

SITTING AS COURT OF IMPEACHMENT

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Friday, August 9, 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.

CHIEF JUSTICE TERRELL: Will you open Court, Mr. Sergeant-at-Arms?

THE SERGEANT-AT-ARMS: Yes sir.

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.

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

Whereupon, Secretary Davis 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	Stensstrom
Branch	Edwards	Kickliter	Stratton
Cabot	Gautier	Knight	
Carlton	Getzen	Morgan	

SECRETARY DAVIS: Thirty-four present, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Adams, will you pray?

SENATOR ADAMS: Let us pray.

Eternal Father of our souls, grant to the members and officers of this body a sacred moment of quiet ere we take up the duties of the day.

Turn our thoughts to Thee, and open our hearts to Thy spirit, that we may have wisdom in our decisions, understanding in our thinking, love in our attitude and mercy in our judgment.

Let us not think, when this prayer is said, that our dependence upon Thee is over, and Thy counsel for the balance of this day. Rather, from these moments of heart-searching quietness, may there come a realization that Thou art in this place. From this holy interlude may there flow life, joy and power that will remain with us until night shall bring Thy whispered benediction, "Well done, good and faithful servant."

Guide our minds to a deeper understanding of Thy truth. Teach us that there can be no compromise with the moral law by which Thou dost rule this universe. Grant us Thy grace to be just and do good.

All these things we ask in the name of Thy Son, Our Savior, Jesus Christ. Amen.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Thursday, August 8, 1957, was dispensed with.

The Senate daily Journal of Thursday, August 8, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: Counsel may proceed.

MR. SUMMERS: Call Judge Willard, please.

Mr. Chief Justice, the defense is going to call Judge Willard for just a moment, out of order. Mr. Beasley has agreed to it.

Thereupon,

BEN C. WILLARD,

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 Ben C. Willard.

Q Judge Willard, what official position do you hold in Dade County, Florida?

A Judge of the Criminal Court of Record.

Q For what period of time have you held the position of Judge of the Criminal Court of Record?

A Continuously since the 25th of January, 1935.

Q I believe you've held that office not only continuously, but without opposition for that period, have you not, Judge Willard?

A With lots of luck, I have.

Q Judge, where were you born and raised?

A I was born in the big town of City Point, on the Indian River. It's on the left hand side, going down, just five miles north of Cocoa, in Brevard County.

Q Where did you spend your early years? In that locality?

A I left there when I was about five years old, and lived in Manatee County for five years, and in 1902, we moved to Miami. I have lived there since that time.

Q Judge, state to the Senate what different official positions you have held in Dade County since your assumption of residence there.

A I was admitted to the Bar in 1914, and in 1916, I was Assistant County Solicitor of Dade County.

In 1920, I was elected to the House of Representatives from Dade County, as the sole member; was elected again for the session of 1923, as the sole member from Dade County, and served in both of those sessions, '21 and '23.

Later, I was Relief Judge for the City of Miami for approximately five years, and was City Judge, the only City Judge at that time, for a period of approximately three years.

Q Judge Willard, has your residence in Miami been continuous since 1902?

A Except for the time I spent at John B. Stetson University. I was there about eight years, but my residence was in Miami; and the time I spent in the Army in the First World War.

Q Did you receive your legal education at Stetson University?

A Yes sir.

Q Do you know the Respondent in this case, George Holt?

A I do.

Q When did you first become acquainted with Judge Holt?

A When George Holt first graduated from Vanderbilt University, he came to Miami. At that time I was the senior member of a small law firm, with the firm name of Willard & Knight.

George was associated with us for some time, and later, during the big boom, when everybody down that way became millionaires, we branched out into a big office, with a switchboard, and George became a member of the firm, and was a member of the firm until we all lost our money, and realized that we had to go to work again, and then everybody got out of the big firms, and we got rid of the switchboard, and we all got out and scratched for ourselves.

Q That broke up most of the big firms, didn't it, Judge?

A It broke mine up. I left with a picture of George Washington and Robert E. Lee; that's all I had (Laughter).

Q Judge Willard, have you had occasion, being in the Court House, to follow Judge Holt's professional, and later, his judicial career there on the Bench?

A I have.

Q Will you, by choice of your own words, tell the Senate your opinion of Judge Holt as a man and as a Judge?

A As a man, I think Judge Holt is a perfect gentleman. I think he's a good lawyer, and it is my opinion that he is an excellent Judge.

Q Judge Willard, is it your opinion that Judge Holt possesses high judicial honor and integrity?

A It is.

Q Has anything happened or occurred in Dade County, Florida, to change your opinion on that score?

A I have long since learned, in Dade County, Florida, not to have my opinions changed or reversed on account of anything that might happen. I have kept my mind open on most everything, especially those matters that come into Court, and I only listen to sworn testimony by competent witnesses in proper places; that's the only way I ever form an opinion with reference to any charge against anybody.

Q Judge Willard, state to the Senate the high crimes, so to speak, that - - - the felonies that you have had occasion to try for the past twenty-two years.

A I'm not proud of this fact, but I think the records will show that I have sent at least thirty-five per cent of the folks to Raiford that have been sent up by the State of Florida.

We also put many folks on probation, and I have always tried, and have been a frontrunner in trying to rehabilitate people that I think are entitled to that.

I don't know the number of cases, but I tried approximately forty cases yesterday without a Jury, all felonies.

Q Now, Judge, that's by consent of the Defendant and the attorneys on both sides, that the matter will be submitted to you for trial without a Jury, is that correct?

A I'd say when my - - - I'm not going to take up too much time; I know you gentlemen are busy, but I want to be as thorough as I can.

When I first started in there, the general opinion of lawyers

was that a man, when he plead not guilty to a felony, had to have a Jury trial. It was my idea to have his Jury trial - - - have him waive a Jury trial and take that particular case to the Supreme Court. The Court ruled that that was perfectly proper.

Since that time, why, I have tried, nineteen out of twenty cases, felony cases, without a Jury, many second degree murder and manslaughter.

Q About nineteen out of the twenty?

A At least that percentage. If I didn't, it would take four Judges to handle my work. As it is, the work is caught up, and I don't need any new Judges, not for my work.

Of course, you know, Mr. Hunt, that when you've been in office as long as I have, if you were a moron when you started, you would have to absorb something (Laughter).

Q Well, I'd like to say, Judge, on that premise, that the people of Dade County must think that your rate of absorption has been terrific.

Judge Willard, in your opinion, does George Holt possess the personal and judicial qualities to make the same good Judge now that he did a year ago?

A The only difference I can see in George Holt, I think any man gets a little wiser each year that he lives, until he gets senile, and George has never reached that stage yet.

MR. HUNT: Take the witness.

MR. HOPKINS: We have no questions.

MR. HUNT: Thank you, Judge Willard.

THE WITNESS: I see one or two folks I would like to shake hands with.

Mr. Chief Justice, it's a pleasure to see you again.

I want to say to all you gentlemen, the first time I met this gentleman, whom I regard most highly, was when he was attorney for the I. I. Board, and I was a youngster, trying to make a living.

CHIEF JUSTICE TERRELL: Glad to see you.

(Witness excused)

MR. HUNT: Your Honor, may we have about five minutes so we can go right on through without any further interruption?

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

Whereupon, the Senate stood at ease from 9:55 o'clock a. m. until 10:00 o'clock a. m.

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

Thereupon,

GEORGE EDWARD HOLT,

the Respondent, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. HUNT:

Q Judge Holt, I believe you read to the Senate yesterday afternoon the accounting letter to you from Mr. Whiteside, which finally wound up the cylinder investment transaction?

A Yes sir.

Q I would like for you to state, if you recall, in relation to the time you actually paid the \$200 to Mr. Whiteside for your first participation in that investment, about how long prior thereto was it that you and Mr. Whiteside discussed this matter? How did it come up, and what decision did you come to?

A Well, we discussed it on several occasions, at social gatherings, and then I finally agreed how much I could put in the venture, and then, sometime later, several weeks later,

while I was down at the duPont Building, getting a haircut - - - it's on the same floor as Mr. Whiteside's office - - - I dropped in there and concluded the deal.

Q Well, you said you finally - - - you decided several weeks before. Did you communicate your decision to Mr. Whiteside?

A Yes sir.

Q And - - -

A But I - - - I was late; I - - - it was several weeks before I gave him the money.

Q But what I wish to know is whether or not you had, sometime prior thereto, instructed and advised Mr. Whiteside to include you in the transaction?

A I had.

Q Was that to the extent of the \$200 participation which you later delivered to him?

A Yes sir.

Q Now, you mentioned the barber shop. Where is that barber shop located, that you have in mind?

A On the same floor of the duPont Building that Mr. Whiteside's office was, and I've forgotten what floor his office was on.

Q It's upstairs in the duPont Building, located among the various professional offices up there, is that correct?

A Yes. It's called "Pete's Barber Shop."

Q And it adjoins Mr. Whiteside's then law office?

A It was several offices down the hall from Mr. Whiteside's office.

Q On the same floor?

A On the same floor, and on the same side of the building.

Q Did you often patronize that barber shop?

A Yes sir, I did.

Q Now, when you delivered that \$200 to Mr. Whiteside, did you take any receipt from him?

A I did not.

Q Did you consider it necessary?

A I did not.

Q Did Mr. Whiteside make any notation or entry in your presence, concerning the receipt of that money?

A He made a notation in a file that he had on his desk, that he had received that sum of money from me.

I saw him do that.

Q Do you know what file it was?

A I presume it was the file of this cylinder deal. I don't know. I didn't look at it or examine it.

It wasn't even necessary for him to do that.

Q You did see him enter the notation?

A Yes, I did.

Q Now, do you recall about when you received the first payment of your portion of the yield from the sale of those cylinders?

A No sir, I do not. I couldn't recall unless I had that letter before me.

The letter I refer to is the letter of final accounting.

Q Will your income tax return for 1952 show that date?

A Yes sir, it should, although I don't keep the income tax; my wife does.

Q Will you state the date of that first payment from that letter, Judge Holt?

A On August 15, 1952.

Q In what amount?

A \$1,124.28, representing a one-thirty-fifth interest.

Q I now hand you what appears to be a copy of your and your wife's joint income tax return for the year 1952, direct your attention to the page headed "Gains and losses from sales or exchanges of property," with the subtitle, "Short term capital gains and losses - - - assets held not more than six months."

I'll ask you to read the entry under the word "Investments" to the Senate.

A "Short term capital gains and losses - - - investments, 3/12/52—8/15/52, \$1,124.28."

Then, there's - - - under the paragraph headed, "Cost or other basis," and so forth, "\$200," and then, in the last column, "Gain or loss," and it has the figure, "\$924.28."

Q Did you then report the transaction up to that point with Mr. Whiteside, and pay a short-term capital gain on it?

A I did, and I was criticized quite a bit for doing that because the transaction had not been completed, and could have - - - a lot of income tax could have been saved on a long-term capital gain, but I didn't even know my wife had even put that in the income tax. We paid taxes on it.

MR. HUNT: If Your Honor please, we offer in evidence on the part of the Respondent, his and his wife's joint 1952 income tax return.

MR. HOPKINS: No objection.

CHIEF JUSTICE TERRELL: That will be the order.

(Whereupon, the instrument above referred to was received and filed in evidence as Respondent's Exhibit Number 16.)

BY MR. HUNT:

Q Now, Judge Holt, when did you next invest in the cylinder transaction to a further extent with Mr. Whiteside?

A In January of 1953. I invested the sum of \$250 for a seventeen and a half per cent interest in the venture.

Q Will you state to the Senate what Mr. Whiteside advised you, as to the status of the cylinder deal between himself and his co-adventurer at that time?

A That he had purchased his co-adventurer's remaining interest in the transaction.

Q And for an additional investment of, I believe you said, \$250 - - -

A Correct.

Q - - - you acquired what fraction of interest?

A A seventeen and a half per cent interest of all the remaining aircraft cylinders.

Q Did you, personally, pay that \$250 to Mr. Whiteside?

A I did.

Q And will you state that date again, please sir?

A The exact date is not there; it's January of 1953.

Q Now, when did you receive the return from that investment?

A In December of 1953, Mr. Whiteside advised that they had sold certain of the cylinders for the sum of \$16,000, and as the result of that sale, he gave me a check on his trust account, in the amount of \$2,800, as his estimate of my interest in the proceeds of the sale.

That was December, 1953.

Q Is the exact date there?

A No sir.

MR. HUNT: I believe that check's in evidence, is it not, Mr. Manager?

MR. BEASLEY: Yes sir.

BY MR. HUNT:

Q Did he advise you at that time that the cylinders had been actually sold?

A He did.

Q Do you recall whether or not he also advised that they had been shipped to the purchaser?

A He did.

Q Now, what happened later between you and Mr. Whiteside, with respect to the cylinder transaction?

A Well, that cylinder - - - that sale did not - - - was not consummated; and during 19 - - - that was December of '53, and then during 1955 - - -

Q Let me ask you this - - -

A - - that they did complete the sale.

Q Let me ask you this - - -

A Yes sir.

Q - - - at that point: When did you learn - - -

A I didn't learn about it until - - -

Q Let me finish the question, please.

A Yes sir.

Q When did you first learn that the shipped cylinders had been rejected?

A It was several months later before I learned about it, and then I offered to return the money to Mr. Whiteside, and he said it wasn't necessary, that it was to be considered an advance on my interest in the transaction, and that I was credited with that, and that they would soon have a sale from the rest of the cylinders, which they did, during the year 1955.

Q Was Mr. Whiteside at that point confident that a market could be found for the cylinders, and that your interest would yield a minimum of \$2,800?

A Yes.

Q And you did offer to return the check when he advised you that the cylinder deal had fallen through, is that correct?

A I did, and he refused it, saying that I was to consider it an advance on my investment.

Q Well, is that the manner in which the \$2,800 was finally accounted for?

A Yes sir.

Q Well, now, in the accounting letter you hold before you, does it not indicate that there was an over-plus in your favor?

A There was. They did complete a sale, as I said, of all the remaining aircraft cylinders in 1955, and he figured my interest at \$2,857.45, and on June 4, 1956, in his final accounting letter to me, he stated he owed me \$57.45, in addition to the sum already received, which he closed, and therefore closed out the entire transaction.

Q Judge Holt, does that letter indicate the date of the last sale of cylinders?

A No, it does not. It said - - - says:

"During the year" - - - "consummated during 1955," sometime in 1955.

Q I'll ask you to state whether or not, in the three various payments made to you by Mr. Whiteside, on each occasion that he wrote a check for the amount involved?

A Yes sir.

Q Payable to your order?

A Yes sir.

Q With a notation related to the cylinder transaction?

A Yes sir.

Q Now, after you had returned your first payment, in 1952, as a short-term capital gain, did Mr. Whiteside, or your accountant, or someone else instruct you differently, and advise that you withhold further returns until the final sale of the cylinder lots?

A Both Mr. Whiteside and our accountant did advise the same thing.

Q Following receipt of the final accounting and check, Judge Holt, did you, in your 1956 income tax return, record and report the final collection?

A I don't know, I'll have to look at the copy of the report. As I said, my wife handles those matters.

Q I hand you what appears to be a copy of 1956 individual tax return of George E. Holt and Christine F. Holt, and ask you to refer to the page entitled "Gains and losses from sales or exchanges of property," and under the sub-caption, "Long-term capital gains and losses," read to the Senate what you find there.

A Under the caption, "Long-term capital gains and losses - - - assets held more than six months," it says, "Aircraft cylinder venture. See schedule and copy of letter attached," and then, over in the column under "Gain or loss," it says, "\$2,607.45."

Q That was the net profit recorded from the long-term gain?

A Well, there's two other items here, Judge.

It says, "Enter the full amount of your share of net long-term gain or loss from partnerships and fiduciaries," and the figure of "181" there. I don't know what that number means.

Then, number 7 says, "Net long-term gain or loss from lines 5 and 6," that I just read from, "\$2,609.26."

Q Well, that would have been from the last two payments of \$2,800 and \$57.45 or \$57.85, would it not - - -

A It would.

Q - - - since you had already reported the first payment as a short-term capital gain?

A That's correct, and this completed the reporting to the Internal Revenue Department.

MR. HUNT: We offer the 1956 income tax return in evidence.

MR. HOPKINS: No objection.

(Whereupon, the instrument above referred to was received and filed in evidence as Respondent's Exhibit Number 17.)

BY MR. HUNT:

Q Judge Holt, I'll ask you to state to the Senate what actuated you in making this investment in war surplus cylinders, and what motive and intent you had in mind in connection with it?

A I had the hope of making a little money out of it, although I was warned that I might lose the entire amount invested. It was that type of investment.

Q Did you consider that your investment in this matter had any connection with your performance of judicial function or duty?

A None whatsoever.

Q Did Mr. Whiteside ever indicate that for having permitted you to invest in this transaction, that he, directly or indirectly, expected a judicial favor return or consideration from you?

A No sir.

Q Did you, in result of this transaction, award to Mr. Whiteside, or to anyone on his behalf, any judicial favor or consideration growing out of the yield or return to you from the transaction?

A I did not.

Q Judge Holt, if you had been of the opinion, or under the impression that your transaction in this matter was wrong, as a matter of law or morals, would you ever have received the checks and reported the transaction to the Government in 1952?

A I would not have.

Q Have you - - -

A It's all a matter of public record.

Q And the preliminary investigation by the Bar Investigators, to which you adverted on yesterday, was begun many years following your recorded report of the transaction and of the yield, was it not?

A It was.

Q Now, Judge, briefly referring to the Langer loan - - -

A I want to say one thing on this before we leave it.

Q Go ahead.

A As a matter of fact, the Bar would never have known of this transaction unless I had told them about it freely and voluntarily.

Q And did you likewise deliver to the Bar all your income tax returns?

A I did, and I gave them full authority to go to my accountant and get copies of all the income tax records they desired, which they did.

Q Did that include a shoebox full of cancelled checks, stretching back over the years?

A Yes sir, and I just got the shoebox back the other day, under order of this Chief Justice here.

In looking at the checks, they are hardly recognizable. I don't know what happened to them.

Q Were your income tax reports at the same time returned to you for the first time since you left them with the Florida Bar?

A For the first time in over a year and a half, and I never have received back the paid notes.

Q By that, do you refer to the notes you gave to - - -

A Mr. Gersten and Mr. Langer.

Q Yes.

A I never have received them back.

Q Do you know whether or not Mr. Langer has received back the note from the Bar or from the House Managers?

A The last time I talked with him, he said he had not, although repeated demands had been made on them for them.

Q Now, Judge Holt, there's a case named "Peoples" - - - entitled "Peoples Water & Gas Company versus City of Miami Beach" in which certain decrees for costs, as well as a final decree, was entered by you.

Do you recall that litigation?

A I do. It started a long time ago.

Q Will you refer to the files, and state when that litigation began?

A Yes sir. This is when I was Division B, right after you went off the Bench, I think, Judge, and Judge Paul D. Barns was the Division A Senior Circuit Judge; and this was presented to me by Mr. Jim Yonge before his death.

Q What was that date?

A The date is July 15, two-fifty p. m., 1948.

Q Now, at the request of the parties, did you appoint a Master in that case?

A I did.

Q Whom did you appoint?

A Judge Louie Bandel.

Q State whether or not you considered Bandel - - - Judge Bandel to be an outstanding attorney, deserving of that appointment?

A I did; and he was also considered one of the outstanding Municipal Court Judges in the United States, and was invited all over the country to deliver addresses on the proper way of conducting a school to correct reckless driving, drunken driving and all kinds of driving causing accidents.

Q I'll ask you to refer to the file and give the date of the order of reference to Judge Bandel, and then the date of his report of testimony.

A Judge Bandel was appointed by me on November 2, 1948.

Q November 2, 1948?

A To which there was no objection.

Q Now, when did his report come in?

A I think after he took nearly six thousand pages of testimony, he filed his report - - - all these pages I'm turning now are exceptions to the report, and there were so many I had to sign an order extending the time to file exceptions to the report.

The notice of filing the report - - - I see the final decree, but I can't find the report. Can you tell me where it is?

MR. HUNT: Do the House Managers have any further files in this case? Was this the one, the only one sent up?

MR. BEASLEY: That's the only file we have.

THE WITNESS: Well, you have to have a little wagon to carry around this file.

MR. HUNT: Mr. Hopkins, do you know whether this is the only Court file in the Peoples Water & Gas case?

MR. HOPKINS: Judge, that's the only one I've ever seen. We subpoenaed the entire files from the Clerk.

BY MR. HUNT:

Q Judge, can you refer to the preamble of either the exceptions or the final decree, and give the date of the Master's Report?

A I'll try that.

Q Perhaps the order extending time for filing of exceptions might recite it.

A The - - - one of the exceptions says that the report was filed on the 22nd day of September, 1950.

Q That's almost two years from the time of reference to the Master?

A That's correct.

Q Do you find the decree which you entered, or the order?

A I find it, yes sir.

Q Is that upon the exceptions to the Master's Report?

A Yes sir, that's the first sentence in the decree.

"This cause coming on to be heard before me after due notice, upon exceptions to the Special Master's Report," and that decree was dated the 21st day of June, 1951.

Q Judge Holt, can you state the essence of the decree?

A I cannot, but since so much discussion has occurred about this case, and about the actions of the Legislature in taking the authority of rate making away from municipalities and other political subdivisions and placed them in the

Public Utilities & Railroad Commission, I think a reading of the final decree now is - - - has become necessary, in order to properly inform the Senate exactly what happened in this case in 1951, and what happened with reference to the order fixing costs, or, as Mr. Miller Walton says, "rate expenses."

Q Go ahead and read it to the Senate.

A "This cause coming on to be heard before me after due notice, upon the exceptions to the Special Master's Report. The Court has considered the exceptions filed by both parties, the pleadings, and the voluminous record, heard argument of counsel for six days. The Master's findings of fact are amply supported by the record, that his conclusions of law were sound and controlling and based upon authority of decisions at the time of the filing of his report. His report was carefully considered; he weighed and evaluated the law properly as it existed at that time; his conclusions were proper.

"After filing of the said Master's Report, the Supreme Court of Florida rendered its opinion in the case of Jacksonville Gas Corporation versus City of Jacksonville, filed January 5, 1951, 50 Southern 2nd 887. In this case the Court determined and announced a standard of valuation other than that used by the Special Master herein in determining the rate base of Plaintiff.

"In the Jacksonville case, supra, the Court stated that the rate-making body might select either actual cost plan or present fair value plan and derive a rate that the Court could not condemn. In so doing, it said that 'Fairness and reasonableness may be meted out to the consumer and investor by gauging the amount the latter is to receive on the basis of the actual cost, a figure which obviously is more accurate than present value, based on estimate and more stable when value is so affected by changing conditions, and that these changes may be compensated from time to time, varying the percentage of return so that the holder of a share of stock will receive an amount to which he is at the time fairly entitled,' in the Jacksonville case cited.

"House Bill Number 26 of the 1951 Session of the Legislature of the State of Florida, approved by the Governor, approved by the Governor May 9, 1951, Chapter 26545, Laws of Florida, 1951, granted and delegated rate regulatory authority over gas or electric utilities to the Florida Railroad & Public Utilities Commission. This act empowers said Commission to investigate and determine the 'actual legitimate cost of the property of each utility honestly and prudently invested in such property less accrued depreciation.' Thus we are faced with a new declaration of public policy by the Legislature in such enactment subsequent to the filing of the Special Master's Report in this case.

"In the Jacksonville Gas Corporation, supra, the use of 'accrued depreciation' was inferentially approved by the Supreme Court. This results from the use of accrued depreciation by the City in setting the rate base originally. Certainly, it was not stricken down and remains an important factor which must be considered.

"1. Based on the foregoing and the use of the test of actual cost, less accrued depreciation, as indicated by the Supreme Court in the Jacksonville Gas Corporation case, supra, it is the opinion of the Court that the property valuation factor of the base is the original cost depreciated allocated to Miami Beach as found by the Master on Page 126 of his report, in the amount of \$1,874,743, which is equivalent to actual cost, less accrued depreciation and is the Plaintiff company's property element in the rate base, and such finding of fact is amply supported by the record.

"It is also the opinion of the Court that the Master's findings of fact as to elements of reasonable working capital to be allowed in the rate base, in the amount of \$200,000 therefore, is well supported by the record. The rate base, as of June 30, 1948, is not less than \$2,074,743, and as of June 30, 1949, due to net additions to plant, is not less than \$2,143,743 for the purpose of testing the 'justice and reasonableness' of the gas rates and charges prescribed by the City of Miami Beach, Ordinance Number 854.

"All findings and recommendations by the Master which are set forth in his report filed herein on September 22, 1950, contrary to the findings of the Court herein, are hereby disapproved, and the exceptions of the parties hereto on such findings and recommendations are specifically sustained.

"2. The findings of fact by the Master that the gas operating income allocable to gas service rendered within the City of Miami Beach on the various following bases during the twelve-month period, July 1, 1948, to June 30, 1949, after deducting all operating expenses applicable to such service, including depreciation expense and Federal income taxes, are amply supported by the record and the Master's findings in those respects, are hereby confirmed, and exceptions thereto are specifically denied.

"a. The rates and charges prescribed by Ordinance Number 854 produce \$130,119, Page 128, Special Master's Report.

"b. The rates and charges prescribed in present rates produce \$156,230, Page 132, Special Master's Report.

"c. The rates and charges prescribed in the prospective rates produce \$204,272, Page 135, Special Master's Report.

"3. According to the above the Court finds that the rates and charges in the various rate schedules produce the following rate of return on the actual cost, less accrued depreciation rate base of June 30, 1948:

"a. Ordinance Number 854 produces 6.27 per cent.

"b. Present rates produce 7.53 per cent.

"c. Requested rates produce 9.41 per cent.

"4. According to the above, the Court finds that the rates and charges in the various rate schedules produce the following rate of return on the actual cost, less accrued depreciation rate base of June 30, 1949:

"a. Ordinance Number 854 rate produces 6.07 per cent.

"b. Present rates produce 7.28 per cent.

"c. Requested rate produces 9.10 per cent.

"5. On Page 133 of the Special Master's Report, it appears 'The record discloses that Mr. Hammond, a witness for the company, testified that he believed eight per cent to be a reasonable and fair return on the fair value rate base. Mr. Koster offered no testimony as to his opinion concerning fair rates of return. Mr. Goldwaite likewise offered no testimony on a fair return, and Mr. Smith failed to testify concerning his opinion of a fair rate of return,' and this is still in the Master's Report. "I therefore have before me for consideration in this record only the testimony of Mr. Hammond, together with two legislative enactments of the Legislature of the State of Florida, creating the Tampa Utility Board and Pinellas County Utility Boards, respectively, as to fair rate of return. The Tampa Utility Board provided for a fair rate of return to be not less than seven per cent. The Pinellas County Utility Board established a fair rate of return not less than six per cent.'

"The Court has searched the record carefully, and finds nothing therein contrary to the Master's finding in that respect. The essential factors entering into the determination of a fair and reasonable rate of return are general economic conditions, the necessity and ability of the utility to attract capital, the current cost of money, the risk involved in comparison with other enterprises of a similar nature, and efficiency of management. The Court needs no authority to recognize that general economic conditions at this time are at a high level, and that cost of doing business and cost of living have increased sharply and rapidly in this post-World War II period. All cost price indices for the present are much higher than pre-World War II prices. As evidence of this condition, and in officially recognizing the same, the City of Miami, Florida, only recently granted an increase of rates and fares to be charged to the public by the Miami Transit Company for bus transportation services within said City. The City of Miami Beach has been considering for some time the official request of Miami Beach Railway Company, which renders bus transportation to that municipality for higher fares to be charged to the bus riding public, and in all probability, before this decree becomes final, will grant such request. The 'escalator clause' so referred to in the rate structure as set up in the rates authorized by the City Commission of the City of Miami, acting in its regulatory capacity, has resulted in increasing the rates of the Florida Power & Light Company for the service of electricity to its consumers in said City in the amount of fifteen per cent since the clause was invoked, in 1946, the provision of which authorized the

said utility to peg its rates charged to the public for the cost of doing business, such as labor, materials, equipment, oil and other essentials. Moreover, the Southern Bell Telephone & Telegraph Company only recently requested and has been granted two increases in its rates, and at the present time has on file with the Florida Railroad & Public Utilities Commission its third request for increase of rates to be charged its telephone customers, and the same is now under consideration by said Commission, all of which things this Court takes judicial notice of as to what is happening in this field here in the State of Florida.

"While it may not be controlling, it is quite persuasive to also note that rates of public utilities of all kinds and classes throughout the entire United States have increased by official and judicial action in nearly every forum of the country. Thus it may be seen that the economic situation affects utilities the same as it does individuals, private business, and even public expenditures, since the purchasing value of the dollar has been so drastically decreased. Here in Dade County after the freeholders had approved a bond issue for a large addition to Jackson Memorial Hospital, owned and operated by Dade County, the building cost, including labor, materials, equipment and other necessary requirements increased to such an extent that the County decided that it was impossible to proceed with the erection of the much-needed addition to the hospital facilities of this County, since the total amount of the bond issue was not sufficient to provide the taxpayers with the facilities for which they had voted. The Plaintiff company is in a vulnerable position from the standpoint of the general character of the population served, being largely dependent upon the winter visitor business and subject to weather conditions. The extent to which visitors come to the area, and therefore, volume of gas sales is dependent largely on the economic condition over the country" - - -

SENATOR STENSTROM: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Stenstrom

SENATOR STENSTROM: - - - may I inquire of the witness: Isn't there some way the content of this material can be brought to the attention of the Senate in a more brief manner than the continued reading?

CHIEF JUSTICE TERRELL: Judge Holt stated at the outset, that he thought that was the only way to get it before the Court, was to read it.

THE WITNESS: And this case has been so misconstrued, Mr. Chief Justice, and Senator, that I deem it absolutely necessary to read this decree, which sets out the exact, true facts concerning this case.

SENATOR STENSTROM: How much longer, may I ask, is this document?

THE WITNESS: About five more pages, if my throat holds out.

CHIEF JUSTICE TERRELL: The Secretary can read it, Judge Holt, if you're - - -

THE WITNESS: I'll call for assistance when I think I need it, Mr. Chief Justice. Thank you, sir.

BY MR. HUNT:

Q Judge Holt, how long is the concluding portion of the decree?

A It's about three or four pages. I can skip a page and get to that.

Q I wish you would.

A If you want me to.

"Under all the facts and circumstances in this case, the Court is convinced that fairness and reasonableness may be best meted out to consumer and Plaintiff company by the adoption and use of the rates and charges contained in the present rates, inasmuch as these present rates and charges are those before me for consideration that most nearly provide a net return of seven and a half per cent on said rate base. As conclusion of law from the facts, the Court finds:

"a. The rates and charges for gas service prescribed by City

of Miami Beach Ordinance Number 854 are confiscatory, and deprive the Plaintiff company of its property without due process of law and denies it the equal protection of the laws in violation of the Constitution of the State of Florida and of the Constitution of the United States, and are set aside and declared to be invalid and unenforceable.

"The Defendant City of Miami Beach is permanently enjoined from enforcing or attempting to enforce said Ordinance Number 854, enacted June 16, 1949, which purported to fix the ordinance rates adjudged herein to be invalid. Since the Court is convinced that fairness and reasonableness in this case may be best granted to consumer and Plaintiff company by the adoption and use of the rates and charges contained in the present rates, the rates and charges for gas services set forth in requested rates are denied.

"c. Because the ordinance rates referred to in the preceding Paragraph 6-A are hereby set aside and declared invalid, there have not been, during the pendency of this litigation, any valid regulatory rates for service furnished by the Plaintiff company in Miami Beach. Rates presently billed by the company under the provision of the preliminary injunction entered herein on July 15, 1948, do not exceed reasonable maximum rates. From that in the twelve months ending June 30, 1949, the company earned \$156,332 gas operating income. This equates to a return of only 7.28 per cent on the actual cost, less accrued depreciation rate base of at least \$2,143,743" - - -

Q Judge Holt, due to the extreme length of that, would you be willing to state the balance of it to the Senate, the crux of it, as regards awards of fees?

What was done in that connection?

A Well, to continue the final decree, I held that the billed rates were not excessive.

And I must tell the Senate that during all this litigation, that the First National Bank was appointed as a fiscal agent, or as trustee, to accept the rate collected by the company, pending final disposition of this case, and I provide that all the sums of money received by the bank be turned over to the company.

And then it goes on to the obligations incurred by the company, the rate litigation expenses, as Mr. Walton described them, of approximately \$190,000.

All the costs of litigation were assessed against the Plaintiff gas company. They were ordered to reimburse the Defendant City for all sums "heretofore paid for Court costs, rental and Master's fee or any other sum advanced in the litigation." and then I found that a reasonable Master's fee for the services performed over a period of the last two years is \$50,000, which sum is included in the costs taxed to the Plaintiff in the preceding paragraph."

Q Judge Holt, did that award of \$50,000 include some \$22,500 that the parties had previously and voluntarily paid to the Master?

A It did so include it, and as I stated before, that part which was advanced by the City of Miami Beach was ordered repaid to it; so, this litigation did not cost the municipality one cent.

Q Now, then, were the amounts of the rate costs later fixed by a later decree?

A Now, that decree was signed the 21st day of June, 1951, and there was a motion for order on rate litigation expenses.

I don't see that order in this file - - -

Q Let me ask you this: Did that set the fees concerning which Mr. Miller Walton testified, as rate costs?

A The fees were not set by the Court, if that's what you mean, but they were considered a part of the rate litigation expense, and those amounts were included in the figure of \$190,000 which I cite in my final decree.

Q Is it true that the fees themselves were set and practically fully paid out by the clients to their attorneys prior to the hearing, the final hearing before you?

A They were actually a matter of private negotiation, over which the Court has no jurisdiction, and they were - - most of them, fully paid before the final decree was ever entered.

Q Judge Holt, did you, in every respect, conduct your judicial functions in that case in the best of faith, and according to your best judgment and discretion?

A Yes sir. As a matter of fact, I might add that this case was never appealed to the Supreme Court of Florida. Both parties evidently were satisfied with the decree and the decision which I made.

Q Were exceptions or petitions for rehearing filed to your final order?

A None whatsoever.

I think this is the last case, Judge Hunt, on municipal regulatory rates that was ever heard in the State, because the Legislature took the power away from the cities and gave it to the Railroad and Public Utilities Commission.

Q Judge Holt, I would like to return to the Dodge party subject for a moment.

SENATOR DAVIS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - have you finished Judge Hunt, with that particular phase?

MR. HUNT: Yes sir.

SENATOR DAVIS: Before he starts on the next phase, I move you, sir, that the Senate stand in a ten-minute informal recess.

CHIEF JUSTICE TERRELL: The request is granted, and the Senate will be at ease for ten minutes.

Whereupon, the Senate stood at ease from 11:15 o'clock a.m. to 11:25 o'clock a.m.

CHIEF JUSTICE TERRELL: Order in Court. Without objection the Chair will declare a quorum present.

MR. HUNT: Is the Court ready?

CHIEF JUSTICE TERRELL: Ready.

THE WITNESS: Judge Hunt, before we begin the continuation of this testimony, I feel that I was probably abrupt in answering the question proposed by Senator Stenstrom and the Chief Justice, and I want to apologize to them. I didn't mean anything by it. I hold them both in the highest respect, but I want to say this to the Members of the Senate, that I may be a little overeager, because, after a year and a half or two years of persecution and prosecution, this is the first time that I've had the opportunity to sit and listen to the accusers against me and to testify at length upon the matters brought before us, and I may be a little bit over-anxious because of the tremendous suffering which I have undergone, and my family, in the past year and a half or two years, and if I appear to be that way, it is not my nature, but it's because it's the first time that, according to the American tradition, that I've had the opportunity of a real trial by real and responsible people, conscious of their oaths of office.

BY MR. HUNT:

Q Judge Holt, recurring to the Dodge party matter, I wish you would state to the Senate what your intent was in beginning to drive down towards the annual Jesters party?

A As I left Riccio's, my intent was to go down to the annual Jesters Christmas party, which was hosted and provided for by one of the most colorful pioneers still living in Dade County, Colonel James H. Bright, who founded Hialeah Park. He is now in his eighties, and he has been a very good friend of mine throughout the years that I have been there, and it was my purpose to go down there and wish him a Merry Christmas.

Q Did you have any intention of otherwise joining in the festivities?

A No sir. I had had my dinner and everything was through in that respect.

Q Now, Judge Holt, mention has been made here of the colored filling station employee whom you employed on occasion to drive you and Mrs. Holt.

Will you state his name?

A His name is Joe, and I can't think of his last name now, to save my life, but his mother still works next door, for Bartlett.

Q She lives - - - she works where, Judge?

A Yes sir.

Q Where did you say his mother works?

A Next door, for Mrs. Samuel H. Bartlett.

Q Has Joe worked for you at odd employment for several years?

A Yes sir.

Q Will you state to the Senate the primary reason you began having someone accompany you and Mrs. Holt as a driver on these evening trips?

A We were instructed by the Sheriff's Department and the Police Department of the City of Miami, after the abduction and murder of Judge and Mrs. Chillingworth, never to go out alone, because anybody in public office receives threatening letters at one time or another.

Q Have you received threatening letters?

A Yes sir, I have.

Q Did you receive a threatening letter the day following, or a day or two following Judge Chillingworth's disappearance?

A No, it was not a letter, it was a post card. Typewritten on it was that "You are next"; no signature, and I gave it to Dave Kraslow, who was then a reporter in the Court House for the Miami Herald, who said he would give it to the F. B. I., and that's the last I've seen or heard of it.

Q Now, following the event of April 30, 1956, did you, during the course of several weeks thereafter, receive some four or five threatening letters?

A I did, and telephone calls.

Q Did you turn them over to your attorneys for delivery to the Sheriff's Intelligence Bureau?

A Yes sir, to what is known in Dade County as the "C. B. I."

Q What does that mean?

A "Criminal Bureau of Investigation."

Q Is it your information that two threatening letters were also received by your attorney at that time?

A Yes sir.

Q I believe you heard Judge Choate testify that he and Mrs. Choate were leaving the party at eight-thirty that night, and that you and he had a discussion which both of you have related, is that correct?

A That's correct.

Q Now, how long after you saw Judge Choate would you estimate that it took you to find Mrs. Holt and leave the party?

A I think Judge Choate placed it at around eight-thirty when we were talking with each other, and it being a large party, and lots of people, I went in search for my wife, and after we paid our respects to the host and hostess, it was some twenty minutes later, or so, before we called for our car.

Q From the time you had the talk with Judge Choate, did you take anything further to drink?

A I did not.

Q Now, Judge, had you and Mrs. Holt originally intended to attend that party or not? State to the Senate the occurrences of the early evening, before you decided to go.

A We had decided not to go because our oldest grandson was very ill that night, and they lived around the corner from us at that time, but our daughter insisted that we go because our son was dating one of the daughters, and it might be misconstrued that we might not approve of his selection, and it was upon that basis that we decided to go and stay a short time.

Q How many grandchildren did you have at that time, Judge?

A Three.

Q What were their names?

(The witness appeared to become emotionally overcome.)

MR. HUNT: I'll withdraw the question for the present.

CHIEF JUSTICE TERRELL: Did you say that concluded your questioning, Judge Hunt?

MR. HUNT: No sir, not yet, Judge.

CHIEF JUSTICE TERRELL: Excuse me. I thought you said you had.

MR. HUNT: I'm waiting for the witness.

BY MR. HUNT:

Q Judge Holt, could we return to that in just a moment?

A Yes sir.

Q Will you tell the Senate, briefly - - - and I know you have a file of correspondence, which I'll ask you not to read, because of the hour - - - will you tell the Senate, briefly, without making any reference to any Grand Jury, or any Grand Jury report, who Mr. S. D. Weissbuch is in the Miami community?

A He was the special counsel for the first Grand Jury that castigated me - - -

Q Let me ask you this: Do you know whether or not Mr. Weissbuch is American born?

A No, he was born in Hungary.

Q Was he a practicing lawyer in Miami for some time?

A Yes sir.

Q Do you know whether or not, prior to April 30, 1956, he had maintained a law office?

A I don't think he had maintained a law office in Miami for several years prior to that.

Q Were you, during the course of World War II, approached by an officer of Navy Intelligence with respect to Mr. Weissbuch?

A I was approached by Lieutenant William A. Hallowes III - - -

MR. BEASLEY: Now, if the Court pleases, I have - - - we have refrained from objecting to any testimony by this Defendant because we want to give him every opportunity to be heard by the Senate, which we think he's entitled to, but Mr. Weissbuch hasn't been a witness in this trial, and we think any testimony relating to him is absolutely immaterial, and we object to it, and especially, referring to any action of the Grand Jury down there, because that has all been stricken.

MR. HUNT: If Your Honor please, we have no intention of referring - - - making any further references to any action of the Grand Jury, but unstricken testimony before the Senate has identified Mr. Weissbuch as being the specially-appointed counsel of the famous Dowling case Grand Jury, and I would like for this Court to know briefly something of the background, as between Mr. Weissbuch and Judge Holt. There'll be no reference to his participation in the Grand Jury, I can assure you.

MR. BEASLEY: Well, it certainly couldn't be material unless it has something to do with that Grand Jury because - - - and that has all been stricken.

We think it's absolutely immaterial, and we object to it.

CHIEF JUSTICE TERRELL: Mr. Hunt, was Mr. Weissbuch employed by the Grand Jury?

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: Well, I think, under the motion we adopted here a couple of days ago, that testimony is out if it has reference to the Grand Jury investigation.

I think that was the purpose of - - -

MR. HUNT: It wasn't my purpose to ask the witness anything pertaining to the Grand Jury investigation, or Mr. Weissbuch's participation as special counsel for the Grand Jury reports. I merely want the members of this Court to know something of the background of Mr. Weissbuch, who directed the beginning of the furor which counsel on the other side maintains brought Judge Holt and his office in disrespect.

CHIEF JUSTICE TERRELL: Well, does the type of furor that you talk about have to do with the Grand Jury investigation?

MR. HUNT: Well, for one day it did, and for the next year it had to do with the newspapers.

MR. BEASLEY: If the Court please, if it relates to the Grand Jury, it certainly could not be material under the rules of this Court before, and if it relates to anything else, then, Mr. Weissbuch hasn't participated in this case, and has had nothing to do with it; so, it couldn't possibly be material, and we want to object to it.

CHIEF JUSTICE TERRELL: I think any connection he had with the Grand Jury investigation, Mr. Hunt, is out.

MR. HUNT: May we have a couple of minutes, Judge?

I'd like to direct a question to the Chief Justice. I do not wish to be considered as contentious or undertaking anything improper.

Would the Chief Justice consider that questions directed to the witness involving the American Civil Liberties Union, in which Mr. Weissbuch may or may not be connected, would be germane or not?

MR. BEASLEY: If the Court please, I want to say, before the Court rules on that question, that that can't possibly have anything to do with this case. It's absolutely immaterial; it beclouds the issues, and we object to it.

Actually, I'm a little surprised that counsel would ask that kind of a question here in the Court, when he knows it's not material.

MR. HUNT: If the Honorable Manager of the House lived in Dade County, and knew what counsel for the Respondent knows, he wouldn't be at all surprised.

MR. BEASLEY: I also want to state that I think that is an improper statement by the counsellor.

MR. HUNT: Well, I thought I directed a pertinent question to the Court.

CHIEF JUSTICE TERRELL: I don't think that question's pertinent, Mr. Hunt.

MR. SUMMERS: Mr. Chief Justice, if I may be heard for just one brief moment:

We put a number of witnesses on the stand, and they testified as to the character and judicial integrity of this witness up to and including a certain date. When those witnesses were then submitted for cross examination, my dear friend Mr. Beasley immediately asked them if it is not a fact that after that certain date, as the result of the publication of that certain document, that by the publication thereof, and the clamor that resulted therefrom, the office was brought into disrepute.

The Manager having brought out these things of his own

volition, I submit to you that it is now proper that this witness be inquired of as to the background that brought about that situation, for the purpose of showing any bias on the part of the directing and moving hands behind the thing.

MR. BEASLEY: If the Court please, I want to say that by no stretch of the imagination could the question by counsel be material in this case.

Now, if they want to go into the background of this thing, we are ready, and we've tried to offer these reports in evidence, and they have objected to them, and I actually think properly so, but if they want to go into them, why, then, we want them in evidence. If they don't, then they're absolutely improper and immaterial, and I don't believe those things should be brought out before this Court; and I think that the question is absolutely immaterial and improper in this trial.

CHIEF JUSTICE TERRELL: The Chair rules the question to be improper at this time, Mr. Hunt; I'll be glad to submit it to the Senate, if you would like for me to.

SENATOR JOHNS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Johns.

SENATOR JOHNS: - - - as a member of the Court, would it be proper, when the Court adjourns for this member of the Court to inquire from the people that know, the background of this Mr. Weissbuch, for me to inquire personally into the history of the thing? And I would personally like to know about it.

CHIEF JUSTICE TERRELL: I don't know of any objection as to your inquiring for your own personal information, Senator Johns.

SENATOR JOHNS: Thank you, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: I don't see that it would have any bearing on the disposition of the matter by this Court.

SENATOR DAVIS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - I've just been conferring with several members of the Senate.

It appears at this time that we've about reached a stalemate, and tempers are flaring in the Senate; many of them would like to go home to weddings, and so forth, and I therefore move you, sir, that we do now adjourn this session.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor of the motion to adjourn, let it be known by saying "aye." Opposed, "no."

The "ayes" have it. The Senate stands adjourned until Tuesday afternoon.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 12:15 o'clock P. M., until 2:00 o'clock P. M., Tuesday, August 13, 1957, pursuant to the motion made by Senator Adams on Thursday, August 8, 1957.