

JOURNAL OF THE SENATE

Wednesday, July 24, 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, Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

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

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

—35.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Edwards, will you pray?

SENATOR EDWARDS: Our Father, we thank Thee for this opportunity to come to Thee in prayer, and we ask that You forgive us for our wrongdoings and shortcomings.

Oh Lord, we have all sinned. We pray that Thou will forgive us of all of our sins, wash us as white as snow.

Oh Lord, we pray that we will have wisdom and knowledge from God, the strength to do Thy will, and to conduct our affairs and live our lives in a manner that will be pleasing to Thee.

All these things we pray, and give thanks to Thee, oh Lord, for life, liberty, and the pursuit of happiness, in the name of Jesus, who died on the cross in your stead and mine. Amen.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Tuesday, July 23, 1957, was dispensed with.

The Senate daily Journal of Tuesday, July 23, 1957, was corrected and as corrected was approved.

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.

CHIEF JUSTICE TERRELL: Is counsel ready to proceed?

MR. MUSSELMAN: Yes sir.

Mr. Perkins, please.

Thereupon,

JOSEPH A. PERKINS,

resumed the stand and testified further as follows:

MR. JOHNSON: Shall we proceed, sir?

CHIEF JUSTICE TERRELL: Yes.

REDIRECT EXAMINATION (Cont'd)

BY MR. JOHNSON:

Q Mr. Perkins, in order to establish the continuity of our questions, I believe you testified that - - - and correct me if I am wrong - - - among the expenses that you incurred at the Hotel Riviera de Haiti, in addition to the rooms that your party occupied, there were certain taxi fares that you had; there was some laundry and dry cleaning sent out, and a trip over to Cap Haitien, that was all charged against the hotel account, is that correct, sir?

A That's correct. I believe I said yesterday that I was the only one who had laundry. I don't think that's correct. Upon reflecting, I think all of us had laundry, because I recall estimating that at ten dollars, and Judge Holt and Judge Crawford tipped the bellboys for that, and I assumed the ten dollars myself, that's correct.

Q Was it true also that you did not pay the hotel bill while you were down there because you were unable to determine exactly what it was. Is that correct?

A Well, that, in effect, is correct, and also, because the hotel itself did not know what the amount of money was, and our estimate - - - at least mine, which I thought was correct, and turned out to be correct - - - was not sufficient for the manager when I talked with him, and he said he would send a bill up, and which, later on, was done.

You must remember that I was well known there; I've been there many times, and there was nothing unusual about that; that is even done today for other people.

Q Well, you were not able to determine, from the conversation with the manager, but wasn't it rather unusual for you to extract from your guests the sum of money that you estimated might be the required charges?

A Well, let me say this: They weren't my guests in the sense of the word.

I knew that I had to pay that hotel bill, and I expected to get the money for it, then and there, just as they expected to get the money from me when the hotel bill was paid elsewhere.

Q When the hotel bill was subsequently rendered, did you find out that you had overcharged Judge Holt and Judge Crawford?

A No. As a matter of fact, if anybody was overcharged, Judge Holt may have been overcharged two or three dollars, or four, something like that.

Q Well, now, I understood you yesterday to say that you determined the bill down to the last dollar, and in your reckoning, it came out to the exact dollar?

A Almost.

Q Do you want to correct that statement today?

A I didn't say "exactly"; I would say almost to the exact dollar.

Q Well, didn't you testify previously that you had overcharged Judge Holt and Judge Crawford in your computation?

A I may have, but as I say - - -

Q I say, but you testified that previously?

A I don't remember, if I did. I could have, yes.

MR. JOHNSON: Mr. Chief Justice, I submitted to you that transcript this morning. If I might - - -

BY MR. JOHNSON:

Q In your testimony before the agent for the Board of Governors, on June 8, 1956, at the Robert Clay Hotel, did you - - - were you asked this question, and did you give this answer:

"Q Now, after you made your adjustment with Weesner, two or three months later, was there any adjustment made with Judge Holt or Judge Crawford because you were underpaid or overpaid?"

"A There was not. Actually, I think they both overpaid a little."

Now, did you say that?

A If that's there, I said it, yes.

Q In other words, you don't deny having said that, is that correct?

MR. HUNT: Well, isn't that what he just said?

THE WITNESS: No, no, I don't deny that.

As a matter of fact, as I said before, money was passing hands at all times. Somebody would pay a bill, and I don't know that it came out exactly even, in dollars and cents. Money was passed in San Juan and St. Thomas. I remember, on one occasion, that there was a bill in a restaurant, and Judge Crawford said to Judge Holt, "It's your turn to pay this man," because he'd started out the door; and he paid it, and then we settled up later.

I don't know that it comes out to the exact penny. I don't think it's possible.

BY MR. JOHNSON:

Q But your testimony is that you did collect money from them in Haiti, and did not actually settle up with the hotel until December, in which you applied the entire bill as a set-off against the fee that you charged?

A That's correct.

Q And you never made any accounting with either Judge Holt or Judge Crawford to correct any discrepancies in what they paid you, is that correct?

A It wasn't necessary. There weren't any discrepancies of any importance. There was a - - -

Q You never discussed the matter with them to determine if they felt this way?

A I don't think so. I know that Judge Crawford discussed some money that was due him from Judge Holt; I overheard it, but I don't think that was over \$25 or \$30, I don't recall.

Q Have you occasionally given gifts to Circuit Judge George E. Holt, Mr. Perkins?

A Well, now, I've testified about that innumerable times, and I testified that sometime in 1950 or '51 or '52, or about that time, that I went over to Judge Holt's house during the holidays and took five - - - four or - - - five or six bottles of whiskey, and I said it was to replace that which I had consumed at his place.

If you want to mean that that's a present, yes, I did do that.

Q Did you leave all of them, or did you decide that that was too much, and take back a bottle?

A One time I took a bottle back, because I told Judge it was too much, and he said, "Well, go ahead and take it." I believe he said, "Don't come back again." I think that's what he said, but all of it was in a joking manner.

Q Did you participate in the trial of Eagle Star Insurance Company vs. Weesner?

A Yes sir, I did.

Q Judge Holt was the Judge in that trial, is that correct?

A That's correct, yes sir.

MR. JOHNSON: That's all we have.

#### RE-CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Perkins, have you and your wife often visited Judge and Mrs. Holt?

A Yes, many times.

Q Do you consider yourself a close friend of theirs?

A I have considered myself a close friend over the past years, and do now consider myself a close friend of Judge Holt.

Q And at the time you took a few bottles of Scotch out, as you say, to replace that which you had consumed, at that time, had you - - - prior to that time, had you been a frequent visitor to Judge Holt's home?

A Many times, and as far as I'm concerned, it can be construed as a gift. Actually, it was the manner in which I said.

Q And are you, personally, a Scotch drinker?

A Yes sir, I'm personally, a Scotch drinker.

MR. HUNT: That's all.

MR. JOHNSON: That's all.

THE WITNESS: May I be excused?

MR. JOHNSON: We have no objection to your being excused.

THE WITNESS: Thank you.

MR. BEASLEY: Are you through with the witness, Mr. Hunt?

MR. HUNT: Yes sir. I didn't want him to begin with.

(Witness excused)

CHIEF JUSTICE TERRELL: Is a witness ready?

MR. BEASLEY: Yes sir, we have another witness out there now.

MR. HOPKINS: We'd like to call Mr. Towle next, please.

MR. BEASLEY: Mr. Chief Justice, we'll be ready in just a few minutes.

MR. HUNT: Mr. Beasley, are you through with the Haitian trip, or do you know?

MR. BEASLEY: What?

MR. HUNT: Are you through with this phase, the Haitian trip, or do you know?

MR. BEASLEY: I'll have to ask Mr. Johnson. I'll find out.

MR. HUNT: I just wondered. I noticed that Judge Crawford is here, if you intend to use him.

MR. BEASLEY: We're through with it for the time being, but may touch back on it later.

MR. HUNT: Well, everybody's jumping on me to go home; that's the reason I wanted to know.

MR. HOPKINS: Is the Court ready to proceed?

CHIEF JUSTICE TERRELL: Yes.

MR. HOPKINS: Gentlemen, you that are following the Bill of Particulars, this phase of the case will cover Article 1 (d) 2, 1 (d) 2.

Thereupon,

LLOYD A. TOWLE,

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

## DIRECT EXAMINATION

BY MR. HOPKINS:

Q Will you give us your name, please?

A My name is Lloyd A. Towle.

Q Where do you live, and what is your profession?

A I live at 235 West San Marino Drive, Miami Beach, Florida. I am an attorney.

Q How long have you practiced law?

A I was admitted to practice in June of 1936, and I have practiced continuously since then.

Q Did you know a Mrs. Annie May Stengel?

A I did.

Q Over what period of time did you know Mrs. Stengel?

A I would imagine I met Mrs. Stengel for the first time about 1941.

Q Did you have any business dealings with Mrs. Stengel?

A Yes, I did.

Q Will you tell us the nature of those dealings, and tell us whether or not you represented her?

MR. HUNT: If Your Honor please, at this time the Respondent would like to reserve an objection to the Stengel matter, and any evidence pertaining to it, because it was a 1953 case.

We will argue that at the same time - - - at the end of the proceeding.

CHIEF JUSTICE TERRELL: It's perfectly proper that that be reserved.

BY MR. HOPKINS:

Q I believe you were testifying about any business dealings or representations, as far as Mrs. Stengel is concerned?

A Yes.

Mrs. Stengel made her home with her son, Raymond Stengel, in Miami Beach, Florida, and they had occasional matters that required an attorney's advice, and in several cases, some actual litigation, in the way of defending Annie May Stengel, the mother, and/or Raymond Stengel, the son; and on - - -

Q Were you - - -

A - - - on those occasions, I represented them, I believe, to the exclusion of anyone else.

MR. HUNT: Will you speak a little more loudly, please sir?

THE WITNESS: I believe that my representation of them in those matters, and during that period of time, was to the exclusion of anyone else in Dade County, Florida.

BY MR. HOPKINS:

Q Do you know the approximate age of Mrs. Annie May Stengel on July 27, 1953?

A There is some - - - a little dispute about that, but I would estimate that she was about eighty-three years of age.

Q Do you know where she lived at that time?

A Now, Mr. Hopkins, on what date was that?

Q July 27, 1953?

A Well, at that time she was living in the residence in South Miami, Florida.

Q Did you know her financial standing at that time?

A Yes. I was familiar with it, having been familiar with it all during the time from 1941.

The situation, in brief, was that her husband, Commander C. E. Henry Stengel, had died almost forty years ago, and had - - - his will had set up a rather large trust, which was being administered by the Fidelity Union Bank of Jersey City,

New Jersey, and she enjoyed the entire income from that trust for the balance of her life, and accordingly, I would estimate that - - - or rather, I would know, from what she had told me before, and from their general circumstances - - - and I might say there I speak of Mrs. Stengel, the mother, and Raymond, the son - - - that this annual income from the trust was around \$15,000 per year to \$20,000 per year.

Q Was Mrs. Stengel at that time living in comfortable circumstances in Miami?

A Yes, very comfortable.

Q Had you visited in the home of Mrs. Stengel, so as to know where she lived, and the circumstances surrounding the home?

A I had been at the home on, I believe, more than one occasion. It's quite a distance from where I have my home, and from where I practice on the Beach, but I had been there at the time that they were looking and contemplating the purchase of that property.

Q Will you describe the home to the Court?

A Well, the home was a very substantial home, very comfortable. It had a swimming pool, located in a very nice neighborhood, and very adequate accommodations for Mrs. Stengel and for Raymond, with whom she lived.

Q Do you remember when Mrs. Stengel purchased this home?

A No, I don't remember exactly when she purchased it.

Q You might refer to that date, July 27, 1953. Do you remember approximately how much earlier she had bought this home?

A I would say about two years prior thereto.

Q Do you know what she paid for this home?

A Yes, she paid, to the best of my recollection, about \$56,600.

Q Do you know whether or not this home was adequately furnished?

A Yes, it was very adequately furnished.

Q Do you remember the type of furniture that she had in the home?

A Yes, I am quite familiar with the majority of it.

As a matter of fact - - -

MR. HUNT: If Your Honor please, just in an effort to save time, I object to this line of questioning. It cannot possibly have any bearing upon an impeachment trial of this Respondent. It's not shown that all this stuff was brought before the Respondent at any hearing, that it was ever called to his attention, and I don't see what bearing it can have on the case, and I object to it.

MR. HOPKINS: If the Court please, before - - -

CHIEF JUSTICE TERRELL: What is the object of this testimony, Mr. Hopkins?

MR. HOPKINS: If the Court please, this situation is covered by pleadings, and at this time we would like to offer in evidence the file of the case of Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents, bearing Number 161416-A, as filed in the Circuit Court of Dade County, Florida.

MR. HUNT: No objection.

(Whereupon, said instrument was received and filed in evidence as House Managers' Exhibit Number 15.)

BY MR. HOPKINS:

Q Mr. Towle, did you represent Mrs. Stengel, or the Stengel family, in this case, that is, the case that has now been offered in evidence, that is, the file offered in evidence?

A That is Mrs. Annie May Stengel, you mean? No, I did not.

Q Did you have any participation in that case?

A Yes, I had considerable participation in it.

Q Were you in Miami at the time the case was begun?

A No, I was in Wisconsin on a short vacation, visiting my parents.

Q Do you have any office file on all phases of this case?

A I do.

Q Would it be convenient for you to refer to that file?

MR. HUNT: Mr. Chief Justice, I wonder if it could be arranged with the Sergeant-at-Arms for some kind of a small desk to be placed in front of the witnesses who bring these files? It would be much easier for them to then testify.

CHIEF JUSTICE TERRELL: Will you provide something to that effect? (Addressing the Secretary)

THE WITNESS: I have the file before me now.

BY MR. HOPKINS:

Q Can you handle it without a desk or table or something of the kind?

A Right.

Q Will you give us, first, the date of the filing of the petition for the appointment of a curator for Annie Mae Stengel, and for an injunction?

A The petition was filed on July 27, 1953.

Q Will you tell us, in substance, what that petition alleges, the purpose of it?

A The petition was filed by Henry Ivan Stengel, the son of Mrs. Annie May Stengel, and by Mrs. Inez Stengel Gay, the granddaughter of Mrs. Annie May Stengel, and it alleged, in brief, that the said Annie May Stengel had become mentally incompetent, and was incapable of managing her own person or property, and that she was senile, and that she was incapable of controlling the income that she received from the trust fund, and asserted that the trust fund was - - - had a corpus of a little more than \$400,000; and it further declared that Raymond Stengel, her son, and the man with whom she had been making her home for at least forty years, has, by duress - - - and this is a quote - - - "has, by duress, coercion and by his control over the said Annie May Stengel, taken possession and converted to his own use all of the income that has been paid to the order of Annie May Stengel over a period of years," and it alleged that he had used some of the funds to purchase this home in South Miami, and a Cadillac, and that unless affirmative protective action were taken by the Court, Mrs. Annie May Stengel would become the victim of a designing person, being her son; and it also alleged that the basis for the Petitioners coming into Court was that they had a personal interest in the matter, because they would participate in any unused or undistributed income out of this trust that remained at the time of the death of Mrs. Stengel.

Q What attorney represented the Petitioners, and signed the Petition in that case?

A George McCaughan.

Q Is he an attorney from Miami?

A Yes sir, he is. He has practiced there approximately the same length of time that I have.

Q When was any action taken on that petition?

A Well, action was taken immediately.

There was a temporary injunction entered, without notice, on the same day that the petition was filed, enjoining Raymond from removing himself or his mother, Mrs. Stengel, from the jurisdiction of the Court, and requiring his appearance before Judge Holt at 12:00 a.m. on July 29, two days later.

There was also an order entered on that same day, of July 27, appointing James L. Anderson and Dr. Paul Kells, of Miami, who are psychiatrists, or neurosurgeons, to examine Mrs. Stengel and report their findings to the Court by July 29, 1953.

There was also an order entered on the same day, directing the Sheriff of Dade County to place Annie May Stengel in protective custody, and specifically, to place her in the Jackson Memorial Hospital, and be certain to produce her at the hearing to be held two days later.

Q The injunction was granted without notice?

Q Who signed the order of injunction?

A Judge George E. Holt.

Q How much time was spent, as reflected by your file, in the examination of the lady before she was declared incompetent?

A Well, my file does not have the transcript of testimony that was taken before Judge Holt, and I wasn't, personally, present at the time - - - you see, I was still in Wisconsin, but I have examined the transcript of testimony, and it appears that there were two days, or portions thereof, devoted to the hearing on that petition.

Q Does your file reflect a permanent injunction on July 30, 1953, signed by George E. Holt, Circuit Judge?

A It does.

Q What did that do?

A Well, that was a permanent injunction, and briefly stated, the order recited that the facts of the petition filed by Henry Ivan Stengel, and by Mrs. Gay, and the temporary injunction be made permanent.

The order recites that the Court was satisfied, from the testimony, that the son, Raymond, would, unless prevented by a permanent injunction, remove Mrs. Stengel from the State of Florida, and recited that the Petitioners were entitled to a permanent injunction upon their posting of bond; and the order recited that Raymond, the son, was permanently enjoined from in any fashion interfering with the work of the curator.

Q Do you find that a curator was appointed by Judge Holt, as reflected by the file?

A Yes, on the 30th day of July, 1953, an order was entered, reciting that the physicians appointed by Judge Holt had found Mrs. Stengel to be incompetent, and that after hearing their testimony, and other testimony of witnesses that appeared before him, he was of the opinion that Mrs. Stengel was liable to dissipate her property and become a victim of designing persons, and that - - - recited that she was mentally and physically incompetent, and it appointed Daniel Neal Heller as curator of the property of Mrs. Stengel, an incompetent, and required him to post a \$3,000 bond.

Q What happened to Mrs. Stengel upon the appointment of the curator?

A After the appointment of a curator, Mrs. Stengel was, according to an order entered on the same day, of July 30, was instructed to place Mrs. Stengel in the Sun Ray Park Sanitarium, in Miami.

That would have the effect of taking her out of - - -

MR. HUNT: May it please the Court, according to the paper before the Senate, labeled "Bill of Particulars," this witness did not enter the Stengel case until September of 1953, and I object to any further testimony on the part of this witness, giving this Court his interpretation of different portions of judicial orders which are in the Court file, unless the entire order is read.

CHIEF JUSTICE TERRELL: You'd better read the order, Mr. Hopkins.

MR. HOPKINS: May I ask a question?

BY MR. HOPKINS:

Q Do you know the Sun Ray Park Sanitarium?

A I do.

Q What type place is that?

A I would say it was a most undesirable place for a lady like Mrs. Stengel.

MR. HUNT: If Your Honor please, I think that's objectionable, and I move the Court to strike it from the record.

It's irrelevant and immaterial; it's prejudicial; it calls for an opinion of this witness with no ground - - - without establishing him as an expert on the subject, and it's improper.

CHIEF JUSTICE TERRELL: What's the purpose of that testimony, Mr. Hopkins?

MR. HOPKINS: To see the type of place that this lady was committed to by the Judge.

MR. HUNT: That calls for a medical opinion. Sun Ray Sanitarium is in Dade County.

He's asking this lawyer to testify what type of place it is.

MR. HOPKINS: If the Court please, may I rephrase another question?

CHIEF JUSTICE TERRELL: Yes.

BY MR. HOPKINS:

Q What type people are ordinarily sent to this place?

MR. HUNT: I object to that. This witness is not qualified to speak of any of the practices of the people being sent to that place, or the type of place it is.

CHIEF JUSTICE TERRELL: Objection sustained.

MR. HOPKINS: Sir?

CHIEF JUSTICE TERRELL: I say, the objection is sustained as to that question.

BY MR. HOPKINS:

Q Do you know whether or not this lady was actually sent to the Sun Ray Park Sanitarium?

A Yes, she was.

MR. HOPKINS: If the Court please, we now ask the Secretary to read from the file that has been offered in evidence, the order of Judge Holt, dated July 30, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery. Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents. Order Remanding Annie May Stengel

"This cause came on to be heard before me on the petition of Henry Ivan Stengel and Inez Stengel Gay for the appointment of a Curator for the property of Annie May Stengel, and the Court having heard the testimony of the witnesses and the examining physicians, and having entered its order finding that the said Annie May Stengel is an incompetent, and having appointed a Curator, and having heard the testimony of the witnesses as to the actions and behavior of Karl Raymond Stengel, son of the said Annie May Stengel, the Court is of the opinion that the said Karl Raymond Stengel is not a fit person to have the care, custody, and control of the person of the said Annie May Stengel, and for this and for other reasons set forth in the orders entered herein, the Court finds that the Sun Ray Park Sanitarium are proper and sufficient persons to have the temporary custody and control of the person of the said Annie May Stengel pending the disposition of actions in the County Judge's Court in and for Dade County, Florida, for the appointment of a guardian for the said Annie May Stengel, an incompetent.

Thereupon, it is

"ORDERED, ADJUDGED AND DECREED that the said Annie May Stengel, an incompetent, be and she hereby is remanded to the custody of the Sun Ray Park Sanitarium until the action in the County Judge's Court in and for Dade County, Florida, for the appointment of a guardian for the person of the said Annie May Stengel has been accomplished.

"DONE AND ORDERED in Chambers at Miami, Florida, this 30th day of July, 1953

"(s) GEORGE E. HOLT,  
Circuit Judge."

BY MR. HOPKINS:

Q Mr. Towle, do you know how long this elderly lady stayed at this Sun Ray Park Sanitarium?

A No, I don't know, but I believe it was for a period of three or four days, because the Petitioners, in the curatorship proceedings, immediately went into the County Judge's Court, and Judge - - -

MR. HUNT: I object to the witness testifying to anything that happened in the County Judge's Court. The files themselves are the best evidence.

CHIEF JUSTICE TERRELL: Objection is overruled.

BY MR. HOPKINS:

Q Will you proceed.

A The Petitioners, in the curatorship proceedings, went into the County Judge's Court, and based upon the findings of Judge Holt, that Annie May Stengel was mentally and physically incompetent, they asked for the appointment of themselves as guardians of the person of Mrs. Annie May Stengel, and upon the granting of that motion, and the entering - - -

MR. HUNT: If Your Honor please, I believe that, Mr. Chief Justice, that there's some misunderstanding about this testimony.

This witness is not testifying with respect to the Circuit Court file, which has been introduced; he is undertaking to testify what other lawyers did in County Judge Blanton's Court, and there's no showing that he was there, that he knew a thing about it, and the file itself is not before the Court.

I think it's improper testimony. He's just speaking from hearsay, or from the fact that at one time he examined the files and placed his own interpretation on them; and I would like to renew the objection.

MR. HOPKINS: May I clarify the record at this stage on that?

The question of this witness is as to how long this lady stayed in this place that she was placed in, and he's explaining the conditions under which she was taken out of that place.

As I understand it, that's the question.

MR. HUNT: Well, it had nothing to do with that.

CHIEF JUSTICE TERRELL: Mr. Towle, you can testify as to what the record shows, but don't attempt to testify to what someone else told you, or what the general reputation was in that community. Testify to what the record shows, or what you know of your own knowledge.

MR. HUNT: May I ask counsel for the House Managers if they have the records of the County Judge's proceeding here?

MR. HOPKINS: I don't know, sir, whether we do or not. I don't think we have that record up here from Miami. If we have, I haven't seen it.

BY MR. HOPKINS:

Q Will you proceed, Mr. Towle?

A Well, from my own personal observation, I don't know when Inez Stengel Gay removed Mrs. Annie May Stengel from the Sun Ray Park Sanitarium.

I understand, Your Honor, that your ruling is that I should not testify to what I know from the record in the guardianship?

CHIEF JUSTICE TERRELL: That's correct.

BY MR. HOPKINS:

Q Do you personally know the conditions of this place where Mrs. Stengel was kept?

A That is, the Sun Ray Park Sanitarium?

Q Yes?

A Yes, I do.

Q What were the conditions there at that time? What people were in there?

MR. HUNT: I object to the question. The Court's already sustained the objection to that question.

MR. HOPKINS: If the Court please, I understood that the Court ruled a few minutes ago to the effect that if this man knows of his own knowledge, he can testify, but he cannot testify on reputation.

I asked at this time if he knew of his own knowledge the type of people that were there in that sanitarium at that time.

MR. HUNT: If Your Honor please, that's the same question.

CHIEF JUSTICE TERRELL: I think it's a different question, Mr. Hunt. I think he can testify as to what he knows about the conditions of the sanitarium, and the people that are cared for there.

MR. HUNT: Shouldn't it be at the time that it was occupied by Mrs. Stengel?

CHIEF JUSTICE TERRELL: Yes, I think it should.

MR. HUNT: That he doesn't know.

BY MR. HOPKINS:

Q Do you know the type of people that were in that place at that time?

A Well, if my answer is confined to the time in which Mrs. Stengel was in there, of course, I wasn't in town; so I don't know exactly who was in the Sun Ray Park Sanitarium at that time.

I do know - - -

MR. HUNT: I object to any further, volunteered answers on the part of the witness, if the Court please.

MR. HOPKINS: May I ask another question?

CHIEF JUSTICE TERRELL: The objection is overruled.

BY MR. HOPKINS:

Q Proceed, please.

A I do know, from - - - that during that general period of time, I would say the majority of the people in the Sun Ray Park Sanitarium - - -

MR. HUNT: If Your Honor please, will the witness be permitted to speak of that general period of time?

CHIEF JUSTICE TERRELL: I think so.

MR. HUNT: All right, sir.

THE WITNESS (Continuing): - - - were people who had become alcoholics, and were placed there for the purpose of being de-alcoholized, or of sobering them up, and possibly keeping them there longer so that they could form some actual conviction of wanting to stay sober.

Another general section of people there were very elderly people, whose immediate relatives did not want them in the family; so they put them there; and of course, there were some mental cases there.

BY MR. HOPKINS:

Q Would you - - - if it's permissible - - - otherwise, we'll get the Secretary to do it - - - would you refer to your file and tell us the date that Daniel Neal Heller was appointed curator?

MR. HUNT: That's in the Circuit Court, is it not?

MR. HOPKINS: Yes, that's right.

THE WITNESS: He was appointed curator on July 30, 1953.

MR. HOPKINS: If the Court please, we would now ask the Secretary to read Motion for Contempt Citation, filed in the Circuit Court in this file on August 3, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery. Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs.

Annie May Stengel and Karl Raymond Stengel, Respondents.  
Motion for Contempt Citation

"Comes now Daniel Neal Heller as Curator of the property of Annie May Stengel, an incompetent, and would show unto the Court that Karl Raymond Stengel has violated the permanent injunction entered by this Court on July 30, 1953 in that the said Karl Raymond Stengel, on the information of the undersigned Curator, has removed himself and the Cadillac automobile Model 75, Motor Number 7555135—1952 License Number 1WW-199-53 from the jurisdiction of this Court, and that by abandoning the real property of the Ward occupied by the said Karl Raymond Stengel, has interfered with the Curator in the pursuit of his duties, and by his absence said Karl Raymond Stengel has failed to account for the monies of the Ward that came into his hands on or about July 19, 1953.

"WHEREFORE, the undersigned Curator moves the Court for the entry of a citation of contempt against the said Karl Raymond Stengel for his violation of the permanent injunction.

"(s) DANIEL NEAL HELLER,  
Curator

"GEORGE C. MCCAUGHAN,  
Attorney for Curator

"State of Florida, County of Dade

"Before me, the undersigned authority, personally appeared Daniel Neal Heller, Curator, and George C. McCaughan, Attorney for Curator, who being first duly sworn, say that on information and belief, and as the result of their investigation the allegations contained above are true.

"Sworn to and subscribed before me this 3rd day of August, 1953

"(s) ENID KEYS,  
Notary Public

"Notary Public, State of Florida at Large. My Commission expires May 14, 1956"

MR. HOPKINS: I would like to now ask the Secretary to read the Citation for Contempt, signed by George E. Holt, dated August 3, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents. Citation for Contempt

"It appearing unto the Court on the sworn motion of the Curator and the Attorney for the Curator that the Respondent, Karl Raymond Stengel, has violated the permanent injunction entered by this Court on July 30, 1953 against his interfering with the Curator in the pursuit of his duties as concerns the property of the said Ward, Annie May Stengel, in that the said Karl Raymond Stengel has removed himself and the Cadillac automobile belonging to the Ward and described as Model 75, Motor Number 7555135-1952, License Number 1WW199-53, from the jurisdiction of this Court and has abandoned the real property belonging to the Ward but occupied by the said Karl Raymond Stengel and has thereby interfered with the Curator in the discharge of his duties, and it further appearing that by his absence the said Karl Raymond Stengel has not accounted for the monies of the said Annie May Stengel received by him on or about July 19, 1953, and the Court being otherwise advised in the premises, it is thereupon

"ORDERED, ADJUDGED AND DECREED that the said Karl Raymond Stengel be and he hereby is adjudged to be in contempt of this Court for the violation of its injunction; it is therefore ordered that as punishment for said contempt the said Karl Raymond Stengel is ordered to be confined for a period of thirty days in the Dade County Jail and the Defendant is required to surrender himself at the office of the Sheriff of this County at the Dade County Court House in Miami, Florida, for the purpose of confinement in enforcement of this order at noon on August 10, 1953, otherwise at and after said time the Sheriff of this County and his lawful deputies are hereby ordered and directed to take the Defendant, Karl Raymond Stengel, into custody and to con-

fine him in the said Dade County Jail for a period of thirty days, and at the expiration of which period they shall then release him.

"DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of August, 1953

"(s) GEORGE E. HOLT,  
Circuit Judge"

BY MR. HOPKINS:

Q Mr. Towle, you represented the Stengels prior to this case, I believe you testified, is that correct?

A Yes sir.

Q And you represented them upon your return to Miami on this occasion?

A Yes, upon my return from Wisconsin to Miami, about the 7th of August, 1953, I found numerous communications from Raymond Stengel concerning the matters that had taken place, and urging that I enter into the case; and thereafter, I did so, as his attorney.

Q Do you know where Mrs. Stengel was taken to when she was taken out of that home under the County Judge's order?

A She was taken to New York City.

Q Who took her to New York City?

A Mrs. Gay, her granddaughter, and one of the two Petitioners for the curatorship.

Q Do you know where Karl Raymond Stengel went?

A He went to the Stengel home, in Spring Lake, New Jersey.

Q Later, representing Karl Raymond Stengel, did you find that this order had the effect of keeping him out of the State of Florida for the rest of the curatorship?

A I did.

Q The order would have immediately put him in jail for thirty days, had he returned to the State of Florida?

A That's right.

MR. HOPKINS: If the Court please, I will now ask the Secretary to read Petition for Rule to Show Cause, filed in this cause August 18, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. In Chancery. Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents. Petition for Rule to Show Cause

"Daniel Neal Heller, having heretofore been appointed as Curator for Annie May Stengel, an incompetent, would respectfully show unto this Court that Inez Stengel Gay, one of the Petitioners herein, who was subsequently appointed guardian of the person of Annie May Stengel in the County Judge's Court in and for Dade County, Florida, on the 31st day of July, a. d. 1953 being cause Number 30838, has wilfully interfered, hindered and obstructed the Curator in the full performance of his duties for the benefit of said Annie May Stengel, an incompetent, and has committed the following acts calculated to present such hindrance, interference and obstruction:

"1. From the date of August 6, 1953 to the date of the filing of this Petition the said Inez Stengel Gay has refused to permit the Curator to visit with or speak to Annie May Stengel, the incompetent. The said Annie May Stengel was kept a virtual prisoner by Inez Stengel Gay from the Curator and this prevented the Curator from speaking with and giving advice to the incompetent. The Curator had, prior to that date, spoken for many hours with the incompetent and during lucid moments the said incompetent had told the Curator many times in the presence of Inez Stengel Gay that various and sundry pieces of her jewelry were suddenly unexplainedly missing. But before the Curator could obtain from the incompetent a description of this jewelry, Inez Stengel Gay

whisked the incompetent away and the Curator had no way of finding out where the property was, who was believed to have taken it, and a detailed exact description of the same from the incompetent herself. This prevented the Curator from keeping an appointment at the County Solicitor's office for possible criminal prosecution. What purposes or design Inez Stengel Gay had by adopting this course of action or what was attempted to be hidden by this course of action is unbeknownst to the Curator. Because of the weakened physical condition of the incompetent the Curator did not wish, under advice of the incompetent's physician, to press too hard for details of all of the missing chattels and things. But when the Curator did inventory, on the date of August 1, 1953, all of the goods, chattels and things of the incompetent found at 8325 Cheryl Lane Drive, Dade County, Florida, the Curator found that there was not a piece of sterling silver in the entire house, either dinnerware or serving pieces. In addition, no jewelry was found on the premises.

"The manner in which Inez Stengel Gay kept the incompetent, Annie May Stengel, a prisoner from the Curator was to inform the switchboard operator at the National Hotel where the incompetent was being kept that if Mr. Heller telephoned or called at the desk, to instruct him that neither Mrs. Stengel nor Mrs. Gay were present. The Curator subsequently discovered that this ruse was being used after he was informed by the licensed practical nurse attending Mrs. Stengel, and from the hotel officials themselves.

"2. That to enable your Petitioner to perform his duties, your Petitioner immediately made contact with the Fidelity Union Trust Company of Newark, New Jersey and with the firm of Riker, Emery & Danzig, Esquires, Attorneys at Law, of that City, since the corpus of a trust of which Mrs. Stengel, the incompetent, is a life beneficiary, is held there. That on the date of August 10, 1953 after the Curator had asked for an accounting from said Trust Company and for an appropriation of monies to discharge various and sundry bills, and for a subsistence allowance for the incompetent, there was received from the firm of Riker, Emery & Danzig, Esquires, Attorneys at Law, over the signature of Charles Danzig, Esquire, a letter stating that the Trust Company and their attorneys were most anxious to cooperate with the Curator in the discharge of his duties, but that they had received the following telegram from the guardian of the person, Inez Stengel Gay, reading as follows :

"Disregard all demands from Curator he has no legal authority to disburse estate monies that is solely the duty of Guardians. I will mail medical bills direct to you for payment if you wish to contact me my attorney is Alexander Gordon 420 Lincoln Road Miami Beach.

"INEZ GAY."

"A true copy of this letter is marked as Exhibit 'A' and attached hereto and made a part hereof.

"Thus your Petitioner would show unto the Court that Inez Stengel Gay has, in effect, committed contempt of the Circuit Court and of its Orders appointing the undersigned as Curator and has purposely and with intent interfered with the proper discharge of the Curator's duties for and on behalf of the incompetent. This has caused concern on the part of the Fidelity Union Trust Company and they are not certain to whom to pay the income from the Trust above referred to.

"3. Wherefore, your Petitioner prays that a Rule to Show Cause be issued and served upon the attorneys for Inez Stengel Gay and that within a short date, to be fixed by this Court these attorneys should show cause why the said Inez Stengel Gay should not be declared to be in contempt of this Court.

"(s) DANIEL NEAL HELLER

"Daniel Neal Heller, Esq., Curator

239 Shoreland Arcade Building

Miami 32, Florida."

Do you want the certificate read?

MR. HOPKINS: Yes.

MR. LINN, Assistant to the Secretary, (Reading): "Certificate

"I HEREBY CERTIFY that I have this day mailed a copy

of this Petition to Alexander S. Gordon, Esq., and George C. McCaughan, Esq., at their respective offices, in envelopes bearing sufficient postage to ensure their prompt delivery.

"Dated August 18, 1953.

"(s) D. N. HELLER"

BY MR. HOPKINS:

Q Mr. Towle, have you examined the file to see whether or not it reflects that any notice of this Rule to Show Cause was served on Mrs. Gay?

A I don't. My recollection is that - - -

MR. HUNT: I object to the witness' recollection. The record is before the Court, if Your Honor please.

CHIEF JUSTICE TERRELL: Read it from the record, Mr. Hopkins.

MR. HOPKINS: I might say, counsel, I find none in the file. If you would like to - - -

MR. HUNT: Very well.

MR. HOPKINS: If the Court will bear with me just a minute. I think it's a little out of place. I think I can find it in just a few seconds, if the Court please.

If the Court please, I would like now to ask the Secretary to read Order on Contempt Citation, filed in this cause on the 24th of August, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery. Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents. Order on Contempt Citation

"This cause came on to be heard before me on the Rule to Show Cause heretofore issued herein on August 18, 1953 directed to Inez Stengel Gay to appear before the undersigned Judge on August 21, 1953 at 10:30 a.m. to show cause, if any she has, why she should not be held and adjudged to be in contempt of this Court. It appeared from the testimony of the Curator and his witness that the Rule was served on Inez Stengel Gay by delivering the same to George C. McCaughan, Attorney of record for the Petitioners, Henry Ivan Stengel and Inez Stengel Gay, and to Alexander S. Gordon, declared by Inez Stengel Gay to be her present Attorney, it appearing from the testimony that the said Inez Stengel Gay has removed herself and Annie May Stengel, the Ward, from the jurisdiction of the State of Florida. It appeared from the testimony of the Curator and his witness that for the period between August 6, 1953 and this date the said Inez Stengel Gay has prevented the Curator or his attorney from having any contact with the said Annie May Stengel, an incompetent, and that the said Inez Stengel Gay removed the said Annie May Stengel from the State of Florida without notice to the Curator as to the whereabouts of the Ward, and it further appearing from the testimony of the Curator and from the exhibits that the said Inez Stengel Gay has interfered with the Curator in the pursuit of his duties therein by informing the Fidelity Union Trust Company of Newark, New Jersey, the trustees of the trust of which the said Annie May Stengel is entitled to the payment of the income for life, that the demands from Daniel Neal Heller as Curator should be disregarded by using the following language, to wit:

"Disregard all demands from Curator. He has no legal authority to disburse estate monies, that is solely the duty of guardians. I will mail medical bills direct to you for payment. If you wish to contact me my attorney is Alexander Gordon, 420 Lincoln Road, Miami Beach. Signed Inez Stengel Gay.' and it further appearing that subsequent to the said trustees having received this communication from the said Inez Stengel Gay, that they have refused to pay the expenses incurred in the course of the Curatorship, which include the costs incurred in this action, the hospital and medical expense, and it further appearing that by the actions of the said Inez Stengel Gay in this respect, she is in contempt of the orders made and issued by this Court and such actions are in flagrant disregard thereof.

"WHEREFORE, it is

"ORDERED, ADJUDGED AND DECREED that the said

Inez Stengel Gay be and she hereby is adjudged to be in contempt of this Court and that the Rule heretofore issued on August 18, 1953 is hereby made absolute and it is further

"ORDERED, ADJUDGED AND DECREED that as punishment for said contempt the said Inez Stengel Gay is ordered to be confined for a period of sixty days in the Dade County Jail and the said Inez Stengel Gay is required to surrender herself at the office of the Sheriff of Dade County at the Court House in Miami, Florida, for the purpose of confinement in the enforcement of this order at noon on August 31, 1953, otherwise at and after said time the Sheriff of this County and his lawful deputies are hereby ordered and directed to take the said Inez Stengel Gay into custody and to confine her in the said Dade County Jail for a period of sixty days, at the expiration of which they shall then release her.

"DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of August, 1953.

"(s) GEORGE E. HOLT,  
Circuit Judge"

BY MR. HOPKINS:

Q Mr. Towle, at the time of the sending of this telegram referred to in the petition and order, was Mrs. Gay the guardian of Mrs. Stengel?

A Mrs. Gay was the guardian of the person of Mrs. Stengel, yes, by order of Judge Blanton, of the County Judge's Court of Dade County.

Q Now, you had contact with Mrs. Gay also later in this case, did you not?

A Yes sir.

Q Do you know where she had gone when this order for her arrest was issued?

A Yes sir, she had gone to New York.

Q Now, let's see, Raymond, the one that was ordered to jail first, was the Defendant, right?

A Yes sir.

Q Mrs. Gay was a Plaintiff?

A Right.

Q After issuance of this order, did it have the effect of keeping Mrs. Gay also out of the State of Florida for the remainder of this curatorship?

MR. HUNT: If Your Honor please, we object to the question. It would take Mrs. Gay herself to answer that. It's improper.

CHIEF JUSTICE TERRELL: Objection overruled.

BY MR. HOPKINS:

Q Will you proceed, please?

A Yes, it did.

Q Has it kept her out even up until today, the date of this hearing here?

A Yes. As far as I know, neither Raymond Stengel nor Inez Stengel Gay have returned to the State of Florida since the entry of the two orders that you've described, with the exception that I understand that they were present for a few days in the State of Florida, in connection with investigation by the Bar Association.

Q Now, at the time both the Petitioner and the Defendant were ordered to jail, what property was in the estate that the curator took over?

A The property consisted of the residence - - -

MR. HUNT: I object to that, if Your Honor please. The records are the best evidence of what the curator took over, and they're before the Court.

MR. HOPKINS: If the Court please, the record is the best evidence of what the curator said. I don't think it's the best evidence of what was in the record.

If he knows of his own knowledge, why, we certainly think he can testify to the property in the estate at that time.

MR. HUNT: I think the court record is the best evidence, if the Court please.

CHIEF JUSTICE TERRELL: As I understand, the witness is testifying as to what his own knowledge is. I think he has the right to testify to that.

BY MR. HOPKINS:

Q Will you go ahead, please, Mr. Towle?

A The property that came into the possession of the curator included all of the furniture or furnishings, fixtures and equipment in the residence in South Miami, and included the residence itself, and included all of - - - a great deal of clothing and personal effects of Raymond Stengel, who had been living there, and who had gone to New Jersey.

There was also a Cadillac automobile, but Raymond had taken that with him; so, on that basis, the curator did not have physical possession of it.

Q Is that the same home that you have described and said that a couple of years before it was bought for \$56,600, or some such figure, as you testified to?

A Yes sir.

Q Then what did they proceed to do with it?

A They proceeded to liquidate it.

The curator - - - I forgot to mention, there was one other item of property that came into possession of the curator. It consisted of a large number of birds in an aviary; that was part of the house.

The curator, in turn, petitioned for an order authorizing him to sell the household furnishings, the birds, and ultimately, the home itself, and insofar as the Cadillac was concerned, there was a dispute there between the General Motors Acceptance Corporation and the curator, and it was ultimately decided that the car should be turned over to the General Motors Acceptance Corporation in New Jersey without requiring that it be returned to Florida.

Q You mentioned some birds, I believe. What type birds were these?

A I think they were described as love birds.

Q Had you visited the home to know, personally, whether the birds were there or not?

A No, I don't know. I was not familiar with the birds. They were not on the premises at the time I was there.

Q Incidentally, at this time, Mr. Towle, Mrs. Stengel was not in the State of Florida, and there was no expense for the upkeep of her at that time, was there, to the curator?

A At the time of the sale of these various assets you refer to?

Q Correct.

A No, Mrs. Stengel was not here; she was in the State of New York, with Mrs. Inez Stengel Gay, or some place designated by her.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: It's been determined, by inquiry of the State's attorneys, that this witness will probably be on the stand the balance of the morning, and at this time I move that we do now take an informal recess for a period of ten minutes.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: Gentlemen, you've heard the motion and the second. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted. The Senate will stand in recess for ten minutes.

Whereupon, the Senate stood in recess from 10:45 o'clock, a.m. to 10:55 o'clock a.m.

CHIEF JUSTICE TERRELL: Unless there is some question the Chair will declare a quorum present. Are you ready to proceed, Mr. Hopkins?

MR. HOPKINS: Yes sir.

If the Court please, we would like to now ask the Secretary to read Petition by Curator to Sell Certain Personal Property of Ward, filed in the Clerk's office of Dade County, Florida, August 31, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. In Chancery. Number 161416-A.

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents.

"Daniel Neal Heller, as Curator for Annie May Stengel, Plaintiff, vs. General Motors Acceptance Corporation, a New York corporation authorized to do business in the State of Florida, Defendant. Petition by Curator to Sell Certain Personal Property of Ward.

"Daniel Neal Heller, Esq., having heretofore been appointed as Curator for Annie May Stengel, an incompetent, would respectfully show unto the Court that:

"1. There is constructed on the East side of the home belonging to the Ward, and located at 8325 Cheryl Lane Drive, Dade County, Florida, an aviary in which is contained approximately fifty birds of various breeds and origins.

"2. Your Curator has seen to it that these birds have been properly fed and cared for during the period that your Curator has served as such.

"3. Nonetheless, these birds, many of which are breeders, require special treatment, care and feeding, which your Curator is unqualified, for lack of experience and training, to render.

"4. Your Curator believes, after consulting two experts on this subject, that unless the said birds are properly cared for, that there is great danger that these birds will die, or else be rendered valueless. Further, the hurricane and rainy season is approaching this area and there is great danger that severe storms may kill all of these precious birds.

"5. Your Curator would further point out that there are many unpaid bills for services rendered to the Ward which the Curator is unable to pay for because of lack of funds.

"6. Your Curator would further point out that he has had several interested parties appraise and bid for these birds. That up to the date of August 30, 1953, the highest price bid for the same was \$250; that on August 31, 1953, Mr. John C. Lucadema, Sr., owner of Bascom's Pet Shop (?) in this City did raise his bid to \$260. Your Curator is further happy to report that the Seminole Bird Farm, in West Hollywood, Florida, did today raise the offer from \$250 to \$275.

"WHEREFORE, all of these things being considered, your Curator respectfully petitions for an Order authorizing your Curator to execute a Bill of Sale of said birds to the Seminole Bird Farm, Box 310, Route 2, West Hollywood, Florida, for the sum of two hundred seventy-five dollars.

"(s) DANIEL NEAL HELLER  
"Daniel Neal Heller, Curator  
239 Shoreland Arcade Building,  
Miami 32, Florida"

BY MR. HOPKINS:

Q Mr. Towle, upon examination of the file in this case, have you been able to find any notice to any attorney or to anybody that the curator was going to apply to sell the birds of this old lady?

A Not - - - none, to the best of my knowledge, no.

MR. HOPKINS: If the Court please, we now ask the Secretary to read Order filed in this cause on the Circuit Clerk Docket, on August 31, 1953.

MR. LINN, Assistant to the Secretary, (Reading): "In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery. Number 161416-A

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs.

Annie May Stengel and Karl Raymond Stengel, Respondents.

"Daniel Neal Heller, as Curator for Annie May Stengel, Plaintiff, vs. General Motors Acceptance Corporation, a New York corporation authorized to do business in the State of Florida, Defendant. Order

"THIS CAUSE coming on to be heard upon Petition of Daniel Neal Heller, Curator setting forth that there are approximately fifty birds, located in an aviary at 8325 Cheryl Lane Drive, Dade County, Florida, which birds this Court has previously determined are the property of Annie May Stengel, an incompetent; and it appearing that unless these birds are properly cared for by experts trained in this field that there is danger that these birds will all die or become valueless; and it appearing that there are many bills charged against the said Ward which are unpaid for lack of funds; and it appearing that the Seminole Bird Farm in West Hollywood, Florida, has made the highest and best bid for these birds, and the Court being fully advised in the premises, it is thereupon:

"ORDERED, ADJUDGED AND DECREED that Daniel Neal Heller, as Curator for Annie May Stengel, an incompetent, be and he is hereby authorized to execute a Bill of Sale to the aforescribed birds to the Seminole Bird Farm, Box 310, Route 2, West Hollywood, Florida, for the sum of two hundred seventy-five dollars, and the said Daniel Neal Heller as Curator be and he is hereby authorized to deliver possession of the said birds to the said Seminole Bird Farm.

"DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 31st day of August, 1953.

"(s) GEORGE E. HOLT,  
Circuit Judge"

BY MR. HOPKINS:

Q Mr. Towle, do you remember what the curator next sold from this estate?

A The next sale was of the household furnishings.

Q Do you know what that consisted of, of your own knowledge?

A Well, I am fairly well familiar with that, yes.

The Stengel family had been collecting items of furniture and furnishings over a period of half a century, and - - -

MR. HUNT: If Your Honor please, the file is before the Court, showing precisely what furniture the curator dealt with.

I think the question is objectionable.

CHIEF JUSTICE TERRELL: He's testifying as to his own knowledge, Mr. Hunt. I think he has a right to do that.

SENATOR JOHNS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Johns.

SENATOR JOHNS: I would like to know how many hours it's going to take to read all these records. It looks to me like they've filed them; any member of the Court here could read them.

I mean, everybody's time is valuable here, and it's just taking up time, reading one record right after another, when, if you file them, I can go read them, or any member of the Court can go read them.

MR. HOPKINS: I might say this, that we apologize for taking up any undue time, but we think it's awfully important that this Court should get the contents of these pleadings, and that's the only way they'll understand the case, is to have the pleadings read.

We'll try to speed it up, of course, by asking this witness, generally, the contents of these different articles, but counsel has objected to that. We would like to proceed to - - - if permissible, to read these pleadings.

MR. HUNT: If Your Honor please, may I make a statement?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: In line with the Senator's thought, it becomes obvious that with the picking out of various documents from

the court record by the prosecution, that the Respondent will be required to pick out the balance of them, and if the program of reading all this material which counsel on either side wishes to call to the attention of the Court, is adhered to, it will very greatly prolong this proceeding.

MR. HOPKINS: May we proceed, Your Honor?

CHIEF JUSTICE TERRELL: Yes, you may proceed, if there's no motion to the contrary, why, I think it's quite important to this Senate, as a Court, to be apprized of the contents of each document, and then, there are other documents that counsel for the Respondent will want read, and certainly, should have the opportunity to have them read.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: In line with the suggestion made by Senator Johns, the records are before the Court.

Wouldn't it be possible for the Court to authorize the State's attorney to explain, as briefly as possible, the contents of the records which he desires to have read, or have introduced, or have called to the attention of the Senate, and then, if the defense desires to have other records read or explained, let the defense, too, explain those records. Wouldn't that expedite the thing, now?

CHIEF JUSTICE TERRELL: I think that would expedite it some in that respect, Senator Davis, if Mr. Hopkins is prepared to give the substance of these documents in a way to give the Senate pictures of what he wants before them.

MR. HOPKINS: I really feel that this witness is probably better qualified to do that, because he has been into the case, knows the details, which order contains what, and if there's any question about it, it will be questioned by counsel on the other side.

CHIEF JUSTICE TERRELL: Who's that, you say? Mr. Towle?

MR. HOPKINS: Yes sir, Mr. Towle, yes sir, the witness.

CHIEF JUSTICE TERRELL: Oh, you want him to give it?

SENATOR DAVIS: I'd like to put that in the form of a motion, Mr. Chief Justice, and then, if the defense desires any explanation for any record, they can ask the witness to explain, or put on some other witness that can explain it.

SENATOR JOHNS: I second the motion, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: The motion is that Mr. Towle be permitted to give the substance of these documents that he certainly seems familiar with, and then, the Respondent, then, can do likewise when he puts on his testimony.

SENATOR CONNOR: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Connor.

SENATOR CONNOR: Are we going to attempt here, as members of this Court, to tell the prosecution how they're going to present their case, or to tell the Defendant how they're going to proceed with their defense in the case?

SENATOR BELSER: That's what we're up here for.

SENATOR CONNOR: That's an unusual way of order, to tell them how they can present their case, in my opinion.

CHIEF JUSTICE TERRELL: Are counsel for the Managers satisfied with Senator Davis' motion, that it will accomplish the purpose, if it should?

MR. HOPKINS: With one or two possible exceptions, in short orders, we think that's satisfactory.

CHIEF JUSTICE TERRELL: Counsel for the Managers, then, being satisfied with that procedure, Senator Connor, I don't think there should be any objection to its being adopted.

You've heard Senator Davis' motion, and the second. All in favor of it, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Now, the procedure is that the witness here, Mr. Towle,

will explain certain of these instruments that he's familiar with, and those that he's not familiar with, Mr. Hopkins, or some other one of the Managers will explain.

MR. HOPKINS: May I proceed, Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Yes.

BY MR. HOPKINS:

Q Mr. Towle, do you have in your file, either the order, or a synopsis thereof, dated September 10, 1953?

A Yes, I do.

Q Do you also have in your file Petition for Leave to Sell Real Estate and Sell Personal Property, filed in the Circuit Court, September 10, 1953?

A I do.

Q Mr. Towle, how many days actually transpired, from the record there, from the time that this lady was first declared incompetent, or the petition was first filed, and the time that the birds were sold?

Can you give us that?

A Approximately one month.

Q And how long was it from the time that the petition was filed, until the home was sold by the curator?

Can you give us that?

A Approximately two months.

Q Now, referring to the petition, dated September 10, 1953, can you give us the substance of that petition?

A Do you refer to the petition of September 10? Is that correct?

Q September 10, 1953, Petition for Leave to Sell Real Property and to Sell Personal Property.

A That is a petition filed by the curator, in which he recites that prior thereto, on August 5, 1953, he had, as directed by the Court, executed Commissioner's Deed to Annie Mae Stengel, conveying the residence that was described as Lot 5, Ponce de Leon Heights; and proceeded to describe the house, and described the mortgages that encumbered it, and recited that there were mortgage payments which were due and past due, and stated that there had been no success in the matter of obtaining funds from the Stengel trust, to the trustees of Fidelity Union Trust Company, and stated that it would be best, in order to pay the bills that were outstanding, for the furnishings and the residence itself to be sold, and for the best interests of the Ward.

The curator says that it would be preferable, in the manner of effecting this sale, to make a separate sale of the furnishings, on the one hand, and the house on the other.

The curator recited that the sale of the residence could be best accomplished by giving exclusive listing to a designated broker which, in turn, would provide for seven and a half per cent commission; and then went into a further discussion of the sale of the personalty, and proposed that it be sold to Lester Hart Galleries for \$4500; and the curator concluded that document by asking for the instructions of the Court.

Q Does the file reflect that anyone was given notice of the hearing on that petition filed by the curator - - -

A It does not.

Q - - - before Judge Holt?

A No, it does not.

Q Were you in Miami at that time?

A Yes, I was in Miami at that time.

Q Does the file reflect any notice to the incompetent or any of the parties, or any attorney of record, or to yourself?

A I do not believe that it does.

Q Would you know - - -

A It would not - - - I might say that it would not have any - - - the curator would not have had occasion to give notice to me, because actually, I hadn't filed my appearance in the pending action, although, of course, he was familiar with the fact that I was then representing the Stengels.

Q Will you refer to the order of Judge Holt, dated September 9 - - -

A Yes, I have that.

Q - - - which, apparently, was filed the day before the petition was even filed in the Clerk's office, is that correct?

A My notations on that order were that it was signed on September 9, 1953, and filed for record on the 10th of September, which was the date that the motion was also filed.

Q Will you now refer to the order of September 10, 1953, signed by Judge Holt - - -

A Yes sir.

Q - - - and tell us the contents of that order?

A It recited that the Court believed that the curator had fully and fairly conferred with various appraisers and auctioneers and registered real estate brokers; and specifically authorized the curator to sell the personalty, meaning the household furniture, furnishing and equipment contained in the residence, to Lester Hart Galleries for \$4500; and it also authorized the curator to give a broker named Ted Meares an exclusive listing for the sale of the property.

Q How much was this broker going to be paid, if the order covers that, for this exclusive sale for this property?

A The commission was designated as not to exceed seven and a half per cent.

Q Will you now refer to Petition to Withdraw as Counsel for Karl Raymond Stengel, as filed September 14, 1953?

A Yes, I have that.

Q In substance, what does that cover, please?

A That was simply a petition filed by John Sullivan and Ben Carey, who had entered the case at the outset as attorneys for Raymond Stengel, and in which they request that they authorize - - - that they be authorized to withdraw as counsel for him, and in order to permit me to appear of record as counsel for him; and they set forth that they believe they should be allowed certain reasonable fees, and designated that as - - - they thought "reasonable" would be \$500; and they further stated that they thought the fee, if so allowed, should be declared a lien against any funds that would be due Raymond Stengel out of the Stengel estate.

Q I notice order, dated September 16, 1953, authorizing withdrawal of the file from the Clerk's office. Will you tell us, in substance, what that order does?

A Well, the file was in demand. I was trying to find out what had taken place, and what could be done; the curator wanted the file, and in this particular instance, I had secured the file and hadn't had time to digest it; so, the curator asked for an order that he be given the Court file and the transcript of testimony, in order that he could have same in order to go to New Jersey, where he was scheduled to appear in proceedings in that state that were instigated by the Trust Company.

The Trust Company, necessarily, had to pay out the income of this trust, and had named the several parties making claim thereon as Defendants, including the curator appointed by the Dade County Court.

Q Did the Court, Judge Holt, order any money paid to the attorneys, John C. Sullivan and Benjamin E. Carey, under this ruling in the case?

A Yes, he found that \$500 would be reasonable compensation for the services rendered by them to Raymond Stengel, and the order recited that said amount be a lien against any distributive share of the estate payable to Raymond, and upon any interest which Raymond may have or claim to have in the assets of the estate.

Q Would you explain to the Court the proceedings that were taking place in New Jersey?

A Well, the proceedings in New Jersey, as I said, were started by the Trust Company that was acting - - - had always acted as the trustee for - - -

MR. HUNT: If Your Honor please, may I inquire as to whether or not this witness is speaking from his own knowledge?

CHIEF JUSTICE TERRELL: That's my understanding.

BY MR. HOPKINS:

Q Are you speaking from your own knowledge only?

MR. HUNT: As to the New Jersey proceedings?

THE WITNESS: Well, as to these New Jersey proceedings, I have knowledge to the extent that I was in the bank in New Jersey and talked with the trust officer - - -

MR. HUNT: Your Honor, that would be hearsay unless the witness was present in Court, or personally examined the Court record.

MR. HOPKINS: Judge, I wonder if the witness might continue. I'm not sure he was through, but - - - is there anything else of personal knowledge you have, Mr. Towle?

THE WITNESS: I also corresponded with a man named Roland, who is an attorney in Newark, and who represented - - -

MR. HUNT: It's still hearsay.

THE WITNESS: - - - Raymond Stengel there in an effort to defeat the efforts of the - - -

MR. HUNT: I object to any further, volunteered testimony by this witness, if Your Honor please, as to the New Jersey proceedings, because his testimony is based entirely on what others told him.

MR. HOPKINS: If the Court please, we don't think it's important enough to pursue. We'll go to another subject.

BY MR. HOPKINS:

Q Now, you - - - do you have in your file a petition for ratification of deposit receipt and certain other acts, filed November 5, 1953, in the Clerk's office in Miami?

A I would like to - - - I don't have a copy of that. I would like to see the Court file on that.

I am familiar with this particular pleading, which is a petition for ratification of a deposit receipt contract made by the curator, which calls for the sale of the real property for \$42,000, and sets forth that the sale will necessarily be subject to the outstanding mortgages, and provides that the broker should have a brokerage commission of \$1,000, and provides that that should be done subject to further order of the Court.

Q You had filed your appearance in the case prior to the filing of this petition, had you not, Mr. Towle?

A I did not note the date of that petition in the file, the filing of it.

Q Petition filed Novemebr 5, 1953.

A Yes, I had filed my appearance over a month prior thereto.

Q Were you given notice of the filing of this petition?

A I was not.

Q Did you appear at the time the order was entered, pursuant to this petition?

A No, I did not.

Q Did you know, of personal knowledge or otherwise, that such an order was being applied for?

A I did not.

The only fashion I learned about it was that I read in the Miami Review that an order had been entered, and upon checking at the Court House, I found that it was an order, authorizing and confirming the sale of this real estate.

Actually, there were two orders. The first one authorized that the sale be made in accordance with this deposit receipt contract; the second order approved the sale.

Q Was the sale approved before you even knew that application was being made to sell?

A It was.

Q And you were the attorney of record in the case at the time?

A I was.

Q Will you refer to order of November 5, filed in the Clerk's office on November 5, signed by Judge Holt?

A May I see that, please?

That is an order entered by Judge Holt on November 5, 1953, confirming that the curator be authorized to proceed to sell the real property in accordance with the deposit receipt contract that he had already entered into.

Q Was the sale then confirmed by Judge Holt?

A It was.

Q What did the real estate bring, on that confirmation of Judge Holt?

A It brought a price of \$42,000.

Q And that was the same home that Mrs. Stengel paid \$56,600 for two years previously?

MR. HUNT: If Your Honor please, that's jury argument. It's repetitive of things that have been testified to here about three times.

CHIEF JUSTICE TERRELL: The objection is overruled. The witness can testify.

THE WITNESS: It is.

BY MR. HOPKINS:

Q The same place?

A It is the same place.

Q Now, Mr. Towle, do you have a break down of the closing statement on this home, to see what was realized upon the sale of this home, to the estate?

A I have that from the deposit receipt contract that I observed was attached to the petition. I do, yes. Otherwise, it would be - - -

Q You do have it?

A No. If I had the Court proceeding in front of me - - -

(The Court file was handed to the witness by counsel.)

BY MR. HOPKINS:

Q You do have the closing statement on this transaction?

A Yes sir, I do.

Q Will you tell us how the funds were distributed in that closing statement?

A The closing statement reflects a purchase price of \$42,000; gives an additional credit to the seller for unearned insurance premium, of \$78.40, and debits the seller with the unpaid balance on the first mortgage, in the amount of \$24,240.74, and the unpaid balance of the second mortgage, in the amount of \$16,347.62, and shows that the original deposit made by the buyer, of \$4200, was more than sufficient to cover the exact amount due by the buyer; and accordingly, of the \$4200, \$2,709.96 was returned to the buyer, so that the actual net fund required of the buyer was something slightly less than \$1500, out of which the seller, the curator, was paid \$1000 commission.

Q Let's see if I've got the figures right in this way - - - I jotted them down:

The sale price was \$42,000?

A That's right.

Q Deduction for the first mortgage, \$24,240.74?

A Right.

Q The second mortgage, \$16,347.62?

A Correct.

Q \$1000 to the exclusive seller that sold it through the sale?

A Correct.

Q Making \$41,588.36?

A I didn't add it, but that would be approximately correct, yes sir.

Q Leaving approximately \$499.64 profit - - -

A Right.

Q - - - from the sale of that home?

A That wouldn't be profit.

Q Are you following the figures? That's gross income from the sale?

A The gross proceeds from the sale, that were received by the curator, yes sir.

Q That didn't take into account documentary stamps and the other costs of closing, correct?

A No sir.

Q Now, does the file reflect that the furniture was sold?

A Yes, it does. The furniture was sold, in conformance with the order entered by Judge Holt, to Lester Hart Galleries.

Q After the sale of the furniture, Mr. Towle, and the birds, and the home, do you have a statement of the net amount in the estate prior to paying attorney's fees and curator fees?

A I do.

Q How much was the net realized from all the personal property, including the furniture, birds and home?

A \$5,312.71.

Q Does the file reflect that after selling this property, these three items, that the curator applied to have Judge Holt set a fee for his services in handling this matter?

A It does.

Q Was notice given to anyone on the hearing of this petition to set fees?

A Yes, it was.

Q Did you appear at that time?

A I appeared at the hearing on that motion, as attorney for Raymond Stengel and Henry Ivan Stengel.

Q What fee was allowed the curator for his services?

A A fee of \$10,000.

Q And who was that fee allowed to?

A Daniel Neal Heller.

Q Have you got the date of that order?

A I believe the order was entered on December 22, 1953.

Q In other words, these services of Heller's went from July 27 to December of the same year, is that correct?

A That is correct.

Q And three items of property were sold by the curator?

A That's right.

Q Who purchased this home?

A It was recited in the order confirming the sale. I do not have that at hand.

Q What other fees were allowed in this estate after the curator was allowed \$10,000?

A Well, at the same time as the allowance of the fee to the curator, a fee of \$6,000 was allowed to George McCaughan for his services rendered in behalf of the Petitioners, as he represented them when they filed the petition for appointment of the curator, and I believe that the motion and the order also included his services rendered as attorney for the curator after his appointment, because immediately upon the appointment of the curator, Mr. McCaughan became the attorney for the curator.

Q Now, is that the same Mr. McCaughan that represented one of the parties at the beginning of the litigation?

A He represented both of the Petitioners at the beginning of the litigation.

Q And they are the same Petitioners who left the state and had an order that would have put them in jail if they returned to the state?

A That's correct.

Q And he later represented the curator?

A Yes sir.

Q How much of a fee was he allowed, then, for representing the curator?

A Well, the total fee allowed was \$6,000, and it did not distinguish between the services that he rendered for the Petitioners and the services he rendered as attorney for the curator. In other words, there was no allocation of - - - some portion of the \$6,000 for one service and some for the other, it was just a lump sum.

Q Incidentally, did it become important as to whether or not this lady was a resident of Florida?

A It apparently did.

Q Was there any allegation in the petition or complaint that she was a resident of the State of Florida?

A To the best of my recollection, there was not.

Q Was there an official finding that she was a resident of the State of Florida?

A There was.

Q Was that after she had gone back to the State of New Jersey?

A That's correct. In fact, it was a finding made on August 24, 1953.

Q That was sometime after the case was filed?

A Yes sir.

Q Now, why did it become important that she be a resident of Miami, Dade County, Florida, in this case?

A I didn't catch that question.

Q I say, why was it so important to have her - - - establish for her - - - establish her as a resident of Dade County, Florida?

A In order for the Court to have jurisdiction of her person and property.

Q In the meantime, had she gone back to New Jersey and invoked the help of the Court there?

A She had gone back to New Jersey, but whether or not the suit by the Fidelity Union Trust Company had been filed as of that date, I am not certain, although it apparently had, because Mr. Heller had petitioned the Court down here for authorization to appear in New Jersey and take part in those proceedings. So, it was - - - I can answer that that the proceedings were pending in New Jersey, instituted by this Trust Company.

Q After allowing that \$10,000 curator fee, and \$6,000 for the attorney for the curator, who had started out as attorney for the Petitioners in the start of this proceeding, how was the money distributed on that?

A The Court ordered that the curator divide the proceeds left on hand between the curator himself and George McCaughan, as attorney for the curator, and as a result of that, the curator's report shows that \$2,656.35 were paid - - - the amount was paid to George McCaughan, and \$2,656.36 was paid to the curator personally.

MR. HUNT: May it please the Court, I would like to ask Mr. Hopkins if he didn't inadvertently overlook having this witness testify as to the amount of money allowed to him, or did you intend to ask him?

BY MR. HOPKINS:

Q Would you cover that? Let's get the fees to every attorney and everybody in the case, if you have a resume of that?

A Yes. As was stated, at the time John C. Sullivan and Ben Carey withdrew from the case, they requested and an order was entered, allowing them a fee of \$500 for services rendered to that point, and that would be charged as a lien against any distributive share due Raymond.

The next two fees allowed were the one to the curator and the one to George McCaughan.

Sometime thereafter, I filed a petition in the same proceedings, requesting that the Court determine upon a fair and reasonable fee to be allowed me for my services rendered in behalf of Raymond Stengel and Henry Ivan Stengel, and upon consideration of the motion, or petition, the Court entered an order determining that \$4,000 was a fair and reasonable fee to be paid me.

Q Are there any other attorney's fees, now, other than - - - further in this case, that haven't been testified to?

A Not in the Dade County proceedings, no. Other fees were allowed in the New Jersey proceedings, but that was entirely beyond the control of the Circuit Court of Dade County.

MR. HOPKINS: Now, with the indulgence of the Court, I would like a short order read by the Secretary; that is called Final Judgment, dated July 28, 1954, and signed by Judge Holt.

MR. LINN. Assistant to the Secretary. (Reading): "In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County. In Chancery. Number 161416-A.

"Henry Ivan Stengel and Inez Stengel Gay, Petitioners, vs. Annie May Stengel and Karl Raymond Stengel, Respondents. Final Judgment

"On December 18, 1953, the undersigned Circuit Judge entered his order awarding fees to George C. McCaughan, as attorney for Petitioners and for Curator, in the amount of \$6,000, after having found that the services rendered by the latter were at the request and direction of Inez Stengel Gay, Henry Ivan Stengel, and were also for the benefit of Annie May Stengel, and were necessitated because of the acts of Karl Raymond Stengel, and the Court directed the Curator to pay one-half of the funds in his possession as such Curator on account of the fee allowance made to the said George C. McCaughan and directed in said order that the latter would be entitled to a final judgment against Inez Stengel Gay, Henry Ivan Stengel, Karl Raymond Stengel and Annie May Stengel, an incompetent, jointly and severally, for such amount remaining due and owing on the said attorney's fees after the partial payment had been made by the Curator from the funds in his possession.

"It appears from the sworn motion of the said George C. McCaughan that on January 7, 1954 he was paid the sum of \$2,656.35 by Daniel Neal Heller, Curator for Annie May Stengel, leaving unpaid the sum of \$3,343.65 on the attorney's fees as aforesaid and for which sum said George C. McCaughan is entitled to the entry of a final judgment inasmuch as the parties named above are delinquent in the payment of said amount. Now, therefore, it is

"CONSIDERED, ORDERED AND ADJUDGED that George C. McCaughan do have and recover of and from said Inez Stengel Gay, Henry Ivan Stengel, Karl Raymond Stengel and Annie May Stengel, an incompetent, jointly and severally, the sum of \$3,343.65 for which sum let execution issue.

"DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of July, 1954.

"(s) GEORGE E. HOLT,  
Circuit Judge"

BY MR. HOPKINS:

Q Incidentally, Mr. Towle, although you were awarded an attorney's fee in the proceedings, were you paid any of these sums realized from the sale of that property?

A I was not. As a matter of fact, the order did not state that I was entitled to any decree or judgment against the estate, or any requirement that the curator pay me any portion. I was simply awarded a judgment decree against my own clients, Karl Raymond Stengel and Henry Ivan Stengel.

Q Now, Mr. Towle, I believe that the testimony was that Mr. Heller had been awarded \$10,000, and he was only allowed to get half of everything left in the estate, of \$2,656.36. Was he awarded a judgment, under date of September 8, 1954, by Judge Holt, against Inez Stengel Gay, Henry Ivan Stengel, Karl Raymond Stengel and Annie May Stengel, for \$7,343.64?

A He was.

Q Has that amount been paid?

A I understand that it has.

Q Have you been paid your fee?

A Well, I went up to New Jersey and hired a New Jersey attorney to sue for it, and - - -

MR. HUNT: I object to the answer, if the Court please.

The question was whether he had been paid his fee or not.

BY MR. HOPKINS:

Q Will you explain how you got paid, if you were paid?

A I wanted to explain that I didn't get the full amount.

The day it was to come to trial in New Jersey, the New Jersey attorney called me and said - - -

MR. HUNT: I object to testimony about the New Jersey attorney, if Your Honor please. It's hearsay evidence.

CHIEF JUSTICE TERRELL: The objection is well taken.

BY MR. HOPKINS:

Q Would you just state what part, if any, of the fee you received?

A I received \$3500 of the \$4000.

Q Now, Mr. McCaughan, who represented the curator in this matter, was allowed \$6,000; he was paid approximately \$2,000, and judgment for the remainder. Did he collect the remainder from these people?

A Yes, he did.

MR. HOPKINS: If the Court please, this is the stage where we would like a short recess to decide whether or not we will ask further questions of this witness, and I note that 12:00 o'clock has arrived.

SENATOR EDWARDS: Mr. Chief Justice, point of order.

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

Court's 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 in the Chair.

By direction of the Chief Justice the Secretary called the roll and the following Senators answered to their names:

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

SECRETARY DAVIS: Quorum present, Mr. Chief Justice; thirty-five present.

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.

CHIEF JUSTICE TERRELL: Mr. Hopkins, you can proceed.

MR. HUNT: May it please the Court - - -

CHIEF JUSTICE TERRELL: Judge Hunt.

JUDGE HUNT: - - - counsel has just announced that they have no intention of calling to the stand Circuit Judge Grady Crawford, who has been in attendance here as a Prosecution witness, and we will agree that he be released, if that's what they wish to do.

MR. HOPKINS: Is the Court ready to proceed with the witness?

CHIEF JUSTICE TERRELL: Go ahead.

Thereupon,

LLOYD A. TOWLE

resumed the stand and testified further as follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. HOPKINS:

Q Mr. Towle, in this Stengel file that you have been testifying about, do you find any place in the file where any guardian ad litem was appointed for Mrs. Stengel?

A No, I do not.

Q Do you find that Mrs. Stengel at any time, or do you know of any time that she was recommended by a lawyer in this entire proceeding?

A Well, the lawyers that preceded me in representing Karl Raymond Stengel, Ben Carey and John Sullivan, I don't believe that they appeared on behalf of Mrs. Stengel; their efforts were such that were designed to aid her, but I don't believe that you could say that they represented her at all.

Q Do you remember who bought this furniture from this estate?

A Yes, Lester Hart.

Q Do you know whether or not that is the same Lester Hart who sold furniture to Mr. Heller, the curator in the Dowling case?

A Yes sir, I do.

Q Is he the same man that sold Mr. Heller furniture, who was curator of the Dowling estate at the time?

A He is.

Q One thing I wanted to clear up:

Didn't you tell me that Mr. McCaughan was attorney for the Petitioner in this case, Mrs. Gay?

A I did; for Mrs. Gay, and for her uncle, Henry Ivan Stengel, the Petitioners.

Q Is he the same Mr. McCaughan who was allowed a fee, as attorney for the curator of the estate?

A Yes - - - well, his fee was awarded for services rendered, and as I say, there was no apportionment of the fee between the services he rendered to the Petitioners, which brought about the appointment of the curator, and the services he rendered the curator from that time forth.

Q Is that the same attorney that was representing the curator when the curator had Mrs. Gay put in jail for contempt?

MR. HUNT: If Your Honor please, this is repetition right along, and I don't mind, if Your Honor wants to hear it.

CHIEF JUSTICE TERRELL: Counsel will confine themselves to as little repetition as possible. However, if you think it's material to your case, well, go ahead.

THE WITNESS: Do I understand that I'm to answer that question?

BY MR. HOPKINS:

Q The question was whether or not that was the same Mr. McCaughan who represented the curator, who cited Mrs. Gay for contempt?

MR. HUNT: We will admit that the one Mr. McCaughan mentioned in the file is the one and same as the one Mr. McCaughan.

MR. HOPKINS: Do you admit that that's the same Mrs. Gay whom he represented at the beginning of the case? Is that correct?

MR. HUNT: That's correct.

THE WITNESS: That's correct, yes.

MR. HOPKINS: You may inquire.

CHIEF JUSTICE TERRELL: Before you take your turn, Mr. Hunt, I have a couple of questions.

MR. HUNT: Very well.

CHIEF JUSTICE TERRELL: The first question is from Senator Johns, of the Fifteenth District, which reads:

"Were efforts made by any of the parties to have the Florida Supreme Court review the orders entered by the Respondent?"

That's - - - if you'll answer that question, Mr. Towle.

THE WITNESS: No appeal was taken to the Supreme Court of the State of Florida from the orders entered, no.

CHIEF JUSTICE TERRELL: The second question:

"Is it your testimony that" - - - this is addressed to you, Mr. Towle - - - "Is it your testimony that the Court ordered the sale of the birds, furniture and real estate without any notice to attorneys for the estate?"

THE WITNESS: That is my testimony.

CHIEF JUSTICE TERRELL: That's all, Mr. Hunt.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Towle, your client in this matter was Karl Stengel, was it not?

A That's right.

Q What was his full name?

A Karl Raymond Stengel.

Q And how long had you represented him?

A I had represented him off and on over a period of ten years.

Q Was he an admitted sexual pervert, Mr. Towle?

A He was.

Q And he was living with his mother, Annie May Stengel, the Respondent in this chancery suit?

A That is correct.

Q And living there with him was another man called "Peter," was it not? "Yes" or "No."

A Well, I can't necessarily say "Yes" or "No."

I never saw Peter at the residence, but I - - -

Q Do you know Peter?

A Yes, I do.

Q Tell the Senate what you know about Peter.

A Peter has been in my office, accompanying Raymond Stengel, on possibly three or four occasions, and I understood and believed that he made his home with the Stengels.

Q Then, your answer is that its your information, from your own client, that he did make his home with your client, Karl Stengel, and his aged mother, is that correct?

A That's correct.

Q Will you state whether or not you ever heard Peter referred to by your client, Karl, who now is afraid to come back to Florida, as his wife?

A No, I never heard that reference made.

As a matter of fact, you may have misunderstood my previous answer in that - - - regarding Karl Raymond's sexual bents, I never discussed it with him, but there was no question about it.

Q Well, what's your information, that makes no question about it?

A His appearance, his speech, information I received from his brother, Ivan.

Q And the fact that Peter was living with him?

A Well, that wouldn't necessarily make him a homosexual, but - - -

Q But it wouldn't hurt, though, would it?

A No, it wouldn't hurt.

Q How old was Karl?

A Karl was about fifty-eight to sixty years of age.

Q Had Karl ever been married?

A No sir.

Q How old was Peter?

A I would estimate that Peter was about twenty-six years of age.

Q Twenty-six?

A Yes. That's my estimate, from just observing him.

Q Would you describe Peter's physical appearance?

A Well, he did not have any pronounced homosexual characteristics, such as anyone would observe in Raymond. As far as his physical appearance was concerned, he was rather slight, and if you would distinguish between that he looked very masculine or very - - - or slightly feminine, I think I would veer toward the fact that he looked slightly feminine.

Q Were you in Court when testimony was taken before Judge Holt in this matter - - -

A No.

Q - - - at which time photographs of your client, Karl, who is kept out of Florida, and Peter were introduced?

A No sir, I was not.

Q And those are the two gentlemen who were living with Annie May Stengel at the time two other children of Annie May Stengel complained of conditions, and asked the Court to remedy the situation, is that correct, and to appoint a curator for her?

A They are the two men that were occupying the same residence as Annie May.

Of course, the people asking for the relief were not both

children; one was a child, and the other was a grandchild.

Q Henry Ivan Stengel was the child?

A Yes sir.

Q And the grandchild was Inez Stengel Gay, the other Plaintiff?

A Yes sir.

Q Do you know how many rooms the house had, in which Mrs. Stengel was domiciled with your client, Raymond, and his friend, Peter?

A No, I frankly, do not.

Q Have you ever been in the house?

A Before they bought it.

Q Well, before or after; do you know how many rooms it has?

A No, I couldn't say definitely.

Q Could you approximate the number of rooms?

A Yes, I would approximate it at ten.

Q And where was it located?

A On Cheryl Drive, I believe was the address. I can give you the exact address.

Q Where is that? Miami Beach?

A No, that's in South Miami.

Do I understand that you want me to search for the exact address?

Q Well, if it's not asking too much. If it's going to take a great deal of time, I'll withdraw the question.

I'll withdraw the question.

Now, then, about the - - - what is it, the Sun Ray Sanitarium?

A The Sun Ray Park Sanitarium.

Q How many times have you been out there?

A I would say I've been there about twenty times.

Q What was the occasion, or what were the occasions?

A One of the occasions was that I was guardian for an incompetent.

Q Who was that?

A Who was it?

Q Yes.

A Thomas J. O'Neill.

Q Who had appointed you guardian for Thomas J. O'Neill?

A Judge Dowling.

Q Who?

A Judge Dowling.

Q County Judge?

A County Judge.

Q And was your ward out at the Sun Ray, under Judge Dowling's order?

A Not according to his orders, no. I would put him out there occasionally when the auspices of the Miami Retreat and the Miami Medical Center, and the other place of a similar kind, when he had tried all those, and they hadn't been successful, I'd put him out in the Sun Ray Park Sanitarium.

Q Did Judge Dowling approve of your action?

A He did, sir.

Q I believe you testified that you saw a number of elderly and incompetent people out there?

A That's right, sir.

Q Perhaps, a number of elderly, crippled people?

A I can't recall seeing any crippled people out there. There may have been an old lady confined to a wheelchair, that I recall.

Q Well, if you had been Judge, and had appointed and had adjudicated an elderly person as incompetent, who was - - - could not take care of herself, where would you have sent her?

A Well, as a matter of fact, I would have sent her to a place out on Southwest Eighth Street. It's run by a man that used to be a builder on the Beach, named Lester Prue.

Q How far out is it?

A It's about Forty-eighth and Southwest Eighth.

Q That's a new place, that was not even in existence in 1953?

A I was wondering about that myself. I can't be sure whether it was or not.

Q I can.

Where else would you have sent her?

A Places in Dade County are not very adequate, and they're not very good.

Q Isn't it true, that's one of the problems we have there?

A It is indeed, sir.

Q Mr. Towle, I hand you the Stengel Court file, from which you have testified at some length, and I'll ask you to turn to Page 183 and state what you find.

A I find a pleading entitled "Appearance," signed by me; requests that the Clerk of the Court please enter my appearance as attorney for Karl Raymond Stengel, one of the Respondents in the cause.

Q Is that all it says?

A And it says, in the certification portion:

"I hereby certify that copies of the foregoing appearance were mailed by me" - - - "were mailed on this 18th day of" - - -

Q Well, just - - - that's just the certificate of service to other counsel in the case, is that right?

A That's right.

Q Have you read the entire appearance? Read the body of the appearance, will you, please?

A Yes sir.

"The Clerk of the above styled Court will please note and enter my appearance as attorney for Karl Raymond Stengel, one of the Respondents in the above entitled cause."

Q Is that followed with your signature?

A Followed by my signature.

Q Very well.

Now, you have in there in that file a receipt signed by you, acknowledging receipt of that Court file. Would you find that, please?

A Would that have been before or after I filed my appearance, do you know?

Q You'll find it on Page 100.

A Yes, I find that.

Q Would you read that receipt to the Senate, please?

A "I, Lloyd A. Towle, 1000 Lincoln Road, Miami Beach, Florida, having heretofore filed an appearance as attorney of record for Karl Raymond Stengel, and I, Lloyd A. Towle, desiring to have the opportunity to study the Court file in this case, familiarize myself with the facts therein, hereby acknowledge receipt of the said Court file from Daniel Neal

Heller, curator in this cause, and promise to return the same to the said curator on or before noon on September 29, 1953.

"Dated at Miami, Dade County, Florida, this 24th day of September, 1953."

Q Now, would you please turn to Page 184 and state to the Senate what you find there?

A I find a pleading entitled "Petition of Attorney for Allowance of Fee and for Permission to withdraw as Counsel for Party."

Q Is that your petition for allowance of fees?

A It is, sir.

Q Was that filed on February 24?

A 1954, that's right.

Q Is that correct?

A Correct.

Q Now, we have mentioned "appearance," "receipt," and your petition for allowance of fees?

A (The witness nodded affirmatively.)

Q Will you examine that Court file and state to the Senate what other paper you filed before the Court?

A I don't believe it's necessary for me to examine the file in order to determine that.

Q Very well. Answer the question, then.

A None.

Q So, the sum total of your paper filings in the case in which you received a fee of \$4,000 upon your own application, were the appearance, the receipt, and those two items were followed by your petition for allowance of fees, is that correct?

A I believe that's correct.

Q Now, I'll ask you to examine the files, or search your own, if you will, and state to the Senate how many appearances you made before Judge Holt, or before anyone else in connection with this case, from the time of your appearance to the time you filed the petition for allowance of fees?

A I believe that the first appearance that I made was on the hearing held on the petition of John C. Sullivan and Ben Carey to withdraw as counsel, and at the time - - -

Q The question - - - that was on September 18 that Sullivan and Carey withdrew as counsel, was it not?

A Yes sir.

Q The question was to advise the Senate the number of appearances you made before Judge Holt, or any other Judge, subsequent to the time Carey and Sullivan got out of the case and you got in?

A All right, that's the first appearance, that I just mentioned.

Q That is not subsequent to your appearance, to your written appearance?

A The point is, I was served with notice by them.

Q That was a courtesy by the retiring attorneys, who had arranged with Karl Raymond Stengel and you for you to take their place, is that correct?

A That's correct.

Q Well, that was more of an interested appearance on your part, wasn't it? It had nothing to do with the litigation?

A It had nothing particularly to do with the litigation, because he had no objection to their withdrawing, and they were anxious to withdraw.

Q All right, sir, go right ahead.

A The hearing on the motion of George McCaughan for the awarding to him of fees, and requesting the Court to authorize his withdrawal as attorney for the curator, a subsequent hearing on the petition of the curator for Judge Holt

to assess and determine his fee, a hearing on my own motion for authority to withdraw, and request that the Court set my fee. As far as I can determine, unless there were intermediate hearings pertinent to the Cadillac automobile, I do not believe that there were any hearings that I attended.

Q Did you attend the hearing on Mr. McCaughan's petition for award of fees and to be - - - to retire from the case?

A Yes sir.

Q Were you present when he presented his petition and affidavit for fees?

A Yes sir.

Q Tell the Senate what objection you interposed?

A Well - - -

Q From the Court files, if you please.

A The Court files do not reflect the objections.

Q Did you file an objection?

A An objection to his being authorized to withdraw, and for the Judge to set his fee?

Q Yes sir.

A No, I filed no objection to that. What objection would be in order?

Q You're on the witness stand.

And then - - -

A I filed none.

Q Then, after the Court had acted, did you file any exception or ask for a rehearing?

A I did not.

Q Did you take an appeal?

A I did not.

Q You say you were at Mr. Heller's hearing on his petition?

A Yes sir.

Q Didn't you testify this morning that you were given no notice whatever of the applications of these gentlemen for fees?

A I did not.

Q Were you given notice?

A I was given notice.

Q By Mr. McCaughan, the Master?

A By Mr. McCaughan, as attorney, and by Mr. Heller.

Q Mr. Heller, the curator?

A The curator, correct.

Q And you were present on those two occasions?

A Yes sir.

Q Mr. McCaughan filed a rather lengthy petition and several professional affidavits in support of his petition, did he?

A He did, sir. That is, the affidavits were not filed at the time of his petition. As I recall, the affidavits were filed at the time of or after the hearing.

Q They were presented to the Court?

A They were presented to the Court.

Q And will you state who signed those affidavits as to Mr. McCaughan's fee?

A Robert S. Florence, a Miami attorney, filed one affidavit.

Q Was he at that time an associate of Judge Mitchell D. Price? Do you recall?

A I think he was. Just a moment.

Possibly not; the affidavit is on his own stationery.

Q Very well. Who signed the other one? There are one or two others, are there not?

A William B. Roman.

Q Is Mr. Roman a member of the firm of Salley and Roman?

A At that time he appears to have been a member of the firm of Hunt, Salley and Roman.

Q Thank you.

Has he, for a number of years, to your knowledge, been chairman of one of the State Bar's Grievance Committees in Miami?

A He has been for the last three years, to my knowledge; it may have been more.

Q And Mr. Roman's affidavit was to what effect?

A His affidavit was to the effect that he had been practicing in Dade County for ten years himself; that he was familiar with and knew George C. McCaughan; that he had examined the files, the office file and his Court file - - - and this Court file; and it was his opinion that \$7,500 would be a reasonable fee for the services rendered by McCaughan on behalf of the Plaintiffs and on behalf of the curator for Annie May Stengel and against Karl Raymond Stengel.

Q Who signed one of the other affidavits?

A Robert Florence.

Q And to what effect was that affidavit?

A Mr. Florence stated that he had practiced law in Dade County for twenty-five years; that he was acquainted with George McCaughan; that he had examined the Court file and the office file; and that he had read McCaughan's petition for an allowance of fees; and it was his opinion that a fee of \$5,000 would be a minimum, and that any fee not exceeding \$7,500 would be reasonable for services rendered by said attorney, taking into consideration the services rendered on behalf of the Plaintiffs and the curator as well.

Q Were those the two affidavits submitted by Mr. McCaughan, or was there a third one?

A I don't recall that there was a third.

Q All right. Then, Mr. Roman's affidavit was to the effect that a combined fee of \$7,500, or rather, a fee of \$7,500 for the combined services of Mr. McCaughan as attorney for the Plaintiffs and as attorney for Mr. Heller, the curator, would be reasonable, is that correct?

A That's correct.

Q And Mr. Florence's affidavit was to the effect that a minimum of \$5,000 and a maximum of \$7,500 would be a reasonable fee for those services, is that correct?

A That's correct.

Q And what was the allowance Judge Holt gave Mr. McCaughan?

A \$6,000.

Q And I believe you stated you interposed no counter affidavit?

A No, I did not. I argued against the allowance of fees, but I did not interpose counter affidavits.

Q When was the hearing held?

A The hearing was held on December 15, 1953, but the order itself was not entered until the 18th.

Q Was a hearing on Mr. Heller's petition for compensation held at the same time, or was that held at a different time?

A That was held at a succeeding date.

Q Do you recall what time of day the McCaughan hearing was held before Judge Holt? Does your file indicate that?

A My daily record indicates that it was some time after two o'clock and, necessarily, before five of that day.

Q How long did the hearing last, Mr. Towle?

A I would guess that the hearing lasted less than thirty minutes.

Q Well, if you had filed no objections and no counter affidavits, what was the basis of your argument to the Court?

A I'll be glad to read you what my objection was.

Q I don't care to have you read it. Just state, in as few words as possible, what your legal position was?

A (The witness consulted some papers.)

Q Mr. Towle, can't you state your legal position without referring to your memoranda?

A Well, I think I would be more accurate if I referred to my memorandum.

Q I think that's perhaps correct. Go ahead.

A I advised the Court that I was present as attorney for Raymond Stengel and Ivan Stengel, and that I questioned that the services rendered by Mr. McCaughan and by Mr. Heller were anywhere near worth the excessive amounts discussed by them, and I questioned whether their services had been of much, if any value to Ivan Stengel and Raymond Stengel, or even to Mrs. Annie May Stengel, and I particularly questioned the propriety of assessing fees for the said two attorneys which would be in excess of the total assets in the hands of the curator; and lastly, I questioned the right of the Court to assess any fees found to be due McCaughan and/or Heller against Ivan Stengel or Raymond Stengel, individually, and requested the right of the Court to provide that such attorney's fees should have the effect of judgment against said two people, individually.

Q Thank you, Mr. Towle, but you later on changed your mind a little bit when you filed your petition, didn't you, against your client?

A As to the right of the Court to assess the fee, you mean?

Q As to any of the points you just mentioned?

A No, I did not.

Q You were in complete good faith in urging those objections?

A I certainly was.

Q You felt it a duty to your clients?

A I did.

Q You were overruled?

A I was.

Q What was your further duty to your clients?

A My further duty to the clients was to appeal the case.

Q Why didn't you?

A Because there wasn't any money available to do so.

Q Available where?

A Anywhere.

Q Your client have any money?

A No My client, Ivan Stengel, was out of the state; Raymond Stengel was out of the state. At that point I had not received a dime for services, and for the considerable expenses that I had incurred.

Q You were out - - -

A I recommended an appeal.

Q You were out of pocket as of that time, is that correct?

A Yes sir.

Q Did you recommend an appeal?

A I recommended an appeal.

Q What was the response of your clients?

A That it was a good idea.

Q Good idea. Well, there was no appeal, is that correct?

A There was no appeal because there was no money.

Q Now, the hearing on the Heller petition, when was that held?

A I believe that was on December 23, 1953.

Q How's that?

A December 23, 1953.

Q Was it in the forenoon or afternoon? Does your file indicate?

A At two o'clock in the afternoon, and it was held on December 22, instead of the 23rd.

Q How long did the hearing last?

A About a half an hour.

Q Did you participate in the hearing?

A To the same extent I had participated in the other hearing, the hearing on Mr. McCaughan's petition.

Q Did you file any written protest or objection or exception?

A No written protest or objection.

Q Or exception?

A Or exception.

Q Or counter affidavits?

A Or counter affidavits.

You understand that in each of these cases - - -

Q Just a moment. Just answer my questions, please sir.

MR. HOPKINS: If the Court please, we think our witness has got a right to answer the questions without being cut off, and we object to his cutting the witness off.

MR. HUNT: The witness answered the question.

MR. HOPKINS: May I ask the witness if he's finished the answer to that question?

THE WITNESS: No, I hadn't finished, no.

MR. HUNT: Would you read the question, Mr. Reporter?

THE WITNESS: Although I had to - - -

MR. HUNT: Just a moment, Mr. Towle, if you don't mind.

(Last question and answer read)

MR. HUNT: That's the question and the answer, if Your Honor please.

BY MR. HUNT:

Q I believe you stated the hearing on Mr. Heller's application lasted for thirty minutes?

A Well, that's my recollection; that was almost four years ago, but I think that was it; that's according to the notes I made at the time.

Q Did Mr. Heller present affidavits to the Court in support of his application?

A Yes sir, he did.

Q Will you refer to those?

A There is an affidavit of Aaron M. Kanner.

Q Is that K-a-n-n-e-r?

A Yes sir.

Q And who is the next one by?

A Harold Kassewitz.

Q And is there another one?

A Alec S. Wallace.

Q Will you refer to the affidavit by Mr. Kanner and state the effect of it, as to - - -

A That was - - -

Q - - - its contents?

A The affidavit states that Mr. Kanner has practiced for a period of twenty-six years; that at the request of Mr. Heller, he examined the Court file, together with Mr. Heller's office file, together with the final audit, together with - - -

Q Together with what? Audit?

A A final audit prepared by the said Daniel Neal Heller, together with daily time sheets kept by him; and that it is his opinion that in view thereof, and of his general experience and ability - - - that is, Mr. Heller's - - - together with the type case involved, it would be the opinion of deponent that a reasonable fee for Mr. Heller's services would be \$10,000.

Q All right, turn to Mr. Kasewitz' affidavit, and give the general effect of that affidavit.

A Well, he says that he has practiced law for thirty years; and sets forth the same information as to his - - - what his opinion is based on, and his opinion is that the services should be worth \$10,000.

Q And the effect of Mr. Wallace's affidavit?

A He says that he has practiced for seven years; and that he's made the same examination of the files, and based upon the work that appears to have been done, he believes Mr. Heller should receive a fee of \$12,000.

Q And the fee awarded by the Court to Mr. Heller for his services was what?

A \$10,000.

Q Did you take any subsequent action, with respect to those allowances, Mr. Towle?

A No, I did not.

Q Mr. Towle, I believe in your petition for allowance of compensation, it's indicated that you had represented some of the Stengel interests, but when this proceeding was filed by one of the children and a grandchild, that you were on vacation in Wisconsin, is that correct?

A That is correct.

Q And the net result of that situation was the employment of Ben Carey and John Sullivan to defend the case, is that correct?

A That is right.

Q And then, some time after your return to Miami, through correspondence with your client, it was arranged for Mr. Carey and Mr. Sullivan to apply for a \$500 fee, and withdraw from the case, is that correct?

A Well, I don't know about arranging for a \$500 fee, but it was arranged that they were to draw up a petition.

Q Well, tell us, in Cracker language, how you got them out and you in?

A It wasn't any effort at all; they were delighted to get out.

Q And you were probably delighted to get in, but just tell us how it was arranged?

A As soon as I returned from Wisconsin, I went over the correspondence that had already accumulated from Raymond Stengel, and a phone call that I had received from either John Sullivan or Ben Carey, and the essence of it was that these proceedings had been had, and the application had been made for the appointment of the curator; the curator had been appointed; Raymond had left the State; Inez Stengel Gay and her grandmother had left the State; and Mr. Carey and Mr. Sullivan were delighted that I was back, and quite anxious for me to appear in the case, to replace them in the case.

Q Prior to that time, had you been in correspondence with Karl Raymond Stengel about your getting back into the case?

A Yes, I had.

As a matter of fact, he wrote me, under date of July 5.

Q Do you have the letter?

A Yes sir.

Q Is that the letter you quote in your petition?

A I don't recall if I quoted any letter in the petition at all.

Shall I check that?

Q Check the petition first. It might save time.

I believe the letter is dated September 3?

A Do you mean the letter that I have referred to in the petition, my petition?

Q That is the notes I have here, yes.

A Well, that isn't the letter that I referred to. I referred to the letter I received July 5.

Q As a matter of fact, doesn't your petition state that you had received a deluge of correspondence, telegrams and calls from Karl Raymond Stengel to get you back in the case?

A That is correct.

Q Now, at that point don't you quote a letter, or are my notes incorrect?

A I think they are correct. I quoted a letter from Karl Raymond Stengel, in which he wrote:

"As you know" - - -

Q What date?

A It's dated September 3, 1953, in which he wrote:

"As you know, I was to have you as my lawyer, but when the case came up, you were away, and I was forced to get another lawyer on a half-day's notice."

Q Do you have that letter, Mr. Towle?

A I imagine I do.

Q Do you have any objection to producing it?

A Not the slightest (Handing counsel a paper instrument).

MR. HUNT: Your Honor, may we have about five minutes at this point to examine the document?

CHIEF JUSTICE TERRELL: Yes sir.

The Senate will be at ease about five minutes.

Whereupon, a short recess was taken.

CHIEF JUSTICE TERRELL: Mr. Hunt, are you ready?

MR. HUNT: Yes sir.

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

BY MR. HUNT:

Q Now, Mr. Towle, your petition for allowance of fees makes brief reference to services rendered in the guardianship matter in the County Judge's Court. Do I understand that a petition was brought in the County Judge's Court simultaneously with the filing of the suit in the Circuit Court, or when was that accomplished?

A I think it was brought three days later, and upon the adjudication of Judge Holt, that Annie May Stengel was mentally and physically incompetent, Mrs. Gay and Karl Raymond Stengel - - - no, not Karl Raymond, Henry Ivan Stengel brought a petition for their appointment as guardian.

Q Were they the same people who were the Plaintiffs in this case?

A That's correct.

Q And did the County Judge appoint a guardian of the person of Mrs. Stengel?

A Yes sir.

Q Who was appointed?

A Mrs. Gay and Henry Ivan Stengel.

Q The Plaintiffs in the two actions were appointed joint guardians by the County Judge, is that correct?

A That's correct.

Q Could you state what further pleading was filed in that case, if any?

A Well, yes, there were - - - of course, they qualified as guardians, both posted bonds, but - - -

Q Let me ask you - - -

A - - - the only pleadings that - - -

Q Let me change the question.

Do you have a docket sheet, briefly showing the proceedings in the County Judge's Court?

A I think I do.

Q Now, Mr. Towle, referring to your longhand docket sheet of proceedings before the County Judge - - - I'll make this as brief as possible, Your Honor, and in just a few minutes, I will conclude this examination.

On July 31, Petition for Appointment of Guardian, Order Appointing Guardian, Oath of Guardian, Bond of Guardian, Appointment of Resident Agent, Letters of Guardianship, Order Allowing Guardian to Remove Ward to New York State, three certified copies, Letter of Guardianship.

Did you have anything to do with any of those proceedings?

A No.

Q On August 3 is shown a deposit of \$35, clerical entry; on August 5, Order Setting Aside and Vacating Order Allowing Guardian to Remove Ward to New York State.

Did you have anything to do with the preparation of that order?

A No sir.

Q The next, August 6, one copy, Letters of Guardianship; one copy of Order - - - those are clerical entries.

August 13, Appearance. Whose appearance was that?

A It wasn't mine.

Q Did Mr. McCaughan represent the Petitioners in these proceedings I've just mentioned?

A I believe he did.

Q It was not your appearance on August 13?

A No sir.

Q On August 28, Petition as of August 14, 1953.

Did you have anything to do with that?

A No, I do not believe so.

Q August 28, Rule to Show Cause.

Did you have anything to do with that?

A No sir.

Q Against whom did the County Judge issue a Rule to Show Cause?

A My recollection is that he entered a Rule to Show Cause against Mrs. Gay.

Q Do you know whether or not that order was ever executed, or whether it's still outstanding?

A I believe that he did not enter the order, because she was already under contempt by order of Judge Holt.

Q But your docket sheet shows it was entered?

A Then I'm wrong.

Q You don't think it will be a part of the Court files when they are here?

A The guardianship? The guardianship files?

Q August 28, Rule to Show Cause?

A Yes, the Rule to Show Cause was entered. I said that.

Q Against Inez Stengel Gay?

A Yes.

Q Is that - - -

A But what I meant to say was there was nothing that developed out of that.

Q Just a minute; we'll get to that. You are anticipating.

A Well, I wanted to correct my answer.

Q Was that Rule to Show Cause entered by the Court?

A I believe it was.

Q And that was against Inez Stengel Gay?

A Yes.

Q Is it still outstanding?

A No, I believe that it came - - -

Q Was it heard?

A I believe that it was heard.

Q Very well.

August 31, Petition for Permission to Remove Ward from State of Florida.

Did you have anything to do with that?

A No sir.

Q September 28, Injunction.

What was that? Entered by the County Judge.

A Perhaps I can tell if I get my file back.

I don't know exactly what the Injunction was. My recollection is that the Judge first granted permission to Mrs. Gay to take the ward to New York, and then it was brought to his attention that the ward might be sufficiently unwell to permit her to travel, and he then changed the order, and the Injunction may have been that Mrs. Gay was enjoined from proceedings as she had first been authorized to do, or it may have been that the Injunction was in connection with the Gay versus Heller dispute that had arisen.

Q This whole thing was pretty much a tug-of-war between your client, Karl, and the Petitioners in these two cases, for custody of this elderly woman, was it not?

A Well, that was probably the way it started out. The way it got under way, and the way it's been, it was a tug-of-war between the curator and the Stengel family.

Q The Stengel family was responsible for the curatorship, were they not?

A Two members of it were.

Q Your one member was not?

A He was not.

Q Yes. September 28, Claim, Nursery, \$103.19.

Did you have anything to do with that?

A No sir.

Q December 18, Release.

Did you have anything to do with that?

A Is that December 18?

Q Yes sir.

A Well, I don't recall what that was.

Q July 30 - - -

A I don't recall that I filed any pleadings, or secured any orders in the guardianship.

Q July 30, Affidavit?

A July 30, '53?

Q Yes, Affidavit of A-c-c and g?

A I don't know what - - -

Q Could that be Accountants and Guardian?

A Could be.

Q Did you have anything to do with that?

A No sir.

Q Well, that's all your docket sheet shows.

Just what did you do in connection with the guardianship proceedings that justified you in stating to the Circuit Judge that that should be considered as a part of your compensation, earnings?

A I discussed the matter with Judge Dowling and Judge Blanton.

Q What did you discuss with them?

A Discussed what could be done about it, because there was a diversity of custody, or - - -

Q Yes, I know your reasoning. Let's just talk about your efforts in the case.

How long did you discuss matters with Judge Dowling?

A I don't recall.

Q How many times did you discuss matters with Judge Dowling?

A Several times.

Q Did you file anything in that case?

A No sir.

Q Did you attend any hearing in that case?

A No sir.

Q So, recapitulating, you did nothing in the guardianship case; you filed three papers in the curatorship case, which was pending before Judge Holt, which consisted of your appearance, your receipt for the files, and your petition for fees, and you spent two one-half hours at hearings before Judge Holt. Did you do anything else?

A Well, there were - - - I mentioned a hearing on my own petition.

Q That was tough, wasn't it?

A That's a question.

Q And for those services, one hour in Court, nothing in the County Judge's Court, and three papers which included your plea for compensation before Judge Holt, by the filing of a fifteen-page sworn petition and affidavits of two attorneys, you were awarded what you considered to be a fair and reasonable fee from your client, Karl, and had a judgment entered against him, is that correct?

A Karl and Henry Ivan Stengel.

Q That is correct?

A That is correct. It was entered against the two brothers. Of course - - -

Q Now, when - - -

A - - - if you want to pin me down as to why I should receive a fee like that, I - - -

Q No sir, I didn't ask you. Your petition is fifteen pages long, and I invite everybody to read it.

When did you return to Miami from Wisconsin, in the summer of 1953?

A I imagine it was about August 25.

Q Mr. Towle, have you ever had any personal differences with Judge Holt?

A Personal differences?

Q Yes sir.

A No.

Q Have you had professional differences with him?

A Well, any attorney who practices before any Judge occasionally gets a decision that he thinks could have been in his favor, but was not, but I don't believe I could say that among my unfair decisions, Judge Holt stood out more than anyone else.

Q Well, did he so act in any particular case as to furnish you some reason for unfriendliness or animus toward him?

A I haven't testified that I have any unfriendliness or animus toward him.

Q Well, let us assume that you might have; then answer the question on that basis.

A You mean that I should suppose that I have an animus, or an animosity toward him, and then, on that supposition, try to determine why it should exist?

Q Do you swear you do not?

A Have any animus against him?

Q Yes.

A Yes.

Q Did you have a fee case before Judge Holt sometime ago, in which he ruled against you and dismissed your case?

A Yes, although that was at least three years ago.

Q So was the Stengel case, wasn't it?

A Yes.

MR. HUNT: No further questions.

#### REDIRECT EXAMINATION

BY MR. HOPKINS:

Q Mr. Towle, will you refer to the file there, please, and tell us who bought this house? The question's been asked, but not answered, I believe.

A The petition of Mr. Heller, filed November 5, 1953, reflects that the buyer was Mr. David Pullman, P-u-l-l-m-a-n, acting as agent for Ted Aidman, A-i-d-m-a-n, and Adeline Aidman, his wife.

Q Going further with one of the questions asked by one of the Senators that hasn't been answered: The purchase price, of \$42,000; first mortgage, \$24,240.74, is that correct? The second mortgage, \$16,347.62?

A That's correct.

Q Making an indebtedness against the place of \$40,588.36?

A Right.

Q Taken from the \$42,000, leaves a down payment on that place of \$1,411.64, is that correct?

A That's correct.

Q From which \$1,411.64, there was still \$1,000 payment for commission due to the real estate agent, is that correct?

A That is my understanding, yes.

Q Now, there's some testimony about a Mr. Kanner who signed the affidavit as to a reasonable fee, I believe, for Mr. Heller. Is that the same Mr. Kanner who shares an office with Mr. Heller, or do you know?

A Well, he has shared offices with Mr. Heller during the past several years, but I can't be sure that he shared offices with him at that time, but he has subsequent thereto.

Q You do not - - -

A And maybe prior thereto, but I'm not certain.

Q Do you know whether he is the same Mr. Kanner who represented the people that bought the furniture?

A I don't know that, no.

Q I was concerned about the fee for the attorney for the curator. Is Mr. Heller an attorney?

A Yes, he's an attorney.

Q Do you know who actually prepared these reports of the curator?

A Well, many of the pleadings filed on behalf of the curator were - - - and the orders entered, were apparently prepared by Mr. Heller, because they are on his stationery; most all of them are, in fact.

Q Then, the attorney for Mr. Heller, paid \$6,000, did not, apparently, prepare the pleadings, is that correct?

MR. HUNT: Mr. Heller had no attorney. I don't think there's any - - - did he?

THE WITNESS: Yes.

MR. HOPKINS: Mr. McCaughan was allowed \$6,000 for representing the curator.

MR. HUNT: Oh, yes, that's right.

THE WITNESS: It appears that most of them were prepared by Mr. Heller.

MR. HOPKINS: We have no further questions.

MR. HUNT: No further questions.

MR. HOPKINS: With the consent of the Court, we would like to excuse this witness from further attendance.

MR. HUNT: If your Honor please, I would like to have a word with the Managers before this witness is excused, with respect to their further program. I don't wish to place any hardship on the witness, but I believe he will be needed later on.

CHIEF JUSTICE TERRELL: You will wait, Mr. Towle.

MR. HUNT: We can determine that later on, Your Honor.

CHIEF JUSTICE TERRELL: You are excused for the present.

(Witness excused)

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Counsel have advised that they would like a little time to confer, and I move you, sir, that we do now go into recess for a period of ten minutes.

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

The "ayes" have it, and the motion is adopted. We'll have a ten-minute recess.

Whereupon, a recess was taken from 3:30 o'clock p.m. to 3:40 o'clock p.m.

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

MR. JOHNSON: Call Mr. Reginald Smith.

I'd like to announce to the Court that this witness is called in regard to Bill of Particulars, Article I (a) 3 and 4.

Thereupon,

REGINALD S. SMITH,

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

#### DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please, to the Senate?

A Yes. My name is Reginald S. Smith.

Q And what is your occupation, Mr. Smith?

A I am General Manager of Wa-Co Motors, in Miami.

Q Will you please speak just a little louder?

A I am General Manager of Wa-Co Motors, of Miami.

Q How long have you been General Manager of Wa-Co Motors in Miami?

A Just a little over three years, sir.

Q Mr. Smith, what type of automobile do Wa-Co Motors deal in?

A To group them, I would say foreign cars.

Q Do you specifically have the Jaguar automobile?

A Yes sir, we do, sir.

Q Mr. Smith, will you tell the Senate what you know of the purchase of the Jaguar automobile on June 6, 1955, for Judge Holt's brother, James F. Holt?

A Yes sir. I have brought with me, as per the direction, the invoice and relative documentation concerning that car.

Q Just so we know - - -

A Yes. The order was written by the owner of the company, Mr. Watts, and I have it in my hand, and it lists the motor car being sold to a James F. Holt. The price of the car is, of course, detailed, and the total price is \$2,785.

MR. HUNT: Did you say "James F. Holt"?

THE WITNESS: I think that is correct, sir.

"James F. Holt."

BY MR. JOHNSON:

Q Who made the arrangements for the purchase of that car?

A I can only say that this particular order was written by Mr. Watts, personally, and in his writing alongside "James F. Holt," it says, "By George E. Holt II"; that is written on the original order. That is all I can say, sir. I can't say anything beyond that.

MR. JOHNSON: We would like to offer in evidence, on behalf of the Managers, the purchase order, together with the attached - - -

MR. HUNT: What's the date of that purchase order?

BY MR. JOHNSON:

Q What is the date of that, Mr. Smith?

A Well, the purchase order is dated June 6, Monday, June 6. Apparently, the invoice was typed up on the same day.

MR. HUNT: No objection.

MR. JOHNSON: Mark this as Managers' Exhibit Number 16.

(Whereupon said invoice, dated June 6, 1955, was received and filed in evidence as House Managers' Exhibit 16.)

SENATOR SHANDS: What year was that?

BY MR. JOHNSON:

Q What year was that, Mr. Smith?

A 1955.

Q Now, approximately a month later, did you have occasion to be concerned with the sale of another Jaguar to a member of the Holt family?

A Yes, yes sir.

Q Tell the Senate about that in your own words.

A In this instance, I recall being called into Mr. Watts' private office, and he referred to the previous Jaguar that had been sold, and asked me to make up another order exactly the same pricing, with the exception of the second car had whitewall tires, which is a \$35 difference in this case; and asked me to make it exactly similar, and told me that it was to be sold to a C. F. Holt.

I thereupon wrote up the order - - - this is in my writing - - - and again had an invoice made up accordingly.

Q Do you know whether the C. F. Holt was the wife of Judge George E. Holt?

A I have found that out since. I did not know at the time.

Q Were each of these Jaguar automobiles new cars or used cars?

A They were new automobiles, sir.

Q Now, what was the price of the first Jaguar automobile?

A The price that it was sold for? The exhibit is gone, but it was - - - the figure it sold for was \$2,750, plus, I believe, the freight from Jacksonville to Miami.

The second car, the same price, plus the Jacksonville-Miami, and plus the whitewall tires.

Q Now, how was the payment made on the first Jaguar, which went to James F. Holt?

A The first car was paid for in the form of a check, sir.

Q How was the second car paid for?

A Cash.

Q Was there any notation upon your order, concerning whether the payment would be guaranteed as to the second car, or Judge Holt?

A As to the second car? No sir, the second car was paid for in cash. The first car, there was a notation on the order copy, by whomsoever signed for the car, stating, "Guaranteed payment."

Although it's very difficult to recall exactly the circumstances after so long a period of time, I would assume, from the wording, that the car was delivered, and possibly the check was handed in the following day. Whoever signed for it guaranteed payment.

Q And what was the date of the second car, Jaguar automobile?

A July 9, 1955.

Q At the time of the sale of both these Jaguar automobiles, do you know who was the attorney representing Mr. Franke Watts, your employer?

A I know who the attorney was representing Mr. Watts; that was Mr. Thurman Whiteside.

Q Did you - - -

A I knew he was the attorney; I did not know Mr. Thurman Whiteside as a person. I knew that he represented - - -

Q You do know him now, do you not?

A I have subsequently met him, sir, yes sir.

Q The same gentleman who is back in the witness room today?

A Correct, sir.

MR. JOHNSON: We offer in evidence, as Managers' Exhibit Number 17, this purchase order, and the attached documents.

MR. HUNT: May I see that, please?

MR. JOHNSON: Certainly.

MR. HUNT: No objection.

(Whereupon said purchase order, dated July 9, 1955, was received and filed in evidence as House Managers' Exhibit 17.)

BY MR. JOHNSON:

Q Mr. Smith, what was the retail price of each of these Jaguars?

A The retail price prevailing at the time was \$3,345, sir.

Q How great a discount - - - just give us the figures - - - was given on each of the Jaguar automobiles?

A In each case, the actual cash discount was \$595.

Q Up to that time, had you ever given to any customer a greater discount than you did on those two Jaguars?

A Not to my recollection, had we ever given to a retail customer quite that amount of a discount.

MR. JOHNSON: Thank you, that's all.

#### CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Smith, will you state to the Senate what it was that, from a business standpoint, permitted your firm to give such a discount?

A Yes. It was motivated - - - basically, the cars that were purchased, both cars, were produced in 1954; they were known as the XK-120 Series, which were discontinued, as far as manufacture was concerned, at the end of 1954.

However, as is often the case, there are cars left on the market, or left in the dealers' warehouses, and so on, which have to be sold, and they are discounted as discontinued models. They are always sold with that clear clarification.

They are legally titled, I might add, as - - - it's permissible to use a 1955 titling, because they are still new cars, but the purchaser must know that they are discontinued models.

Q Is it for that reason that a discount somewhat larger than usual was granted in this case, to your knowledge?

A Yes - - - well, the average discount on those cars that was authorized by the owner of the company approximately was \$400 to \$450. That is, of course, provided the car was sold, that there was no trade-in, that they might lose money on, or any other incumbrances. It certainly would have been sold - - - any salesman could have sold the car for at least \$400 or \$450 off the retail price, which I think brings it down to \$3,000, or just a little bit below that, and as I made a point a few moments ago, these cars were sold for \$595 discount, which is just a little higher than, perhaps, that - - - as far as I know, any other car was sold for, with the exception of one, that was sold to an employee of the company.

Q Are these the only two - - - were these the only two models of the discontinued Jaguar which you have described, which you had?

A Oh, no, no sir. We had, I believe it was, probably around a dozen of them, but it must be explained that our major business is with the - - - with other trade firms, or the wholesale market, and therefore, we sell to dealers in the six and a half states to which we distribute the Jaguar automobile. The others were sold to dealers.

Q Around the time of the purchase of the second Jaguar, do you recall a purchase to some lady, I believe, up north, for the same price, of the same type of car?

A To a lady up north?

We - - - we sold a car to a Mrs. Fisher, of New York, but it was not sold at that price. As a matter of fact, I think we - - - with the trade-in involved - - - I don't know whether this is the particular lady to whom you refer, but I do recall that name for the simple reason that the deposit was placed way back in '55, and the car was only finally delivered about six weeks ago; that's the only reason it refreshes my memory, but there was a trade-in involved, and I assure you that we got a bit more than the \$2,700-odd, as in the case of the two cars, and if there was any other lady - - - there may have been, but as I said before, the only two cars that I can recall that were sold at that price were the two that we're

referring to right here, with the exception of the one other, which was sold at a relatively similar discount, to an employee.

Q Is it necessary that you have permission of the factory to grant discounts on these cars?

A Well, it is - - - we would never grant - - - publicly announce a discount price without the factory or the factory's New York representative knowing about it.

Strictly speaking, there is no law to prevent us selling at any price.

Q When you advertised these cars, did you advertise them at a discount price?

A Yes, we advertised them at a discounted price. I'm not sure, now, whether we actually specified a price, but I have, in the back of my mind, that we referred to them as discontinued models, or words to that effect; "few miles," or something, to qualify it as being - - - to get it in for the advertising rate, and the F.O.B. Jacksonville, and if we did quote a price, I'm fairly sure that we never would quote anything below \$2,995.

Q That would - - - that \$2,995 would protect you in the event of a trade-in sale - - -

A That's correct.

Q - - - would it not?

A That's correct, sir.

Q That doesn't mean that if a man came there with a certified check or cash, that you would stand on it, does it?

A Certainly, if the hypothetical gentleman came and offered a figure of \$2,700, say, \$2,800, personally, I would have been on the spot if Mr. Watts hadn't been there; I would have had to have made a decision.

I will, however, tell the Senate that my decision would have been in favor of our hypothetical friend.

Q One last question: Are you able to tell from your records whose check was delivered to your company on June 6, when the first car was purchased?

A Up to a point, I can, sir.

The first car referred to, which was paid by check, was paid by a check, and in our bookkeeper's deposit slip here is recorded, "\$2,785, Holt," and then the clearing house number is "87-5."

I understand that this has been checked, and it emanated from a North Carolina bank.

Q North Carolina bank?

A That's what I have been told. I haven't personally checked it, I have just found out - - - I was questioning where it was, and someone said, "That's a North Carolina bank."

Q Is that 87-5?

A 87-5 is the clearing house number, just like New York is 1 - - - so-and-so, and so on.

Q Could it have been the Nashville Bank and Trust Company, Nashville, Tennessee?

A Well, Nashville is in Tennessee, isn't it?

Q Yes. I thought so.

A I - - -

Q Did you see the check?

A I'm sorry; I would say I may have done it, and I may not.

Q Do you know whether or not it was Judge Holt's brother's check, from Nashville?

A I'm afraid that I must answer that I cannot tell you, sir, what that check is.

Q Yes.

A The only way, probably, that you're going to get that check is if it turns up in somebody's files.

It probably was a negotiable check. We deposited it in the bank; the bank honored it, and I expect, in time, we even got the money.

Q And the title to the car - - - the car was billed and invoiced to James F. Holt?

A The first one?

Q The first one.

A That's right.

Q James F. Holt?

A Well, the - - -

Q The second one - - -

A - - - the evidence is away from me now - - - yes sir, I believe that is correct, the first exhibit I handed in.

MR. JOHNSON: Yes sir, that's correct, sir.

BY MR. HUNT:

Q Now, the second car was paid for in cash?

A Paid for in cash, yes sir.

Q Is that at all unusual?

A No.

MR. HUNT: No further questions.

THE WITNESS: Thank you.

MR. JOHNSON: That's all I have.

I'd like the permission of the Court to excuse this witness, and also, his bookkeeper, whom he brought along, who's not necessary, if counsel will stipulate.

MR. HUNT: That's agreeable.

THE WITNESS: Thank you.

(Witness excused)

MR. JOHNSON: Mr. Thurman A. Whiteside is the next witness.

We'd like to announce to the Senate that this witness is called in connection with the Bill of Particulars, Items 1 (a) 1, 2, 3, 4; 1 (b) 3; 1 (d) 3 and 1 (d) 9.

I'll repeat that: 1 (a) 1, 2, 3 and 4; 1 (b) 3; 1 (d) 3 and 1 (d) 9.

Thereupon,

THURMAN A. WHITESIDE,

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

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please sir?

A My name is Thurman A. Whiteside.

Q And what is your profession, Mr. Whiteside?

A I'm an attorney at law.

Q Do you have other interests other than the practice of law?

A I have other business interests, yes.

Q Where do you practice law, Mr. Whiteside?

A In Coral Gables, Florida.

Q Is that in Dade County?

A Yes, it is.

Q How long have you practiced law in Dade County, Florida?

A Since 1933.

Q Are you affiliated with any law firm?

A At the present time, no.

Q Will you please tell the Senate what law firms you have been connected with since 1948?

A I was a junior member of the law firm of Yonge & Whiteside, James E. Yonge; and I was a member of the firm of Yonge, Whiteside & Prunty, the partners there being John W. Prunty and myself; and that firm was formed after Mr. James E. Yonge passed on, in 1948.

Q Will you state the date that the firm of Yonge, Whiteside & Prunty was formed?

A From memory, at the moment, I believe it was September 1, 1949.

Q And that firm continued until what time, sir?

A August 31, 1955.

Q What was the arrangement between the partners in that firm, concerning the income of the firm?

A We had no written partnership agreement. We had only an oral understanding between ourselves.

Q Will you relate that to the Senate, please?

A In the beginning, the partnership was a sixty-forty partnership, of which I received sixty per cent and Judge Prunty received forty per cent.

At some time subsequent to the formation of the partnership which, I believe, was two, or perhaps, maybe, three years later, the partnership was changed to a fifty-fifty partnership.

Now, basically, we had no firm partnership agreement, and we would determine the percentage that would be applicable to each of the partners in each year, as well as an associate we had in the office.

Q Is that the same John Prunty who is now on the Circuit Bench in Dade County?

A Yes.

MR. JOHNSON: In order that I might refer to certain documents therein, the Managers now offer in evidence, as their Exhibit Number 18, the Circuit Court file of the Eleventh Judicial Circuit, in and for Dade County, of the Peoples Water & Gas Company versus City of Miami Beach, et al, being Number 118302, from the docket of that Court.

Do you have any objection, Mr. Hunt?

MR. HUNT: The Court files, you're offering?

MR. JOHNSON: Yes sir.

MR. HUNT: Do you intend to offer the testimony?

MR. JOHNSON: I only have - - - well, whatever is contained, yes sir. I have no separate testimony, if that's what you mean.

I understand the testimony has not been found.

MR. HUNT: If Your Honor please, we have the objection that everything pertaining to the Peoples Water & Gas matter happened many years before this Respondent was re-elected and entered upon his current term of office, and we reserve the right to object to the relevancy, materiality of the testimony, as we have heretofore, on any matter which occurred prior to the beginning of the current term of the Respondent.

CHIEF JUSTICE TERRELL: The same reason you reserved the other transactions?

MR. HUNT: Yes sir.

(Whereupon, said Court file, Number 118302, Dade County, was received and filed in evidence as House Managers' Exhibit 18.)

BY MR. JOHNSON:

Q In order to establish the sequence of events, Mr. Whiteside, and not calling for any answers that would go into any great detail concerning the factual matters of this case, did your firm bring a suit on behalf of the Peoples Water & Gas

Company against the City of Miami Beach and others on - - - which was filed on July 15, 1948, in the Circuit Court in and for Dade County, Florida, in connection with some rate litigation?

A The firm of Yonge & Whiteside, Robert R. Saunders, of Fort Lauderdale, Florida, and Chapman & Cutler, of Chicago, of counsel, filed that bill of complaint.

Q Did you affix your signature, as one of the counsel in the case, sir?

A Yes, I did.

However, that suit had its inception and its beginning, actually, in November of 1947, but prior to the institution of this suit, there had been a rate hearing before the City Council of the City of Miami Beach.

Q All right. Now, do you have your files, your office files before you, in reference to this suit?

A Yes, I do.

Q Will you please state the date that the final decree was entered in that suit?

A The file appears to bear the date of the 21st day of June, 1951. That doesn't necessarily mean it was filed with the Circuit Clerk on that date.

Q Yes sir. Mr. Whiteside, is it true that the final decree reserved, for further consideration, the fixing of costs of the litigation?

A Of course, in that respect, I think that the final decree speaks for itself, Mr. Johnson.

Q The final decree is quite lengthy, and I'm only asking you this in order to determine the sequence of events, and rather than reading the entire final decree, would you please answer the question, if you can, sir?

A All costs in the litigation were assessed against the Defendant - - - company, and it was ordered to reimburse the Defendant, the City of Miami Beach, for all sums theretofore paid by it for Court costs - - -

Q But did - - - go ahead.

A - - - but it did reserve unto the Court, the Court reserved the right to settle the Court costs in this fashion:

"The parties hereto are ordered and directed to determine" - - -

Q You're reading from the final decree?

A I am, Paragraph 5, Page 10:

"- - - to determine with all convenient speed the exact amount of rate case expense Plaintiff has paid, or is obligated to pay, Court costs of this litigation and the reimbursement due the Defendant city from the Plaintiff.

"The Court expressly reserves and retains jurisdiction to determine and settle the amount of such rate case expense, Court costs and the reimbursement to the City in the event the parties do not do so amicably. Such amounts as finally determined may be recovered by the Plaintiff by amortizing them over a period of not less than eight years, and including them in their operating expenses."

Q Now, Mr. Whiteside, does that decree at any place therein specifically refer to attorneys' fees as being a recoverable item of Court costs?

A Not as such, but it was a recoverable Court cost under the settled law in effect at that time, prior to the Legislature granting the power of regulation to the Railroad and Public Utilities Commission, all such costs in a case of this kind were recoverable costs, which included attorneys' fees.

Q But at that date, on June 21, 1951, the Court had not approved any particular amount of attorney fees as proper costs in the suit, is that correct, sir?

A It had not.

Q Now, will you examine your file, sir, and see if you find a motion for Order on Rate Litigation Expense, filed February 29, 1952?

A My copy will not show when it was filed, Mr. Johnson.

Q Let me show you the original.

A If you can give me the date of it. I have one dated here - - -

Q The only date I have is February 29; apparently, that's dated February 29.

Do you find that in your file?

A I have the motion here that was certified to by S. O. Carson, on the 27th day of February, 1952, and I assume that's the one that you are referring to.

Q Will you please explain what that motion was about, sir, and the date again. I didn't get it.

A The primary counsel in this litigation after the bill of complaint was filed, was Mr. Miller Walton, of the law firm of Walton, Hubbard, Schroeder, Lantaff and Atkins. After the entry of the final decree order, there were several conferences between attorneys representing the Peoples Water & Gas Company and the City Attorney of the City of Miami Beach, Honorable Ben Shepard and his special counsel, in an attempt to settle the costs.

No agreement could be reached between counsel, and inasmuch as no agreement could be reached between the parties litigant, as to the total amount of costs that should be taxed as recoverable costs by the Plaintiff, the motion was filed, - - -

Q Is this the - - -

A - - - to bring the matter on before the Court, pursuant to the reservation in the final decree.

Q In other words, is it fair to say that that motion was made in order to require the Court to determine what would be the total litigation expenses, which would include attorney fees?

A Not total litigation expenses, Mr. Johnson, but the motion was filed in order for the Court to determine and set the total amount of costs, or Court costs and expenses that had been incurred by the Plaintiff company, either for itself or reimbursed to the Defendant, the City of Miami Beach, as taxable costs in the case, not necessarily the total cost of the litigation, because there were other costs.

Q But that order that you referred to would include an order concerning attorney's fees, is that correct, as included in the taxable costs?

A No sir, it would only be included as an item of taxable cost; it would not be included, as a necessary, the item of attorney's fees that was paid to counsel.

Q My question is this: At the time you filed that motion, the Court had not approved any sum of money as attorney's fees at that date, is that correct, as recoverable?

A The matter had not been before the Court.

Q Does your file reflect what was the date of the hearing before Judge Holt for the purpose of determining such amounts which the Peoples Water & Gas Company could recover as costs of litigation?

A I have a copy of the transcript of the testimony that was taken at that time.

Q Will you tell - - -

A That was on Thursday, May 1st, 1952.

Q On May 1 - - -

MR. HUNT: What was that date, please?

THE WITNESS: May 1, 1952, sir.

BY MR. JOHNSON:

Q Now, Mr. Whiteside, during the pendency of your motion to require the Court to determine the rate litigation expenses, and prior to the hearing at which the Court took testimony, did you enter into any business deal with Judge Holt?

A Mr. Johnson, I must take issue with some of the words that you've used.

Q Well, use the - - -

A You called the motion "during the pendency of your motion." The motion was not signed by me. As counsel, my name appeared on it. It was executed and filed by S. O. Carson.

At the time of the hearing, I did not appear as counsel, but appeared as a witness to testify as to the reasonableness of the fees which I had already been paid by my client, Peoples Water & Gas Company - - -

Q All right - - -

A - - - over a period of years from 1948 to December 31, 1951.

Q May I phrase it this way: Prior to the time that you appeared to give sworn testimony before Judge Holt concerning the reasonableness of fees to be assessed as Court costs, did you enter into a business transaction with him?

A We did.

Q Will you please relate to the Senate what that consisted of?

A You mean in detail?

Q I don't think it's necessary to go into detail with Mr. Cloeter, your other co-venturer, but just so far as it concerns Judge Holt.

A In January or February, John J. Cloeter, who had been a client of mine for some time prior to January or February of 1952, came to me and told me that he had picked up a lot of - - - or a group of aircraft cylinders that were war surplus; that the initial cost would be about \$12,000, plus freight.

He said to me that "This is an item which is obsolete; these cylinders are obsolete. So far as I know, they can be used in only one place in the world at this time"; that the entire sum of money might be lost, but if not, the return and yield should be very good.

I told him that I would participate with him as a joint adventurer; so that he issued an order for the purchase of those aircraft cylinders. The total cost of those aircraft cylinders, together with the freight rate in Miami, was \$14,315.66.

I gave Mr. Cloeter my first check on March 14, 1952, for \$3,578.91, and then I gave him the balance in a check to pay for my one-half - - - undivided one-half interest on April 11, 1952, of \$3,578.92.

Q Mr. Whiteside - - -

A Now, sometime in the interim period - - -

Q All right, go ahead.

A - - - between - - - January or February of 1952, I don't know, but I had the pleasure of being in a social situation with Judge Holt and his wife, and in casual conversation, mentioned that this man, Cloeter, had made a substantial sum of money in dealing in war surplus materials. He had suggested that I take a flyer with him on this lot of cylinders, and that I had agreed to do.

I suggested to Judge Holt that it might be an opportunity to make some money, but it also might be an un - - - might be a total loss, for him to figure out what - - - if he was interested at all, to come along and take a flyer with me, and if so, to figure out how much money he could afford in the investment, and let me hear from him.

Q Will you please state to the Senate whether Judge Holt did invest, and if he did, the sum of money, and when he invested it with you?

A His first investment - - - he did invest two different - - - basically, out of the full contract - - -

Q Let us discuss the first one now, if we may, sir.

A Beg pardon?

Q Let's discuss the first item of investment.

A All right.

Judge Holt told me that he thought that he could afford to invest \$200 in the transaction, and which he did, on April 11, 1952, gave me \$200, and for that, he purchased approximately a one-thirty-fifth interest in and to my undivided one-half in the lot of aircraft cylinders.

Q Mr. Whiteside, I think you have related that at the time you discussed this with Judge Holt, you told him that this was a highly speculative investment, in which he might lose all his money, is that correct, sir?

A I don't know that I used the speculative - - - the term "speculative," but I do know that I did tell him that my client, whom I had every confidence in, had told me that we might lose it, but if we didn't lose it, we would make a substantial yield for the amount of the investment made.

Q Well, Mr. Whiteside, is it true that on the same date that you accepted this \$200 from Judge Holt in this uncertain endeavor - - -

MR. HUNT: If Your Honor please, the witness is being asked an improper question, a leading question. This is his witness.

Why doesn't he ask the direct question, instead of packing it full of argument? We object to it.

MR. JOHNSON: I'd like to change my question, then, if I may.

MR. HUNT: I'm sure you would.

BY MR. JOHNSON:

Q Is it true that on the same date that you received this two hundred dollars from Judge Holt, that you received the sum of \$3,578.92 return on your investment?

MR. HUNT: If Your Honor please, I object to the question as purely leading, putting the answer in the witness' mouth. What does he ask him for - - -

MR. JOHNSON: He can deny it, if it's not true.

MR. HUNT: He's your witness; you're leading him.

MR. JOHNSON: Well, we certainly - - -

CHIEF JUSTICE TERRELL: The objection is overruled.

BY MR. JOHNSON:

Q Is that true, or - - -

A The question is untrue - - -

Q Mr. Whiteside - - -

A - - - the answer is "No."

Q Mr. Whiteside, I hand you a photostated check - - -

A The answer is "No," because you're confused, Mr. Johnson, in that figure.

Q I think I am, sir. Would you please tell me how much you received on that date?

A I received a check from West Hem Corporation, their check Number 139, in the amount of \$2,140.38.

Q Did you - - -

A Also, on the same date - - -

Q What was that sum again, sir? I didn't get that.

A \$2,140.38.

Q And that was received on the same date that you accepted the two hundred dollars - - -

MR. HUNT: What date was it, Mr. Johnson?

Would you mind telling me the date?

MR. JOHNSON: That's what I'm asking him.

BY MR. JOHNSON:

Q Was it the same date that you received the two hundred dollars from Judge Holt that you testified to previously?

A It was the same date, April 11, 1952, and I might add

that that is the same day that I gave my co-adventurer, John J. Cloeter, his check for - - - at least, my check to him for \$3,578.92, which completed my payment for one-half of the balance of my interest in the aircraft cylinders.

Q Is it your testimony, then, sir, that on the day that you received this first return on your investment, that on that date you completed the payment of your original investment?

A Absolutely.

Q And you made a deposit, or sent a check to Mr. Cloeter, in the sum of \$3,578.92?

A Yes sir.

Q Mr. Whiteside - - -

A I didn't send it to him, I handed it to him.

Q You handed it to him? All right, sir.

Now, Mr. Whiteside, was it necessary for you to obtain two hundred dollars from Judge Holt in order to complete this investment?

A No sir.

Q Did you take a receipt from - - - or did you give a receipt to Judge Holt?

A No, I did not give him a receipt for it, nor did I get a receipt from my co-adventurer. There was nothing in writing of the transaction between my co-adventurer and myself, or between Judge Holt and myself.

Q Didn't you give a check to your co-adventurer?

A I gave him a check, yes sir.

Q Did you receive a check from Judge Holt?

A No, Judge Holt paid me in cash.

Q And did you - - - you gave or received no written memorandum to corroborate that testimony, sir?

A I don't quite understand your question, Mr. Johnson.

Q Was any written memorandum given concerning the \$200 that you are testifying to?

A None whatsoever, except I made a memorandum in my file which was later used to - - - as a receipt, in this personal part of the file.

Q Do you have the original memorandum, sir?

A Do I have the original memorandum? The original memorandum was a sheet of small paper. It's listed here in the file under "Receipts," from George E. Holt, which is the policy which was followed in the office.

Q Well, my question was, do you have the original memorandum?

A This is the original memorandum, so far as my office records are concerned.

Q But is that the item that you wrote down at the time you received the \$200?

A It is not.

Q You no longer have the piece of paper you wrote the memorandum on?

A No, it was destroyed in the usual course of business; purely a memorandum to my secretary at the time.

Q Now, Mr. Whiteside, you testified that you gave sworn testimony on May 21, 1952, for the purpose of determining such amounts of money which would be recoverable as costs of litigation, is that correct, sir?

A Yes sir, I appeared at that hearing only in the capacity of a witness.

Q Did you state that you had a copy of the transcript of that day?

A I did; and I also furnished at that time an affidavit, copy of which I have.

Q Well, Mr. Whiteside, will you check on the last page of the transcript of that testimony and ascertain whether Judge Holt took his ruling under advisement at that time?

A The transcript shows that the Court stated:

"All right, gentlemen, I will take it under advisement."

Q Now, Mr. Whiteside, during such period of time as the Court had that matter under advisement, did you give any sums of money to Judge Holt on his investment which you have described?

A On August 15, 1952, I delivered to Judge Holt my Yonge & Whiteside Trust Account check, the original of which you have, in the amount of \$1,124.28.

Q That was on his original investment that you have described, of \$200 cash?

A Yes sir, that is correct; and that represented one thirty-fifth of the total receipts of \$39,350.14, and it computes out to one thirty-fifth of that amount.

MR. JOHNSON: The Managers now offer, as their Exhibit 18, the original check drawn on the Yonge & Whiteside account, dated August 15, 1952, to the order of George E. Holt, in the sum of \$1,124.28, signed by Thurman A. Whiteside.

THE WITNESS: I understand you have that photostat. Do you?

MR. JOHNSON: I'll see if I do.

We would like to offer this, with permission to substitute a photostat at a later date.

MR. HUNT: No objection, if the witness identifies it.

BY MR. JOHNSON:

Q Is that the same check that you gave Judge Holt?

A Yes sir.

MR. JOHNSON: If the Court please, that's Exhibit Number 19, not 18.

(Whereupon, said check, dated August 15, 1952, was received and filed in evidence as House Managers' Exhibit 19.)

BY MR. JOHNSON:

Q Mr. Whiteside, when was the order entered by Judge Holt, in which he assessed the costs of litigation, including attorney's fees?

A According to the copy in my file, which could or could not be correct, inasmuch as you have the original, it was the 9th day of December, 1952.

Q I'm referring to the original Court file, and a photostat thereof, and my copy shows the 9th day of December, 1952, that the order was entered. Is that what your records show, sir?

A Yes.

Q In that order, will you state to the Senate, what was the amount of the fee which was approved for your firm, as a part of regular litigation expenses to be recovered from the consumers of the City of Miami Beach?

A Well, for clarification purposes, so there can be no possible inferences of the type that you're trying to make, Mr. Johnson, my fee was negotiated with general counsel of the Peoples Water & Gas Company. During the pendency of that litigation, the company changed ownership, and general counsel was no longer R. R. Saunders, of Fort Lauderdale; became Stradley, Ronon, Stevens and Young.

Mr. Stevens came to Miami in August, July or August of 1951, and we negotiated my fee, the amount of my fee. My original fee was \$85,000. We negotiated down to \$50,000. All payments that I had received from 1948 up to 1950 were credited against that fee.

I received the balance of my fee on December 31, 1951 - - - I say "my fee"; that fee was the fee of the firm of Yonge & Whiteside.

Q Mr. Whiteside, you stated that you had rendered your fee, or a bill for your fee, prior to that date, but will you give the year and month in which you and your clients arrived at what fee they would agree to pay you?

A It was in a conference in my office, in the DuPont Building, in Miami; the year was 1951, and the month was either July or August of 1951.

Q And at that conference, what sum of money, in addition to those that you had already received, did they agree to pay you?

A I had had - - - there had, prior to that time, been paid to me, or authorized to be paid to me, the entire sum of \$50,000, excepting only \$15,973 - - - and when I say "we" in this respect, I'm speaking of the firm of Yonge & Whiteside - - -

Q Well, Mr. - - -

A - - - because our accountants - - - we were winding up the affairs of that firm.

Q Well, Mr. Whiteside, is it a correct and fair statement to say that it was after the final decree was entered in favor of the Peoples Water & Gas, your clients, that your clients agreed to pay you a fee of \$50,000?

A Yes, that's correct, but the company at the time was having a change of ownership, and they asked me to estimate what my total fees would be, and at that time I told them that I thought it would be in the neighborhood of \$80,000.

Q Was it also true that had the Peoples Water & Gas Company not prevailed, that in that event, the costs of the attorney's fees for the utility company would not have been assessed as items of cost?

A I think that's a true statement of the basic law at that time.

Q Then, your testimony, as I understand it, is that you received the sum of \$15,973 after the entry of the final decree in favor of the Peoples Water & Gas Company, is that correct, sir?

A I received more money than that.

Q How much - - -

A That is the only sum of money that had not theretofore been authorized for payment. There had been \$7,280 prior to the entry of the final decree on a bill that I had rendered that had been authorized for payment, but it was not paid. I actually received some - - - I received \$7,280 and \$15,900 after the entry of the final decree, as payment for my final negotiated fee of \$50,000, but only \$15,000 is applicable to the line of questioning which you follow.

Q Mr. Whiteside, did you have any further business dealings with Judge Holt, subsequent to the one that you just testified returned him the sum of \$1,124.28?

A Yes, I did.

Q Will you please - - -

A At the time that we - - - at the time of the receipt, the last payment here, for the first lot of cylinders that was sold, which was on 7/31/52, I agreed with my co-adventurer, John Cloeter, to purchase his undivided one-half interest in and to the cylinders for scrap value.

Sometime between then and January, I advised Judge Holt that I had agreed to do that, and that I didn't know what the scrap value would be, because he would send me a bill when he determined what the scrap value was, and that since we had been co-adventurers from the beginning, that it might be well to continue such word, "co-adventurers."

In January of 1953, I was billed in the sum of \$1,489.50 by John J. Cloeter for his half-interest in approximately 33,100 pounds of cylinders at nine cents a pound.

At that time he owed me - - - our firm services for \$1,400, so that was paid by rendering a paid statement, and I gave him a check, or mailed him a check, in the July following, for the difference of eighty-nine dollars and some-odd cents.

When I received the amount of the bill - - - sometime about the time I received the amount of the bill, I then discussed it with Judge Holt, and advised him what the amount was, and suggested he determine some amount of money, if he wanted to continue with the adventure to - - - that he would like to invest in the matter, and he advised me, and paid

me, sometime during January - - - and I do not know the exact date, January of 1953, \$250.

For that \$250, he received a seventeen and one-half per cent interest in and to the total lot of cylinders that were then on hand.

Q When did you pay him the sum of money he earned on that investment of \$250, Mr. Whiteside?

A I paid him, or I advanced a check for \$2,800 in January of 1954.

Do you have that check? May I refer to it, please?

Q I show you the check Number 1942, dated January 22, 1954, payable to the order of George E. Holt, for \$2,800, signed, apparently, Thurman A. Whiteside.

Is that the check that you refer to, sir?

A Yes, that is the check I refer to, and it was charged on our books to "T. A. W. - - - cylinders. Re: Advance to G. E. H. against future sale of cylinders."

We had talked - - -

MR. JOHNSON: Excuse me. We offer in evidence, as Managers' Exhibit Number 20, the check we have described.

Any objection, Mr. Hunt?

MR. HUNT: No objection. I don't think the witness finished his answer to the question.

MR. JOHNSON: He was going into something else, but I'd like to get that into evidence, if I may.

(Whereupon said check, dated January 22, 1954, was received and filed in evidence as House Managers' Exhibit 20.)

BY MR. JOHNSON:

Q Had you not completed the answer to something I had asked you, Mr. Whiteside? I don't think I asked you - - -

A You asked me a pretty general question which could be susceptible to a lot more.

Q Well, I'll go into specific questions, if I may.

A Thank you.

Q Between the date that you first - - - well, let me withdraw that question, and ask you this:

Now, concerning the \$250 investment by Judge Holt, did you give any written memorandum, or was any written memorandum given of any sort, concerning that investment?

A No more than there was between my co-adventurer and myself.

Q Judge Holt didn't give you a check, in other words, did he?

A No sir, he paid me in cash.

Q Cash money?

A Yes.

Q I notice in your dealings - - - is this a fair statement of your testimony to date:

That Judge Holt, in his transactions with you, gave you cash each time, but in return, you would give him your check for his return on his investment, is that correct, sir?

A As his distributable share, for purposes of accounting, purposes of income tax reports.

Q Now, between the date that you say he gave you this \$250 in cash and the date that you gave him your check for \$2,800, did you receive any sums of money as a return on your investment?

A Yes sir.

Q What sums of money did you receive?

A No sir, I'm in error. This check is dated January 22, 1954.

During October and November and December, Mr. Cloeter,

who was the sales agent for these cylinders, and his corporation, received fifteen per cent commission for each and every sale that they made, had these cylinders - - - had the whole remaining lot of them sold at somewhere between \$16,000 and \$17,000.

The cylinders, or a large part of the cylinders were delivered, and we were expecting payment at any time. So, at the end of the year, and for purposes of accounting, I assumed the sales price of \$16,000, and drew this check to Judge Holt - - - I believe it was drawn in the form of George E. Holt, however - - - for \$2,800, which was an estimate of seventeen and a half per cent, which was his interest, of the sales price of the cylinders.

Q Mr. Whiteside, what did the end of the year have to do with this transaction, your furnishing him \$2,800?

A The end of the year had nothing to do with this transaction particularly, Mr. Johnson, except that the end of the year, I think we're all familiar with the fact that by January 15, you must get in your final estimate, and you must be within a certain per cent of being right, and that it was called to my attention at that time by reason of my efforts in that direction, only due to my desire to get the matter cleared up and behind me as much as possible.

Q Well, as a matter of fact, you have since learned that Judge Holt did not return that particular sum of money on his income tax for that year, is that true?

A I think that basically, that he did not return that sum of money in his income tax year, that year, predicated upon my advice to him.

Q Actually, the end of the year had nothing to do with that, is that true?

A Well, now, generally, at the end of the year, of course, you look into all of your financial situations and transactions, and that's what I'm referring to, Mr. Johnson.

Q Now, Mr. Whiteside, I notice that in the first check you gave Judge Holt, you figured it down to the last dollar of the percentage, but I see that - - - as a matter of fact, down to twenty-eight cents, but I see that in the check that you gave him that you have just described, it was in the round sum of \$2,800?

A I think that if you will figure out seventeen and a half per cent of \$16,000, that you will find that it comes to a round sum of \$2,800.

Q Well, Mr. Whiteside, may I ask you this question: Had a sale been consummated, and money been paid to you at the time you gave Judge Holt this check?

A It had not. We were waiting for the check any day, and it had not been received.

Q As a matter of fact, did you ever receive that particular - - -

A As a matter of fact, later, those cylinders were rejected by that particular purchaser.

Q In other words, you were - - -

A And they were returned - - -

MR. HUNT: Let the witness finish, Mr. Johnson, please.

BY MR. JOHNSON:

Q Go ahead, please. Have you finished, Mr. Whiteside?

A Those cylinders were returned, so that the sale was not consummated in any respect, and predicated upon the sale not being consummated in any respect, I advised Judge Holt, at a later time, not to take up that \$2,800 on his income tax return for the calendar year, because it had not reduced itself to earned income as yet.

Q Mr. Whiteside, did Judge Holt request that you advance him the sum of \$2,800 prior to the sale being fully consummated?

A He did not.

Q Well, how did you come to do that?

A I think I said that before, Mr. Johnson, that I was trying to wind up my own affairs at the end of the year.

Q Well, what was the date of that \$2,800 check that you gave him, Mr. Whiteside?

A January 22, 1954.

Q Well, when you say that you were winding up your affairs at the end of the year, you were already into another year, is that correct?

A That's quite correct, but you have to make certain estimates, and you have to go back to the previous year to find out where you are for that year.

Q Well, I don't understand, Mr. Whiteside. What does giving a check on January 22 got to do with winding up your affairs in a prior year?

A It was merely called to my attention by looking into my own business affairs, and looking into the various items that I am interested in, that this was an outstanding item, and that we were expecting the money any day, and the cylinders would be delivered, that I would just as soon get it out of the way.

Q Well, Mr. Whiteside, when you learned that the deal fell through, did Judge Holt return the sum of money to you?

A No sir.

Q Did you request him to do that?

A I didn't ask him to. I said, "Well, you keep it, because we'll sell those cylinders, and we'll see where we stand when we wind up."

Q Did he offer to return the sum of money to you?

A I don't think I even gave him an opportunity to offer to return it.

Q Well, how long after you gave him the check for \$2,800 was it before you finally consummated the sale of the cylinders?

A There were several sales after that, the first of which - - -

Q Will you please give us the date, sir?

A Beg pardon?

Q Will you give us the date, please sir?

A The first of which was on 4 - - -

MR. HUNT: Mr. Whiteside, will you talk a little louder, please?

A (Continuing) The first of which was on 4/21/54, which was three months after that - - -

Q What was the amount of that sale?

A - - - transaction fell through.

Q Will you please tell us the amount of that sale?

A \$1,328.31.

Q And of that amount, Judge Holt had a one-thirty-fifth interest, is that correct?

A No, he had seventeen and a half per cent.

Q Seventeen and a half per cent. One-thirty-fifth was on the first investment?

A Yes.

Q Well, when was the next consummated sale for which you received money in connection with the cylinders?

A 12/1/54, for \$1,071; billed 12/31/54, for \$4,760; and bill for the balance of the lot in a close-out sale on May 10, '55, in two amounts, one for \$4,169 - - -

Q Excuse me, I didn't get that figure.

A \$4,169.

Q And what was the other?

A The other item, in the amount of \$5,000, which totaled \$16,328.31.

Q Well, then, do I understand your testimony to be that it was not until May 10 of 1955, nearly a year and a half later, that Judge Holt actually earned the right to have distributed to him the sum of \$2,800?

A Well, now, if you're talking about the right to be distributed as earned income, it did not become earned income during that - - - until these other sales were consummated.

Q In other words, he was sharing with you on a percentage basis, is that correct?

A That's correct, he had an advance toward his interest.

Q And you did not - - - excuse me, go ahead, sir.

And it was not until May 10 of 1955 that you received the over \$9,000 which entitled him to this \$2,800, is that correct?

A No. As I stated, on May 10, I stated two amounts were received on May 10. I said they were billed. Actually, out of those two amounts, \$4,169 was received on May 10, and \$5,000 was received on May 31, 1955; both of those dates are in the year 1955.

Q Mr. Whiteside, I don't quite follow you, but is this your testimony, that the sum of money which you distributed to Judge Holt, in the sum of \$2,800 on January 22, 1954, was concerning a transaction that was not actually consummated until May 10, 1955?

A That is not a correct summation of my testimony, sir.

Q Well, will you tell me what is correct? I don't follow your testimony at all.

A As I said before, the check for \$2,800 was advanced to George E. Holt on January 22, and charged - - -

Q What year, now?

A 1954; and charged, "T. A. W. cylinders re: advance to G. E. H. against future sale of cylinders."

At that time my co-adventurer and I had believed that the cylinders had been sold. We had been waiting for a check for a matter of two or three months, but instead of receiving a check, we received - - - he received a rejection of the cylinders upon inspection by the then purchaser, so that that particular sale against which this \$2,800 was an advance, was not consummated. That was the sale against which the advance was made, not the sales that took place periodically over a period of the next - - - to May 31, 1955.

Q But the sale against which the advance was made was never consummated, is that correct?

A I just got through saying that, Mr. Johnson.

Q And it was not until May 10 of '55 that you finally got the money on the cylinders in which Judge Holt had invested, is that correct?

A That is quite correct.

Q And he invested - - - did you testify how much money he invested?

A \$250.

While we're on that, Judge Holt, for a total investment of \$450, received a net return of \$3,531.73. The gross return, of course, was \$450 more than that.

I received a net return of \$43,499.39.

Q Did you need the investment of \$250 that Judge Holt gave you in order to consummate the deal?

A I believe you asked me that question, Mr. Johnson.

Q I asked you, first, about the amount of \$200 - - -

A This was \$250.

Q Well, did you need the sum of \$250 in order to consummate the deal?

A No sir, I don't think so.

Q You say you don't think so?

A No, I don't think so.

Q You mean by that answer that you did not need the \$250.

A Well, you asked me for a matter of opinion, whether I needed the \$250 or not. I told you I did not think I did.

Q Mr. Whiteside, during the period of time that you were engaged in these business transactions with Judge Holt, will you tell me who were the members of your firm?

A There were only - - - you mean - - -

Q Members and associates?

A You're limiting it now - - - let me understand your question - - - to April 11, 1952 to May 31, 1955?

Q Well, for the present purposes, we can limit it to that.

A I believe that until December 31, 1952, on memory, that the partnership of Yonge & Whiteside was still alive, and that we were still in process of winding it up.

Of course, the owners of any partners in that firm were T. A. Whiteside and the estate of James E. Yonge, Y-o-n-g-e.

During that period of time, Mr. Prunty, John W. Prunty and I had a partnership, and we were the partners in that partnership. We had an associate who worked for us and participated in our net earnings at the end of the year, by the name of H. Earl Barber.

Q Did you have any other associates or employees that were lawyers?

A That were lawyers?

Q Yes sir.

A Now, you're going to a period - - -

Q The period that you limited it to, Mr. Whiteside.

A May 31, 1955?

Q Yes sir.

A I believe that sometime during that period we employed George Orr.

Q During this period of time was your firm quite active in litigations, and concerning various matters in the Circuit Court of Dade County, Florida?

A I don't know what you mean by "active."

Q Well, suppose you use your own words, and describe just how active you were.

A I wouldn't say that our firm was known as a litigating firm, no.

Q You handled quite a bit of - - -

A General practice, and if it called upon us to go into Circuit Court, we would go into Circuit Court.

Q Did your firm - - -

A However, I had not been in Circuit Court since 1953.

Q You derived, however - - -

MR. HUNT: What was that last answer, please?

THE WITNESS: Except, I have not been in the Circuit Court on argument of a case, or for presentation of a case since 1953, when I appeared as a witness in this Peoples Water & Gas Company case, and one other time, when I appeared to argue a motion to dismiss for John Prunty, my partner, in a case for the Peoples Water & Gas Company.

BY MR. JOHNSON:

Q But were you sharing in the profits of the firm from which other members of your firm practiced in the Circuit Court of Dade County, Florida?

A I would say that Mr. Prunty, now Judge Prunty, practiced in the firm, and before the Circuit Court, as did Mr. Barber and Mr. Orr, when he was with the firm of Yonge, Whiteside & Prunty.

Q Did you share in the profits of - - - earned by those

gentlemen, practicing before the Circuit Court of Dade County, Florida?

A I don't know, really, what you mean; I don't know what any profits were earned. I shared in the partnership profits. I don't know whether you could trace the profits to the practice before the Circuit Court or to office practice.

Q Well, you shared in all the profits, then, is that your statement?

A Certainly.

Q Mr. Whiteside, did you, in the month of June, 1955, have occasion to help Judge Holt purchase a Jaguar automobile for his brother, James F. Holt, from Wa-Co Motors?

A I don't remember the time, Mr. Johnson.

Q Do you remember the occasion?

A I remember the occasion.

Q And - - -

A There were two situations.

Q Will you describe both of them?

A To the best of my memory.

To the best of my memory, the first one, Mr. Barber or Mr. Prunty told me that Judge Holt wanted to buy a Jaguar for his brother, or that his brother wanted to buy a Jaguar, and since they were being sold and distributed there, and Judge Holt wanted to buy a car, asked me if I would call Mr. Watts, who is the owner of Wa-Co Motors, who was a client of mine and office - - -

Q Did you - - -

A - - - I called for Mr. Watts and told him that I had been advised that Judge Holt wanted to buy a Jaguar for his brother, and I asked him if he could get out his sharp pencil.

Q Was that - - -

A He said he would, "Put him in touch with me and I'll work out the transaction."

Q What did you mean by "get out his sharp pencil"?

A What do I mean by "get out your sharp pencil"?

Q What did you mean by that?

A Make him a fair price.

Q Did you also have - - -

A Which wasn't unusual.

Q Did you also, or were you interested in another matter, approximately a month later, in which Judge Holt purchased an automobile for himself from Wa-Co Motors?

A I would like to finish the first one.

Q Go ahead, sir.

A Because, in your Bill of Particulars, you say that I arranged for the purchase.

That's all I had to do with the first transaction. I didn't know whether he had acquired the car or not until sometime afterward.

Q But you put him in touch with your client, isn't that true?

A I beg your pardon?

Q You put him in touch with your client, and urged your client to give him a good deal?

A I did, as I have many people.

Q Well, then, did you also do a similar matter for Judge Holt in July of 1955?

A I don't know whether it was July or not, but I did call Mr. Watts on a second Jaguar when Judge Holt said he would like to have - - - said he would like to have one like his brother's.

Q And during this period of time in which you - - I don't know whether you want to use the word "arrange," or whatever word you care to use for the purchase of these Jaguars, was your firm actively practicing in the Circuit Court of Dade County, Florida, and practicing before Judge Holt?

A My partner, Judge Prunty, I assume, was practicing before Judge Holt. I don't know whether Mr. Barber appeared - - ever appeared before Judge Holt during that period of time, but I would have to answer the question without any actual checking or figures before me, that we were practicing, or the firm, through Mr. Prunty and Mr. Barber and Mr. Orr, were practicing in the Circuit Court, and before Judge Holt.

SENATOR DAVIS: Mr. Chief Justice, after consultation with the State's counsel, they advise me that this is a good stopping point, and at this time I'd like to raise a point of order.

CHIEF JUSTICE TERRELL: The point of order is sustained, and Court is adjourned until 9:30 tomorrow morning.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:00 o'clock P. M., until 9:30 o'clock A. M., Thursday, July 25, 1957.