's right, it's a very rambling building; it's quite a large house.

Q Was the place where you talked with him on the side where you pick up your car to leave?

A That's my memory of it. It either was there or very near there.

Q But you wouldn't be certain about it? You're just estimating it; the time, I mean, you're just estimating?

A Well, I estimated it, of course, but I'm reasonably certain that it was within striking distance of the hour that I mentioned.

MR. BEASLEY: That's all.

MR. HUNT: Thank you, Judge Choate.

CHIEF JUSTICE TERRELL: Judge Choate - - -

THE WITNESS: Yes sir.

CHIEF JUSTICE TERRELL: - - - Senator Knight, of the Court, offers this question - - -

THE WITNESS: All right.

CHIEF JUSTICE TERRELL: - - - "Is it your present opinion that Judge Holt could still serve as Circuit Judge with honor and dignity?"

THE WITNESS: Yes, that is my opinion.

CHIEF JUSTICE TERRELL: That's all.

MR. HUNT: That's all, Judge Choate. Thank you very much.

(Witness excused)

MR. HUNT: Call Senator Gautier.

Thereupon,

R. B. GAUTIER, JR.,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Senator, I want to go through the useless formality of asking you your name.

A You say you will go through with it, or won't?

Q Yes, for the record.

A R. B. Gautier, Jr.

Q What is your trade or occupation or profession?

A Attorney at law.

Q Where do you practice?

A Dade County, Miami, Florida.

Q Where is your office located, Senator?

A DuPont Building.

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

A Twenty-five years, will be in November.

Q Have you served Miami, or that area, in any public office or offices, and if so, what?

A As a member of the Legislature, of the House and Senate.

Q When did you serve in the House?

A In 1943 and 1947.

Q And when did you serve in the Senate?

A '49, through the '55 session.

Q '49 through the '55 session?

A Yes.

Q How long have you known Circuit Judge George E. Holt, the Respondent in this matter?

A It's thirty years this summer.

Q Will you state to the Senate in your own words what your relationships with Judge Holt have been over the years, both professionally and socially?

A We have been friends for thirty years.

I knew Judge Holt originally when I was working in the

Clerk of the Circuit Court's office, in the Legal Department, in 1927, and he was a young lawyer; he had been in Miami a few years at that time, as a young lawyer; and then, when I was admitted to practice, we had offices on the same floor.

Q What building was that?

A In the Langford Building.

I was admitted in 1932, and our offices were on the same floor, and for a few years after that, we had adjoining offices. His office was next to ours, and he was teaching law at the University of Miami during that period, in the thirties, and we were extremely close because we - - - in those days, during the depression area, we were borrowing money from each other to meet the grocery bills from week to week, and when you get close enough to borrow grocery money, you get pretty close to a fellow.

Then, he became interested in politics and ran for the Legislature in 1936, I guess it was, and served three terms of course.

I knew him all through that period, and when he was appointed to the Bench, I practiced before him in many, many cases prior to the war and subsequent to the war.

Q You yourself served in the Navy, I believe, during World War II?

A That's correct.

Q Do you know whether or not Judge Holt was a member of the Coast Guard Reserve in Miami - - -

A Yes.

Q - - - during the war?

A He was.

Q You have stated, I believe, that you've had occasion to appear before Judge Holt and his Court many times.

A Many.

Q During the course of your practice there, you have - - -

A Not in recent years, I haven't, because I haven't been in Court much; I haven't been in litigation much, but in the last four or five years, I haven't appeared before him at all.

Q Senator Gautier, I'll ask you to state to the Senate what general reputation in the community Judge Holt enjoyed for judicial integrity and honor prior to the so-called Dowling Grand Jury report, on April 30, 1956?

A Well, I would say excellent, and I would - - - certainly, in my own judgment, and I think it's best illustrated by the fact that Judge Holt, in 1954, received, I think, the highest vote ever given a judicial office seeker at the polls.

Q Do you know of your own knowledge that he led the entire ticket that year?

A He did.

Q And do you also know that prior to that, six years prior to that, he was unopposed for reelection?

A Yes, that's true.

Q Is it your opinion that notwithstanding the expunged Grand Jury report and the subsequent publicity attendant thereon, that Judge Holt continues to have judicial integrity and honor?

A In my opinion, certainly.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Senator Gautier, since the Grand Jury report of last April a year ago, hasn't there been a great deal of criticism of Judge Holt in the Eleventh Judicial Circuit?

A Well, I would say that there has been considerable among the public, and I can also say that no man could have the things said about him and been through what Judge Holt has experienced since that Grand Jury report and the unfortunate accident that he had, without some public clamor; there's no question of that.

MR. BEASLEY: That's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Will you state, generally, whether or not, in the course of his judicial duties, Judge Holt, from your observation, presided on the Bench and in Chambers with dignity and decorum?

A Indeed so.

As a matter of fact, I think Judge Holt has quite a reputation for being one of the outstanding judges in the State, not only for his legal knowledge, but in his astuteness as a judge.

Q Senator Gautier, are you aware that upon Judge Holt's return from Europe, in 1954, he wrote a book named "Wig and Robe," which set forth his study of various European courts?

A Yes, and those articles were published, I think.

Q That's correct.

A Yes sir. I read some of them.

MR. HUNT: Yes sir. Judge?

CHIEF JUSTICE TERRELL: Senator Kickliter, of the Thirty-Fourth, offers this question:

"Could you say whether or not attorney fees in Miami are generally higher than in other areas of the State of Florida?"

THE WITNESS: I'm most thankful that they are, yes sir.

They are, that's true, as far as I know.

MR. HUNT: So is the overhead, isn't it?

THE WITNESS: Anything else?

MR. HUNT: Is that all, Judge?

CHIEF JUSTICE TERRELL: That's all.

BY MR. HUNT:

Q One more question, Senator Gautier:

Since the House voted Judge Holt's impeachment, his office has remained open, and no one has been appointed to fill it, is that correct?

A Yes sir.

MR. HUNT: That's all.

THE WITNESS: Thank you.

MR. HUNT: Thank you very much.

(Witness excused)

MR. HUNT: Will you call Judge Barns, please.

Thereupon,

PAUL D. BARNES,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q You are Judge Paul D. Barns?

A Yes sir.

Q You reside in Miami?

A I do.

Q About 133 S. E. 25th Road?

A 130.

Q 130?

A Yes.

Q Judge, how long have you resided in Miami?

A Since 1920.

Q Will you sketch for the Senate, in your own words, your professional background, where you received your legal education, and bring us on down to date on your background of professional and judicial experience?

A I graduated from high school, and attended Washington & Lee for two years; then the University of Florida for two years; admitted to the Bar in 1916; then I graduated from the University of Florida in 1920; went to Miami in 1920; practiced law for five years; was appointed one of the judges of the Civil Court of Record in January, 1926.

Q Who appointed you, Judge?

A John W. Martin; and in July, 1927, was appointed Circuit Judge, and served as a Circuit Judge for almost twenty years; then I was elected to the Supreme Court of Florida, where I served three years and retired.

I now am a professor of law at the University of Miami, and occasionally serve in the Supreme Court.

Q That's as brief as some of your brief opinions, Judge. Thank you.

I will ask you to state to the Senate for what period of time you have known the Respondent, George E. Holt, and in what different areas or capacities you have had occasion to come in contact with him?

A Well, I first remember Judge Holt as a practitioner in the firm of Knight, Willard & Holt.

Q Is that Willard Judge Ben Willard who, for many years, has been Judge of the Criminal Court of Record?

A Yes sir; and then I knew him as he practiced before me when I was sitting as Judge of the Civil Court of Record, and as - - - before me, as a Judge of the Circuit Court, and also, I knew him as associate Judge of the Circuit Court from 1940 to 1946, about.

Q I believe - - - what year, Judge, did you become a senior Judge of the Eleventh Judicial Circuit?

A I don't know the year; it was the year that Judge Atkinson died. I don't know what year that was.

Q Well, then, did you have - - - you had occasion to serve actively on the Bench during the time that Judge Holt was on the Bench, between the time of his appointment, and up to the year, I believe you said, 1946?

A Up to December, 1946.

Q December, 1946?

A Yes.

Q Now, except for the three or three and a half years during which you were a Justice of the Supreme Court of Florida, and resided, undoubtedly, in Tallahassee, have you resided in Miami continuously at other times?

A That's right.

Q Throughout the period you have mentioned?

A Yes sir.

Q Have you known Judge and Mrs. Holt socially, had occasion to come in contact with them socially?

A Yes, I have.

Q You, of course, are familiar with the fact that on April 30, 1956, a Grand Jury in Dade County, presided over by an attorney other than the State's Attorney, returned a presentment in which Judge Holt was criticized. I'll ask you this question:

From your experience with Judge Holt, both as a practicing attorney and as an associate Judge of the same Court, what would you say was the reputation he enjoyed for judicial integrity and honor prior to April 30, 1956?

A Excellent.

Q Judge, will you state to the Senate the manner in which Judge Holt handles his Court, with respect to his share of the work, treatment of witnesses, jurors, and members of the Court?

A When I served on the Bench with Judge Holt, Judge Holt attended to his duties diligently. He met his appointments promptly, and he got his work out, and I would say it was a pleasure to serve with him.

Q Judge Barns, is it your opinion that at the present time, Judge Holt still has the honor and integrity which he has always had?

A In my opinion, yes.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. BEASLEY:

Judge Barns, since the Grand Jury report of last year, and since Judge Holt's record, hasn't he been greatly criticized by the population of the Eleventh Judicial Circuit?

A Yes sir, he's been brought in disrepute.

Q Yes sir. His office has?

A Yes, he has.

Q Yes sir.

A Not particularly what he did, but what - - - the implications of what the press had.

Q Don't you believe that because of his conduct, and what has been said about his conduct in office and his personal conduct in the Eleventh Judicial Circuit since the Grand Jury report of last year, that his office and he himself has fallen into disrepute with the people down there?

A Yes.

MR. BEASLEY: That's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Judge Barns, the - - - you've mentioned what the papers said about him. Will you state to the Senate whether, following the outlaw Grand Jury report of April 30, the criticism of the - - - a certain segment of the press against Judge Holt has been most pronounced and severe?

A It has, and very well molded the minds of people.

Q Sir?

A And have very well molded the minds of the public.

Q Do you think that among the profession, and the Judges on the Bench, and the people who are familiar with the work of the Court, that Judge Holt still enjoys a reputation for integrity and honor?

A I do.

MR. HUNT: That's all.

MR. BEASLEY: That's all.

MR. HUNT: Thank you, Judge.

THE WITNESS: Thank you.

(Witness excused)

MR. HUNT: Your Honor, may we have about five minutes to corral the rest of the witnesses?

CHIEF JUSTICE TERRELL: Court will be at ease for five minutes.

Whereupon, the Senate stood in recess from 3:50 o'clock, p.m. to 3:55 o'clock, p.m.

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

MR. HUNT: Call Mr. Lantaff, please.

Thereupon,

WILLIAM C. LANTAFF,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A William C. Lantaff.

Q Your residence?

A Miami, Florida.

Q What is your occupation or profession, Mr. Lantaff?

A I'm an attorney at law.

Q Do you practice in Miami, Florida?

A Yes sir, I do.

Q Where is your office located?

A 916 DuPont Building, Miami, Florida.

Q With what firm are you associated in the practice of law?

A Walton, Lantaff, Schroeder, Atkins, Carson, & Wahl.

Q "We the People"?

A "We the People."

Q Mr. Lantaff, for what period of time have you practiced law in Miami?

A Since 1937.

Q Where did you receive your legal education?

A At the University of Florida.

Q Have you held any offices in the Bar Associations in that area during the course of your practice?

A I was a member of the Board of Directors of the Dade County Bar Association.

Q For a number of years?

A Yes sir. I do not recall exactly how many years.

Q All right. What official or public positions have you held, Mr. Lantaff?

A I was a member of the Florida State Legislature, and a member of the Congress.

Q When did you serve in the State Legislature?

A From 19 - - - in the 1947 and '49 sessions of the Legislature.

Q And when did you become a Member of Congress?

A In 1950.

Q And for what period of time did you serve in the National Congress?

A I served in the 82nd and 83rd Congresses, 1951 through '54.

Q Did you retire in 1954 from Congress?

A Yes sir, I did.

Q Was that the end of your second term?

A Yes sir.

Q Mr. Lantaff, do you know the Respondent in this matter, George E. Holt?

A Yes sir, I do.

Q Will you state to the Senate, in your own words, over what period of time you have known him, and the areas or capacities in which you have known him throughout that period?

A I've known Judge Holt since 1937, when I first began practicing law in Miami, and had occasion to practice law before him and practice in his Court on many occasions.

Q Does your firm maintain a general practice in all the Courts of the State and this geographical area?

A Yes sir, we do.

Q Have you known Judge and Mrs. Holt on occasion, socially?

A Yes, I have.

Q Have you had occasion to appear before Judge Holt in the trial of various kinds of lawsuits over the period of your practice in his Court?

A Yes sir, I have.

Q I'll ask you to state to the Senate the demeanor in which Judge Holt presides over the Bench, and runs the business of his Court, in your own words.

A Well, I was always impressed with the dignity of Judge Holt's Court.

As a lawyer, I always marveled at his ability to get to the point of a case in a hurry, and with the dispatch that he handled his cases.

I've always known and respected George Holt as an attorney and as a Judge, and I've always felt that his Court was one that was typical of the dignity that I thought ought to prevail in Court.

Q That was as true of his Chambers hearings as of the formal Court Room hearings, was it not, Mr. Lantaff?

A There was very little difference between handling an equity case in the Judge's Chambers or handling a jury case in the Court Room.

It was always dignified, and in my opinion, exemplified the type of Judge that one always thought brought credit to the profession.

Q Will you state to the Senate the manner in which Judge Holt would treat witnesses and jurors and attorneys and people coming before his Court?

A Well, as a young lawyer, I think I was rather impressed with a degree of sternness on the part of Judge Holt, that there wasn't any particular levity to be tolerated in Court, and yet you were always treated with respect.

You knew that he wasn't going to try and make a fool of you because you made some mistake in the Court Room, but I always recall Judge Holt treating jurors and lawyers and witnesses with respect.

Q Mr. Lantaff, you are aware of the fact that the 1956 Spring Term Grand Jury, on April 30, filed a report in which Judge Holt was criticized in connection with the famous Dowling case, are you not?

A Yes sir, I am.

Q Now, you are likewise aware of the newspaper comment, criticism, which followed upon the heels of that report?

A Yes sir, I am.

Q Now, prior to the report which I have mentioned, I will ask you to state to the Senate what general reputation Judge Holt enjoyed among the people of the community for judicial integrity and honor?

A In my opinion, prior to the Grand Jury report in the spring of 1956, Judge Holt enjoyed the highest opinion of - - -

had the highest respect for his integrity and his honesty and his ability as a jurist.

Q Is it your understanding that the Grand Jury report which has been mentioned has subsequently been declared unlawful, and expunged from the public records?

A Yes sir.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Lantaff, you understood there were two Grand Jury reports, didn't you?

A Yes sir.

Q Isn't it a fact that they both severely criticized Judge Holt for his conduct in office, and for his personal conduct?

A As I recall, there was criticism for - - - as to the amount of fees - - -

Q Yes.

A - - - involved.

Q In both of them?

A As I recall it, yes sir.

Q Now, then, since those Grand Jury reports, isn't it a fact that Judge Holt, personally, and his office as Circuit Judge, has fallen into disrepute with the population, the people of the Eleventh Judicial Circuit?

A I don't think there's any question about that, Mr. Beasley, but that's not any of Judge Holt's doings; that's because of accusations made against him.

Q You don't think the fact that these excessive fees and his personal conduct were brought out in the press and made known to the public, the public, generally, knows about it, has had anything to do with it?

A Well, I think the question of the excessiveness of the fees is one that two people might reasonably disagree on.

In fact, members of the Bar might think that a fee was particularly reasonable, and lay people might think that a fee was exorbitant.

Q But I'm talking about - - -

A But I don't think that you can say that a fee is, of itself, excessive without knowing the amount of time expended in litigation, the amount of work.

Q Well, but I'm not asking you about that; what I'm asking you about is, isn't it a fact that because of those things, and because of them being brought to light and made known to the people, that he and his office have fallen into disrepute in the Eleventh Judicial Circuit?

A Mr. Beasley, I'm not trying to evade the question, but you have said that "because of these things being brought to light." I don't view them as having been brought to light, or brought to the attention of the people; I view them as accusations, and I think any of us can be seriously damaged, especially those of us in public life, by accusations, whether right or wrong.

Q But because of those accusations?

A Because of those accusations.

Q His office is now, and he, personally, in disrepute with the people in the Eleventh Judicial Circuit?

A I don't think there's any question that, because of the charges made against him, that, generally, that Judge Holt's reputation, and that of his Court, has been seriously impaired.

MR. BEASLEY: That's all - - - just a minute.

BY MR. BEASLEY:

Q You were asked about the Grand Jury reports. You testified that they criticized the fees. They also criticized him for borrowing money from attorneys and deposit - - -

MR. HUNT: Now, if Your Honor please, I object to that. That's not proper cross.

MR. BEASLEY: If the Court please, he asked him about it; he's the man that brought it out. I think I have a right to cross examine him on any question that he brought out.

MR. HUNT: Your Honor - - -

CHIEF JUSTICE TERRELL: I think that's cross examination - - -

MR. HUNT: All right, sir.

BY MR. BEASLEY:

Q Is that right, Mr. Lantaff?

A I don't recall with a sufficient degree of accuracy to be able to answer the question, Mr. Beasley.

Q You remember, those things were mentioned in the Grand Jury report, though, don't you?

A As I recall, there was mention made of those things. I don't know just which Grand Jury report it was.

MR. BEASLEY: Well, I'm through. That's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Mr. Lantaff, is it also your understanding that the two Grand Jury reports to which Mr. Beasley referred have been declared unlawful and physically expunged by operation of law from the public records of Dade County, Florida?

A That's my understanding.

Q Yes sir.

Mr. Lantaff, have you - - - you have remarked about the accusations brought against this Respondent, concerning which he is now upon the first trial he's ever had, and the following newspaper repetition and comments on those charges, in your opinion, could that happen to any public officer, however so innocent, if it's permitted to be set up as a criterion of Government in this State?

A Well, I don't think there's any question about that.

Anyone in public office, either in the judiciary or in the legislative bodies is in somewhat of a fishbowl, so to speak, in any charges made against them, no matter of what nature, can certainly adversely affect them, and cause public opinion to go against that person.

Q And it wouldn't make any difference whether the charges were true or false, under those circumstances?

A Yes sir, that's what I certainly meant to say.

MR. HUNT: Yes sir. That's all.

RECROSS EXAMINATION

BY MR. BEASLEY:

Q Mr. Lantaff, it hasn't only been what the papers have said about Judge Holt down in Dade County, but what other people, what the people, generally, have said about him, that have caused, to a large extent, his office and himself to fall into disrepute down there, isn't it?

A Well, that's a point that I hoped I had brought out, Mr. Beasley, was the fact that prior to the Grand Jury reports, you heard none of this talk, you heard none of this question of Judge Holt's Court being in disrepute.

On the contrary, I think that his Court enjoyed the finest reputation, and there was a marked cleavage of opinion prior to the Grand Jury reports, and afterward - - -

Q Well, it's the - - -

A - - - and naturally, when you are repetitious, just keep repeating things in the papers, you are going to influence the minds of the people.

Q But it's impossible for the population to know what's going on in a matter as involved as Court procedure until

some medium brings it to the attention of the people, isn't it?

A It's true, it is true, but I think that the most damaging thing to do would be to give someone carte blanche to make all of the derogatory remarks that they can about a public official, and thereby cause him to fall in disrepute, and that they be removed from office, or defeated at the polls.

Q Well, then - - -

A I think we've all experienced having untrue things said about us.

Q Then, if the accusations against Judge Holt, as to his borrowing money from attorneys, his personal conduct, as to the operation of an automobile, and almost killing two people, and his speculation in business, which is enjoined by the Code of Ethics, and his allowance of high fees and excessive fees in the handling of estates of people who are incompetent, if those things are proven, then you think those accusations are well founded, don't you?

A If they are proven?

Q Yes sir.

A I think that's an entirely different thing.

Q You think those things would bring his Court into disrepute if they're proven to be true?

A If all of those things are proven?

Q Yes sir.

A I certainly do.

MR. BEASLEY: All right, sir.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Is it your understanding that that's the purpose of this trial, to determine whether or not all those charges Mr. Beasley has couched together are true or untrue?

A I thought that was the sole purpose of the trial.

MR. HUNT: Thank you.

CHIEF JUSTICE TERRELL: Mr. Lantaff, Senator Kickliter, a member of the Court, sends up this question:

"Could you state whether or not jury verdicts rendered in Miami are substantially larger than those verdicts rendered in other areas of Florida?"

THE WITNESS: Yes sir, I think that's true, without any question, I do.

CHIEF JUSTICE TERRELL: Senator Johns, a member of the Court, sends up this question:

"What kind of race do you think Manager Beasley would run in Dade County for Governor?"

(Laughter)

MR. BEASLEY: May I say, if the Court please, that I don't want the witness to answer that question at this time.

THE WITNESS: Is that all?

MR. HUNT: That's all, sir - - - have you got any more questions, Your Honor?

CHIEF JUSTICE TERRELL: No, that's all.

MR. HUNT: All right, sir, that's all.

(Witness excused)

MR. HUNT: Send in Mr. Brautigam, please.

Thereupon,

GEORGE A. BRAUTIGAM,

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

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A George A. Brautigam.

Q What is your profession or occupation, Mr. Brautigam?

A I am an attorney at law.

Q Where do you practice your profession?

A Dade County, Florida.

Q How long have you practiced law in Dade County, Florida?

A Since 1941.

Q Since 1941?

A Yes sir.

Q Mr. Brautigam, have you held any public office in Miami, or in Dade County?

A Yes sir, I was Associate Municipal Court Judge of the City of Miami, and I was State's Attorney of the County of Dade.

Q For what period of time were you a Municipal Judge of the City of Miami?

A I believe it was '47 and - - - 1947 and 1948.

Q And when did you enter the State Attorney's office?

A I was elected in 1952; took office on January 6, 1953; held that office until January 8 of this year.

Q Mr. Brautigam, did you offer for reelection in the last primary?

A I was a candidate, yes sir.

Q Who was elected State's Attorney?

A Mr. Richard Gerstein.

Q Would you spell that, please?

A G-e-r-s-t-e-i-n.

Q Did Mr. Gerstein have the active support of the morning press in Miami, or not?

A Well, after a certain date, Judge Hunt, he did have, but - - -

MR. BEASLEY: May the Court please, I just can't see where that would have anything to do with this case; now, I just can't see it.

MR. HUNT: Well, I'm going to tell you.

MR. BEASLEY: Object to it on the ground that it's immaterial.

CHIEF JUSTICE TERRELL: I don't see that it does either, but we've let it come in; so, I - - -

MR. HUNT: I think I'll connect it up, Judge.

BY MR. HUNT:

Q Now, prior to April 30, 1956, were you or not in attendance on the so-called Dowling case Grand Jury?

A I was not in attendance. I had been excused by the Grand Jury about two or three weeks before that. The exact date, I don't remember, but I approximate the time about two or three weeks before that date.

Q Will you state to the Senate whether or not that Grand Jury engaged the services of outside counsel?

A Yes, they did. They engaged the services of Mr. Weissbuch.

Q What's that name?

A Weissbuch.

Q What's his full name?

A Samuel D. Weissbuch, I believe.

Q Was he - - - is that W-e-i-s-s-b-u-c-h?

A Yes.

Q Was he a practicing lawyer in Miami at the time?

A I understood him to have retired from the practice five years before that particular time.

Q Do you know whether or not he even maintained an office at that time?

A Judge, only what I am told, that he had - - -

MR. BEASLEY: Now, we object to that.

BY MR. HUNT:

Q Don't say what anyone else said.

A I don't know.

Q All right.

Now, I'll ask you to state to the Senate whether or not you were consulted in connection with the April 30, 1956 Grand Jury report in your capacity as State's Attorney?

A Was I consulted with reference to the report?

Q Yes, prior to its filing.

A Yes, I was.

Q What advice did you give?

A I was called down to the Grand Jury chambers, and Judge Robert Floyd, one of the Circuit Judges, was on the foreman's chair in the Grand Jury room; and I was presented a mimeographed report.

I examined the report and made some comments to the Grand Jury as to the law on the subject matter of the report; asked them to be permitted to have it redrafted, and told them that it was in violation of the Supreme Court's decision on the subject matter; and asked for leave to bring into the Grand Jury room three of the decisions that I had familiarized myself with from the time that I took over the office of State's Attorney.

MR. BEASLEY: Now, if the Court please, at this time, we - - - I want to make this observation - - - object to this testimony, or ask that the Grand Jury reports be admitted in evidence. If they're going to discuss them, they certainly should be in evidence so the Senate can have the benefit of looking at them.

MR. HUNT: If Your Honor please, there's been no testimony - - -

MR. BEASLEY: Both of the Grand Jury reports.

CHIEF JUSTICE TERRELL: Just one at the time.

Are you through, Mr. Beasley?

MR. BEASLEY: Yes sir - - - I want to say this: If they're going to discuss those Grand Jury reports, they should be in evidence so the Senate can have the benefit of seeing what's in them.

Now, counsel for the Respondent objected to them, and the Court sustained the objection, and now he's trying, in a roundabout way to bring out the facts concerning the Grand Jury reports, and he wants them without them being in evidence, and we want to now, if they're going to discuss those Grand Jury reports, offer them in evidence again.

MR. HUNT: If Your Honor please, I believe that counsel is unduly overwrought.

I have not asked this witness anything pertaining to the contents of those Grand Jury reports, which have been expunged, and have no intention to.

CHIEF JUSTICE TERRELL: Answer the question, Mr. Brautigam, and you gentlemen have a right to cross examine on the same point if it's considered relevant.

THE WITNESS: Is there a pending question, Judge?

BY MR. HUNT:

Q Let me ask you this:

Were you in Court on April 28, two days prior, or three days prior to the actual published recording of the April 30 report?

A Yes sir, I was, before the Honorable Judge Robert Floyd.

Q Did you publicly request time in which to prepare opposition pleadings to the report?

A Yes sir, I did.

Q Did Judge Floyd grant you until the following Monday, April 30, in which to present pleadings in opposition to that report?

A He gave me the opportunity to file it; he didn't limit the time of filing. He set the hearing on the documents to be filed on Monday. I filed the documents with the Court Friday afternoon, the next afternoon.

Q Did you appear before Judge Floyd in open Court on - - -

A I did, sir.

Q - - - April 30, 1956?

A Yes.

Q And did you argue and present law in support of your motion to suppress that proposed Grand Jury report?

A Yes sir, I did.

Q Were you opposed by any attorney arguing to the contrary?

A Yes, Mr. Weissbuch was present, and Mr. Pallot was present.

Q Did your opposition motion prevail?

A No, it did not.

Q Did Judge Floyd at that time permit the report to be filed?

A Yes, he did, sir.

Q Did you later take an appeal to the Supreme Court of Florida?

A Yes sir.

Q Did you appear before the Supreme Court of Florida and orally argue that matter?

A I did, sir.

Q Did the Supreme Court of Florida enter an opinion, on February 27, 1957, reversing Judge Floyd?

A Yes sir.

Q And did the Supreme Court, in its opinion and order reversing Judge Floyd, direct him to expunge the offending matter from both the interim and final reports of the Grand Jury?

A Yes sir.

Q I hand you a copy of the Supreme Court opinion to which you have referred. I'll ask you to read to the Senate the indicated paragraph.

A "In bringing this phase of the matter to a close we feel impelled to commend Honorable George Brautigam, the State Attorney for the Eleventh Judicial Circuit at the time of the presentment in question, for promptly asserting and advocating the rights of the general public in the principles of personal rights and freedom discussed and pronounced herein. His intervention for such purpose was made in the face of great obstacles and during a tornado of adverse public feeling that was generated by the improper presentment complained of. Unlike Pilate, he did not yield to what appeared at the moment to be the popular side of a controversy but performed his duty according to the dictates of his own conscience, as he had the right to do. Subsequent public events

indicate he paid a high price for his devotion to duty. Such courageous public service is worthy of this commendation."

Q Thank you.

I believe it's common knowledge that the stand you took on this matter cost you your office, did it not, Mr. Brautigam?

A I've always had a pretty good suspicion that it contributed to it, Judge.

Q Mr. Brautigam, how long have you known the Respondent in this case, Circuit Judge Holt?

A I have known him since I became associated in the practice of law in Dade County, in 1941.

Q Have you had occasion to appear before Judge Holt, and in his Court many times?

A Yes sir.

Q As State's Attorney, charged with the enforcement of the criminal laws of the Circuit, did you have occasion to be in close contact with Judge Holt in his capacity as senior Judge of the Court?

A Yes, because Judge Holt, as Senior Circuit Court Judge, handled all the arraignments of our capital crime cases, and I presented the cases for arraignment and for the setting of trial dates.

In addition to that, I had quite a lengthy experience with Judge Holt in the investigation that was being conducted by the State's Attorney in Dade County, on the subject matter of Communism, Communist activities in Dade County, before the Grand Jury.

Q Yes sir. That was an extensive investigation, was it not?

A Yes.

Q Did you, during the course of that investigation, have occasion to produce a number of persons before Judge Holt, who refused to testify before the Grand Jury?

A Yes sir.

Q Will you state to the Senate what transpired, and what the charges were?

A Well, under the Florida statutes, we were investigating Communism and Communist activities.

The persons were brought before the State's Attorney on preliminary inquiry, and then brought before the Grand Jury, and upon their refusal to testify, a motion was filed before the Circuit Court to hold them in contempt for failing to respond to the questions.

They were so held in contempt; an appeal was taken to the State Supreme Court - - -

MR. HOPKINS: Excuse me just a minute, Mr. Brautigam. Let me enter an objection here.

Is there anything in the Grand Jury reports about which you're testifying to now?

MR. HUNT: No sir.

MR. HOPKINS: Will you answer that question?

THE WITNESS: No, Bill, there isn't.

MR. HOPKINS: Well, we object to it as being immaterial, Mr. Chief Justice, having nothing to do with this case.

CHIEF JUSTICE TERRELL: Answer the question, Mr. Brautigam.

THE WITNESS: And the Supreme Court reversed Judge Holt on an extended hearing that was held in the Supreme Court.

BY MR. HUNT:

Q What action did Judge Holt take with respect to the suspected Communists who would not talk?

A He held them in contempt.

Q Put them in jail?

A Yes.

Q Now, did you have other occasions, or not, to often have matters pertaining to the Grand Jury and other matters of your office, before Judge Holt?

A Yes, I did, and in the first year of our office, I had two assistants at that time, but thanks to this body, we finally got more, but in our division of work, I used to handle most of the civil work in the office, and in bond validations, particularly, habeas corpus proceedings, extraditions, etc., I came in contact with Judge Holt on many occasions.

Q I want you to state to the Senate, in your own language, Mr. Brautigam, your appraisal of Judge Holt as a Judge?

A Well, Judge, I - - - that would probably take too long.

I have always found Judge Holt to be a very honest, a very stern man. Judge Holt was a man that I had a lot of confidence in, because when we went in there with a proposition of law, we knew that we were going to have an answer without a delay to it, even though it wasn't always in our favor, but we felt as though the work of the office could be dispatched because of his interest in our work; and during all the time that I worked with him as State's Attorney, I never found him to be wanting in any regard.

Q What - - -

A He was - - - excuse me.

Q Go ahead.

A He was always there when we wanted him to be there; he wasn't an absent Judge.

If it took time past 5:00 o'clock, why, he was there for that purpose.

Q Did you or not find him to be cordial and courteous to jurors, witnesses and members of the public coming before his Court?

A I could never find anything to the contrary.

Q I'll ask you to state to the Senate what reputation Judge Holt enjoyed up to the time of the outlawed Grand Jury report and the following newspaper headlines, what reputation he enjoyed for judicial integrity and honor?

A I would say it was a good reputation.

Q Would you say it was of the highest?

A Yes sir.

Q Is it or not - - - what is your opinion with respect to whether or not these attacks which have been made on Judge Holt have damaged him in his own personal integrity and honor?

A I am so personally involved in that subject that I think I would be prejudiced, because I was a victim of the same type of conduct, and if what it did to me personally, in the short period of time in which I was exposed to it means anything, I would say that Judge Holt had been damaged far greater than I was.

Q Do you feel that you still have the same personal honor and integrity that you had before it happened to you?

A Do I have it?

Q Yes sir?

A You mean as far as myself is concerned?

Q That's right.

A I don't have to blush when I shave, Judge, and my wife still lives with me, and my four children enjoy my company; so, so far as I am concerned, I haven't changed because of what took place.

Q Do you know of any - - - strike that question.

Do you have any reason to believe that Judge Holt, with the qualifications you have outlined, has changed from the time you last appeared before him?

A No, I don't think that as far as people that know Judge Holt, worked with Judge Holt, have been in any way affected by it.

Of course, there are a lot of newcomers down there that might be affected by what they read in the newspapers.

Q Is it your understanding that as a result of the opinion of the Supreme Court, which followed your appeal and the appeal, I believe, of John W. Wright, which was taken at the same time, resulted in the physical deletion and expungement of the April 30, May 8, and September 23 Grand Jury reports returned in that county?

A It is my opinion, what? I didn't follow the question, sir.

MR. HUNT: Read the question, Mr. Reporter.

(Last question read)

THE WITNESS: Sir, I don't follow that question.

BY MR. HUNT:

Q I mean as a result of the law set in that case, it is your - - -

A What?

Q As a result of the law set in that case, is it your understanding that the Grand Jury report which I have referred to have all been expunged, physically, from the public records of Dade County?

A I, personally, attended the expungement, yes sir.

Q You enjoyed it?

A I think that's obvious.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. HOPKINS:

Q George, let me get these Grand Jury reports straight here. There was one in - - -

SENATOR SHANDS: Mr. Chief Justice - -

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: - - - I'd like to - - - it's approaching closing time for us, time for us to adjourn, and it will not take very long for this witness' testimony to be completed - - - is that right?

MR. HUNT: No.

SENATOR SHANDS: I move that we extend the time of this session until such time as the completion of the examination of Mr. Brautigam may be effected.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: You've heard the motion, Gentlemen. All in favor, let it be known by saying "aye."

SENATOR KNIGHT: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: - - - may I ask, sir, what was the motion? I didn't hear it.

SENATOR SHANDS: To extend the time for adjournment for a few minutes to let Mr. Brautigam finish his testimony today.

SENATOR KNIGHT: All right, fine.

CHIEF JUSTICE TERRELL: All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

BY MR. HOPKINS:

Q George, the Grand Jury reports that you testified about, that was the Spring Term, or the Fall Term of '55? Do you recall the Grand Jury?

A Well, let's see, Bill, they went out of - - - they went out in May. I imagine it would be the Fall Term of '56.

Q Fall Term of '56?

A Yes. We have it for six months, but it's not Spring and Fall.

Q This was really the Fall Term of '55, but still sitting in the Spring of 1956?

A Well, it was April of 1956; so, it would be the Fall Term of 1955.

Q 1955?

A Yes.

Q Then, there was a further Grand Jury report, was there not, in September of 1956?

A In September? Yes, there was.

Q Now, that would have been the Spring Term for the year 1956 - - -

A Yes.

Q - - - is that correct?

A That's correct.

Q Now, you testified that Mr. Weissbuch was counsel for the Grand Jury of the Fall of 1955, and the report came out in the early part of 1956, is that correct?

A Yes sir.

Q Now, who was counsel to the Grand Jury when the report came out in September, 1956?

A The State's Attorney from Polk County, Gunter Stephenson.

Q That's Judge Gunter Stephenson, who's now Circuit Judge in Polk County?

A Is he a judge? If he is a judge, yes sir, that's he.

Q He was State Attorney of Polk County - - -

A Yes sir.

Q - - - assigned to Dade County?

A Yes sir.

Q And that was a different Grand Jury from the one that you referred to, that Mr. Weissbuch appeared before, is that correct?

A Yes sir, that's right, Bill.

Q Now, the Grand Jury report of September, 1956 - - -

A Yes, go ahead.

Q 1956.

A Yes sir.

Q That was not expunged by the Supreme Court, was it?

A Bill, I don't know. I had been replaced in that matter. I don't remember what did happen. I don't think that was - - - it wasn't the one I took up there to the Supreme Court.

Q Now, then, the Grand Jury report of September, likewise - - - did that, likewise, criticize Judge Holt?

A September of '56? I believe it did, yes.

Q Did it, likewise, recommend the impeachment proceedings against Judge Holt, recommend his removal?

A That I'm not sure of, Bill.

Q That was carried in the newspapers, was it not, that report, in the newspapers?

A That's right.

Q And did it not recommend Judge Holt's removal from office?

A I can't answer that for sure. It may have.

Q Now, what did the Grand Jury report contain in the Spring, which was the Fall Term of 1955, in the Spring of 1956?

A What did it contain?

Q Right.

MR. HUNT: Now, if Your Honor please, this witness has not been questioned in chief on any such subject.

CHIEF JUSTICE TERRELL: The objection is overruled.

BY MR. HOPKINS:

Q Will you proceed?

SENATOR RAWLS: Your Honor, may I ask a question?

Is that one of the reports that was expunged?

CHIEF JUSTICE TERRELL: As I understand it, this is in cross of their main examination.

MR. HUNT: Yes sir, that report has been expunged, along with the rest of them.

SENATOR RAWLS: Your Honor, as one member of the Court, I do not believe that we should go into the expunged Grand Jury reports, and I appeal the decision of the Chair.

MR. HOPKINS: If the Court please, may I be heard just a second on that? They have gone into the question of carrying this report up to the Supreme Court, and what the Supreme Court did, and discussed it, and we think we're entitled to know what was in it.

MR. HUNT: If Your Honor please, we have studiously avoided going into the subject matter. We have done that only as a matter of events, occurrences.

The Southern Reporter shows what the Supreme Court said about it, and this man has testified as to the returning of the expunged report, and what happened to it.

Now, we have before the Senate, for identification, a certificate of the Clerk of the Circuit Court, and that certificate shows that all three of these reports, upon orders on mandate, entered by Judge Floyd, and a subsequent order, entered by Judge Charles A. Luckie, of Jacksonville, who was sent down there by Governor Collins; they've all been manually expunged and deleted from the public records.

CHIEF JUSTICE TERRELL: I think that's all true, Mr. Hunt, but these things have been brought in here, and I think they had no place, but they've been brought in, and you've been questioning on direct, and I think they're entitled to cross examine on them.

MR. HUNT: May it please the Court, at no point did I ask this witness a single question as to the contents of any of those Grand Jury reports.

MR. HOPKINS: You asked him what the Supreme Court did to it, and you followed it all the way through.

BY MR. HOPKINS:

Q Will you answer the question, Mr. Brautigam?

MR. HUNT: I'd like - - -

SENATOR RAWLS: May it please the Court, I'd like to have a vote on whether we're going into these expunged Grand Jury reports or not, because I feel like that it's unlawful, and this Senate should not consider anything that was in the expunged Grand Jury reports, as the Supreme Court of the State of Florida directed that they be destroyed and removed from the records.

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

SENATOR GETZEN: Mr. Chief Justice, I want to understand this.

If we want to sustain your ruling, we vote "yes," and if - - -

CHIEF JUSTICE TERRELL: That's right.

SENATOR GETZEN: - - - and if we want to override it, we vote "no."

CHIEF JUSTICE TERRELL: That's correct.

SENATOR ADAMS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Adams.

SENATOR ADAMS: - - - will you state that again, please?

CHIEF JUSTICE TERRELL: If you vote to sustain the ruling of the Chair, you vote "aye"; if you vote to reverse the Chair, you vote "no."

SENATOR KNIGHT: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: - - - may I make one inquiry before we vote?

CHIEF JUSTICE TERRELL: Yes.

SENATOR KNIGHT: Mr. Chief Justice, if we're talking about the Grand Jury reports from memory, when a copy of that is available, isn't it better evidence than his memory about what it might contain? In other words, wouldn't the Grand Jury report itself be the best evidence?

CHIEF JUSTICE TERRELL: Yes, I think it would.

SENATOR KNIGHT: Then, may I inquire further: Has not the Chief Justice already refused to allow the reports to be made a part of this proceeding?

CHIEF JUSTICE TERRELL: That's correct, but they've been brought in and been discussed, and questions answered, and now the question arises as to whether or not they should cross.

I think, under the circumstances, they're entitled to cross examination.

Call the roll, Mr. Secretary.

Whereupon, Secretary Davis called the roll and the vote was:

Adams	Connor	Hodges	Pearce
Beall	Davis	Houghton	Pope
Boyd	Dickinson	Johns	Shands
Cabot	Edwards	Kelly	Stenstrom
Carlton	Getzen	Kickliter	Stratton
Carraway	Hair	Neblett	

Yeas—23.

Belser	Branch	Gautier	Morgan
Bishop	Clarke	Johnson	Rawls
Brackin	Eaton	Knight	

Nays—11.

CHIEF JUSTICE TERRELL: Proceed with your questioning, Mr. Hopkins.

MR. HOPKINS: If the Court please, at this stage I offer in evidence copies of the Grand Jury reports, dated April 25, 1956, and September 21, 1956.

MR. HUNT: Now, if Your Honor please, that is objected to because it has already been ruled by this Court to be improper evidence to be offered by the prosecution against this Respondent.

Now, the matter of cross examination of this witness, as to his recollection of events or the contents, is one thing, but a reoffering of illegal, unlawful evidence which, by operation of law, has been destroyed as unlawful, is quite another; and this Senate has already ruled, the Chair has ruled, that that report will not be received in evidence against the Respondent, and we object to it.

MR. HOPKINS: If the Court please, we didn't open the door; he opened the door to bring these reports in, and since it's held to be legal evidence, we think the best evidence is the reports themselves.

We offer them in evidence at this time.

MR. SUMMERS: Mr. Chief Justice - - -

SENATOR BELSER: Now, I think Mr. Hopkins, there, has made a misstatement of the proceedings that have been held here, sir, so far as this Court.

If you recall, Mr. Hunt asked the Presiding Officer of

this Court could he ask some preliminary questions of this witness, not touching upon the subject matter of that Grand Jury report; and you cannot show me, and the Reporter cannot read back to me, as a Member of this Court, any question where Mr. Hunt, counsel for the Defense, asked this witness any one question which required - - - went into the subject matter of that expunged record.

So, I would like to call that to the attention of the Court. If we admit the subject matter of the expunged Grand Jury report, then we are proceeding backwards to the procedure which we have followed already here in this Court.

MR. HOPKINS: If I may answer.

CHIEF JUSTICE TERRELL: Read the question again - - - ask the question again.

MR. HOPKINS: I have offered in evidence the Grand Jury reports of April, 1956, and September 21, 1956.

CHIEF JUSTICE TERRELL: Was that the - - - you offer those reports in evidence?

MR. HOPKINS: Yes sir.

CHIEF JUSTICE TERRELL: Well, we've held one time that they're not proper to be offered in Court, but they've been brought back, and I don't see any way to handle the matter except to admit them in evidence.

MR. HOPKINS: All right, sir.

MR. HUNT: All I can say is that I think the Honorable Chief Justice is in error, and we did not bring them back in the sense that the Court seems to feel we did, in my opinion - - - I may be wrong - - -

CHIEF JUSTICE TERRELL: They've been brought in.

MR. HUNT: We inquired of this witness, purely and simply, as to his activities as State's Attorney in connection with the filing of those reports, and the appealing of one of those reports - - - two of them, in fact, to the Supreme Court, and the reversing of the lower Judge upon the point, and there's not one word of testimony, and not a single question in the record here by which we brought them back by way of opening up the subject, as a matter of law.

SENATOR STENSTROM: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Stenstrom.

SENATOR STENSTROM: - - - May I inquire of you, sir, if you feel that testimony relating to the expunged reports should properly have a place in this trial?

Now, before you answer me, sir, let me say this, that I believe the only testimony relating to them has been given by this witness, and if the Chief Justice feels that it should not properly be gone into, we could, by a motion to strike that portion of the witness' testimony, clear up the entire matter.

CHIEF JUSTICE TERRELL: Is your question, Mr. Hopkins, directed to the cross on the main - - -

MR. HOPKINS: That's correct, sir.

MR. HUNT: If Your Honor please, he's not offering a question, he's offering those reports as evidence; he has not asked a question.

MR. HOPKINS: I desire to ask the witness about the reports at this time, Your Honor, if they're in evidence.

CHIEF JUSTICE TERRELL: I think the question is proper.
BY MR. HOPKINS:

Q Mr. Brautigam, I now hand you the reports - - -

MR. SUMMERS: Mr. Chief Justice, are the reports in evidence now, sir?

CHIEF JUSTICE TERRELL: No, the reports are not. He's asking a question with reference to the contents of the reports.

MR. SUMMERS: I think the gentleman is operating on the assumption that they are now in evidence.

MR. HOPKINS: If the Court please, I was under the impression that the Court had admitted them in evidence.

MR. HUNT: No.

CHIEF JUSTICE TERRELL: No, they haven't been admitted in evidence as yet, but witnesses here have been examined as to them.

MR. HOPKINS: Yes sir.

CHIEF JUSTICE TERRELL: Now, you can cross on that examination.

SENATOR BELSER: Mr. Chief Justice, a point of inquiry.

Has the witness been examined as to the subject matter of the Grand Jury reports? Not as to the formation of the Grand Jury reports, and not as to the fact that an appeal was taken, and objections were made, and an expungement was later made from the public records of Dade County concerning the report, but has the witness answered any question touching upon the subject matter contained in the Grand Jury reports?

CHIEF JUSTICE TERRELL: Well, as I understand Mr. Hunt's examination, he examined the witness here as to the contents of the - - -

MR. HUNT: No sir, no sir.

SENATOR EATON: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: - - - I move you, sir, that we do now take a five-minute recess for the purpose of the Reporter's reading back to the Chief Justice the testimony of this particular witness, so that we might determine whether or not the contents of that report have been discussed by this particular witness.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor, let it be known by saying "aye."

SENATOR BISHOP: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Bishop.

SENATOR BISHOP: - - - substitute motion.

I move you, sir, that we do now adjourn.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: The motion to adjourn takes precedence over any other motion, and it's not debatable.

All in favor of adjourning, say "aye." Opposed, "no."

The "noes" have it; the Senate refuses to adjourn.

SENATOR EATON: The motion before the Senate now, Mr. Chief Justice, is that - - -

CHIEF JUSTICE TERRELL: All in favor of Senator Eaton's motion, let it be known by saying "aye." Oposed, "no."

The "ayes" have it; the motion is carried.

Whereupon, a short recess was taken, during which the Court Reporter read the pertinent portions of the witness' testimony to the Chief Justice.

CHIEF JUSTICE TERRELL: Order in Court. Without objection I declare a quorum present.

SENATOR DAVIS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - I have a motion to make, but prior to making that motion, I wish to explain my position, to a certain extent.

As the lawyers of this Senate well know, the Court - - - not only the Presiding Officer of the Court, but the members of the Senate - - - have been very lax with reference to the rules of evidence.

There comes a time, however, that it seems to me they might be going just a little too far afield of evidence, in admitting certain types. I think that we are fast approaching that line of demarcation in the testimony of this witness.

I think that, personally, as a member of this Court, that many questions have been asked, both by the State and the Defense, which are not admissible.

With that statement, Mr. Chief Justice, I move you, sir, that we strike the testimony of this witness with reference to his - - - all testimony of this witness which refers to his own political campaign; that's 1;

2. Strike all testimony of this witness with reference to his appearance before any Grand Jury in Dade County, Florida;

3. Strike all the testimony of this witness with reference to any Grand Jury reports filed by the Grand Jury of Dade County, Florida.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: You've heard the motion, Gentlemen. Any debate?

SENATOR KICKLITER: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Kickliter.

SENATOR KICKLITER: - - - Will the Senator yield for a question?

SENATOR DAVIS: Yes sir.

SENATOR KICKLITER: Is that motion laid upon the

theory and predicate that the Grand Jury reports will not be admitted, or will be admitted?

SENATOR DAVIS: The motion is made, Senator, on the theory that under no rules of evidence that I'm familiar with are either lines of that particular type of testimony admissible in a Court of law.

CHIEF JUSTICE TERRELL: Are you ready for the question?

All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted.

SENATOR DAVIS: Mr. Chief Justice, I move you, sir, that we do now adjourn.

CHIEF JUSTICE TERRELL: You've heard the motion to adjourn. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it. Court is adjourned until tomorrow morning, at 9:30.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:20 o'clock P. M. until 9:30 o'clock A. M., Thursday, August 8, 1957.