

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Thursday, July 25, 1957

121

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. Muselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

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

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

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

—35.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Connor, will you pray.

SENATOR CONNOR: May we pray?

Supreme, our Protector of the Universe, we ask Thy divine blessing upon this nation of ours, upon our State, and upon the Members of this Senate as they sit in deliberation in this impeachment proceeding.

We would ask Thee to give us wisdom and understanding. We all realize that we have sinned and come short of the Glory of God. Therefore, we ask Thee to forgive us of our sins.

Be with the Members of this Court in our deliberations, and may we seek diligently for truth, so that our decision will be cloaked with honor and justice, for we ask it in the name of Jesus Christ, our Lord and Savior. Amen.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Wednesday, July 24, 1957, was dispensed with.

The Senate daily Journal of Wednesday, July 24, 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.

MR. JOHNSON: Are you ready to proceed, Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Yes.

Thereupon,

THURMAN A. WHITESIDE,

resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. JOHNSON:

Q Mr. Whiteside, prior to the interruption of the testimony by the recess of last night, I had asked you some questions concerning a \$2800 check that you furnished to Judge Holt on January 22, 1954.

Now, did that complete that transaction, Mr. Whiteside?

A If the sale had been consummated it would have completed the transaction, but in view of the rejection of the cylinders by the purchaser at that time, the transaction was not completed until later, in piecemeal sales, so to speak, over a period of time.

Consequently, when the matter was finally concluded, on receipt of the last payment, on May 31, 1955 - - -

Q Was it May 31 or May 10, do you recall?

A May 31, 1955 was when the last \$5,000 was received as payment from the sale of the cylinders. Then the matter was concluded, and it was then time for an accounting.

Q Well, did you make an accounting with Judge Holt on May 31?

A I did not, through error, perhaps, on my part.

Q Well, on what date did you make your final accounting with Judge Holt, Mr. Whiteside?

A I made a final accounting with Judge Holt by way of letter, dated June 4, 1956.

Q Mr. Whiteside, prior to your letter of June 4, in which you made a final accounting, had you been called before the Florida Board of Governors of the Florida Bar Association?

A I had not.

Q Did you appear before them?

A I did not appear before the Board of Governors prior to that time.

Q Well, did you appear before a committee of the Board of Governors?

A I appeared before agents who were appointed by the Board of Governors for investigative purposes.

Q They were investigating this particular transaction with which we are concerned?

A I don't know whether they were investigating this particular transaction at the time I appeared before them.

Q Well, Mr. Whiteside, did they ask you questions about this transaction? I don't want to be technical about it.

A Yes, they asked me questions about this transaction, but it was predicated upon my delivery of my records to them, from which they received their first information of this transaction.

Q And it was not until after that questioning of you by the Board of Governors that you made what you have described as the final accounting, on June 4, 1956?

A That's quite correct, but it's necessary to explain it.

For the calendar year 1955, I did not file my tax return until October of 1955, so that I had not even gotten my records in shape, and had all my information together at the time I appeared before the agents of the Florida Bar for the first time, on May 31, a year ago.

Q But all of the sales had been consummated over a year prior to what you have described as a final accounting with Judge Holt?

A That's quite correct.

Q Now, Mr. Whiteside, do your records reflect the appointment of your law partner, John W. Prunty, as co-curator of the estate of Jewell Alvin Dowling, on June 22, 1954?

A I have none of those records.

Q You would not dispute what the court records indicated, would you?

A I've never seen the court records. Of course, they are matters of public record, and must be accepted as such.

Q Well, I suggest that we bring the records before you, then.

MR. JOHNSON: Would the Court indulge us just a moment until we get that file? We want to have it received in evidence.

BY MR. JOHNSON:

Q Mr. Whiteside, while we are waiting for the file to be brought in, do your records reflect what was the total fee received by your law partner, Mr. Prunty, from his work that he performed as co-curator in the estate of Jewell Alvin Dowling and the other Dowling, I believe, his wife, Ina?

A The partnership records would reflect that for the year ending August 31, 1955.

Q Do you have those records before you?

A I do not.

Q Would your recollection reflect that the total fee received by your partner, John Prunty, in connection with the Dowling estate, was the sum of \$32,262.38?

A I believe that's correct. I will accept that figure, in any event.

Q Will your records reflect that the total portion of that fee was received on June 9, 1955?

A The total portion?

Q The final portion, rather, to be more accurate.

A I can't tell you exactly when the final portion was received, Mr. Johnson. I know that the entire \$32,000-odd was received during our fiscal year, September 1, '54 and ending August 31, '55.

Q Does your record or your recollection reflect that approximately at the same time that the final portion of that fee was received was at the time you arranged for the purchase of these Jaguar automobiles from Wa-Co Motors by Judge Holt and his brother?

A I have no idea that the times coincide. If they do coincide - - -

Q Do your records - - -

MR. HUNT: I'd like for the witness to be permitted by the examiner to complete his answer.

BY MR. JOHNSON:

Q Had you finished your answer, Mr. Whiteside?

A I had not.

Q Go ahead, please sir.

A If the records do show that the times are coincidental and are simultaneous, it will be my first information about that.

Q Mr. Whiteside, I asked you earlier in the testimony concerning the division of profits between you and Mr. Prunty. Was it your testimony that at the beginning you received sixty per cent and your partner forty per cent?

A Yes sir, that was my testimony.

Q And then, a couple of years later after the formation of the partnership, the division was changed to fifty-fifty?

A I believe I testified that it was either two or three years later. I didn't know which.

Q Which continued on up until the termination of your partnership?

A I also further testified that we reserved the right, at the end of each year, to decide upon what percentage each of the partners would receive out of the partnership, and we had no formal partnership articles of agreement.

Q Mr. Whiteside, up until the time of the dissolution of your partnership with Mr. Prunty who, as I understand, went on the Circuit Court Bench at that time, did he not?

A He did not go on the Circuit Bench at the time of our dissolution.

Q How long afterward?

A We dissolved August 31, and he went on the Circuit Court Bench, and received his appointment, in January following.

Q But up until the final dissolution of the partnership with Mr. Prunty, did your firm continue to practice in the Circuit Court of Dade County, Florida, and before Circuit Judge George E. Holt?

A Yes, but I did not practice in the Circuit Court, nor have I practiced before Judge Holt, other than as I testified.

Q You are speaking of personally?

A Personally.

Q But the firm of which you were a partner practiced - - -

A Yes.

Q - - - before the Circuit Court of Dade County?

A Yes.

MR. JOHNSON: You may examine, Mr. Hunt.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Whiteside, I believe your examination began on the subject of the Peoples Water & Gas Company rate litigation, and certain fees and costs which developed from that case.

I wish you would explain to the Senate, in your own language, precisely what the issues were in the Peoples Water & Gas Company case, who the parties were, and by whom they were represented.

A All right, sir.

Peoples Water & Gas Company is a gas company that at that time was serving the southeastern portion of Florida, which had some thirteen municipalities in which they were then operating.

They were operating in the City of Miami Beach under a franchise that was granted in 1928.

Q About what was the size and capital structure of that company, roughly?

A I don't recall the size of the capital structure at this time.

Q Very well, go ahead.

A I do know that it had three million - - - approximately three million eight hundred dollars in bonds outstanding, and later, sometime during this litigation, issued some additional bonds, but as to its capital structure, that's all I recall.

Q In any event, did it have the franchise to furnish natural

gas to members of the public throughout the City of Miami Beach?

A It was not natural gas, it was manufactured water gas at that time.

Q I beg your pardon. Go ahead.

A And they had approximately between thirteen thousand and fourteen thousand consumers in the City of Miami Beach.

Under the original franchise, there was a clause in that franchise, or covered in that franchise, which provided that the City of Miami Beach and the officials of Peoples Water & Gas Company would agree upon rates to be charged to the consumers therein.

They did so agree, and that provision, then, was effective for a period of five years.

In 1947, with the record increase in the cost of fuel oil after the war, and coal, which are the basic ingredients which you must have for the manufacture of water gas, so-called, the company was operating in the red. They consulted our firm of Yonge & Whiteside, Jim Yonge and myself, to see if they were bound - - - and they felt that they were bound by the terms of their contract, that those rates must remain inviolate for a period of five years, and that period had to go from 1947 - - - had about four more years to go at that time.

After much research, we came to the conclusion, the legal conclusion, that it was the settled law, not only in the State of Florida, as well as having been affirmed by the Supreme Court of the United States in a case that happened to originate in Jacksonville, Florida, that no city or governmental agency could contract away their police power, and the police power, the power to regulate rates, was inherent, as it had been granted to the City of Miami Beach by their charter, in their charter by the Legislature of the State of Florida.

We recommended to our clients that they therefore - - - that therefore, that that covenant was void, ab initio, and as a result of that, the City did not have the power to make the contract, and therefore, it could not be binding upon the Peoples Water & Gas Company.

The franchise also provided that the initial rates were to be established by the Peoples Water & Gas Company, and we recommended to them that they, at that time, since the contract was void, as being beyond the city's authority, that they establish rates that they thought were proper and adequate rates.

As a result of our recommendation, the city was advised that, effective December 1, 1947, certain rate structures would be put or placed into effect by the Peoples Water & Gas Company.

Thereafter, following the usual procedure at that time, the City of Miami Beach issued an order to show cause why the rates should not be reduced because they were excessive.

Upon issuance of that order testimony was taken before the City Council of Miami Beach, and that time they took approximately one week.

Q What was that last? The taking of testimony?

A The taking of testimony and a presentation of the matter, pursuant to the order to show cause before the City Council of Miami Beach took approximately one week in time.

As a result of that hearing, the City Council passed what was known as a rate ordinance, and put into effect rates less than those that had been placed in effect by the company on December 1, 1947.

Of course, their ordinance had to become valid through the operation of the provisions of the charter on three meetings, and then thirty days thereafter. Within that thirty-day period, Mr. R. R. Saunders and Mr. James D. Yonge and myself, along with a conferee from Chapman & Cutler's office, in Chicago, prepared a Bill of Complaint which was filed, I believe, in July of 1948, and at the same time, a motion for temporary injunction.

A temporary injunction was issued - - -

Q Just a moment. Where was that suit filed?

A In Dade County, Florida.

Q And was the temporary injunction issued after notice?

A I don't recall, but I'm reasonably sure that it was, but if I could check the file, I could give a definite answer on that.

Q Do you have the file?

A Right.

Q Let me ask you this, Mr. Whiteside: Upon the initial presentation, was there any injunction or receivership granted on the bill?

A Yes sir, there was.

Q Will you please state its effect?

A It merely enjoined the enforcement of the rate ordinance which had been passed and enacted by the City Council of the City of Miami Beach.

Q Pending what?

A Pending final determination of the suit; and then, thereafter, the - - - all the differences between the ordinance rates and the rates then charged by the Peoples Water & Gas Company were deposited with the First National Bank of Miami, in escrow.

Q And would you repeat that last? What was deposited in the First National Bank in escrow?

A The difference between the rates which were enacted by the rate ordinance of the City Council of Miami Beach, which were less than the rates that were then being charged by the Peoples Water & Gas Company.

The monies at issue, in other words, were deposited in escrow with the First National Bank of Miami by the company, under an order of Court, pending the final determination of the suit.

Q The Court determined that the differential in dispute, so to speak, be deposited in escrow in the First National Bank, pending final determination of the suit?

A Yes sir.

Q Go ahead.

A There was also at issue in this with a joinder and answer of the Defendant, the City of Miami Beach, the question as to whether or not the rates that the Peoples Water & Gas Company had put into effect on December 1, 1947 was a legal action, legal, proper action on their part.

This suit pended, volumes of testimony were taken . . . first, shortly after the filing of the Bill of Complaint and the issuance of the injunction, the Peoples Water & Gas Company retained and employed Miller Walton, of the law firm of Walton & Lantaff—Hubbard, Schroeder & Atkins at that time as primary counsel in this litigation, inasmuch as Mr. Walton had had vast rate experience in representing various independent telephone companies throughout the South.

Testimony was taken . . . or first, an application for a Master was made, and the Master appointed was Louie Bandel, and thereafter, after notice, testimony was taken in this matter. The - - -

Q Who is Louie Bandel?

A He's an attorney at law, practicing law in Miami, Florida, and had had considerable experience in acting as Master.

Q Is he a civic leader and former member of the Miami City Commission?

A He's a former member of the Miami City Commission, former City Judge, and has been very active in civil and fraternal matters.

Q Go ahead.

A Testimony was taken over a period of a year and a half, approximately; many, many hours and many days were devoted to the taking of testimony. It was highly technical. All of the witnesses, or nearly all the witnesses were expert engineers or accountants, and were tracing it through on the technical basis of rate bases and return and depreciation,

both accrued and reserve, and the testimony, as I recall, ran over five thousand pages, separated into volumes that would stand, perhaps, six feet high, before the conclusion of the taking of testimony.

Thereafter, the matter was argued before the Master, primarily by Mr. Miller Walton, Mr. Ben Shepard and Mr. Sidney Hoehl, who was employed by the City of Miami Beach as special counsel; and that argument was reduced to writing, and just the argument was over four hundred pages.

The Master filed his report. Thereafter, the counsel for the City of Miami Beach filed their exceptions to the Court, and counsel for the Peoples Water & Gas Company likewise filed - - -

Q When was the report filed, Mr. Whiteside?

A For some reason or another, the Master's report is not a part of this Court file, but the exceptions to the Defendant - - - exceptions of Defendants to the report of the Special Master refers to the report of the Special Master, filed herein on the 22nd day of September, 1950.

MR. HUNT: May I ask at this time, Mr. Chief Justice, ask the House Managers if they are in possession of the Master's report, which should be in the Court file?

MR. JOHNSON: Mr. Hunt, we didn't receive it. We were informed by the Clerk of the Circuit Court that that Master's report was taken out of the file and no one can find it.

MR. HUNT: I don't refer to the big stack of testimony.

MR. JOHNSON: I mean the Master's report itself was taken out of the file and the Clerk informed us that they cannot find it.

However, there is one of the witnesses who has been subpoenaed that has a copy, and that's the Master himself, he has a copy of the Master's report. That is not ours, but it will be available, if you desire to call him for that purpose. I will surely be glad to see that you look at it now.

MR. HUNT: It may be that we can dispense with it.

MR. JOHNSON: But the original of that report is not available. We determined - - - tried to find it, and we could not find it. We determined that.

MR. HUNT: Thank you.

BY MR. HUNT:

Q What date did you assess to the Master's report, Mr. Whiteside?

A If I remember correctly, it was the 22nd of December, was it not? Of September . . . excuse me, 1950.

Q 1950?

A Yes sir.

Q And the date of the order of reference to the Master?

A May I have my file? It will save time.

The order of reference was dated the 2nd day of November, 1948.

Q Would you refer to the - - - I believe it's the final decree, which recites the number of hearings before the Master, and the number of pages of testimony taken before the Master.

MR. HUNT: If Your Honor please, these momentary delays are caused by the fact that a large number of these papers have been withdrawn for photographing purposes, and then apparently inserted out of order. It's difficult to trace down any particular one; they're not in sequence.

THE WITNESS: I don't see the copy of the final decree in this file, offhand.

MR. HUNT: I'm sure that the final decree is there.

CHIEF JUSTICE TERRELL: The index doesn't give you any assistance as to where - - -

MR. HUNT: There's no index, Your Honor. The docket sheets are not here.

MR. JOHNSON: Mr. Hunt, perhaps we can stipulate with you that it took eighty days to take the testimony.

MR. HUNT: I'd prefer to conduct the examination of the witness without stipulation, Mr. Johnson.

MR. JOHNSON: All right, sir, just as you say.

MR. HUNT: There are other portions of the final decree that you overlooked, that I want this witness to refer to.

THE WITNESS: I've found the final decree now.

What was your question?

BY MR. HUNT:

Q Referring to the recitals of the decree as to proceedings before the Master, the amount of testimony taken, the number of witnesses examined, etc., would you read that portion of it?

A This is contained in Paragraph 8, Page 9. Do you want me to read only that portion referring to the question?

Q Please sir.

A (Reading): "The record of this case is probably the largest in the history of legal jurisprudence in this state; if not, certainly the most extensive ever filed and considered in this Circuit. The testimony alone consists of 5,307 pages; the exhibits number 74; and the Master's report 141 pages, plus 440 pages of argument. The cost of the stenographic services alone amount to \$5,937."

Q Now, what was the general effect of the final decree, Mr. Whiteside?

A The general effect of the final decree was that the ordinance rate, as established by the City Council, which brought on this litigation, was confiscatory, for that it provided the Peoples Water & Gas Company with less than a reasonable return.

The other effect of the final decree, or other effects of the final decree were that inasmuch as the ordinance rate was invalid because it was confiscatory, that then, the only valid rates that were then in existence were the rates that were being charged by the Peoples Water & Gas Company, and in effect, upheld the legal right of the Peoples Water & Gas Company to place the new rates into effect on December 1, 1947.

Q Now, were all questions before the Court concluded by that final decree?

A They were not.

Q Will you read the provision which reserves jurisdiction for particular purposes?

A (Reading): "The parties hereto" - - - this is Paragraph I, Page 9:

"The parties hereto are ordered and directed 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 Plaintiff by amortizing them over a period of not less than eight years, and including them in its operating expenses."

Q Now, you made reference yesterday, Mr. Whiteside, to the state of the law upon that particular situation; that is, the assessment of costs against the consumers.

Was that by Federal law or state law?

A It's, I would say, by general law and the decision of not only Federal Courts, but State Courts. It's also been - - - was the settled law in the State of Florida at that time.

Q And that law was to what effect at that time?

A That in the event that a city or a municipality, or a rate-making body established regulatory rates or rates exercising their regulatory authority, and those rates were confiscatory, that is, they provided less than a reasonable rate of return, that the cost of obtaining a reasonable rate of return in that litigation would be a cost of the regulatory body or the consumers which the regulatory body is representing.

Q Now, following the entry of the final decree - - - will you give the date of the final decree first, please?

A The 21st day of June, 1951.

Q State what proceedings followed the entry of that final decree, with reference to bringing the reserved portion of the litigation to final conclusion?

A There were several conferences between counsel for Plaintiff and the City of Miami Beach, and such counsel were unable to agree upon the amount of the cost of the litigation which should be assessed or taxed as costs to be recovered of and from the consumers of the City of Miami Beach.

Q Do I understand that the City of Miami Beach failed to prevail in that case?

A They did.

Q And do I further understand that the City of Miami Beach was represented primarily by the - - - their city attorney, Mr. Ben Shepard?

A I would say that they were represented primarily by Sidney S. Hoehl - - - H-o-e-h-l, I think, who was employed as special counsel.

Mr. Ben Shepard was a very active participant in the litigation.

Q He did participate?

A Actively.

Q Yes sir. And who participated for the successful side in these conferences?

A In these conferences, Mr. Shepard, Mr. Hoehl, Mr. Walton - - -

Q Was that Miller Walton, of Miami?

A Miller Walton, of Miami, Mr. S. O. Carson, of his firm, and myself.

Q Now, I believe the testimony you gave yesterday determined the fact that eventually a motion was filed before the Court, asking the Court to make the determination, is that correct?

A That's correct, sir.

Q And the date of that motion, please sir?

A A lot of these are out of order.

The date of the order, or the date of the certification on the motion to - - - excuse me, is the 27th day of February, 1952, and executed by S. O. Carson.

Q Well, then, between June 21, 1951, and the early part of 1952, the attorneys representing the various litigants were engaged in different joint discussions in an effort to amicably agree upon the cost matters, is that correct?

A Yes.

Q Now, what followed the filing of the motion, requesting the Court to arbitrate the differences?

A It was set down by notice, first, on some date other than when it was heard; for some reason or other, it had to go over, and then additional notice was given for hearing by Mr. S. O. Carson to all counsel involved on the 14th day of - - - dated the 14th day of March, 1952, and filed on the same day, setting May 1 for the time of such hearing and the taking of testimony.

Q Now, then, will you detail the happenings at the hearing, please, and the participants, name the participants?

A The participants?

There was present at the hearing the Honorable Ben Shepard, Mr. Sidney Hoehl, Mr. Miller Walton, Mr. S. O. Carson, myself, John H. O'Brien, Roy E. Jones, and a Court Reporter.

Q Will you state what developed at the hearing? Was testimony taken? What was the proceeding?

A Testimony was taken on behalf of the company. It then

introduced an exhibit, setting forth the total of the rate case expense which the company sought to be taxed as a cost to be recovered over a period of years, pursuant to the terms of the final decree.

The company itself, through Mr. O'Brien and Mr. Roy E. Jones, supported certain portions of that exhibit by their testimony, and as a witness I submitted an affidavit which supported certain portions of the actual cost - - - that affidavit is a part of the file - - - that we had expended through our office, as a part of the cost, some \$25,549.90; and Mr. Miller Walton testified as to what his fee was, what he had been paid, and as to whether or not, in his opinion, it was a reasonable fee; and likewise, I testified as to what my firm had been paid, and as to whether or not it was a reasonable fee.

Q Mr. Whiteside, do you find in that file the affidavit which you submitted on that occasion?

A I do.

Q What was the total amount of advancement by your office to the account of this litigation, as shown by your affidavit?

A \$25,549.90.

Q Will you please state, who was G. C. Mosley and Associates?

A They were the reporters.

Q What?

A They were the reporters that made the record of testimony before the Master.

Q And Mr. Bandel, you've stated, was the Master?

A Yes, he was the Master.

Q And that affidavit is in the file, is that correct?

A Yes, it is in the file.

At that hearing there was no evidence presented other than what I have outlined briefly.

Q I was about to ask you to outline to the Senate, briefly, what the issues were before the Court at that hearing?

A The - - -

Q The question of reasonableness of requested fees, or what?

A Our costs - - - and costs.

Q And costs?

A Our costs, to be recovered, whether it be attorney's fees, or whether it be costs for renting the marina, or costs for expert testimony of engineers of Stone & Webster Corporation, out of Boston, or even appraisal - - - real estate persons who were engaged in the appraisal business in Miami, Florida.

Q And what objections, or what pleadings, by way of objections or exceptions, do you find in the file there to the order of the Court?

A The order of the Court, fixing the amount of costs - - -

Q Yes.

A - - - that are recoverable?

Q Yes.

A There were none.

Q Pardon?

A There are none, I don't believe.

Q Was there any appeal from that order?

A There was no appeal, and as I've stated, the only testimony before the Court was the testimony which the Peoples Water & Gas Company produced.

Counsel for the City of Miami Beach, of course, argued vigorously against certain items of expense.

Q Well, in addition to counsel's argument against items of expense on the part of the City of Miami Beach, did the City of Miami Beach produce witnesses - - -

A They did not.

Q - - - in opposition to any of the items of cost or adjustment, including attorney's fees?

A They did not.

Q Will you refer to that order, and state briefly to the Senate the effect of it?

A The order is rather complete in itself. Do you want me to refer to - - -

Q No. Is it lengthy?

A About three and a half pages.

Q Will you state the effect of it?

A The effect of the order is that in the objection as to attorney's fees, the Court stated, "It is sufficient to dispose of the first ground of objection simply by observing that the only evidence before this Court is that the amount of such fees, if anything, is less than reasonable."

There was objection to the cost of - - - engineering costs of preparing a fair value study; that cost was \$17,000, and counsel for the City of Miami Beach had argued strenuously against that, if I recall correctly; and the Court observed that:

"Of the total amount of expense incurred and paid by Plaintiff, only \$17,114.53 is involved as cost of the appraisal study. Approximately sixteen days, or 1,670 pages of cross examination were devoted to the appraisal study alone by Defendant's counsel.

"Further, we find that Defendant's principal witness used the result of the appraisal study at least twelve times in arriving at his calculations. It is obvious that this witness' calculations would not have been possible without the appraisal study, predicated upon the importance attached by Defendant's counsel. Measured by time devoted to the subject, the Court is convinced that the cost of the appraisal study is not excessive."

A And will you state what costs and expense items were finally approved, or is that a very lengthy situation?

A It's represented completely by the exhibit that was introduced at that hearing by the Plaintiff, and it was admitted as Plaintiff's Exhibit Number 1, and it's basically broken down into legal expense - - this would be out-of-pocket expense, a total of \$2,416.95; legal services, \$116,832.80; Court hearing expense, \$129,683.12.

The cost of separating and maintaining the differences between the ordinance rate and the rates that were being charged, so that the accounting could be made, and the money deposited with the First National Bank in trust, in escrow, was \$15,852.62; accounting, \$5,738.76; original cost study, \$3,-331.40; the appraisal - - - that's the fair value appraisal, \$17,114.53; miscellaneous, \$2,080.99, a total of \$293,051.17.

Q Will you, Mr. Whiteside, give us the breakdown, now, on attorney's fees?

A The attorney's fees breakdown: Walton & Hubbard in that - - - their firm - - -

Q What's the name of that firm, do you know?

A At that time it was Walton, Hubbard, Lantaff, Schroeder & Atkins.

Q Very well.

A \$65,000.

Q Go ahead.

A Yonge & Whiteside, although it was paid to T. A. Whiteside, \$50,000.

Q Yes.

A Other, \$1,832.80, of which \$1,000 was paid to Giles Pat-

erson, of Jacksonville, Florida, and \$832.80, if my memory serves me right, to the firm of Chapman & Cutler, of Chicago.

Q Now, will you explain to the Senate, Mr. Whiteside, what had happened prior to this order establishing \$50,000 as compensation, allowable cost to your firm, with respect to your firm and your client?

I think you testified yesterday that you had been completely paid, or virtually so, and that your fee had long since been negotiated with your client. Is that correct?

MR. JOHNSON: Now, we object to counsel summing up the testimony, in effect, making an argument, and we suggest that the witness be allowed to testify from his own knowledge.

MR. HUNT: Mr. Johnson, from you, that's a delight.

The witness is on cross examination, Your Honor.

CHIEF JUSTICE TERRELL: The objection is overruled.

BY MR. HUNT:

Q Go ahead.

A First of all, the \$50,000 that was allowed as a recoverable cost in the order entered by the Court was not in anywise, in any respect, fixing the amount of my fee. It did not say to my client, or the Peoples Water & Gas Company, "You now have to pay the firm of Yonge & Whiteside \$50,000," it merely approved that they had paid me \$50,000, and that that was a reasonable amount for the company to recover from - - - of and from the consumers of the City of Miami Beach over a period of eight years.

As to our fees, actually, we received \$2700 in October, 1948; \$2,000 in November, November 16, 1949; \$2,000 on December 14, 1949; \$2,000 on January 19, 1950; \$2,000 on February 17, 1950; \$2,000 on March 9, 1950; \$14,047 on September 28, 1950; and we had billed for \$7,280, which was approved and authorized for payment in June of 1951, although the billing was in December of 1950, or January of 1950, to the best of my memory; however, it was paid, although it was authorized by the company for payment, payment was not received until December 31, 1951.

Likewise, the differential between what we had been paid, or authorized to be paid, and the agreed, negotiated fee, which was negotiated, as I testified yesterday, with general counsel out of Philadelphia, of \$50,000, to which \$15,973 was paid on December 31, 1951 also.

Q Well, then, if Judge Holt, upon that hearing, had refused to allow the compensation previously paid or committed to your firm by your client, as assessable costs, would it have had any influence or effect upon the receipt by your firm of \$50,000 from Peoples Water & Gas Company?

A None whatsoever, because \$50,000 had been received and \$50,000 had been agreed between counsel and general counsel, as the proper amount of compensation to be paid.

Had the order not allowed any attorney's fees, my firm would have still received \$50,000, and would have had to have accepted it, for services, I might add, that extended from November of 1947 to - - -

Q From November, 1947?

A - - - to May of 1951, and some time thereafter.

Q Now, Mr. Whiteside, with reference to the purchase by Judge Holt of automobiles from Wa-Co Motors, I believe you stated that at Judge Holt's request, you called your client, Mr. Watts, related the fact that you might have a customer, or some such matter as that, and gave him Judge Holt's name, and asked him to sharpen his pencil when he came around, is that about right?

A That's about right. On the first time I called Mr. Watts.

Q Have you ever been requested or importuned by any friend, prior or subsequent to that time, to call somebody to see if you could get a little off for him?

A Many, many times.

Q Did you generally do it when you could?

A Almost invariably.

Q Was it your understanding, on the occasion of the purchase of the first Jaguar, that that was for Judge Holt's brother?

A It was.

Q Was it your understanding that after the brother of Judge Holt took delivery of the first Jaguar, that Judge Holt and Mrs. Holt then determined that they would like to have one of the same type and variety?

A That was what Judge Holt said in the telephone conversation.

Q And do I understand that you again called Mr. Watts, related the situation to him, and for the second time, suggested that he get out a sharp pencil?

A I did.

Q Did you have any feeling at that time that you were acting evilly or wrongfully or corruptly in connection with Judge Holt?

A Heavens, no.

Q I would like for you to state to the Senate, Mr. Whiteside, your past relations with Judge Holt, your relationship over the years, in your own words.

A Judge Holt and I have been friends for between twenty-five and thirty years.

My wife and Mrs. Holt and myself went through grammar school and Miami High School when Miami was a small town, so that there has been a certain feeling of affinity between the old timers in Miami, anyway; and we have that feeling of affinity, and have had it through the years.

I have always considered Judge Holt as a personal friend, social friend, and his wife as well.

Q Has Judge Holt ever extended any judicial favors to you?

A Not the first one.

Q Are you in need of any judicial favors?

A Now, I might have to qualify that if you included in "judicial favors" appointments as Master, I was appointed a Master by Judge Holt a few times after I returned from the Service.

Q When did you return from the Service, Mr. Whiteside?

A February 15, 1946.

Q In what branch of the armed forces did you serve?

A In the United States Marines.

Q In what department, or theatre?

A Third Marine Division, in the Pacific.

Q In the Pacific?

A Yes.

Q When did you return to Miami from the war?

A About February 25 or 26, along in there, 1946.

Q State to the Senate what your financial circumstances were when you - - - I believe you indicated that Judge Holt sent a few \$25 Masterships to you?

A Well, when I returned - - -

MR. JOHNSON: I don't think that's his testimony, Judge Hunt. I didn't hear him refer to the amount of the fee. We object to it, object to the question, as not correctly paraphrasing, and arguing what he said.

MR. HUNT: We'll take out the amount of the fee for Mr. Johnson.

BY MR. HUNT:

Q Go ahead.

A There was no office space available in Miami for any returning lawyers unless they had a firm to return to.

I had been in the duPont Building until the Navy took it over, and I was fortunate - - -

Q Talk louder.

A And I was fortunate enough to get a commitment from the manager of the building to move back into the building when the Navy gave it up.

They didn't give it up until June 30; so, I did nothing from March - - - February 25 or 26 until about the middle of July, but in that interim period, Mr. James E. Yonge and I worked out a partnership arrangement.

When we - - - I don't believe in buying things on time, if it can possibly be avoided, so, when I bought a new library, I bought a limited workable law library and paid for it in cash, and when we were through setting up the office and furnishing it, the resources that were left at my command were rather limited at that time.

SENATOR DAVIS: Mr. Chief Justice, one of the members of the Senate has an emergency call, and I move we 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; the motion is adopted.

Whereupon, a recess was taken from 10:35 o'clock a.m. to 10:45 o'clock, a.m.

CHIEF JUSTICE TERRELL: Order in Court. Without objection the chair declares a quorum present. Whose time is it?

MR. HOPKINS: We are ready, Your Honor.

Are you through, Judge Hunt?

MR. HUNT: No, sir.

BY MR. HUNT:

Q Mr. Whiteside, prior to the recess, I believe the crux of your last statement was to the effect that upon your return from the Marines, that Judge Holt favored you for some time with Mastership appointments, is that correct?

A Yes, I received a few Mastership appointments from Judge Holt, but I also received them from other Circuit Judges, sir.

It was the policy of the Circuit Judges at that time to pass around some uncontested Masterships among all returning servicemen as much as possible.

Q I believe at that time I was guilty of joining in the policy, was I not?

A I think you were, sir.

Q I'll ask you to state, Mr. Whiteside, whether or not, even if tendered you, you would accept any judicial favor from any judge?

A No. By that, I assume you mean, would I accept any appointment - - -

Q That's right.

A - - - as Master or as a receiver or as a curator, or any other official appointment that is within the power of a Circuit Court Judge to appoint?

Q Yes, for the purpose of earning the fee attached to it?

A I would not.

Q Will you state - - - are you able to approximate your gross income over the past five-year period, if you're willing to do it?

A My wife and I file joint returns, and I have only the gross information available, that is, the gross income, before tax deductions other than the deductions that are represented as items of expense in the practice of law.

Q Will you give us the gross?

A For the five-year period, including 1952, '53, '54, '55 - - -

Q We can't hear you, Mr. Whiteside.

A For the years of 1952, '53, '54, '55 and '56, the total ap-

proximate gross income, before tax deductions, is in excess of \$650,000.

Q That would average out, on an annual basis, approximately what?

A \$130,000 a year.

Q Now, the period you've just covered includes everything in connection with the Dowling era, does it not?

A The Dowling era would only be in the calendar year 1955.

Q '55?

A Yes, or the fiscal term, fiscal year, 1955, which would be my calendar year 1955.

Q Mr. Whiteside, there's been an intimation that you received some profit or return as the result of the fact that Judge Holt appointed your former partner as a co-curator in the Dowling case. Will you state whether you did or not?

A All of the fees received by Judge John W. Prunty as a co-curator were received during the firm's fiscal year commencing September 1, 1954, ending August 31, 1955.

I received no portion, directly or indirectly, of those fees. I received no benefit, directly or indirectly, of those fees.

Q No, your firm relationship with Judge Prunty terminated on what date?

A August 31, 1955.

Q Under what arrangement or agreement was the income for that year allotted, or divided, as between the partners?

A Actually, I assume that you could say that the income for that year was treated in that fashion, but we agreed, actually, to dissolve our partnership on a basis that John would pick up all the net income of the firm, plus \$9,000, approximately, of the capital account, and I took a \$9,000 loss in the capital account.

After that - - - that was done as of August 31, but the decision was arrived at on September - - - on or about September 12, 1955, and our C.P.A. was instructed accordingly at that time.

For clarity's sake, it might be well to add that Judge Prunty was not, had not, and we had no idea that he would be appointed to the Bench at that time, first; and second, that the matter of the Dowling estate, or any criticism, or otherwise, of his participation in the Dowling estate, had not been brought into any focus or attention, nor did we know anything about it at the time.

Q Well, will you explain, from a financial or accounting standpoint, the net result in the - - - as to the agreement that Judge Prunty take all the net firm fees for the current, or fiscal year, rather, of 1955?

A The net result, in the final analysis, I am advised by Judge Prunty, that his income tax was increased approximately \$14,000 by - - - over what it would have been normally by that method of dissolution.

Had we not dissolved in that fashion, and had dissolved in a fashion of a fifty-fifty partnership, my income taxes would have been increased approximately \$26,000, but the net result is that I'm out \$700, approximately, in cash, as a result of dissolving in that fashion. There's a \$700 differential to me, the reason for that being that both upon the formation of our firm—it was necessary for John to live out of the firm, and for the associates we had working with us to live out of the firm, and they had authority to draw any sums of money that they needed for living purposes, so that when we reached the end of - - - well, the point where we ended up our last fiscal year, John's capital account was \$14,000 in the red, and mine was \$40,000 black, and he ended up that year with his capital account being approximately - - a little bit in excess of \$23,000 in the red.

This is rather involved. Had we dissolved on a fifty-fifty basis, John would have been obligated to pay me \$23,000-odd, which he offered to do, and which I refused, because I felt there was a more equitable way of approaching the dissolu-

tion, and had we dissolved on that basis, and John repaid me the \$23,000, I would have kept, in net dollars, the sum of approximately \$27,500.

By letting John take all the income and the \$9,000 capital account, which means he had to pick up \$50,000 on his income that year to pay the additional tax on it, and my taking a \$9,000 loss, in theory - - - and that was the basis that was approached on at that time, because it was in September of 1955, before the end of the calendar year, the tax saving to me was approximately \$26,700, or a differential of about \$700 out of pocket.

Q Mr. Whiteside, one further question:

You mentioned that you were formerly in partnership with an attorney named Yonge?

A Yes.

Q How long did he practice in Miami, and who was he?

A He was James Ernest Yonge, Y-o-n-g-e, and I believe he originated in Tallahassee, here; I know he grew up in Tallahassee, and he practiced - - - started practicing in Miami shortly after World War I, practiced there until his death, in 1948.

We formed a partnership in - - - had agreed to form a partnership in July of 1946, and made it effective as of October 1, 1946.

Now, Jim represented Pan American Airways, World Airways, and had a retainer from them.

He kept that out of the partnership, but he knew at that time that I had to live out of the firm, and he permitted me to draw any sums of money that I earned out of the firm, and the expenses would be allocated as against whatever income he produced in the practice of law other than his retainer.

I shall forever be indebted to him.

MR. HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Whiteside, you testified on your examination by Judge Hunt concerning the Peoples Water & Gas Company case, and concerning the Master, and did you tell how many days the testimony actually took, sir?

A I did not. I heard you were willing to stipulate, I did not testify how many days.

Q Well, will you tell us, sir, how many days it took?

A I don't know, offhand.

Q Well, would eighty days sound like the proper amount of days?

A To me, from living through it, it seemed like it was less than the proper number for the reason that, of course, there were many days spent in preparation for hearings.

Q I'm speaking, now, of the actual days of hearings?

A I don't know at this moment.

Q If the record should show that eighty hearings were conducted by the Master, would that indicate that there were eighty days of testimony?

A Not necessarily. It could have been that one hearing consisted of three or four days.

Q Well, in this particular case, could you give your best estimate as to the number of actual days that were consumed in the taking of testimony?

A It would be merely a guess, now, and I would hesitate to do so. I have not checked my records on that.

At one time, I had a complete time schedule on it, but I haven't checked it for years.

Q But you would not dispute the fact that the record consisted of eighty hearings, would you, sir?

A No, if the record so showed.

Q What sum of money was awarded to the Master for those - - - the period of time that he took testimony?

A I believe the Master's fee was awarded in the amount of \$50,000.

Q Now, you said something to the effect that there were no pleadings filed in contradiction to the award of Master's fees and attorney's fees?

A No sir, I - - -

Q Was that your testimony?

A No, I did not say that.

Q Well, isn't - - -

A My testimony was, sir, that there were no pleadings filed in protest to the order fixing and determining the costs.

Q Well, is this a true statement of fact, that the attorneys for the City of Miami Beach vigorously contested the award of the Master's fee and the award of attorney's fees in the amount they were awarded?

A They contested the amount of the Master's fee at the time of argument of exceptions to the Master's report, which was, perhaps, more than a year before the order fixing and determining the costs was entered.

Q Is it also true that they vigorously contested the award of the attorney's fees in the amount that they were allowed to be recovered as costs of this litigation?

A That occurred at the hearing on May 1, 1952, and he was representing the City of Miami Beach, and - - - both counsel, and of course, they objected strenuously and vigorously to the taxing and fixing of any costs.

Q Well, I - - -

A My testimony was, there was no evidence introduced by them that tended to show or attempted to show that any of the costs requested by the Plaintiff were not reasonable.

Q Well, will you answer my question, please, Mr. Whiteside?

A I think I did.

Q Well, let me rephrase it. Perhaps I didn't understand your answer.

Did the attorneys for the City of Miami Beach vigorously protest the awarding of Master's fees and attorney's fees in the amount in which they were awarded?

A I can only answer it in this fashion, Mr. Johnson: They protested. I don't know what you mean by "vigorously."

Q Well, "strenuously," I think, is the word you used.

A They argued very strongly against the allowance of any costs.

Q Now, you - - -

A And particularly, particularly the appraisal charge, or the cost of obtaining the appraisal report, \$17,000, on the fair value of the property - - -

Q Excuse me, I wanted to ask you - - - what I want to ask you specifically about this time is about the attorney's fees and Master's fees.

Is it your answer that they - - - the attorneys for the City of Miami Beach vigorously or strenuously protested the allowance of such fees?

A I have stated, sir, that they did protest the amount of the fees. They protested, as any lawyer would, and they protested it as good and able counsel would be expected to do.

Q Now, I believe you also testified there was no appeal taken from the final decree?

A Yes.

Q Is it also true that by an act of the Legislature of the

State of Florida, prior to the entry of the final decree, the power to fix rates was awarded to the Florida Railroad and Public Utilities Commission?

A That is quite true, but that act was drawn in such a fashion that it exempted any litigation that was pending at the time of the enactment of that legislation.

There were two pieces of litigation pending in the State of Florida, one involving the Florida Power Corporation, in St. Petersburg, and this one, involving the Peoples Water & Gas Company.

Q On the question of reasonableness of attorney's and Master's fees, who testified as to the reasonableness of your fees, Mr. Whiteside?

A I testified as to what I had been paid, and I also testified as to what I had billed, and I testified as to whether or not I thought it was reasonable or unreasonable.

Q Well, who else other than yourself testified concerning the reasonableness of your fees?

A No one.

Q Who testified as to the reasonableness of the Master's fee of \$50,000?

A That I don't know, sir.

Q Well, is this a correct statement of fact, that there was no testimony taken whatsoever concerning the reasonableness of the Master's fees?

A I don't know, but I don't recall any testimony whatsoever.

Q Your best recollection, then, is that there was no testimony taken concerning the reasonableness of that fee, is that correct?

A That is my best recollection.

Q Mr. Whiteside, in answer to a question by Judge Hunt, you stated, in effect, that you considered nothing improper about your conduct in relation to procuring or arranging for the procuring of Jaguar automobiles, for bringing Judge Holt in on this deal with the cylinders; was that the substance of your testimony?

A I don't believe Judge Hunt asked me anything about that, insofar as the effect of the cylinders, and he did not use the words "procuring or arranging to procure the Jaguars."

Q Well, let me ask you this question, let me bring it right down to the essence of what I'm trying to ask you:

Are you familiar with the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida on January 27, 1941, which provides as follows, concerning social relations - - -

A Would you give me the book, please?

Q I'll quote from it:

"It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

Were you familiar with that at the time these transactions occurred?

A I asked you for the citation, Mr. Johnson, so I could follow you as you read it to me. Would you give me the Canon, please sir?

Q Certainly. That's Canon 33 of the Canons of Judicial Ethics. It's contained in the last paragraph of the Bill of Particulars.

A Yes, I was familiar with it then and I'm familiar with it now.

Q Well, isn't it true that during the time of this litigation, whereby your client prevailed over the City of Miami Beach, that you brought Judge Holt into an extremely lucrative business deal with you, whereby, for a cash investment of a total sum of \$450, he was able to receive, on one occasion, a return of over \$1100, and on another occasion, a return of \$2800?

A As you phrase the question, I can only say that it's not true.

Q I beg your pardon, sir?

A As you have phrased the question, I can only say that it's untrue.

Q Well, isn't it true that you did him the favor of bringing him into this business transaction while you had a case pending before him which was undisposed of?

A I brought him into a business transaction in which he invested \$200 and received \$1,124 gross return.

Q Well, - - -

A And that was during the period of time that the matter of fixing the costs was pending.

Q Is it true that you gave him one of these checks while he had under advisement a motion to determine the taxable costs of that case?

A I did.

Q Excuse me. What was your answer?

A It's true.

Q You don't consider that a violation of the Judicial Code of Ethics, which provides that a judge should "in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct"?

MR. HUNT: If Your Honor please, the question is nothing but repetition, and the witness has testified, time after time, that his own client had fixed his fee and completely paid it out, and Judge Holt had nothing to do with it.

BY MR. JOHNSON:

Q Well, isn't it true that the client whom you had represented had not yet been authorized to recover your fee as a taxable cost in this case?

A That is true.

Q Isn't it true, at the time of the entry of this final decree, that the Court stated, "However, it must be borne in mind that this Court is not a rate-making body, and has no jurisdiction in that respect," inasmuch as the Legislature of the State of Florida had divested the Court of the power to fix rates, and had conferred that to the Florida Railroad and Public Utilities Commission?

A No. I don't understand your question - -

Q Well - - -

A - - - but if I do understand your question, the Courts have never been vested with rate-making authority; that's always been vested in the Legislature of the State, and delegated by them to proper regulatory bodies, whether it be the city or some other special agency that was set up.

Q But isn't it true that the City of Miami, which was involved in this litigation, had been divested, by reason of the action of the Legislature of the State of Florida, prior to the entry of this final decree?

A Yes, as I tried to state before, Mr. Johnson, the actions that had been taken by the City of Miami Beach theretofore was preserved under that act, and that the terms of the act excepted any rate or controversy that was then in litigation, and provided, in effect, that whatever rates came out of the litigation that was pending at the time of the passage of that act, whatever rate came out of that litigation, would become the first legal rate under the regulatory authority of the Florida Railroad and Public Utilities Commission.

Q Is it your contention that the Florida Railroad and Pub-

lic Utilities Commission was divested of the power to fix rates of the Peoples Water & Gas Company?

A They were divested until this litigation was concluded - - - now you're getting to the Florida Railroad and Public Utilities Commission.

If you'll check the records, within a very few months after May of 1952, the Peoples Water & Gas Company applied to the Florida Railroad and Public Utilities Commission for a further increase in rates, and received a further increase in rates from them, and not only did they receive that increase in rates, but the Florida Railroad and Public Utilities Commission had to approve the method and manner of the collection of costs that were decided in this case.

Q Well, is it your contention, then, that at the time of these hearings over which Judge Holt presided, that the matter concerning fees was already settled?

A My fee had been fixed and set, and I had been at least three-fourths paid, and - - - during a part of the time, I had been at least three-fourths paid my fee, that is, my firm, and the balance was paid long before there was ever any hearing to determine if the fee was a cost to be taxed.

Q But isn't it true that after the final decree of the Court, on June 21, 1951, that - - - and only after that - - - that the final twenty-five per cent of your fee was agreed upon and paid, the sum of some \$15,000?

A That was as a result of negotiations with my client's general counsel, as I related yesterday and today.

Q Which was after the final decree, is that correct, sir?

A Oh, Yes.

Q Are you also familiar with Section 32 of the Canon of Judicial Ethics, as adopted by the Supreme Court of Florida on January 27, 1941, which is as follows - - - I'll read it to you:

"A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment?"

A Yes, I'm familiar with that.

Q Is it your contention that that Canon of Ethics did not apply to the favors you did him, concerning the purchasing of the two Jaguars, concerning the bringing him in on this lucrative business deal during the time that you had litigation pending before him?

A Are you asking me, now, for my opinion?

Q Yes sir. How did you - - -

A In view of the relationship between Judge Holt and myself, through the many, many years of our relationship, I know that it was not a violation of that Judicial Canon of Ethics, because I know that there was nothing that I could do for Judge Holt which would influence him in any decision.

Q Do you feel that he should have recused himself from that litigation, inasmuch as you and he were engaged in a joint business venture in which you gave him money from time to time, in large sums, during the pendency of that litigation?

A I did not present the argument, nor did I present the bill for costs to be determined; I was merely a witness at that time.

Q But you were of counsel, isn't that true?

A I was of counsel.

Q And you testified before him?

A I testified before him as to the amount of fees, and as to the amount of money that had been expended through our firm.

Q And he based his ruling and judgment upon the amount of your fee solely upon your testimony and no one else's, is that true?

A Well, I don't know. I would say that the only testimony before him as to the reasonableness of the fee to be paid was mine, but he had before him a five-thousand-odd page trans-

cript of record of testimony; he had four hundred forty pages of oral argument; he had the Master's report, which was more than one hundred twenty pages, I'd say; and then he had the complete history of the Court file, and he had the complete history of the litigation before him. I think he was in position to exercise his own, independent judgment.

Q Well, how was - - -

A As well as rely upon whatever testimony I might have given.

Q Now, will you answer my question, please sir?

Is it not true that the sole testimony upon which he based the reasonableness of your fee was the sworn testimony of yourself at that hearing in May of 1952?

A Mr. Johnson, you're trying to badger me now.

Q I'm not - - -

A That was not the same question you asked me before.

Q Well, will you answer my question?

Was there any other testimony?

A I have answered that, sir; there was no other testimony.

Q Isn't it true that while he had that under advisement, concerning the testimony you had given, that you made a payment to him on this alleged investment, in the amount of - - - let's see, what was that amount - - - eleven hundred and - - -

A I resent the use of the term "alleged investment."

MR. HUNT: So do I.

THE WITNESS: What he did here was to make an investment.

BY MR. JOHNSON:

Q What was the sum of that payment you made to him while he had it under advisement?

A \$1,124.

Q Did he express to you that he felt gratitude to you for cutting him on such a - - -

A \$1,124.28.

Q Did he express a feeling of gratitude for you on cutting him in on such a lucrative business as that?

A I don't remember that he did.

Q Well, it's natural for him to have done it?

A In fact, I'm almost sure. I don't remember any conversation.

Q Well, it would only be natural for him to feel - - - to have a feeling of gratitude - - -

MR. HUNT: Your Honor, counsel is just arguing with this witness, trying to badger him and abuse him. I think a stop ought to be put to it.

CHIEF JUSTICE TERRELL: Counsel will not argue with the witness. Ask him the question, and let him answer.

MR. HUNT: And that's his own witness.

MR. JOHNSON: Well, we certainly don't think this witness - - -

MR. HUNT: Well, you certainly put him on the stand.

MR. PIERCE: You subpoenaed him.

MR. HUNT: You subpoenaed him.

MR. JOHNSON: Well, we - - -

MR. PIERCE: You put him on the stand.

MR. JOHNSON: We subpoenaed him, and if it's necessary, why, he can be called as a Court witness, but I think the Senate is entitled to hear all the testimony from all the witnesses who may be able to throw light on this matter.

MR. HUNT: I think the Court would have something to say about whether you can now call him as a Court witness, that you haven't got out of him what you expected.

BY MR. JOHNSON:

Q Is this true, Mr. Whiteside, that while the Court had under advisement your sworn testimony concerning your fee, that you made the payment to him that you have described, of \$1100, or is it not true?

A That is true, as I have stated several times.

Q Mr. Whiteside, let's discuss the testimony you gave pursuant to the questioning of Judge Hunt, concerning the fee earned by your partner in the Dowling matter.

I believe you stated that you understood that fee to be slightly in excess of \$32,000?

A Yes sir.

Q In the ordinary course of your partnership accounting and division of profits, would you have received half the income from that fee?

A You are asking an imponderable, now, Mr. Johnson.

We, my partner and I, first discussed the dissolution of our partnership in September or October of 1953. We concluded, sometime prior to August 31, to dissolve our partnership, and we dissolved it on the basis that I have testified to.

Q Do you have any written memorandum - - -

A My previous testimony about our partnership agreement was that we had no written articles of partnership, and we operated on a general basis, with a reservation of the right that we sit down and agree, at the end of each year, as to the participation.

Q Do you have any written memorandum concerning the dissolution of the partnership?

A Well, you have a written memorandum, because you have a photostatic copy of the final return of the partnership.

Q Prior to that, did you reduce any memorandum to writing?

A No sir, that wasn't necessary, that wasn't at all necessary.

Q Now, did I understand your statement correctly that you received no funds or benefits, either directly or indirectly, from those fees received in the Dowling case?

A Either directly or indirectly.

Q You have your partnership return of income for the fiscal year ending August 31, 1953, do you not, sir?

A Yes. '53, did you say?

Q '54, I meant to say. I don't know whether I did or not.

For the fiscal year from September 1, 1953 - - -

A Wait just a second. I don't know that I - - -

Q - - - and ending August 31, 1954. Did you testify to certain items in that?

A No, I testified to the final return for the period ending August 31, 1955.

Q Do you have that before you?

A Oh, yes, I have the one for August 31, 1955.

Q What was your gross - - - let me strike that.

What was your net taxable income for the year ending August 31, 1955?

A There is no net taxable income for the partnership.

Q Don't you find the figure of \$41,299 listed there?

A Yes sir - - -

Q But that is not in the ordinary net income - - -

MR. HUNT: Suppose you let the witness answer the question.

BY MR. JOHNSON:

Q But the ordinary net income - - -

A The partnership net income, which must be picked up by the partners, in accordance with the method of distribution that is set forth in the partnership return, the partnership, as such, did not have; and the partnership, as such, therefore, has no net taxable income.

Q Now, will you answer this question: What was the ordinary net income of the partnership for the fiscal year ending August 31, 1955?

A The net earnings were \$41,299.82.

Q And of that ordinary net income, \$32,000 was represented by the Dowling fee, is that correct?

A I wouldn't say that, sir. I would say that of the gross income of \$98,589.42, \$32,000 was represented by the Dowling matter.

Q How much of that gross income was paid as fees to associate attorneys and employees?

A \$20,008.68, of which \$11,000 was paid to associates in the office.

Q Then, exclusive of these associate attorneys, or forwarding fees, the income from the Dowling estate amounted to what percentage of your gross income?

A Oh, approximately a third of the partnership's gross income.

Q Now, you have discussed in your testimony, pursuant to questioning by Judge Hunt, capital assets which you had, in the sum of \$40,000 and some-odd dollars and a deficit asset of \$14,000 on behalf of your partner, John Prunty, is that correct?

A That was the capital account of the two of us respectively, going into the last fiscal year.

Q Now, a capital account, that's a bookkeeping item, is it not? It shows that you are credited with that much money?

A The capital account shows that you are credited for that amount of money.

You can build up your capital account, however, by the investment of dollars, or by failure to take out as much - - - sums of money in drawings as you are entitled to in the distributed share of the partnership.

Q You mean - - -

A In other words, if you didn't withdraw it, why, you'd just keep your earnings as well as - - -

Q You don't mean to say that you had that much in the bank, do you?

A Oh, no, that's the capital account. Basically, the partnership capital account was worth \$40,000 at the beginning of the year.

Q Well, is it a fair statement to say that that's a bookkeeping figure, or an accounting figure?

A It is an accounting figure, but it's a very necessary and essential one.

Q Well, that is your answer, that it is an accounting figure?

A Yes, but it represents - - -

Q But it does not represent cash in the bank or fixed assets?

A It represents dollars that have gone into and have been credited to you in the business of the partnership through the years. It represents actual dollars.

Q Does it represent a credit of dollars or actual dollars?

A It represents a credit of actual dollars.

Q All right, sir.

How much money did you withdraw from the partnership account during the fiscal year ending August 31, 1955?

A \$35,587.56, which was charged to my capital account.

Q How much did you contribute to the capital account of the firm?

A \$23,678.89.

Q Are my figures correct, that show that your withdrawals were in excess of your contributions in the amount of \$11,908.67?

A I haven't checked your computation, but assuming that your computation is correct, my withdrawals are in excess of the monies that I advanced, in cash or by check, in that amount.

Q Well, is this a fair statement, that your withdrawals over and above your contributions that year were in the approximate sum of \$12,000?

A Yes, they were, and they were charged to my capital account.

Q They were charged as a credit, is that right?

A Beg pardon?

Q Charged to a credit of capital dollars you had, not actual money you had?

A That account is an accounting item, and it is a credit for dollars, but it represents actual dollars that have been placed in the account.

Q In other words, if there had been no income whatsoever, you would still have had that credit, which would have remained unpaid, is that correct?

A I don't quite understand your question. Would you repeat it?

Q In order to set off income against a credit, you've got to have income, is that true?

A No.

Q That's not true?

A I don't think I followed your question, but if I understand your question, it isn't true, from an accounting viewpoint.

Q Well, let me go back, Mr. Whiteside. You stated you had a credit in your capital account of \$40,000 which did not actually indicate the money in the bank; that during the year you drew in excess of the sum you contributed in the amount of the approximate sum of \$12,000, is that true?

A That's true, that's in excess of the amount of money that I contributed to the firm, which has nothing to do with earnings.

Q Isn't it also true that at the dissolution of your partnership, you kept all the tangible assets of the partnership?

A When we went into partnership, I owned all the tangible assets.

Q Well, you increased it from time to time, as far as library and - - -

A We increased it, and through the years, whenever John's capital account was in the black, he would, in theory, own that pro rata share of the tangible assets, but in the beginning of the last year, his capital account was in the red, and therefore, he had no equitable ownership in the tangible assets of the firm; so, therefore, I kept what was mine.

Q You actually - - - you kept all the equipment and the law library of the firm?

A I did.

Q Did you also keep the bank account which was in existence at the time - - - the cash money, I'm talking about, not credits? Did you also keep the cash money that was in existence at the time of the dissolution of the partnership?

A No, I didn't.

Q What did you do with it?

A I can't tell you exactly how much was deposited to the account that was opened by John W. Prunty, in his name, for the practice of law. Some of those funds were transferred to his account.

Q Well, wasn't there approximately \$8,000 in cash in the bank at the time you dissolved?

A Yes.

Q Well, didn't you keep the greater portion of that \$8,000?

A Did I keep the greater portion of that \$8,000?

Q Yes.

A I don't know.

Q Well, isn't that your best recollection, that you kept the greater portion of that \$8,000, as part of the assets of the partnership?

A I don't know. It's entirely possible that I did, but I don't recall that the \$8,000 was retained by me.

Q There were certain accounts - - -

A In any event, the accountant traced it all.

Q There were certain accounts receivable, were there not, that the partnership had at the end of the fiscal year ending August 31, 1955?

A Yes.

Q What was the amount of those accounts receivable?

A I don't know.

Q Didn't you keep those accounts receivable?

A No, in winding up the partnership affairs and the collecting of the fees for work that was done by the partnership, or winding up the matters that were pending at the time of the partnership's dissolution, that were concluded during the next year, had been accounted for between Mr. Prunty and I on a basis which was agreed upon and picked up and reported in our 1956 calendar year tax return.

Q Mr. Whiteside, your figures of the partnership return shows that your ordinary net income was \$41,299. Now, when you subtract the Dowling fee, which you say you - - - you disclaim that you have an interest in, from that, that leaves a figure of \$9,000 and some-odd. On that basis, then, you drew from the firm account nearly \$3,000 over and above the net that would have been in the firm had you not received the Dowling fee, is that true?

A Well, I drew \$35,000 from the account of the partnership, which was charged to me personally on the books, and therefore charged to my capital account in the form of our dissolution, form of agreement of our dissolution.

What conclusion you want to draw from that, Mr. Johnson, I can't prevent you from drawing any conclusions you want; all I say to you is that I did not receive, directly or indirectly, the first portion of any dollar of fees awarded by the Court to John Prunty, as co-curator in the Dowling matter.

Q So, for taxation purposes, you showed a loss of - - -

A It wasn't shown for taxation purposes, but it was the method and the manner of our agreement to dissolve.

Q Well, let's call it accounting purposes.

A And it seems to me that two partners have a right to agree to dissolve upon any basis that's mutually agreeable to them.

Q Well, is this true or not, that for accounting purposes, you were in the red, or you received a deficit of \$9,268.53?

A Yes, but it still left my capital account in the black for some \$19,000, even after you take away the \$35,000.

Q But that's a capital account credit, is that right?

A That's correct.

Q But yet you still testified that you withdrew over and above these contributions, nearly \$12,000 from the firm, and you further testified that you kept the furniture and the library, and that you kept a large portion of the cash in the bank, is that true?

A That's correct.

Q But yet you still say that you received no funds or benefit, directly or indirectly, from the fact that the firm earned \$32,000 from the Dowling estate?

A None whatsoever.

Q There's been a question furnished me by Senator Shands. The question is:

"What was the date of final accounting of interests in the sale of the pistons, and what month was the actual settlement in full made to Judge Holt?"

A I didn't quite understand the question. I missed one word in there. Would you read it again?

Q The question by Senator Shands is:

"What was the date of final accounting of interests in the sale of the pistons, and what month was the actual settlement in full made to Judge Holt?"

A What month was the actual date of the sale of the cylinders, the last date of the cylinders?

SENATOR SHANDS: What I wanted to know is when did you make the accounting to Judge Holt? What month? I skipped that; I didn't get that.

THE WITNESS: I made the accounting to Judge Holt on June - - - by my letter, dated June 4, 1956.

MR. JOHNSON: I have a photostatic copy of that letter.

SENATOR SHANDS: Now, my next is, when did you make the final settlement?

THE WITNESS: With that letter, I forwarded a check of \$57.45.

BY MR. JOHNSON:

Q Let me show you this letter, which purports to be a photostatic copy of a carbon copy of a letter addressed to Honorable George E. Holt, dated June 4, 1956, signed, "T. A. Whiteside."

Will you examine this and state if this is a photostat of a carbon copy of your letter to Judge Holt?

A That, I believe, constitutes a photostatic copy of that letter, although I believe it's truly a photostatic copy of a copy of the letter.

Q Do you have a carbon copy you can furnish us, without my offering this, or would you prefer me to use this photostat?

A I have no objection to your using that photostat.

MR. JOHNSON: We offer in evidence, as Managers' Exhibit Number 21, the letter dated June 4, and ask that it be read.

(Whereupon, said document was received and filed in evidence and marked House Managers' Exhibit Number 21)

MR. LINN, Assistant to the Secretary, (Reading): "June 4, 1956.

"Honorable George E. Holt, 8400 N. E. 10th Avenue, Miami, Florida:

"Re: Aircraft cylinders

"Dear Judge Holt:

"This letter constitutes a final accounting between us in our joint venture in regard to the aircraft cylinders.

"On 4/11/52, for and in consideration of the payment of \$200 cash, I sold to you a one-thirty-fifth interest in and to my interest in certain aircraft cylinders. On August 13, 1952, I forwarded the Yonge & Whiteside Trust Account check, 1381, in the amount of \$1,124.28 in payment of one-thirty-

fifth of my interest in the receipts from sales of said aircraft cylinders to that time. Total receipts to that time were in the amount of \$39,350.14.

"In January of 1953, I purchased my co-adventurer's remaining interest in the remaining aircraft cylinders for the sum of \$1,489.50. At that time, upon the payment of \$250 in cash to me, you acquired a seventeen and a half per cent interest in and to all of the remaining aircraft cylinders held and owned by me. During the year 1955, the balance of the aircraft cylinders was sold, and a total sum was received therefor, in the amount of \$16,328.31.

"During October, November and December of 1953 we thought we had consummated the sale of the cylinders for the sum of \$16,000, and as a result, I mailed you T. A. Whiteside Trust Account Check 1492, in the amount of \$2,800, as my estimate of your interest in the proceeds of such sale. However, this sale was not consummated.

"With the sale of the balance of the aircraft cylinders, for a total of \$16,328.31, consummated during 1955, your pro rata share, at seventeen and a half per cent of same equals to \$2,857.45. Inasmuch as I have heretofore advanced you \$2,800 toward the sale of such aircraft cylinders, I remain indebted to you in the amount of \$57.45. Attached hereto please find check to your order, in that amount.

"This concludes this business transaction, and let me suggest that it is now in order for both of us to fix up our gains in the sale of these cylinders for our tax returns for the calendar year 1955. For your information, your gain is \$2,607.45, long term capital gain, where my gain is \$12,230.36.

"Please accept my apology for the delay in this accounting, but I am just getting around to gathering my information together for delivery to my accountant for my 1955 calendar year tax return.

"I trust this matter has been handled to your entire satisfaction. With personal regard, I am,

"Very truly yours,

"(s) T. A. Whiteside"

BY MR. JOHNSON:

Q Mr. Whiteside, you followed, from your office copy, the reading of that letter, did you not?

A I followed part of it; I followed a part of it.

Q Now, is it true that this letter of accounting, in which you enclosed your check for \$57.45, was sent approximately two and a half years after you gave Judge Holt your check in the sum of \$2,800?

A I don't know whether that's true or not. The dates will speak for themselves.

Q Let's see, you gave him the \$2,800 on January 22, 1954, and this letter is dated June 4, 1956; it's just short of two and a half years, is that correct?

A That's approximately correct, yes sir.

Q Is it also true that this letter that you wrote to Judge Holt, dated June 4, 1956, was written after you testified before agents of the Board of Governors of the Florida Bar Association, in which they questioned your business transactions with Judge Holt?

A As I said yesterday, that was true, that is true.

Q I have one other question - - -

A However, I did add yesterday that I was derelict in my duty in accounting to Judge Holt; I should have accounted to him a long time before that, but due to the pressures of many - - - many pressures within my own family, I had not accounted with him, and my attention was focused to this matter by reason of that inquiry, and I also stated this, that the - - -

Q Well, Mr. Whiteside, just answer my question, please sir - - -

A - - - that the way this investigation came about, as far

as I am concerned, was my delivery of records to the agents. Prior to that time, they had no knowledge.

CHIEF JUSTICE TERRELL: If counsel will give the witness a chance to answer, and counsel - - - other counsel are not breaking in before the answer, and while the other counsel - - - in other words, having two lawyers and the witness all trying to talk at the same time, it's confusing to the Court, confusing to the witness, and I hope counsel will all refrain from doing that any further. That has happened several times this morning, and it does nothing but confuse the issues.

MR. JOHNSON: If the Court please, I would like to request that the Court instruct the witness to answer - - - give an answer responsive to the question, and not embark on a long dissertation of his previous testimony; that was the reason I interrupted, and I apologize to the Court for interrupting, but I request that the witness be instructed to answer the questions, and then he can explain any answer that he thinks is called for.

BY MR. JOHNSON:

Q Mr. Whiteside, concerning the money that Mr. Prunty received for his services in the Dowling case, was that deposited in the firm account of Yonge, Whiteside & Prunty?

A It was deposited in the firm account of Yonge, Whiteside & Prunty.

Q When did you file your 1955 personal income tax return?

A About October 15, 1955, six months after it should have been returned, due to, as I just stated before, the pressures within the family.

Q Do you mean '56 or '55?

A '56, October, '56. Excuse me.

SENATOR SHANDS: Mr. Chief Justice, I move that the Court now go into a closed session for a little matter that we'd like to get settled.

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

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

Whereupon, at 11:55 o'clock, A.M., the Senate went into a closed session, which lasted until 12:03 o'clock P.M., after which the trial was recessed on a point of order until 2:00 o'clock P.M. of the same day.

AFTERNOON SESSION

Whereupon, at 2:00 o'clock P.M., the trial was resumed, pursuant to the taking of the recess, and the following proceedings were had:

CHIEF JUSTICE TERRELL:

Order in the Court. Unless a question is raised the Chair declares a quorum present.

MR. JOHNSON: Are we ready to proceed, Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Yes, ready to proceed.

MR. JOHNSON: We have no further questions at this time of this witness, unless there's some further examination by counsel for Respondent.

MR. HUNT: I didn't hear you. I'm sorry.

MR. JOHNSON: We have concluded our examination at this time of this witness.

MR. HUNT: I have no further questions.

MR. JOHNSON: If the Court please, we would like to keep this witness available, inasmuch as there are other aspects of the case that have not yet been concluded, that he may figure in, and we do not want him excused at this time.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will so advise the witness.

(witness excused)

MR. JOHNSON: The next witness is Mr. Wright.

MR. HOPKINS: Mr. Chief Justice, while we're waiting on the witness, we would like to at this time offer the stipulation entered into between the Managers on the part of the House and the Respondent, and ask that it be read by the Secretary.

CHIEF JUSTICE TERRELL: Very well, send it up to the Secretary.

MR. LINN, Assistant to the Secretary, (Reading): "In re: The Matter of the Impeachment of George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida:

"Stipulation:

"On this the 22nd day of July, 1957, it was agreed between the Managers on the part of the House of Representatives and Respondent, George E. Holt, through his counsel, as follows:

"1. That the Managers on the part of the House of Representatives shall furnish a list of their witnesses that have been subpoenaed to date to the Respondent, or his counsel, sometime during the afternoon, and that the counsel for the Respondent will furnish to the Managers on the part of the House of Representatives a list of witnesses that the Respondent expects to subpoena in this Impeachment matter tomorrow afternoon;

"2. That the Respondent, George E. Holt, was appointed Circuit Judge of the Eleventh Judicial Circuit of Florida on June 7, 1941, by the then Governor of Florida, Spessard L. Holland, and that he has continuously been the duly appointed and/or elected qualified and acting Circuit Judge of said Court for said time, up until the date of Articles of Impeachment of the said George E. Holt by the House of Representatives, on May 27, 1957; and that the said George E. Holt has been the senior Circuit Judge, presiding over Division A of said Court since January 5, 1949, up to May 27, 1957;

"3. That certified copies of Motor Vehicle Department records shall be admitted in evidence, where material, without the necessity of bringing in a member of the State Motor Vehicle Commission to testify as to their authenticity;

"4. That the note, dated January 28, 1955, signed by George E. Holt to J. J. Gersten, bears the genuine signature of the said George E. Holt, and that the letter dated April 16, 1957, from Joseph J. Gersten to Honorable George E. Holt, bears the signature of the said Joseph J. Gersten, and was mailed to and received by Honorable George E. Holt;

"5. That the photostat of a letter dated April 11, 1957, from George E. Holt to Honorable Joseph J. Gersten is a duplicate of the original signed by the said George E. Holt and delivered to the said Joseph J. Gersten;

"6. That the letter dated April 17, 1957, from George E. Holt to Joseph J. Gersten, bears the signature of the said George E. Holt;

"7. That all the instruments filed and papers filed before the Clerk of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, when material, may be admitted without being technically identified by the Clerk of the Court;

"8. That any original document filed before the Circuit Court, when offered in evidence by either party, may be withdrawn from the file upon the filing in the record of a certified or photostatic copy of such document;

"9. That any original note, check, letter or other instrument, the property of any individual, offered in evidence, may be withdrawn upon the filing in the record of certified or photostatic copy of the same;

"10. That certified copies of the House Journal, resolutions or acts of the House of Representatives of the State of Florida, certified to by the Chief Clerk of the House of Representatives, shall be received in lieu of the originals, where such Journal, resolution or act shall become material;

"11. That the map of the City of Miami and portions of Miami Beach and other municipalities, published by the H.

M. Gousha Company, shall be received as the official map of the areas shown on same.

"Witness: The Managers on the part of House of Representatives and Richard Hunt on behalf of Respondent, George E. Holt.

"/s/ THOMAS D. BEASLEY, A. J. MUSSELMAN, JR., MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES.

"/s/ RICHARD HUNT, OF COUNSEL FOR RESPONDENT."

MR. MUSSELMAN: We intend to question Mr. Wright relative to the particulars of Article 1 (e) 2.

The witness is Mr. John W. Wright.

Thereupon,

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

DIRECT EXAMINATION

BY MR. MUSSELMAN:

Q Will you state your full name and address, please?

A My full name is John W. Wright. I live at 336 Northeast Twentieth Terrace, Miami, Florida.

Q Mr. Wright, are you a licensed and practicing attorney in Dade County, Florida?

A I am, sir.

Q And how long have you been so?

A I have been so since 1950.

Q And as such, do you practice before the Respondent, the Honorable George E. Holt, Circuit Judge?

A I practice before the Respondent, as well as before all the others in that circuit.

Q Are you also a close personal friend of the Respondent, George E. Holt?

A I consider myself as such.

Q Do you visit in his home, or have you in the past?

A I have been in his home on numerous occasions, so many that I could not recite them at this time.

Q "Frequently" would be the proper answer?

A Yes sir.

Q Have you also had the occasion, Mr. Wright, to render gifts to either Judge George Holt or Mrs. Holt, and if so, please describe them to us.

A I have brought with me a list that I presented before the Board of Governors. I would like to testify from that, please.

Q May we see the list, please?

(The witness passed a paper instrument to counsel.)

A I have a cold and bronchitis; I hope that you will bear with me today.

Q The one single blue sheet which you now have before you is a list?

A Yes.

Q Would you read from that, please?

A I gave to Judge Holt one sport coat - - -

MR. HUNT: Will you speak out, Mr. Wright?

A (Continuing) I gave to Judge Holt one sport coat, value, approximately \$35. I presented to him one pair of driving gloves, \$4; two sport shirts, valued at \$13; one tie, valued at \$4.50; and I gave to Mrs. Holt a blouse, valued at \$7.50, and one bottle of perfume, at the price of approximately \$2.

The total is \$56.

MR. MUSSELMAN: Gentlemen of the Senate, I've been asked to reannounce that that's as to the Particulars of Article 1 (e) 2.

I believe that concludes my questioning on the gifts. Your witness.

MR. HUNT: I think I need time for a conference, but on second thought, I have no questions.

MR. MUSSELMAN: We'll ask that this witness be excused for the time being. We will recall him.

MR. HUNT: I have one question, if you don't mind.

MR. MUSSELMAN: Yes sir.

CROSS EXAMINATION

BY MR. HUNT:

Q Will you state whether or not Judge or Mrs. Holt, or the two of them jointly, ever reciprocated your small, gift-giving tendencies in any way?

A Yes sir, they did.

On Christmas and my birthday - - - my birthday is almost approximately in the same month that the Judge's is - - - they gave me a dress shirt on one occasion; they gave me a tie on another occasion; and on another occasion, they gave me two ties; and upon another occasion - - - I think this came directly from Mrs. Holt, she gave me a paper weight for my desk.

Q Mr. Wright, did you serve in the Army during the last war?

A I did, sir.

Q Are you a disabled war veteran?

A I am, sir.

Q Have you had some five iliac operations, which we have recently read about in the newspaper?

A Well, the one thing I do have in common with President Eisenhower is that I had ileitis, and I spent two years in the hospital with it, in and out, and I was also in the same hospital that he was, Fitzsimmons General, in Denver, Colorado.

Q Thank you.

A I have a sixty per cent disability.

Q Thank you.

Those gifts you detailed, Mr. Wright, did they cover the entire period of your association with Judge Holt?

A Yes sir, I was - - - I would like to explain to the Senate, if I may, my reason for giving them to him:

During the course of our friendship, I was invited many, many times to the house of Judge Holt and Mrs. Holt for the purpose of dinner - - -

Q You're a bachelor, are you not?

A Yes sir, I am.

I had no way of reciprocating, of showing my friendship and my appreciation for the fact that they did give me dinner; upon Christmas, they invited me to partake of the holiday. I have no relatives in Florida except my father, who is very aged, and consequently, we do not celebrate Christmas.

And so, in appreciation for their kindness and consideration, I felt that it was courteous and mannerly to reciprocate in some small manner.

MR. HUNT: No further questions.

MR. MUSSELMAN: Mr. Wright, you'll be excused for the moment, and be recalled at a later time.

I'd like to call Julius Jay Perlmutter.

MR. HUNT: Mr. Musselman, does that conclude that one phase?

MR. MUSSELMAN: That concludes that one phase.

Members of the Senate, we intend to proceed on the particulars of Article 1 (d) 2 - - - or rather, 1 (d) 3, the Dowling case.

Thereupon,

JULIUS JAY PERLMUTTER,

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

DIRECT EXAMINATION

BY MR. MUSSELMAN:

Q Would you state your full name and address, please sir?

A Julius Jay Perlmutter, 2121 Lake Drive, Sunset Island 4, Miami Beach, Florida.

Q Are you now a practicing attorney before the Circuit Court of Dade County, Florida?

A I am, sir.

Q How long have you been an attorney, Mr. Perlmutter?

A I was admitted in October of 1955.

Q Mr. Perlmutter, I hand you the first volume of a set of three volumes of a Circuit Court case in Dade County, entitled "Jewell Alvin Dowling, Chancery Number 167361."

I'll ask you, sir, if you are familiar with this file, and if so, in what way did you gain this familiarity?

A Well, I am familiar with the case of Jewell and Ina I. Dowling. I don't remember that I've ever examined this particular file.

Q All right, sir. And in what way are you familiar with it, with the case?

A I was appointed receiver by the Honorable Judge George Holt late in March of 1955.

Q Will you examine the Court file, please, Entry Number 1, and recite to the Court what that is?

A Petition for appointment of curator.

Q And who filed the petition, Mr. Perlmutter?

A You mean according to the file?

Q Yes, according to the file. Who filed the petition?

A Lane, Muir, Wakefield, Frazier & Lane, for Mrs. Ina I. Dowling.

Q And what is the prayer? Would you please read the prayer of the petition?

A "Wherefore, petitioner prays that some competent person be appointed as curator of the property of her said husband, pursuant to the provisions of Chapter 25376, Laws of 1949, Section 747.05, et seq., Florida Statutes Annotated."

Q Does it recite in the petition, Mr. Perlmutter, by referring to the first paragraph, the residence of the Petitioner?

A It reads, under Paragraph 1:

"Petitioner is a resident of the State of Massachusetts," and gives the local address.

Q All right, sir. Examine the file further and see what further action was taken after the petition was filed.

A There is an order here.

Q What is the nature of that order, sir?

A Appointing a guardian ad litem, Daniel Neal Heller; signed by the Honorable Judge George E. Holt.

Q Will you refer back to the file, please, for a moment. I forgot to ask you what division the case fell in. Would you look and see if it's indicated on the outside of the file?

A "A."

Q Division A?

A Yes sir.

Q Is that Judge Holt's division?

A That is my understanding, yes sir.

Q What was the date of the order to which you just referred?

A The 18th day of March, 1954.

Q What was the date, sir, that you were appointed receiver?

A I think I said '55 before, but it was March, I think, either the 18th or 28th of March, 1954.

Q How long did you serve in your capacity as a receiver, Mr. Perlmutter? Do you recall?

A I was officially discharged from bond, I think, sometime in October, but I was relieved of the active duty of handling the assets sometime in July.

MR. HUNT: Was that the same year, please?

THE WITNESS: Yes sir.

BY MR. MUSSELMAN:

Q Will you please refer to Entry 135, which is contained in Volume 1?

A Where would the number be, Mr. Musselman?

Q On the lower right hand side of the page; you'll see the small numbers indicated thereon by the Clerk.

A 135?

Q 135.

A It's in Volume 1.

Q Yes sir. What is that?

A It appears to be an order and decree, appointing curator.

Q Would you read the portion of the order wherein your name is recited, and give the date of the order, please?

A The date of the order is the 22nd day of June, 1954. I see Paragraph 5:

"Upon the filing and acceptance of the bond of the aforesaid curator:

"(a) Temporary receiver heretofore appointed in this cause, namely, Julius Jay Perlmutter, shall immediately transfer and convey to the said curators all assets and monies and properties in the receiver's possession, custody and control, including all books, documents and records of the said Jewell Alvin Dowling, or the said receiver, and

"(b) The said receiver's duties shall forthwith terminate with the exception of filing a final accounting of said receiver prior to the date of July 12, 1954."

Q So, sir, if you were appointed in March, and you were relieved of your duties on June 22, you served a period of approximately three months, is that correct?

A Well, no, I had to compile a final report, and had to dispose of the documents and records in my possession.

Q After you were relieved of your duties by the order of June 22?

A That's right.

Q What did you do upon entering upon your duties as a receiver, Mr. Perlmutter?

A Well, I sought to determine if there were any books or records to show what the assets of the estate were, and found very little, or no records at all; and I learned immediately that there was a proceeding pending in Massachusetts for the appointment of a conservator for Mr. Dowling's estate.

I then advised the Court and received a supplemental order, which I took with me when I went to Massachusetts, and

there appeared before the Honorable Judge Reynolds, in Denham, Massachusetts, and learned that I was a half a day late, that a petition had been filed by a A. George Gilman, the banker in Massachusetts, asking that he be appointed conservator, and the Judge had appointed him.

When Judge Reynolds was apprised of the proceedings in Florida, he examined the order, and set a hearing for the next morning, and after consideration of Judge Holt's supplemental order, and being advised of what took place, saw fit to rescind his own order appointing Mr. Gilman, and honor the order of the Florida Court, and appointed me as temporary conservator in Massachusetts, under a similar size bond to the one I had filed in Florida, which was \$25,000, making a total of \$50,000.

Q Did you marshal or receive any of the assets of Mr. Jewell Dowling in Massachusetts?

A I then proceeded to the office of Mr. Dowling, and there took such books and records and other assets as I could find, and took them with me.

Q Did you have any difficulty with his secretary, Mrs. Grace Donlin?

A None whatever. She prepared a receipt for those books and records that I was taking, and I gave her a signed copy of that receipt.

Q Did you also at that time secure some bonds, negotiable instruments or other instruments that the title to which was in question?

A Well, subsequently, someone raised the question of title, and I had no doubt that the stocks and bonds were the property of Mr. Dowling, because they were in the confines of his office, and according to the legend on the door, no one else shared that office; and the stocks and bonds that were in other names, such as stock brokers and Mrs. Ina I. Dowling, had the endorsement of Mrs. Ina I. Dowling on the reverse side in blank. I certainly had a right to assume that they were either Mr. Dowling's initially, or by virtue of the endorsement, and being in his possession.

Q What did you do with those instruments and papers, notes and other paraphernalia that you found in his office?

A Brought those of value back with me to Florida, and had shipped, by Acme, railroad and freight, some six cartons of books and records, running back to 1907.

Q You were at the time, however, responsible to the Massachusetts Court, as you were appointed temporary conservator in Massachusetts?

A That's right.

Q What was the ultimate disposition of those negotiable securities you had in your possession, Mr. Perlmutter?

A Well, I kept them in my possession until the curators served me with an order of their appointment. I then turned them over to the curators.

Q I believe you recited earlier, in an order entered by Judge Holt, that Daniel Neal Heller was appointed guardian ad litem?

A Yes.

Q Did you see him in Massachusetts also?

A Yes sir, Mr. Heller was in Massachusetts when I appeared there either the second or third time, I'm not certain which.

Q Would you please refer back to the order wherein Daniel Neal Heller was appointed guardian ad litem, and recite the terms and conditions under which he was appointed?

A Do you want me to read the caption?

Q Where it specifically refers in the order to his appointment. Will you read that paragraph?

A Paragraph 3:

"Daniel Neal Heller is appointed guardian ad litem to represent the alleged incompetent at said hearing."

Q As an attorney, Mr. Perlmutter, what hearing were they referring to in that order which the Judge had granted?

A Paragraph 2 refers to a hearing; states:

"A hearing on said petition shall be held before this Court on March 25, 1954, at ten-thirty a.m. o'clock."

Q To briefly summarize it in the form of a question, then, Mr. Perlmutter, am I correct in saying that in response to the petition, a receiver and a guardian ad litem were appointed? Is that correct?

A No sir, that is not correct. I was appointed, I believe, a week or ten days following the record you just had me read from, and when I was called in, my name was filled in in a blank, prepared order, which I was told was prepared by Mr. Lane, who represented Mrs. Ina Dowling, and subsequently ordered, as receiver, a copy of the transcript of the proceedings that took place before I was appointed, so I could be acquainted with the background of the matter; and I learned from that record that a receiver was ordered appointed by stipulation of all the parties.

Q Now, upon your return to Massachusetts, what did you proceed to do in your duties as receiver?

A Well, I examined the leases of some sixteen or fifteen tenants in the property that Mr. Dowling owned, and I sent registered letters, together with Judge Holt's order appointing me, advising them of the requirement that they pay their rent in the future to me.

That was one of the first things I did.

Q Describe in detail your further actions.

A Well, can I look at my file?

Q You can refer to your files, if you wish.

A I obtained an accounting firm to prepare an accounting and inventory, as was required of me by Judge Holt's order that I do, I believe, within ten days' time after my appointment.

I immediately qualified, as I said before, by filing the bond for \$25,000. The accountant proceeded to work on the books and records I brought back from Massachusetts with me, and they were many and detailed.

As the result of it - - - I think it took us some eight or nine days to go through those papers - - - as a result of that, an accounting inventory was filed by me under the firm of Sidney Wasserman & Company, Certified Public Accountants, showing the assets of the estate of Jewell Alvin Dowling, dated March 25 - - - that is, the statement was as of March 25 - - -

Q I believe, sir, if I may interrupt you there, I believe the original of that is contained in the Court file, Entry 107. Perhaps you can look for it, and use the original, rather than your copy.

A All right. Yes sir.

"Estate of Jewell Alvin Dowling, Julius Jay Perlmutter, receiver, March 25, 1954," and as indicated in the letter of transmittal from the accountant to me, the letter is dated May 11, which was about the time it took from the time I started to corral the assets, until we had them in such shape that we could make a competent report to the Court, and it's a full, complete, and I believe, detailed report of the assets and liabilities, and a schedule of rents receivable.

Q What did it show the net value of the assets of the estate of Jewell Alvin Dowling to be in the State of Florida?

A Well, I have here a total figure of \$1,636,733.96, as a grand total.

I believe it was subsequent to this original report that there was a breakdown filed, showing the amount in each - - - no, I'm sorry, we do have it here.

We have a schedule of net fixed assets in Massachusetts - - - do you want me to detail them for you?

Q I want you to read the lump sum, if you will, please, on Massachusetts, and also on Florida.

A The total fixed assets in Massachusetts was \$1,495,964.79,

less depreciation, net fixed assets of \$1,307,192.77 in Massachusetts.

In Florida the grand total was \$388,727.16, less depreciation, was a net assets figure of \$329,541.19, making a grand total of \$1,884,691.95, less accumulated depreciation of \$247,957.99, leaving a net fixed assets of \$1,636,733.96.

Q That was the total of the estate in Massachusetts and the total of the estate in Florida combined, that you just gave us?

A As handled by me and the C. P. A., yes sir.

Q Now, Mr. Perlmutter, what did you continue to do as receiver? Did you contest any leases?

A Yes sir, I examined all the leases of the tenants, went over them with my attorney, and we found that one lease in Florida was a duplicate lease, or was made out to two different tenants for the same premises, and in Massachusetts, we discovered that a building which had brought a net of \$85,000 or \$89,000 a year net profit to Mr. Dowling, had been, just about a year or a year and a half before these proceedings, leased to Jordan Marsh Company, or Allied Stores, the parent organization, for fifty years, for \$50,000 net a year.

Q Mr. Perlmutter, I am primarily concerned with the Florida assets. Will you recite what you did in relation to the Florida fixed assets?

A Well, when I discovered those two discrepancies in the leases, I advised the Court, filed a petition to have one of the leases, that is, the Florida lease, cancelled, and a new lease made with a tenant who was in the property, and which would have probably represented an additional benefit to the estate of some \$35,000 or \$40,000.

Q Did you recite in the petition to the Court on that lease that, in your opinion, it could have provided sufficient income for the estate of Jewell Alvin Dowling? Would you please refer to the petition to the Court in regard to that lease?

As I understand, you are testifying now as to your attempt to set aside a lease?

A Yes sir.

Q Will you please refer to your petition?

A Do you know the number of it? I can't find it.

Q What was the result of your effort to set aside the lease?

A Well, there were hearings held. There was opposition to it by the attorney for the tenant who was already in one of the stores, and I believe ultimately, the matter was processed for such a long while that after I got out of the picture, I don't know what happened, and I know that the Massachusetts lease involved a million and a half dollars, and I understand that they are either suing Jordan Marsh or negotiating the sale of the property as the result of what we found.

Q But as far as the lease in Florida, on the Florida property, you are not - - - you cannot recall at this moment what was the ultimate outcome of your efforts to cancel the lease?

A Other than the fact that they filed a petition to dismiss our petition for instructions to the Court, and that there were protracted hearings on it, I don't know what the ultimate outcome was - - - oh, yes, I do know, in this respect, that the building was ultimately sold, and the - -

Q Were you successful in your efforts to cancel the lease, Mr. Perlmutter? That's the question.

A No, I wasn't successful in my efforts to cancel the lease, but I think I was successful in getting the tenant to ultimately buy the building and pay a higher price than he otherwise would have.

Q Now, did you - - - when you completed your efforts as receiver - - - and I conclude from your remarks that that completed your efforts - - - am I correct in saying that?

A Well, no sir, I have some - - - I have some six files here that I think that would probably better relate what my efforts consisted of than I can by just answering that ques-

tion. How you would want me to go about relating all these instances, I don't know.

Q What steps did you take here in Florida in your efforts as receiver for the estate of Jewell Alvin Dowling, other than those recited?

A Well, I believe that every effort I made in an attempt to get the assets from Massachusetts was in line with the duties assigned to me as receiver.

Q Attempting to get the assets from Massachusetts?

A Yes sir.

Q And move them to Florida? Is that what you mean?

A Well, to corral them and to keep them intact for the estate of Jewell Alvin Dowling.

Q What was the value of those negotiable securities signed in blank, or others that you brought back from Massachusetts with you to Florida?

A I believe there's a receipt in the record of exactly how much they were, I know I have copies of such receipt.

I would say they exceeded \$200,000.

Q Now, what was ultimately done with the securities, do you know? Were they returned to Massachusetts?

A Only what I was told, that they ultimately were delivered to a guardian for Mrs. Jewell Alvin Dowling. First they were handed over to her attorney, Mr. Lane, here in Florida.

Q Did you employ counsel for yourself in your duties as receiver?

A Yes sir. I was not a member of the Florida bar at the time.

Q Who did you employ?

A Stanley S. Stein.

Q And he is a practicing attorney in Miami?

A Yes sir.

Q And you also have testified you employed an accountant?

A Yes sir.

Q Mr. Perlmutter, what did you receive as fees for your services rendered to the Jewell Alvin Dowling estate?

A I received no fees in Massachusetts, but I received a total of \$6,500.

Q What did your accountant receive as and for his fee?

A I think it was \$1,000.

Q And what did your attorney receive as and for his fees?

A \$2,500.

MR. MUSSELMAN: Your witness.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Perlmutter, prior to your entry into the legal profession, what was your trade or occupation?

A Real estate.

Q How long have you lived in Dade County?

A This is my eleventh year.

Q Were you active in real estate?

A Yes sir, very active.

Q Are you still in real estate?

A I am, sir.

Q Where is your office located?

A 407 Lincoln Road.

Q Miami Beach?

A Miami Beach, yes sir.

Q Did you have an organization by the name of J. J. Perlmutter and Associates?

A I had, yes sir.

Q Is that still in existence?

A No sir, I changed that name to Real Estate Corporation of Florida when I became a member of the bar, to avoid confusion.

Q Mr. Perlmutter, have you held any public office in this State?

A I have, yes sir. I've been appointed by the Honorable Governor Fuller Warren, former Governor, to the Flood Control Board. I have served as a member and as Chairman of the Dade County Board of Appeals on Zoning for some four years. I was reappointed to that by the Honorable Charley E. Johns, former Governor. I have been a member of the Florida State Judicial Council.

Q For what period of time?

A I believe eighteen or nineteen months. I was a lay member appointed by the Governor, and had to resign when I became a member of the bar.

Q Now, then, you were actively engaged in the real estate business at the time of your selection as receiver - - -

A Yes sir.

Q - - - in this matter?

A (The witness nodded affirmatively)

Q Do I understand from your testimony that you were selected as receiver by agreement or stipulation of the parties?

A Well, I don't know how I came to be selected. I know that I was called by Miss Potter, Judge Holt's secretary, and asked to be present at quarter to two.

When I came in there, Judge Holt told me that he was appointing me as receiver in a matter, based on his knowledge of my experience in Federal Court, having served as receiver or trustee in a few matters for Judge Holland.

Q Is that John W. Holland, now retired?

A Yes sir, that's right.

Q You had served him several times in a trustee or receiver capacity?

A I had, yes sir.

Q I'll ask you to state now what services you performed as receiver in the Dowling case, either in Florida or in Massachusetts, if you were in Massachusetts at the direction of the Court, in the matter of marshaling assets?

A Well, I was in Massachusetts as a result of the order - - -

Q On how many occasions?

A On three occasions.

Q How much time did you spend up there?

A Well, the first time I was there for two days; the second time, two days; the third time when I appeared there to be considered for appointment as permanent conservator, we were held over, unfortunately, by Judge Reynolds, due to a Decoration Day holiday, for six days.

Q Six days?

A Yes sir.

Q Well, now, you undertook to state a while ago, in answer to counsel's question, certain actions that you had taken in Massachusetts, and counsel seemed to only want to hear about Florida.

I wish you would state what happened in Massachusetts.

A Well, we had a conference with Judge Reynolds - - -

first, with the Clerk of the Court, and then an appointment with Judge Reynolds, at which time we apprised him of what had taken place in Florida.

He then very kindly agreed to hold a hearing the next day, and advised George Gilman's attorney, and after a hearing for several hours, he vacated his original order and appointed me as temporary conservator.

I then went to Judge - - - to - - - I'm sorry - - - to Jewell Alvin Dowling's offices, spent all of that afternoon there and all of the next day; packed up all of the books and records, and talked with the manager of Jordan Marsh, the principal tenant of the most important piece of property that Mr. Dowling owned in Massachusetts.

I spoke - - -

Q What type of property was that?

A Well, it's an eight-story office building, with a - - - I would say it's about a hundred feet front, by about one hundred twenty-five feet deep.

It was not a very modern building - - -

Q How many tenants, and of what value?

A The value of the building, I have it here.

As I started to say, there were about thirty-five or forty office tenants, and about eleven stores in that building.

Adjoining that particular building is a three-story set of old, red brick-front buildings, which were rented to Jordan Marsh, who spent about a quarter of a million dollars to rehabilitate the front of it, and it was being used as a department store.

In Massachusetts, the building value, let's see, there were two important pieces of property; one was in Allston, just on the outskirts - - - a suburb of Boston; that had a total fixed value of \$225,000.

The large building I was speaking about was in Malden, Massachusetts; valued at \$1,225,000, that was the book value of that property, exclusive of elevators, furniture and fixtures.

Q Well, now, as to the assets in Florida, were they income-producing properties, for the most part?

A They were, but unfortunately, they were tied up with old leases, one of which had been made only about a year or a year and a half before these proceedings, and the income from one portion of the building, which was rented, of course, rented for \$15,000 for twenty-five years; a new lease, made about a year or a year and a half previous, when that portion of the building should have been bringing in about \$25,000 or \$30,000 a year, but you couldn't do anything about the lease.

Q Who was occupying that property?

A David Allen, a very fine, high-type men's furnishing and clothing store.

Q What as to the other property?

A The other two stores - - -

Q Where were they, by the way?

A On Lincoln Road - - -

Q Miami Beach?

A Miami Beach, in the heart of the shopping area.

The other two stores, one of them was rented - - - had been occupied by the same dress - - - ladies' dress and specialty shop, Milgrim's, a very famous name, for some twenty years.

Their lease was expiring a year later, and they were paying some \$10,000 a year, I believe, but Mr. Dowling, about a year previous, had signed a lease with the tenant of the other store, a linen shop, Moseley's Linen Shop, who was paying \$8,000 for their store, to give him both of those stores for \$12,000 a year, and that would have reduced the income of the property by some \$8,000 or \$10,000 a year.

Q What other assets were there here in Florida?

A There was another hundred foot of Lincoln Road store property, occupied by House and Gardens, a furniture firm, that had been in there, I think, ten years. The lease was about to expire, and they also had it under a very, very old and cheap lease.

Q Were they residential properties?

A No sir. I think that they - - - there was a drapery man who worked for the furniture store, who lived on the second floor, which was in violation of an ordinance.

Q Well, what I mean is, did Mr. Dowling also have residential properties?

A Oh, yes sir, yes sir.

Mr. Dowling - - -

Q Did you inventory those?

A Yes sir. We had two homes listed; we later took one off as belonging to Mrs. Dowling.

We had a home at 1100 Bay Drive, Miami Beach, which is on Normandy Island.

Q Where was the other one?

A The other one was just in front of it, on the corner of a fifty-or sixty-foot lot, a smaller house, and an older house.

Q Well, did Mr. and Mrs. Dowling occupy one of those houses, or both of them?

A They occupied the larger house.

Q And what about the smaller one?

A The smaller one was completely vacant, and had little or no furniture in it. I think it had, maybe, one room of furniture, and an odd sleeping cot.

Q Was it shut up; no one living there?

A No one living there, no sir.

Q What other assets did you find in Miami Beach?

A Well, we - - -

Q Or in Florida?

A We found the home, the furniture and furnishings of that home; an old automobile; a yacht named "Bing," and another yacht, named "Corinthia," one a fifty-five footer, and the other a one hundred twenty-footer.

Q Did you have those appraised, or insert them in your report at book value, or how did you have them in there?

A Well, in our inventory, we took them at Mr. Dowling's book inventory, which was \$10,000 for the yacht "Bing," which was some thirty-seven years old, I believe, and had not been sailed, I was told by the captain then employed for many years; and then the other was the "Corinthia," which had a \$5,500 book value. We took it at that value.

Q Was that an old boat too?

A Yes sir, I would say that that was a little younger, about twenty-two or twenty-four years old.

Q Were both of those boats over at the Miami Beach boat slips?

A No, they were tied up right behind the property, right on the bay.

Q Right behind the - - -

A The homes.

Q - - - the homes? Which home?

A Both homes. One was tied up behind each home.

Q I see. And what did the captain, who hadn't sailed in several years, seem to do?

A Well, it seemed to me, upon investigation, that he was ripping up floorboards and replacing them almost every season; at least, I saw bills which indicated that, and - - -

Q Well, if Mr. Dowling didn't go out on the boats, do you know whether or not anyone else did?

A Well, the captain said that he used to take the boat to the slips and back every time they left for the winter, to go back - - - for the summer, rather, to go back to Massachusetts.

I imagine that's about all the sailing they did.

Q Do you know what they were paying the captain?

A Well, he claimed he was entitled to some back pay. I think at the time there was \$265. He said that he had been getting \$150, and which was inadequate, and he wanted a raise.

Q Well, during the time you were receiver, did you pay him?

A No, I only paid him some of the back bills that he had accumulated.

MR. HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. MUSSELMAN:

Q With reference to the assets in Florida that you have just referred to, would you keep that accounting open for a moment?

The accounting - - - am I correct in stating that the accounting shows that the boats were worth \$15,500, the two of them together?

A That was the book value on the - - -

Q The book value of them?

A - - - on the income tax report that was filed here.

Q And the home to which you have referred, showed a value of how much?

A \$81 - - - a net fixed asset value, after depreciation of \$81,945.42.

Q And the ninety-nine-year leasehold, what was the value, as shown by the accounting, of that resource?

A \$50,993.48.

Q What is the value of the car that you referred to?

A The value was \$1,718.16

Q And finally, the value of the business property that you referred to?

A \$179,384.13.

Q And there were some current assets, is that correct?

A There was cash in the bank in Florida, of \$146.75 only.

Q The total value of all you have given us, then, I think you testified previously, was \$363,749.55, is that correct?

A No, the gross assets were \$388,727.16, and the net assets, \$329,541.19.

Q That was the net assets?

A Yes.

MR. MUSSELMAN: Thank you, sir.

RECROSS EXAMINATION

BY MR. HUNT:

Q Mr. Perlmutter, the unoccupied house you spoke about - - -

A Yes sir.

Q - - - are you familiar with the fact that that was eventually appraised and sold?

A Yes sir, I am familiar with that.

Q Do you know a real estate appraiser practicing in Dade County, named Adrian McCune?

A I certainly do; a man of high repute.

Q Are there any higher, to your knowledge?

A Well, there are some that are younger, and are just about arriving at his stage of many years of experience.

Q Do you know Mr. S. Z. Bennett?

A I certainly do. He's one of them I had in mind when I said that.

Q He also is an appraiser of high repute, is he?

A He certainly is. He's used by the County and by the City.

Q Are both of them used by the County and the City and the Federal Government - - -

A Yes sir, they are.

Q - - - in appraisal matters?

A Yes sir.

Q Are you familiar with the appraised value they placed upon that unoccupied house prior to sale - - -

A No.

Q - - - when the petition of the curator was filed - - -

A No.

Q - - - for instructions?

A No, I am not familiar with it firsthand, except that I have been told it was under \$30,000. One of them was \$30,000, I believe, and the other was \$32,000, or \$35,000.

Q From your knowledge of the property, and from your experience as a real estate broker in Miami Beach, would you be more or less in agreement with the figures set by Mr. McCune and Mr. Bennett?

A Well, not without knowing exactly what their figure was.

MR. HUNT: Well, let it go. It will take too much time.

No further questions.

REDIRECT EXAMINATION

BY MR. MUSSELMAN:

Q The asset that you are now referring to was shown on the accounting statement as being \$81,945.42, I believe you testified, and I believe one of the other gentlemen testified, or it was shown in his report, \$35,000, and another, \$28,500.

Do you recall those figures?

A No, I understood Judge Hunt to be asking me about the house that was ultimately sold, the smaller house.

Q That's the one I'm referring to.

A That had no \$85,000 listing on it in my assets.

Q Well, please check back on that. That's what I want to know about.

A Yes sir. I have - - - the house that was sold, I have no valuation put on it in my statement, because it was - - - the owner of record of that property was Ina I. Dowling. The \$81,000 land and building value was on a home which was occupied by Mr. and Mrs. Dowling, and owned by Jewell Alvin Dowling.

MR. MUSSELMAN: I think we'll show you the reverse on that.

RECROSS EXAMINATION

BY MR. HUNT:

Q And that home is still occupied by Mrs. Dowling, or do you know?

A Well, I understood she was in Massachusetts. I think, up until the time she left, she lived there.

MR. HUNT: Yes. No further questions.

MR. MUSSELMAN: No further questions.

(witness excused)

MR. MUSSELMAN: Mr. Daniel Neal Heller.

MR. HUNT: If Your Honor please, before this next witness begins, I apprehend that he will be quite a lengthy witness. Would it be out of order to suggest a short recess, because we'd like to get some papers in order before he takes the stand.

SENATOR SHANDS: I so move.

SENATOR BEALL: I second the motion.

CHIEF JUSTICE TERRELL: The Court will be at ease.

Whereupon, a recess was taken from 3:05 o'clock, p.m., to 3:15 o'clock, p.m.

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

DANIEL NEAL HELLER,

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

DIRECT EXAMINATION

BY MR. MUSSELMAN:

Q Would you state your full name and address, please?

A Daniel Neal Heller, Ainsley Building, Miami, Florida.

Q Are you a practicing attorney in Miami, Florida, sir, in Dade County?

A Yes sir, I am.

Q How long have you been practicing in Florida?

A Approximately seven years.

Q Where did you practice prior to that time?

A I came directly from law school. I have been practicing in Dade County continuously since my graduation from law school.

Q For the information of the Court, are you the same Daniel Neal Heller who served as curator in the estate of Annie May Stengel?

A Yes sir, I am.

Q It has been previously testified by a witness that you were appointed guardian ad litem in the matter of the estate of Jewell Alvin Dowling, Incompetent, is that correct?

A Yes sir, it is.

Q Would you refer to the Court file, please, and give us the date of your appointment as such guardian ad litem?

A Yes sir, I'll be pleased to.

The Court file reflects, sir, that I was appointed as guardian ad litem for Jewell Alvin Dowling on March 18, 1954.

Q How long did you serve in that capacity, Mr. Heller?

A I believe that I served until the middle of June, 1954. I think the date is - - -

Q June 22?

A I am having difficulty finding the order before me.

Q Look at Entry Number 135, please.

A Thank you, sir.

Yes sir, I served from the date of March 18, 1954, until June 22, 1954, as guardian ad litem for Mr. Dowling.

Q That's a period of approximately three months, is that correct?

A Yes sir, approximately three months.

Q What occurred on June 22, 1954, as reflected by the order you are now looking at?

A The Court, after reciting certain facts and jurisdiction, entered a decree appointing curators, and - - -

Q Who was appointed, Mr. Heller?

A It therein recites that John W. Prunty and myself were appointed as curators of the estate of Jewell Alvin Dowling.

Q So there were two curators appointed?

A Yes sir, by this order of June 22, 1954.

Q And who was the other curator?

A John W. Prunty, P-r-u-n-t-y.

Q Did your duties as guardian ad litem cease on the entrance of that order?

A I so construed it, yes sir.

Q Mr. Julius Jay Perlmutter has heretofore testified that he acted as temporary receiver during the same period, and for some time after that.

What assets, if any, were turned over to you by Mr. Perlmutter?

A I am under a slight handicap, which I mentioned to you earlier, that some of these records were turned over by me or Mr. Prunty in earlier interrogation on this subject matter, and so I don't have the exact figure.

My guess is that it was approximately \$11,000 in cash, which was received by the curators from the receiver, together with certain fixed assets and certain personal assets.

MR. HUNT: Mr. Chief Justice, may I interpolate a question of the House Managers?

Are the Managers in a position to return to this witness the original documents of his own, pertaining to this matter, which were turned in and successively relayed to the House Investigating Committee, and then into your hands by Court order?

MR. MUSSELMAN: I believe this witness can tell us more about that than I can.

BY MR. MUSSELMAN :

Q Did you go today to the Florida Bar Headquarters?

A Yes. Mr. Watson Roper accompanied me, and these exhibits, which number a great many, are missing for some reason. No one seems to know where they are, or who has them, but Mr. Roper has a clear recollection that I turned the records over to the Bar investigators, but there seems to be no trace of them now, and Mr. Roper, I think, is at this moment attempting to find those records and papers and documents.

MR. MUSSELMAN: Let me inform counsel for the Respondent that, to my knowledge, we've never had those records in our possession, and turning - - - the Supreme Court ruling, turning over the Bar Investigation reports did not include his particular records.

We do not have them in our possession.

MR. HUNT: Thank you.

BY MR. MUSSELMAN:

Q Your estimate of the funds turned over to you by the receiver were - - - was \$11,000, approximately.

Did you file a receipt in the cause, acknowledging receipt of those documents?

A Sir, there is also an exhibit file, besides the Court file, and that doesn't seem to be here. Do you know where those are?

Q An exhibit?

A There are exhibit files, which number several thousand pages. They have, you know, transcript of testimony.

Q Yes sir.

A And tax reports.

Now, that's probably where some of this information may be obtained.

(Several paper instruments were handed to the witness by counsel.)

A (Continuing) I have in my hand what I recognize as having come from the Court files, Exhibit H.

It's a schedule of receipts and disbursements, prepared by a certified public accountant, Sidney Wasserman & Company, at the request of Judge Prunty and myself, for the period from June 29, 1954, through - - - up to and including the date of December 31, 1954, and that one does show that \$11,000 figure, sir.

Q Would you give the exact amount?

A Yes sir. It's dated June 29, and it says:

"J. J. Perlmutter, Receiver. Transfer of funds, \$11,050.99."

Q What other assets, if any, were turned over to you to commence your duties as curator?

A Well, to save time, I'll guess, and therefore, not give you the exact figures that we give.

We received two motor vessels, the "Corinthia" and "Bing"; we received a 1951 Oldsmobile automobile; we received a lessee's interest in a ninety-nine-year lease on a piece of property on Lincoln Road - - - that was 744 Lincoln Road; we received a fee simple, or ownership of the ground of a piece of business property on Lincoln Road, at approximately number 830 Lincoln Road; and we received a guest house residence, which was located at 1100 Bay Drive, Miami Beach; and in addition thereto, we received from the receiver, who, I think, by that time was also the conservator, or temporary conservator, appointed by the Massachusetts Court, approximately \$330,000 of liquid assets, which consisted of negotiable stocks, endorsed in blank, and various savings, bank books, stocks and other securities.

Q What ultimately became of these securities you are now telling us about?

A Well, these securities, as far as Judge Prunty and I could determine, had been received by Mr. Perlmutter in the - - - in Massachusetts, in the performance of his duties, and there was some question as to the ownership of the securities. By that, I mean it was reported to us that the securities endorsed in blank were kept in Mr. Dowling's safe; so, we petitioned the Florida Court, which had appointed us, in the nature of an interpleader, and we reported that we were Mr. Dowling's curators, and we reported that we had almost \$350,000 worth of liquid assets, and we reported that it looked like they originally belonged to Mrs. Dowling, or a good portion of them, but we pointed out that a demand for them seemed to be made from two sources, by Mr. William Lane, who was then the attorney for Mrs. Dowling, and also by Attorney Robert W. Meserve, who - - - of the law firm of Nutter, McLennan & Fish, of Boston, who was then serving in the Massachusetts jurisdiction as a conservator for Mrs. Dowling; and so, we petitioned the Court and, in effect, in our petition, said that "We make no claim to these securities. They should either go, probably, to Mrs. Dowling, or back to Massachusetts, to the conservator," and we had a hearing before the Court, and notified all of the necessary parties who claimed an interest at that moment, and after the hearing, Judge Holt ordered that the securities be turned over by Mr. Prunty and myself to Mr. William A. Lane, who was then serving as Mrs. Dowling's lawyer, and this was done, and if my memory is right, we received a receipt - - - it was a very lengthy receipt, it was three, four, five or six pages - - - for each of the securities, and which we turned over to Mr. Lane, and he later informed me in conversation that he had then either mailed them to Massachusetts or personally gone to Massachusetts and physically delivered them to Mrs. Dowling in Massachusetts, or to someone acting on her behalf, I just don't recall which it was.

Q So, these securities which were brought down from Massachusetts by Mr. Perlmutter were ultimately returned, under order of the Court, to Massachusetts, is that correct?

A Yes, that's right. They were returned to Mrs. Dowling's lawyer, and she was then - - - it was summer months, and she was then in Massachusetts, and I think, rather than wait

for her return, Mr. Lane brought them to Massachusetts to her.

Q And that left remaining in your hands the \$11,050, is that the correct amount?

A \$11,050.99, yes sir.

Q The home, the guest home - - -

A Yes sir.

Q - - - is that correct?

A Yes sir.

Q And the ninety-nine-year lease?

A Yes sir.

Q And the property on Lincoln Road, which was unencumbered, and the automobile. Are those the correct assets that were turned over to you?

A Those were the assets at that time, yes sir; I think that's correct.

Q All right, sir. Please refer to Entry Number 139. The date was June 25, three days after your appointment as curator.

MR. HUNT: What was that number?

MR. MUSSELMAN: 139.

MR. HUNT: Thank you.

MR. MUSSELMAN: I may have the incorrect number on that. Tell me what that entry is. It may be 142.

THE WITNESS: This is a motion, entitled: "Motion for Leave to Sell Two Motor Vessels Found Listed in Receiver's Report Filed in this Court on March 25, 1954."

BY MR. MUSSELMAN:

Q Now, you were appointed on June 22, is that correct?

A Yes sir.

Q That was 1954?

A That's right, as curator, but I had been guardian since March 18.

Q That's correct?

A Yes sir.

Q And three days thereafter, on June 25, 1954, the petition was filed for leave to sell the boats, is that correct?

A That's correct, and the petition recites that the receiver had unsuccessfully tried to sell the boats, and it - - - that's one of the missing exhibits, by the way, and Mr. Perlmutter had given to me a check-off list. He had called every registered junk broker in the telephone - - - Greater Miami telephone book, or some thirty, approximately thirty, and he had made a notation with regard to each yacht broker, a notation such as "not interested," or "no market for it," or "he had \$1,000," and so forth, and - - -

Q There was - - -

A - - - this petition sets forth the reasons why.

One boat, I believe, was forty-five years old, and the other boat was thirty-nine years old, and there were charges against it at that time of some \$1,700 by the Miami Beach Boat Slips.

The earlier testimony, if you have it, the testimony here showed that he spent - - - at least, that was the testimony offered - - - some \$33,000 in the fifteen-month period before Mr. Prunty and I were appointed as curators, on alleged or fictitious repairs to the boats - - - not repairs, but storage and dockage; and there was one bill, of \$375 to move the boats from Twenty-First Street, on Miami Beach, to about Seventy-First Street; and later testimony revealed that Mr. Dowling himself - - - and the petition so recites - - - had tried to sell the boats, and he had not been on the boats, I think, in fourteen years, and in addition to that, he had kept the ship captain, and was paying him \$100 a week, and he'd keep those old boats that he never used.

Q Well, what - - -

A And so, we did petition the Court, after Mr. Perlmutter told me that he had no success in finding any interested buyers - - - so, we petitioned the Court, and - - -

Q Did you ultimately sell the boats?

A We did. We first advertised them extensively in the newspapers. We had these large, six-inch block ads. We had one in the Miami Herald, and we had one in the Miami Beach Sun, because Mr. Dowling lived on Miami Beach; and we advertised for sealed bids for these vessels, and I think the highest bid we got was some \$3,000 for both boats.

So, we rejected all the sealed bids, and then there happily came along a man who offered \$7,250 for both boats; that was twice the amount of the highest sealed bid. So, we took an earnest money binder from this man, of \$1,275 and set a closing date of ninety days hence, and in that ninety-day period, the buyer paid in advance all the insurance, and also all of the dockage, and he moved them to an inland marine base, because we were then approaching the hurricane season.

Q Now, then, that man was Mr. Barber, is that correct?

A Thomas A. Barber; and of course, we had, unfortunately, before we could even negotiate with him, Judge Prunty and I had to go to the Miami Beach Boat Slips. They claimed there some \$2,000-some-odd in repairs, and we were able to settle it for less, \$1,663.83.

These were charges which were incurred by Mr. Dowling before the curatorship, and before the receivership.

Q Well, what was netted from the sale of the boats?

A \$7,250.

Q All right, sir. Then, did you petition the Court for leave to sell the guest house, and if so, when did you do it, sir?

A I found that Page 162, on those boats. Those offers on the sealed bids ran from \$1,100.71 to a highest offer of \$3,119.

Now, on that house, sir - - - these pages seem to be in mixed order.

The Court file reflects that on July 14 - - - well, it was filed in the Court file on July 14, but on July 13, a copy was mailed to Lane, Muir, Wakefield, Frazier & Lane, attorneys for the wife, and to Warren, Klein, Lehrman, Shorestein & Kline, attorneys for the husband, a petition for clarification and for leave to sell certain real property.

Q What was the date of that petition?

A It was filed in the Court file on the 14th day of July, 1954.

Q Well, did the Court give permission to sell the house, and what was received for the house, if it did?

A Yes sir, the Court gave permission - - - I've been trying to find it - - - do you know what page that's on?

Q I think you can probably recite from memory, Mr. Heller. Didn't the Court give you permission to sell the house?

A The Court gave permission to advertise the house for sale.

Q And was the house ultimately sold as a result of the advertising?

A Well, we had to employ a registered real estate broker, who conducted an extensive advertising campaign, and a few months later, I think - - - I don't have it right in front of me - - - the property was sold, and I believe the appraisals were attached to it.

We mailed a deposit to Mrs. Dowling, in Massachusetts, and she went to see her attorney - - - at that time I think it was Arthur Martin - - - and she entered into the agreement to sell the house.

We sent her the deeds and the bids and the report of the appraiser, and after discussion with the Massachusetts conservator, and so forth, Mrs. Dowling agreed to sell the house.

You see, that was the house on the corner, that they had never lived in.

Q I understand that, sir, but the house was sold, was it not?

A Yes sir.

Q What was the purchase price that the house brought?

A From memory, \$29,500.

Q And that was less a brokerage fee, or not?

A Well, the brokerage fee recited here is \$1,475; so, the net on the sale would be \$28,000, or \$28,025.

Q So at this point, sir, in brief summary, you had received \$11,050 from the receiver; you had sold the house, which netted you \$27,035 (?); and you had received from the sale of the boats, the sum of \$7,250.

Can you possibly total that? Do you have a pencil and paper before you?

A I must add this, that I am not very good at this thing. I would like a margin of error, sir.

I didn't write anything down. Do you have the figures?

Q \$11,050; \$27,035.

A Twenty-seven thousand - - -

Q And thirty-five dollars.

A And thirty-five dollars.

Q \$7,250 from the sale of the boats.

A That's approximately \$35,000.

Q I think you're \$10,000 off. I think it's \$45,000?

A \$45,000?

Well, you see, I did need that margin.

Q Now, that's the sum you had after the sale of the boats and the guest house, is that correct?

A Well, that's not an accurate portrayal.

Q All right, sir, give us - - -

A You're ignoring, or leaving out, rather, what we had to pay out, you see.

For example, we had to pay ground rent on the ninety-nine-year lease, which was some \$9,000, and you know, if the ground rent had not been paid, we would have lost the property.

Q Well, then, the figure I gave you, or you tried to figure out, was less the ground rent of \$9,000, is that correct?

A And all other charges, as reported in this Exhibit H, which was filed in the Court file:

"First National Bank, \$17 06; the Miami Beach Boat Slips, \$1,663.83; cash for postage stamps, \$10; Standard Lock & Key Company, \$20 56; Coleman & Coleman Court Reporters, \$15; Atlas Signs, \$9 50; International Patrol, \$15; Long Office Supply, \$148 43; Florida Sun Publishing Company" - - - that was to advertise the boats - - - "\$16.65; Howard Backus," for towing one of the boats, "\$35; Corey Martin, insurance on the boats, \$90; Head-Beckham Insurance, curator's bond, \$135; Economy Plumbing, \$8.57; Head-Beckham, curator's bond, \$135; costs to myself, \$58.03; Miami Roofing" - - - and that was for one of the tenants, the roof repair - - - "\$32; Withers Storage, moving files, \$8.24; Jack Mallicoat, Court Reporter, \$13.75; Ethel Deutsch, Court Reporter, \$45; Estate of Claude R. Johnson, \$4,500. Patricia A. Johnson, \$2,250 and Mary Elizabeth Johnson, \$2,250; Central Stationers, \$9.39; Art Landscape Company, \$35; J. E. Kelly, Reporter, \$26.25; Leonard Tobin, Constable, \$4.10; Anchor Post Products, Inc. of Florida, \$75; Robert McKay, \$75" - - - that was the appraisal; "P. L. Watson," another appraiser, "\$50; Howard Backus, towing, \$35; Jones Boatyard & Storage Basin, \$150; Lane, Muir, Wakefield, Frazier & Lane, \$2,500, attorney's fees; Warren, Klein, Lehrman, Shorestein and Kline, \$8,000, attorney's fees; Julius Jay Perlmutter, Receiver, \$6,500; Stanley S. Stein, \$2,500" - - -

Q Mr. Heller, may I interrupt you, please. I think that

you're - - - actually, I think that's the Court order that I'm immediately going to refer you to.

A Yes sir.

Q I'm trying to draw an approximate balance, prior to the order of the Court, entered on October 21, which is Entry Number 208. Would you turn to that order, please?

A Well, I think I described to you that the office records and files in the Dowling case are approximately nine feet of files, or four steel drawer filing cabinets, and we had, I thought, a satisfactory accounting-bookkeeping system.

Q Let me approach the problem in this fashion - - -

A What I'm saying is that we had a ledger book, you know, which would tell at any moment exactly what we had and what was - - - you know, the balance; and that, too, was one of the exhibits that were taken, or that I don't have.

Now, if I had that ledger book, I could tell you exactly, on the very day of this order, exactly what was in the bank.

Q Well, let me approach the problem in this fashion:

You received income from the sale of the house; you received income from the sale of the boats; you had received some money from the receiver; and we have arrived at an approximate total of \$45,000 with those three sums, is that correct?

A Yes sir.

Q That's only an approximation. Did you have any additional income during the period immediately prior to the sale and receipt of the funds from the house?

A Not that I recall.

What is the date of the - - - I'm a little confused. What is the date of the sale of the house?

Q I thought you gave that date to me a moment ago; July 14.

A Not the sale of the house, I don't think the house was sold until - - -

Q Did you have any income that you know of, up until and including the day that the order was entered, awarding fees for the first time, which was reflected on Entry Number 208, which I'll ask you to read at this time?

A Yes sir. We had - - - we received a rental payment of one of Mr. Dowling's tenants, on the date of August 12, of \$1,000; we received, on the date of August 30, from the same tenant, I see, \$4,000; we apparently had received an insurance premium refund of \$10.

I would think, sir, that that was all of the income, cash income, which we had to the date of October 21, 1954.

Q And you were less some expenses to that date?

A Less? You are right, right, sir. There are expenses, which I set out in the accounting exhibits, which are filed in the Court file, and our ledger book, which I don't have now.

Q Again without the actual returns, would you approximate the total gross income during that period, from the sale of assets, and the receipts and rents, of approximately \$48,000? Would that be accurate? From the sums you just read to me?

A I'm not very good at this sort of thing, now.

Q All right, sir. Would you read the order of the Court entered, as reflected by Entry Number 280. Read the order in its entirety.

MR. HUNT: May I ask the House Managers if the ledger book to which the witness referred is among the missing documents?

MR. MUSSELMAN: It's among the missing documents with the Florida Bar Association.

THE WITNESS: If I had a little time - - - now, sir, the order of - - - the question was, the order of October 21?

BY MR. MUSSELMAN:

Q Do you think that in a few moments you could reflect with accuracy, or some degree of accuracy, what your balance was at that time?

A Well, I think that the accountant reported to us that he was always exact to the penny, you know, and I tried to keep those books, and we did, but it's difficult now, sitting at this half-table, with some figures and not others, to do the same job that I did in an orderly fashion in my office, and that's why that book is important to me.

Q All right, sir, will you read that order, and we'll disregard the other for the moment.

A Yes sir.

"This cause coming on to be heard upon various" - - - you want me to read the entire order?

Q Read the entire order.

"- - - upon various petitions and motions filed before the Court for allowance of fees, reimbursement for costs, expenses, etc., and the Court having examined the same, and being fully advised in the premises, it is, upon consideration,

"ORDERED, ADJUDGED AND DECREED

"1. That the curators heretofore appointed by this Court be, and they are hereby ordered and directed forthwith to make the following disbursements:

"(a) To Lane, Muir, Wakefield, Frazier & Lane, Esqs., attorneys for the Petitioner Ina I. Dowling, the sum of \$2,500 for their services, costs and expenses rendered in procuring the appointment of the curators. However, since the bulk of the services rendered in this cause by the said attorneys were at the request of and for the benefit of Ina I. Dowling in the protection and preservation of her separate estate, and since the financial condition of the said Ina I. Dowling is more liquid than that of the ward, and inasmuch as the said Ina I. Dowling is well able to pay the fees of her said counsel, the Court directs that the payment by the curators be considered without prejudice to the aforesaid law firm to obtain the balance of their fees, if any, and reimbursement for costs and expenses, from the said Ina I. Dowling; and

"(b) To Warren, Klein, Lehrman, Shorestein & Kline, Esqs., attorneys for Jewell Alvin Dowling, the sum of \$8,000;

"(c) To Julius Jay Perlmutter, Receiver, the sum of \$6,500;

"(d) To Stanley S. Stein, Esq., attorney for Receiver, the sum of \$2,500;

"(e) To "- - - myself - - -" the guardian ad litem, Daniel Neal Heller, Esq., guardian ad litem, the sum of \$3,000;

"(f) To Sidney Wasserman, Certified Public Accountant, the sum of \$1,000;

"(g) To Paul Kells, medical doctor, one of the examining physicians, the sum of \$1,175; to Jess Spierer, Ph. D., one of the examining physicians, the sum of \$50; to James L. Anderson, M. D., one of the examining physicians, the sum of \$300.

"2. All of the above awards include reimbursement for costs and expenses as well as fees for corresponding counsel.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 21 day of October, A. D. 1954," and it was signed "George E. Holt, Circuit Judge."

Q Mr. Heller, I'm going to tell you what the total of those fees were, and if it's incorrect, I'll be glad to stipulate to any correction at any time.

Those fees total \$25,025, is that correct, or do you know?

A Well, you - - - if you have added them on a machine, and you're satisfied, of course, I'm satisfied that that's correct.

Q All right, sir. Now, after the sale of the boats and the sale of the house, we now have remaining the ninety-nine-year lease on the Lincoln Road property and the fee simple title to certain Lincoln Road property.

What was done, if anything, with the ninety-nine-year lease on the Lincoln Road property?

A Well, Mrs. - - - Mr. and Mrs. Dowling returned to Florida around Thanksgiving, in 1954, and we received written word from the Massachusetts conservator for Mr. Dowling that Mr. and Mrs. Dowling had now decided to give up Massachusetts as their home, even on a part-time basis, and to live permanently in Florida; and the Massachusetts conservator indicated that the financial situation in Boston was not good, that while there was a great deal of property in land which Mr. Dowling owned, he had no ready cash, and so Mr. Meserve informed us that he was unable to contribute to the cost of feeding and keeping and housing the Dowlings as long as they lived in Florida - - -

Q Could I interrupt you for just a minute, sir, Mr. Heller?

Actually, did the Dowlings have any relatives living at all at this time?

A Well, Mrs. Dowling's petition, which she filed under oath when Mr. Lane was representing her - - - you recall that she started a proceeding - - - she says that the only relatives that he had were two cousins, who were eighty years old, and one lived in Swanville, Maine, and the other cousin lived in Belfast, Maine, and they had no children, of course - - - they were married about fifty years at that time - - -

Q They had no children?

A - - - but as far as we knew, they never had any children.

Q Did they have any deceased children or grandchildren?

A As far as we could determine, there was no issue, no child born of the marriage.

Q All right.

A Now, we had the situation of the Massachusetts conservator saying, "I can't send any money from Massachusetts to Florida, but rather, I wish that you would send money from Florida to Massachusetts, because we have to pay" - - - I think it was then some \$18,000 delinquency on rent of the property which Mr. Dowling owned in Massachusetts; and we were informed that Mr. Dowling had, shortly before the time that he was - - - that a conservator was appointed for him in Massachusetts, he had made a very disadvantageous lease on property which we will identify as the Jordan Marsh property, Allied Stores. He had taken a piece of property which he had rented to them for years and changed his rental agreement with them, and gave them a long-term lease, by which he decreased his income from the property approximately \$20,000 to \$25,000 per year.

Now - - -

Q I hate to interrupt you, but I believe all this could be brought out on cross examination. I'm questioning you about whether or not you petitioned to do anything about the ninety-nine-year lease?

A Well, I am trying to - - - as I said - - - I told you, you know, when we got together before this, I wanted to give you, you know, full and complete answers to help you, you know.

Q All right, sir. Did you petition the Court for leave to sell the ninety-nine-year lease?

A No sir, we hadn't yet.

Q Did you ultimately do that?

A Yes, and I must tell you what preceded it.

We employed this accountant to make a schedule of the income from the Florida property so that we could tell from this schedule whether or not we could support Mr. and Mrs. Dowling on a twelve-month basis, now that they would be living in Florida all year long.

Now, that schedule was prepared - - - special report was prepared by the Certified Public Accountant on the date of January 20, 1955, and that was filed in the Court file, as Exhibit Number G.

Now, this report lists all of the possible rental income of Mr. Dowling's two pieces of property in Florida - - -

Q Mr. Heller - - -

A Yes sir.

Q - - - excuse me, sir. I hesitate to interrupt you here, and I know you want to explain your answers, but I believe you did testify that you ultimately did petition to sell the ninety-nine-year lease, is that correct?

A Yes, we ultimately petitioned to sell the ninety-nine-year lease.

Q And you did sell it, did you not?

A We transferred his interest - - -

Q You assigned it?

A Assigned it.

Q Now, would you please describe, Mr. Heller, what occurred in the Judge's Chambers, relative to accepting the first bid?

I believe you attempted to get bids on the property twice. Would you describe what happened in the Judge's Chambers the first time you attempted to accept bids?

A Yes sir. There's a transcript of testimony. I would like to read that. I can read that. It's a short transcript of testimony which was taken down by the Court Reporter, and that will accurately reveal to the Senate what took place, the number of bidders, and so forth.

Q All right, sir, if you can find it that way.

A That transcript of testimony appears to be missing here. It's missing; it is not among these records.

Q Well, please describe it from memory, sir, if you can.

A Well, we had these two appraisal reports; we had this - - - we attached to our petition this accountant's report, which showed that, taking all the best possible income the Dowlings could have against their necessary living expenses, food, and the payment of taxes, and insurance, and so forth, they would have a reserve of only \$300 for possible contingencies. This set aside the necessary spending money, and so forth, living costs, medical expenses, and so forth.

Now, therefore, we presented to the Court this Certified Public Accountant's statement. There was also presented to the Court two appraisal reports from Mr. S. Z. Bennett, M. I. A. and Mr. Adrian McCune, M. I. A.

Now, these appraisal reports recited that Mr. Dowling had these very disadvantageous leases, and, as you recall from going through the file, he had signed a lease with one tenant, a year before the curators were appointed whereby he gave one tenant a ten-year lease and a ten-year option, at a rental of \$2,000 less than the tenant was paying, and then threw in another store and gave the tenant possession of this other store a year prior to the time that the lease would have expired on the second store.

Now, Appraiser McCune said that - - - his interest in this property, inasmuch as it was encumbered by the long-term lease, the petition recited that there were three tenants, David Allen - - - now, David Allen had a lease until the year 1975.

The second tenant was Milgrim's, who had a lease, and he was paying \$10,000 a year rent - - -

The third tenant was Moseley, and he had a lease, and he was paying \$4,000 a year rent - - -

Q Now, Mr. Heller - - -

A Yes sir.

Q - - - excuse me again, please sir.

We are scheduled to adjourn here at five o'clock, and I believe we can get the information before the Senate, from the Prosecution's side, prior to that time.

A Yes sir.

Q Now, in the Chambers of the Court, the bids were opened, is that correct?

A No, the bids had been opened previously by Mr. Prunty and myself, but nobody knew what the bids were.

Q I see. You were first informed of that in the Circuit Judge's Chambers, is that right?

A In the Judge's Chambers, and we reported the appraisal reports.

McCune was \$82,500, and we had a bid, I believe, of \$91,500, net, and we reported that to the Court and asked for instructions.

When one of the persons, this Moseley, who managed to get that very good lease that I spoke to you about before, when Moseley found out what the highest bid was, Moseley then filled in ink a bid of \$500 more than the other highest bid - - - and it's right here in the Court file.

They had an offer to bid which is neatly typewritten, but the amount is blank, and that's filled in in ink; and when Moseley then offered \$500 more, the person who had offered \$95,000 - - - I think they were represented by the law firm of Shutts, Bowen, Simmons, Prevatt & Julian, when they found out that they might lose this thing for \$500, they said, "Your Honor, that \$95,000 offer that we made, that's without brokerage fees," and of course, right on the offer itself, it said, "Less brokerage fees." (So, all the other bidders said, "Well, gee, if we knew that, we wouldn't let the property go for \$200 or \$500." All the bidders who were at the sale, and who had been notified, and so forth, each one wanted to pull a different way. Gee, they pointed out to Judge Holt - - -

Q Well, what was the ultimate result of that - - -

A The ultimate result was that each bid was pulling this way; Judge Holt rejected all the bids and instructed Judge Prunty and myself to readvertise the property, which we did, and to accept sealed bids, which we did.

Q Now, Mr. Heller, is it not true that at that hearing - - - I'm sorry we don't have the transcript - - - at that hearing, did you not ask the Court not to do that, but rather, to accept the bid at that time?

A Of course, it's kind of unfair to testify from memory, but I know for sure what I said.

I said it was unfair to bidders who had bid in confidence to let some latecomer come in, hear the bid that somebody else had made in good faith and in confidence, and jump on that person's back, and for \$500 or \$1,000, steal the property.

That, I said, I thought is unfair, and collusive bidding.

I conceive that when bids are made, particularly in a situation like this, that they should be honest, which these bids were, and that no bidder should know what another bidder was bidding to insure the greatest return to the estate, and the proof of the matter was that after we received the sealed bids, there was one bid for \$105,000, and another bid for \$127,500, so that by virtue of the instructions which Judge Holt gave, we received \$22,500 difference between the two sealed bidders, and some \$45,000 more than Mr. McCune who, I think, is well known to you, had said was the reasonable value of his interest in this property, encumbered as it was, with long-term, undesirable leases.

Q So, that was the purchase price for the ninety-nine-year lease, as finally determined by sealed bids, is that correct, \$127,500?

A \$127,500.

Q And that - - - the assignment of that lease was consummated at that price, is that correct?

A That's right, and these appraisal reports show that his net income - - - he had to pay the taxes, he had to pay the insurance for his tenants; his net income from this valuable Lincoln Road piece of property, was approximately \$5,000 a year, and that's the basis upon which McCune said, figuring at six per cent income, that it was worth \$82,500.

Q All right, sir, the next entry I'll refer to in the Court file is Entry Number 221, dated January 4, 1955.

What does that appear to be?

A This is a petition filed by Judge Prunty and myself, as curators for Jewell Alvin Dowling, reciting forth - - - setting forth certain facts, and asking that the Court appoint a curator for Mrs. Dowling, and it sets forth, for example, this

abortive power of attorney which she gave to her chauffeur. In other words, she just signed over everything she had to this man who was working for her for about four months, and we found out that she didn't even remember having signed the paper, and we found out that she was terrorized of this man - - - he exposed his private parts to her, and so forth, and with that, we knew that she had become the victim of a designing person.

Q But you and Judge Prunty, as curators, for Jewell Alvin Dowling - - -

A Yes sir.

Q - - - filed a petition to have a curator appointed for Ina S. Dowling who - - -

A Ina I. Dowling.

Q Ina I. Dowling.

A Now, let me explain that a little; let me explain.

This was, at best, a renewal of a March, 1954, pleading.

Mr. Dowling filed a counter claim, in March, 1954, against Mrs. Dowling, in which he said, in effect, "You are more incompetent than I am incompetent. You're a victim of a conspiracy" between a certain banker, and so forth and so on, "and you're the one who needs a curator; I don't."

This was filed by Mr. Dowling, under oath, in a - - - as a counter claim, in March, 1954; that was during the time I was guardian ad litem, but this was filed by his own attorneys.

Now, at that time Judge Holt appointed doctors, psychiatrists, to examine Mrs. Dowling also, and the psychiatrists reported that while Mrs. Dowling was not much better off than Mr. Dowling, in terms of being able to manage her separate estate, she had - - - there was this little difference, by virtue of her training, or her nature, the doctors or psychiatrists, felt that Mrs. Dowling would probably have good enough sense to hire the right kind of person, either a bank or trust company or lawyer or investment broker, or somebody who would manage her estate. In other words, they said, "She can't manage any more of an estate than he can, but the difference between them is this: He suffers from euthasia; he doesn't know what's wrong with him, and he'll never admit that there's anything wrong."

So, for example, if you spoke to Mr. Dowling at any time of the day or night, and asked him, "How do you feel?" Mr. Dowling would say, "Tops, tops," and he'd scream it out. He just would - - - he never would admit that there was anything wrong with him, but the man was completely paralyzed on one side, and totally deaf on one side, and had no control over his bowels, or his urine, and so forth.

Q Mr. Heller - - -

A Yes.

Q - - - excuse me - - -

A This petition, filed in January, 1955, was a renewal of the petition which Mr. Dowling himself filed in March, 1954, some eight months earlier.

Now, under the - - -

Q In other words, you filed that in your capacity as curators for Mr. Dowling, is that correct?

A Exactly, sir, because the Florida statute says that once a curator is appointed for a person, that person loses the capacity to sue and be sued.

Now, since Mr. Dowling had filed the original petition in March, 1954, at which time he felt that his wife was in greater jeopardy than himself, in January, 1955, he had lost the capacity, the legal capacity to sue anybody - - -

Q Well - - -

A - - - in this proceeding.

Q Were there any relatives available - - -

A Not to - - -

Q - - - to file a petition?

A Not to our knowledge. We had no knowledge of any relative living within the State of Florida, and it's so set forth in the petition.

Q Was the Sheriff available to file it, Mr. Heller?

A I'd like to just finish this one thing for a moment.

Q All right.

A So, since we stood in the shoes of Mr. Dowling, we filed the petition.

Now, the next thing - - -

Q Doesn't the statute specifically provide that in the absence of certain specified relatives, that the Sheriff will file any petition?

A May I see that statute?

I know that it doesn't - - - I don't think it says "shall file." The statute says that the Sheriff "may file."

Now, we stand in the shoes of Mr. Dowling; that's the reason the Court appointed us to sue and be sued for him.

Now, Mr. Dowling, as husband of Mrs. Dowling, would be the most logical person to file that law suit.

Q He was then incapacitated, right?

A Right; and therefore, legally, we stood in his shoes, and therefore, if he had a right to file the law suit, but was now deprived, by legal impediments, it was our duty to file the law suit for him.

Q I think - - -

A Which we did.

Q I think that section of the statute is very short. Will you read that to the Senate, please, who is authorized to file a petition for the curator. Give the statute number also.

A "747.06. Petition for - - -

"The jurisdiction of the Court shall be invoked by the filing of a petition in the Circuit Court of the County of his or her residence by the person for whose property a curator is sought; or by either the father, mother, brother, sister, husband" - - - now, let me just put in our own parenthesis - - -

Q Read the statute. Read the statute, and then you can go back and put that in.

A All right, sir.

"- - - wife or child or next of kin of such person; and, if any such relative fails to act, then by the Sheriff of the county or the domicile or residence of such person, which petition shall set forth the facts and reasons why it is proper, appropriate or reasonably necessary for the best interest of such person that such appointment be made."

Q Your parenthesis, then, simply - - -

A I haven't finished. You said you wanted it all.

Q All right.

A "The petition shall state names and addresses of all members of the immediate family and the names and addresses of husband or wife and next of kin, as particularly as is known to the petitioner."

Now, our parenthesis says - - - the point that I started - - -

Q The way you interpreted that statute is what you're supplying here, is that correct?

A Pardon me?

Q You are interpreting the statute by supplying a parenthesis?

A That's right.

Q All right.

A Since the statute says that the husband could and has a right to file it, and since there was no child, and since Mr.

Prunty, now Judge Prunty, and I were, for legal purposes, the husband, then, in that capacity, we filed this petition.

Q Well, does the statute itself make any reference to the personal representatives of any of those parties?

A I don't understand your question.

Q Do you see the words "personal representative" anywhere in that statute?

A I would have to read the whole statute, but I don't know that I do.

Q All right, sir. As a result of that petition, what was done by the Court in the interim, during the time in which the question of incompetency was being determined? Was a guardian ad litem appointed to represent Mrs. Dowling in the meantime?

A Well, I think there was a restraining order against the chauffeur.

Q Was there a guardian ad litem appointed?

A I believe so. I think the statute on that says - - - 747.09 - - -

Q Well, was there a guardian ad litem appointed?

A Yes sir.

Q And who was the guardian ad litem who was appointed during that time?

A I haven't found the order on it; I find the oath, and that's signed by John W. Wright.

Q John W. Wright.

A 225.

Q All right, sir. Was the - - - I wish you would look, now, at Entry Number 232.

A Yes sir.

Q Dated January 7, 1955?

A Yes sir.

Q Is that the order appointing you and Mr. Prunty as co-curators of the estate of Ina I. Dowling?

A No, the one that I have here was the - - -

Q Well, that's the order - - -

A - - - injunction against the chauffeur from using this power of attorney.

Q Look at Entry Number 239.

A Yes sir.

Q That is the decree, appointing you and Judge Prunty as co-curators over the estate of Ina I. Dowling, is that the one?

A Yes sir, that's the one.

Q All right, sir. Now, you are co-curators, both over the estate of the husband, and also over the estate of the wife, is that correct?

A Well, we are curators. I don't know whether we're co-curators, but we're curators.

Q But you are curators of both estates?

A Both estates, yes sir.

Q All right, sir. The next thing I would like you to look at is an order entered on the 27th day of January, 1955, wherein you are awarded fee - - -

A I can't find the number here. I'm sorry; what's the date of that again?

Q January 27, 1955.

MR. HUNT: Your Honor, if there's no objection, over the evening recess, we'll take that file in our custody, and return it tomorrow, in proper procedure.

CHIEF JUSTICE TERRELL: Any objection on the part of counsel for the Managers?

MR. MUSSELMAN: I have no objection to that, if Your Honor please.

Do you find the order?

CHIEF JUSTICE TERRELL: That will be the order.

THE WITNESS: January 27?

BY MR. MUSSELMAN:

Q The 27th of January.

A Yes sir, and that's the bid order that I told you about, the handwritten bid; that's the number two bid, sir.

Q All right. What is - - - read the order which awarded you a fee for your services in connection with the Ina I. Dowling estate.

A "This Court" - - - "ORDER:

"This cause coming on to be heard upon the petition of the curators for the allowance of adequate compensation for their services with reference to preparing, filing, appointment, qualification and other actions of the said curator, with reference to the estate of Ina I. Dowling, incompetent, and the Court having considered the said petition and the exhibits thereto attached, and having evaluated the services and actions of said curators, and the Court finding that the said curators acted with promptness, diligence, and for the best interests of the ward, which has resulted in the preservation and protection of the estate of said ward, and the Court being otherwise fully advised in the premises, it is thereupon:

"ORDERED, ADJUDGED AND DECREED as follows:

"1. The curators, John W. Prunty and Daniel Neal Heller, are each allowed an award of the sum of \$7,500 for their services rendered in obtaining the appointment for the said Ina I. Dowling, and for their services rendered with reference to the estate of the said Ina I. Dowling to date:

"2. That John W. Wright, as guardian ad litem for Ina I. Dowling, be and he is hereby allowed guardian ad litem, and is, upon the entry of this order, discharged from any further services as such guardian ad litem:

"3. That the curators be, and they are hereby allowed to forthwith pay the above charges and allowances, and that the same be paid from the estate of the said Ina I. Dowling, and if there be not sufficient funds in the estate of the said Ina I. Dowling, that then the curators be, and they are hereby authorized and empowered to pay, from the estate of Jewell Alvin Dowling, such sums of money as are necessary to discharge the above claims in full.

"DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 27th day of July, A. D., 1955."

Q In brief summary, then, Mr. Heller, you petitioned for appointment of a curator for Ina I. Dowling on January 4, 1955, is that correct? You were appointed on January 7, 1955, and awarded a total fee, for both curators, of \$15,000 on January 27, 1955, is that correct?

A That's correct, without going into the services which were performed, and the trip which we made, and so forth. Yes, that's correct.

Q What were the total assets of the estate of Ina I. Dowling in Florida, Mr. Heller?

A Well, there was \$350,000 in liquid securities, which I referred to earlier.

Q Which was returned to Massachusetts, is that correct?

A The first time they were returned to Massachusetts, and then there were some subsequent problems with them, because, by virtue of the power of attorney which, you know, you didn't let me tell you about, \$20,000 worth of that stock was sold; and so, in addition to that, she owned this house on Miami Beach, where they lived.

Q How much money did she have in the bank, Mr. Heller,

you know, at the time you entered into this curatorship of her estate?

A Well, deprived of my records, as I am, that's an impossible question to answer.

I imagine that she had close to \$40,000 or \$50,000 in liquid cash.

Q And that was in Florida?

A Some of it was in Florida. I believe most of it was in Massachusetts, because we had - - - as curators for Mr. Dowling, we had returned that to Massachusetts.

Q You had returned that to Massachusetts?

A That's right.

Q And you don't know what her bank balance was at that time without your records, is that correct?

A That's correct, sir.

Q All right, sir. In that order of January 27, to which you were just referring, doesn't it also award you a fee for \$5,000, or is that in a later order on the same date?

A Yes, there is a second order entered on this same date:

"This cause coming on to be heard upon petition filed by the curators, wherein they have set forth in said petition all of the services rendered by the said curators to the ward for the period of June 29, 1954, to December 31, 1954, and the Court being particularly impressed with the fact that a great number of hours, approximately some eight hundred hours, have been expended by the two curators for and on behalf of the interest of the ward, and the Court having taken cognizance of the fact that the curators have served a dual capacity for the best interests of the ward as curators, and as attorneys for the ward, and the Court having observed firsthand, and having examined their reports, and being cognizant of the fact that the curators have done an excellent job in the preservation of the ward's estate and in maintenance and support of the ward, and the Court being otherwise fully advised in the premises, it is, upon consideration:

"ORDERED, ADJUDGED AND DECREED that John W. Prunty and Daniel Neal Heller each be allowed and awarded the sum of \$5,000 for their services as curators, as set forth in detail in the petition heretofore filed in the above cause, for the period from June 29, 1954 to December 31, 1954, and that the said curators are hereby authorized and directed to make immediate payment of the above sums from the account of the ward.

"DONE AND ORDERED at Miami, Dade County, Florida, this 27th day of January, A. D., 1955."

Q All right, sir. You were appointed as curators on June 22, 1954. Your fees are now extended until - - - or you are paid for your work up to and including the date of this order, is that not correct, for both the estate of Ina I. Dowling and the estate of Jewell Alvin Dowling, is that correct, by virtue of the terms of the order you just read?

A No sir, because, in the estate of Jewell Alvin Dowling, Judge Prunty and I were each allowed a fee of \$5,000 for services rendered to his estate alone - - -

Q To the date of that - - -

A - - - no, no to the date of December 31, 1954.

In other words, the petition and the order show that the award was made for the eight hundred hours of time spent from June 29, '54, to December 31, 1954, even though the order itself is not physically entered; the hearing was not held until some three weeks later, which was the 27th day of January, 1955.

Q All right, sir. As of this point, out of the assets which Mr. Dowling had, you had sold the boats, and you had sold the house, and you had sold the ninety-nine-year lease, and there remained - - -

A Well, we converted the ninety-nine-year lease to cash.

Q Yes.

A His interest in the lease to cash.

Q All right, sir. And there remained the fee simple interest in the property on Lincoln Road, is that correct?

A He still - - -

Q And this automobile?

A Subject to the leases which were, you know, were on the property.

Q Which were on the property?

A That's right.

Q Now, was the automobile sold?

A Yes sir, it was sold.

Q What was received from the sale of the automobile?

A Do you have the page?

Q No, I don't. It's shown in one of your accountings. I believe it was \$450.

A Well, that sounds close enough, if you will accept that answer.

Q All right, sir, what was done with the assets encumbered by leases, but, nevertheless, owned, in fee, by Jewell Alvin Dowling?

A Well, on that property, Mr. Dowling's net return from the lease was \$10,000 a year; actually, \$8,000 after depreciation.

That, too, was appraised by Mr. McCune and Mr. Bennett. They both felt that he was getting less than half of the true rental value, and Mr. McCune said he should be getting \$16,500 a year net from the property, and he was only getting \$8,000.

Mr. Bennett said he should be getting \$16,800 net per year from the property; and so, the property - - - we petitioned the Court to be able to get a better tenant for Mr. Dowling, and we succeeded in getting a tenant who was willing to pay \$17,500 a year, and paid us three years' rent security in advance, \$52,500; and this - - - we petitioned the Court for instructions, we received sealed bids, and so forth, and we ultimately created this new lease. In other words, the old tenant had proved unsatisfactory by virtue of the tenant and the income to Mr. Dowling.

So, we were able, by this transaction, to increase the estate potential some \$636,500.

Q All right. Now, totaling up all the rent of the ninety-nine-year lease - - - is that what you're doing, Mr. Heller, to increase and enhance the value of the estate?

A No. If you total all the rent over the ninety-nine years, it's more than - - - it's more than a million and a half dollars, but the difference what Mr. Dowling received from his own property and the difference of what he or his estate would receive under this lease, was \$636,500.

Q Your method of computation that you're using is determining the full term of the lease of ninety-nine years, though, is that correct?

A That's exactly correct, exactly correct.

Q All right, sir. If we were to do that, however, you had previously sold a ninety-nine - - - or converted to cash, as you testified a moment ago - - -

A Yes sir.

Q - - - the ninety-nine-year lease, would you use, or could you use the same computation on this asset?

A Yes sir, yes, exactly.

The appraiser said that the - - - his interest in the ninety-nine-year lease was \$82,500.

Thus, when we received \$127,500, we were bringing into his estate \$45,000 more than that property was then valued on his books.

Therefore, we were increasing his estate by the \$45,000.

Q That, the appraiser showed, was the value of the property on Lincoln Road, however, that you ultimately did put under a ninety-nine-year lease?

A Well, he said if we sold it, it was worth between \$280,000 and \$300,000, but we didn't sell it. What we did was to create a valuable leasehold in the property.

Now, the appraisal reports show that Mr. Dowling was receiving about \$8,300 net from that property; whereas, we received for him \$17,500 net, and to secure that, the tenant paid three years' rent in advance.

Q What was Mr. Dowling receiving, net, from the ninety-nine-year lease?

A Approximately \$6,000, between \$5,000 and \$6,000; and it's all set forth in these appraisals, appraisal reports by - - -

Q How many - - -

A - - - Mr. Bennett and Mr. McCune. They're quite lengthy. This one from Bennett is about forty-five pages.

Q How many unexpired - - - how many years remain unexpired under the terms of that ninety-nine-year lease? I believe he acquired it in 1929?

A He acquired it in 1929, and this transaction was consummated in 1955, see, but earlier, you didn't - - - I wanted to bring out that it would have been better if we had been able to negotiate leases on that corner, but, unfortunately, in 1950, four years before we are appointed, Mr. Dowling himself gives to his prime tenant, David Allen, a twenty-five year lease, to the year 1975.

Therefore, there was nothing which we could do with that tenant.

In addition, Mr. Dowling gave to his other tenant, Mr. Moseley, a lease of both remaining stores.

Now, Mr. Dowling was receiving \$14,000 from those stores, but he gave Moseley a lease to both stores for \$12,000, which was \$2,000 less than he was then receiving, and all the appraisers, both McCune and Bennett, said that based on the figure that Mr. Dowling was receiving, that he was receiving less than half of the rental income which he should have received, because after these tenants paid him in advance, he then had to pay the bulk of insurance and taxes and other costs and expenses and revenue - - - of costs and expenses of this property.

Now, we, therefore, were in the impossible position of being confronted with this twenty-five-year lease by one tenant, and a twenty-year-lease by another tenant, neither of which we had any power to set aside; and that's why the appraisers said that it was worth - - - McCune, - - - Appraiser McCune, said it was worth \$82,500, and that's why, when we were able to sell it for \$127,500, I think that we were able to convert it profitably to Mr. Dowling's benefit.

Now, on the second piece of property, which the appraisers said was worth, if we sold it, between \$280,000 and \$300,000, we didn't sell that, but rather, that's the one on which we increased the rental income from approximately \$8,000 to \$17,500.

Q All right, sir. The next thing I want to refer you to is the order of March 9, 1955. I don't have the number of the order.

A Yes, I think I found that.

Q That's the order of - - -

A 388, Page 388.

Q Is that the order awarding you fees?

A Yes sir.

Q Will you please recite in the record that order?

A Yes sir.

Q That's March 9, 1955, is that correct?

A Yes sir, that's correct.

Q Go ahead.

A "This cause coming on to be heard upon the petition of the curators in the above cause, for the allowance of adequate compensation for services rendered by the said curators to the ward for the period January 1, 1955 to date, and for certain special services rendered by the said curators to the ward during said period, the Court having considered the said petition and the details and information contained therein, and having evaluated the services and actions of said curators, and the Court finding that the curators have served in a dual capacity for the best interest of the ward as curators and as attorneys for the ward, and the Court having observed directly, and through the examination of the reports of the said curators, that the services of the curators have tended to preserve and protect the estate of the ward, having increased the value of the ward's estate, and have generally benefited and enriched the ward, and assured that the ward may be provided with ample means to provide every need for the maintenance, care, support and living of the said ward and of Ina I. Dowling, also a ward of this Court, for the balance of their natural lives, and the Court being particularly impressed with the promptness, diligence and efficiency with which the said curators undertook and consummated the sale and assignments of the ward's interest in the ninety-nine-year lease, dated July 29, 1929, recorded in Deed Book 1327, at Page 137 of the Public Records of Dade County, Florida, and covering real property known as 734-738-744 Lincoln Road, Miami Beach, Florida, as particularly set forth in the petition of the curators, and the Court likewise being particularly impressed with the promptness, diligence and efficiency with which the said curators undertook and concluded the negotiation for the execution of the ninety-nine-year leasehold agreement upon the property known as 826-838 Lincoln Road, Miami Beach, Florida, as more particularly described in the petition of the said curators, and the Court further finding that the actions of the said curators have not only resulted in the preservation and protection of the estate of said ward, but that their said actions have directly contributed to a handsome return to the said ward, and the enrichment of the estate of the said ward in a manner and an amount far in excess of any estimates produced by qualified appraisers and in excess of any offers previously submitted to the said ward" - - -

MR. HUNT: Mr. Heller, will you pull that microphone toward you a little? It's hard to hear you.

A (Continuing) Yes sir, I'm sorry.
"- - - and the Court, therefore" - - - "in excess of any estimates produced by qualified appraisers and in excess of any offers previously submitted to the said ward, and the Court, therefore, concludes that the said curators are entitled to a suitable allowance of compensation commensurate with the outstanding results achieved by the said curators, and the Court being otherwise fully advised in the premises, it is, therefore:

"ORDERED, ADJUDGED AND DECREED that the curators, John W. Prunty and Daniel Neal Heller, be and they are each allowed and awarded the sum of \$15,000 for their services as said curators in the above cause, for the period from January 1, 1955 to the date of this order, and for their special services rendered to the said ward's estate, as set forth in detail in the petition heretofore filed in the above cause by the said curators, and the said curators are hereby authorized and directed to make immediate payment of the above sums awarded for their services from any of the funds or accounts of the said ward now in their possession.

"DONE AND ORDERED at Miami, Dade County, Florida, this 9th day of March, A. D., 1955."

Q All right, sir, I believe there was one more order entered in this file, showing additional fees to you and Mr. Prunty. Please see if you can find it. I believe it's dated June 9, 1955. It's probably in the center of that pile, if I'm not mistaken.

Do you recall, offhand, without reference to the file, what you received?

A \$3,000 or \$4,000.

Q \$4,762 38?

A That's correct.

Q Is that the correct figure?

A That sounds approximately correct.

Q All right, sir. Do you know, or can you draw a total for us, of the total fees received by you, fees or disbursements, as and for your duties as curator, one of the two curators, in both of these estates?

A Approximately \$32,000.

Q And what did you receive, sir, as and for your fee as guardian ad litem of the estate of Jewell Alvin Dowling?

A Approximately \$3,000, from which I had to pay the fee of the Massachusetts lawyer, and my expenses to fly to Boston twice, and my hotel expenses, and so forth.

Q A total, either fee or disbursement, of \$35,000, approximately, is that correct?

A That's a gross figure, yes sir.

Q And what did Mr. Prunty receive, as and for his fee as a curator, referring to the file?

A The same fee as I received, approximately \$32,000.

Q. I have some questions from some Senators here.

A Yes sir.

Q "Who was it that purchased the home that was converted to cash?"

A I don't know the bidder's name. I know the law firm who represented them, I think, was Copeland, Therrel & Baisden.

Q Do you recall? If you don't recall his name, do you happen to recall the real estate broker that was involved in that sale?

A Cooper was the buyer, Bidwell Cooper, I think.

There were two brokers, Silver and Martin. I think the broker - - - Martin was the broker, and the purchaser was Bidwell Cooper.

I'm testifying from memory. I could find the exact thing for you.

Q All right, sir.

Do you also recall, or do you recall the date upon which the \$9,000 rent, the ground rent, was paid on the ninety-nine-year lease?

A Yes sir, that was paid on August 5, 1954.

Q And the second question:

"What was the date of the sale of the ninety-nine-year lease?"

Do you find that, Mr. Heller?

A That should be January, 1955.

Q A question from Senator Kickliter:

"Please explain what services are meant by 'procuring curators' which was enumerated as one of two items of services by the co-curators that resulted in fees totaling \$15,000?"

A Yes sir.

We filed - - - we first discovered, or uncovered that Mrs. Dowling had given a blanket power of attorney, to dispose of everything that she owned in any State, of any shape, manner or description, to her chauffeur-handyman.

We found out, by investigation at the house, that both Mr. and Mrs. Dowling were terrified of this chauffeur-handyman. We found out that he had been keeping her dividend checks from her stock in his room.

We found out that she just didn't know where her securities were; and we found out that this chauffeur-handyman was going around to stock brokerage houses, making plans to sell her stock and other assets; and so, we immediately reported to the Court that which we found which, to a certain extent, was the original charge made by Mr. Dowling against Mrs. Dowling, in March, 1954.

The Court entered several orders, which you had me point out before, and immediately entering an order enjoining and restraining this chauffeur-handyman from using the power of attorney.

The Court also had the Sheriff's chief civil deputy live in the Dowling house for a few days, or week or so - - - or I think it was two weeks, in fact - - - to protect Mrs. Dowling and Mr. Dowling in the event that this chauffeur-handyman should return.

You will recall the testimony that was given by the neighbors, and so forth, that he had been drunk on many occasions, the chauffeur-handyman, and he had exposed his private parts to Mrs. Dowling; and then, when Mr. Wright and I, as guardian - - - he was guardian ad litem and I was the curator, as was Judge Prunty, we then went to Massachusetts, because we found out that the chauffeur-handyman had ordered \$20,000 worth of Mrs. Dowling's stock sold, and it was sold, and he had asked that the money be sent to him.

Fortunately, we were able to prevent the - - - or attempt to help to prevent the money being sent to the chauffeur-handyman, and we appeared in the proceeding in Massachusetts to help the Court there determine the matter of the property in the Massachusetts jurisdiction, to prevent the chauffeur from doing that again.

And I should add that these services were kind of extraordinary in this regard: We had to move with great dispatch; it was an emergency situation.

We found out about the power of attorney, I think, on Friday. On Monday, when Mrs. Dowling was in church, I stopped by to see Mr. Dowling, and he told me for the first time that they were frightened of this man, and about the power of attorney, and so forth; and I think, on Monday or Tuesday, we immediately filed a petition, and then tried to find the chauffeur-handyman, to get the power of attorney back from him.

In fact, I remember one night that there were two deputy sheriffs and myself, and we drove around until one or two o'clock in the morning on Miami Beach, trying to find this chauffeur-handyman, at places we thought he might be, because that was the night we found out from Boston that he had already sold \$20,000 worth of stock; and we had a hearing before Judge Holt, at which there were six or seven witnesses, including Mrs. Dowling, and she denied, under oath, that she had ever given this power of attorney to the chauffeur, and she was amazed, of course, when the original was presented to her; she was just flabbergasted, she just couldn't believe that she had signed it, she didn't understand the significance of it; and we produced witnesses down the street, and so forth, as to how this man had conducted himself, and we had the - - - had to go to psychiatrists to have them re-examine her at that time, to see whether her condition had improved or degraded since the examination that had been made of her in the spring of 1954, and as I said, Mr. Wright and I had to make a trip in January, to Massachusetts; we were up there several days; and these were some of the matters which were brought to the attention of the Court by Judge Prunty and by myself, to Judge Holt, at the time that the fee was allowed.

I might add - - - add this point, which is very interesting:

You will recall that Mr. Lane, Mrs. Dowling's original lawyer, received a fee of \$2,500 by order of the Court, in which he had filed the original petition against Mr. Dowling, but after that, Mrs. Dowling gave him an additional fee of \$15,000, she voluntarily gave it to Mr. Lane for his services which he rendered in having the curators appointed for her husband, so that Mr. Lane's total fee, by virtue of the \$2,500 which the Court allowed him, and the \$15,000 which Mrs. Dowling voluntarily gave to him, was \$17,500; so that the fee which Judge Prunty and myself received, of \$15,000, was \$2,500 less than the fee which the Court and Mrs. Dowling had paid to Mr. Lane for a service of a somewhat similar nature, in terms of, you know - - -

Q Mr. Heller, did you and Judge Prunty think of the idea of having Mrs. Dowling just simply revoke that power of attorney by instrument through the Court?

A Oh, sure. In fact, we did. One of the things that we did do was to have her sign a paper, "I hereby revoke the

power of attorney which I gave to Mr. Heilman," and so forth, but we realized also that on the bottom of this power of attorney, it had been notarized by Arthur J. Martin, and when we checked the Boston telephone directory, we found that Arthur J. Martin was a Massachusetts attorney, on Commonwealth Avenue, I believe; so that, apparently, she had been able, at the time she signed that blanket power of attorney to give away everything she owned to a man she knew no more than a month or two, she'd been able to convince a reputable Boston lawyer that she was capable of signing such a paper, so, we thought to ourselves, "What will we accomplish if she signed a paper today, revoking the power of attorney" - - - which we had her do, as a precaution - - - "because this woman, under oath" - - - I'd like to read those pages to you - - - she denied, under oath, that she had signed this paper, and the paper showed that it was signed in the presence of her lawyer in Boston.

Therefore, she - - - if we - - - if she signed - - - left an order today, or paper, revoking it, she could go out the next day and sign twenty more, for the butcher, or the milkman, or anyone else who came along with a paper.

In other words, there was no question in my mind, nor in Judge Prunty's, and there was no question, or the guardian ad litem, I believe, or the Court's, that this woman was, in fact, incompetent, completely incompetent to manage her separate estate; and therefore, we were running the perilous risk that she would just go out and keep signing powers of attorney. She didn't know what she was signing, and to revoke a power one day, that was tantamount to worthless, because you will recall that in the interim period, while we were petitioning, the chauffeur-handyman was successful - - - and, in fact, did sell \$20,000 worth of stock; so, it would be - - - our attempt to revoke each power of attorney that she gave out would be like trying to just put your finger in a dike to stop a break.

Q Had you evidence at the time that she gave a power of attorney to anyone else besides Heilman?

A No, we had no evidence that anyone other than Heilman, at that moment, had a power of attorney, but I think you can appreciate that we could not dare run the risk that there were others running around.

Q Senator Connor wants to know:

"Why was it necessary to have dual curators, instead of just one curator?"

A Yes sir.

Let's say that the Court - - - of course, bear in mind that I am not the Judge, and I was the one who was appointed so, I'll only answer it from my viewpoint, as I see it.

Let's say that the Judge had appointed a bank or a trust company as curator for Mr. Dowling.

Now, I think we all know, businessmen and lawyers alike, that the bank or trust company which had been appointed curator, they would then have gone out and hired a lawyer; they would have had to.

You see before you a thousand pages of Court files, and maybe two thousand pages, or another thousand pages of exhibits.

Now, the bank would not act as its own lawyer; they would hire a lawyer. Therefore, there would - - - no matter how you look at this thing, there would have had to have been two fees paid. There would have been a fee paid to the bank or the trust company, for acting as the curator, and there would have been a fee paid to whatever firm of attorneys represented the curator. Thus, there would have been two fees.

Now, apparently, what Judge Holt had in mind by appointing two practicing lawyers was, he anticipated that the lawyers would act as curators and as attorneys for the curators. Therefore, the two fees were paid, but the curators did not go out and hire lawyers for themselves; they did the job themselves; so that, I hope, is an explanation of the job, in my opinion.

Also, I want to say this: As I mentioned to you before, there were nine feet of office files; that's four lawyer-size filing cabinets.

I lost other business in the two years in which I was handling this matter, because this thing required that much time. I honestly say that no one person, no one lawyer, could possibly have handled this estate by himself and still remained in the business, or whatever else it was that he was doing. It could not be done; it was a physical impossibility, as you can see what transpired here in a short period of time.

Q Mr. Heller, here are some more questions.

A Yes sir.

Q These are from the Senate.

A Yes sir.

Q "Was John W. Prunty the same John W. Prunty who was a law partner of Thurman A. Whiteside?"

A I believe that Judge Prunty at that time was in partnership with Mr. Whiteside.

I believe you just said "Judge Prunty."

Q Yes. All right. Now, here's a question from Senator Neblett:

"Was Mrs. Dowling under a guardian ad litem or under the curatorship when she paid Attorney Lane this \$15,000? If so, did the guardian or curator approve the payment?"

A She was under nothing.

MR. HUNT: What was the answer, Mr. Heller?

THE WITNESS: Sir?

MR. HUNT: What was the answer?

THE WITNESS: What I am saying is that when Mrs. Dowling paid that additional \$15,000 fee to Mr. Lane, she had neither a curator or a guardian ad litem nor a receiver.

The psychiatrists reported that Mrs. Dowling could hire somebody capable to manage her affairs, and so forth; and

therefore, at the time that Mr. Lane's fee was paid, Mrs. Dowling was not under any Court impediment. In other words, she was a free agent, and had been from March until January, 1955.

BY MR. MUSSELMAN:

Q Mr. Heller, when did Mr. Dowling die?

A I think in May of 1955.

Q You stated a moment ago that in your two years of serving as curator, you were appointed June 22, 1954, and he died on May 25, 1955; that's less than one year, isn't it?

A Yes, but I am still one of two curators for Mrs. Dowling.

In other words, Attorney Frank J. Kelly was appointed as a replacement for Judge Prunty when he was elevated to the Bench, and I am still serving now, have from 1954 to 1957.

Q And after - - -

A And there have been no fees paid. I want you to know that there have been no fees paid since that time, so that the fee of \$32,000 that I received also covers to this very day, as I sit here; so, it's now three years.

Q Didn't you petition the Massachusetts Court - - -

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Point of order, Mr. Chief Justice.

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

Court's adjourned until 9:30 tomorrow morning.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:30 o'clock P. M., until 9:30 o'clock A. M., Friday, July 26, 1957.