No. 1188

OCT. TERM 1967

U. S. Supreme Court

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VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al,

Plaintiffs,

vs. In Chancery No. 22751

LITTLE HUNTING PARK, INC., et al,

Defendants.

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SUPREME COURT, U.S.

Fairfax, Virginia

Wednesday, March 22, 1967.

ISABEL WARNER
Court Reporter
412 Jackson Street
Falls Church, Va.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
PAUL E. SULLIVAN	7	73	119	122
JOSEPH WINGLER	123	124		
JOSEPH GARTLAN	126			
ROBERT A. MARSHALL	133	152		
JAMES F. SUTHERLAND	155	161		
FLORA SULLIVAN	163	170	174	
THEODORE R. FREEMAN	176	178		

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Fairfax, Virginia

Wednesday, March 22, 1967.

The above-entitled matter came on for hearing before Judge JAMES KEITH, in Courtroom No. 3, Wednesday, March 22, 1967, at 10:00 o'clock, A.M.

APPEARANCES:

ROBERT M. ALEXANDER, ESQUIRE,
ALLISON W. BROWN, ESQUIRE, and
PETER A. EVELETH, ESQUIRE,
for the Plaintiffs.

JOHN CHARLES HARRIS, ESQUIRE,
for the Defendants.

P R O C E E D I N G S

THE COURT: Who are counsel?

MR. ALEXANDER: My name is Robert M. Alexander, counsel for the plaintiffs. I am co-counsel with Mr. Allison W. Brown, Jr., a member of the Bar of the District of Columbia, and Mr. Peter Ames Eveleth. He is in the library now.

THE COURT: What is his last name?

MR. ALEXANDER: E-V-E-L-E-T-H, and Mr. Gartlan, who was on the original complaint, and is going to withdraw because he may be called as a witness.

THE COURT: Mr. Harris, are you ready to go ahead?

MR. ALEXANDER: In this matter, I would move that Mr. Brown be allowed to present the case, he and Mr. Eveleth.

THE COURT: All right.

MR. HARRIS: We are ready.

MR. GARTLAN: My name is Joseph V. Gartlan, Jr. I appear as counsel of record. Because of a development which came to my attention only at the last ~~hearing~~ minute, it may be a reasonable prospect that I may be called as a witness for the plaintiffs. Under the circumstances, I think it would be advisable that my appearance be withdrawn in this case.

THE COURT: Any objection?

MR. HARRIS: No objection.

THE COURT: All witnesses who are going to testify in this case, please stand and raise your right hands.

MR. HARRIS: I move a rule on witnesses.

THE COURT: All who are parties in the suit, or who are going to testify, go out in the hall and do not talk in the hall. The purpose of that is your testimony will not be affected by what is said by the people or the people in this Courtroom who are on the stand, what they say won't be affected by you. Step outside.

Do you want to make an opening statement?

MR. BROWN: Yes, Your Honor. This is the case of Mr. Sullivan, his wife and minor children, seeking the Court's assistance in entering an order reinstating them in a membership organization, a non-stock corporation under the Virginia Statute, known as Little Hunting Park, Incorporated. Little Hunting Park, Incorporated, is a membership corporation from which Mr. Sullivan and his family were unlawfully and arbitrarily and unreasonably expelled in the summer of 1965 as a result of internal dissention and disagreement among the members and Mr. Sullivan's engaging in certain activity by which the Board of Directors of the organization concluded it amounted to harassment of them and they proceeded to expel him under the provisions of the bylaws of the corporation, which permit expulsion of a member for conduct, and they use the term, "Inimicable," and that is a term used in the bylaws, to members of the corporation.

Count 1 of our complaint simply alleges an unlawful and

arbitrary expulsion from the association, and the fact that this expulsion has resulted in the loss and deprivation of valuable property rights and personal rights, and in addition, he has suffered damages for which he is entitled to have reimbursement.

The second count of the complaint alleges that as a result of the action whereby the incident gave rise to this dispute, he sought to assign a membership he had in this association to a tenant in his home, a tenant to whom he rented his house. This tenant was a negro, and as a result of the conduct of the association, Mr. Sullivan sought the approval of the association for this assignment, and the board of directors refused to approve the assignment.

Our contention is that the effect of this refusal by the board of directors to approve the assignment is to cast an unlawful racial cloud on the property rights which Mr. and Mrs. Sullivan own, that amounts to a form of racial covenant which has its affect not only insofar as the association is concerned, but insofar as those parcels of real estate which Mr. Sullivan owns in the subdivision served by this association.

The issues on the second count are primarily legal questions which we will be prepared to develop more fully to the Court in a legal memorandum subsequent to the trial. The questions involving Mr. Sullivan's expulsion and whatever justification alleged therefor, are factual questions which

are principally the basis for the trial today.

THE COURT: Is there a copy of the bylaws in the paper?

MR. HARRIS: There is a copy with a request for an injunction.

THE COURT: I did not see it. Go ahead.

MR. HARRIS: We did not intend to put the bylaws into evidence. Your Honor, basically, the issue in this case is whether the Court should supersede its judgment for a proper tribunal of a non-stock club. This is the entire thing. I realize if the club acted in malice, then this is an issue that could be tried before this Court today. Again, if it was contrary to the bylaws or the action of the board was contrary to the bylaws, then this is an issue, but these two issues, whether the club acted with malice or contrary to the bylaws have to be proved by the plaintiffs in this case.

Otherwise, we see nothing more in the case than the board of directors of a club electing to expel a member for his conduct, and there was sufficient evidence for that expulsion, and he comes to Court and asks the Court to re-instate him and overrule the non-profit club.

MR. BROWN: May I say one more thing in rebuttal?

THE COURT: Go ahead.

MR. BROWN: In the case of ~~Gottlebe~~ Gottlieb against ~~Acme~~ Economy Stores, Inc., 119 Va. 198, it makes that clear. This is a leading case involving expulsion from a private association, and then

contrary to my brother's assertion, the question is not necessarily whether the association acted out of malice in expelling the member. As the Court of Appeals said in the Gottlebe case, the power of a corporation to relieve itself of members violating the fundamental objectives and purposes of the corporation is essential to its successful preservation, so the question before the Court will be whether Mr. Sullivan's actions violated the fundamental objectives and purposes of the corporation.

We allege as an additional basis for our suit that the board of directors acted out of malice. It isn't essential we establish malice in order to show his actions did not violate the objectives and purposes of the association.

MR. HARRIS: One question, and it is going to the definition of the word used in the bylaws to enable the board of directors to expel a member, and that is inimical. I have here a definition from Webster's New Colegiate Dictionary. It says, "Inimical comes from the Latin word, 'Inimicus,' which means unfriendly, hostile, and having the disposition or temper of an enemy, unfriendly, unfavorable, opposed in tendency, and antagonistic."

THE COURT: Are we ready to go ahead? Call your first witness.

MR. BROWN: Mr. Sullivan, please.

Thereupon

PAUL E. SULLIVAN,

plaintiff, was called as a witness in his own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Will you state your name and address, please?

A Paul E. Sullivan, 7113 Coventry Road, Alexandria, Virginia.

Q What is your occupation?

A I am an analyst for the Defense Department.

Q Are you married, Mr. Sullivan?

A I am married.

Q How many children do you have, and what is their age range?

A I have seven children. They range from two and one-half to sixteen.

Q Will you state how you first became a member of the Little Hunting Park, Inc. and at what time?

A Well, we moved into Bucknell Manor, in the house that is now 6810 Quander Road in the last month of 1950, and in May, 1955, when Little Hunting Park, Inc. was being formed, we purchased a share so our children would be able to make use of the facilities of Little Hunting Park, and I retained that membership to this point. Later, we moved from --

Q Just one second. That share you purchased for what price?

A I believe it was $150.00.

MR. BROWN: As evidence of Mr. Sullivan's membership, I would like to have the report identified, Share No. 290, as Plaintiffs' Exhibit No. 1 for identification.

THE COURT: Any objection to this, Mr. Harris?

MR. HARRIS: I have no objection, this being a copy of his membership certificate.

(The certificate was marked Plaintiffs' Exhibit No. 1 for identification.)

BY MR. BROWN:

Q Is this the share you purchased in 1955 or 1954?

A 1955, I believe, yes, May, 1955. Yes, that is the same share. It is a copy of it.

THE COURT: This is Exhibit No. 1.

(The certificate, marked Plaintiffs' Exhibit No. 1 for identification, was received in evidence.)

BY MR. BROWN:

Q How long did you live in the house on Quander Road, Mr. Sullivan?

A Until March, 1962. At that point, we moved to the house we now live in on Coventry Road.

Q What happened to your swimming pool membership? Did you acquire another one with the property?

A When we bought the house on Coventry Road, a swimming pool share was included in the purchase price, and the owner who sold the house, transferred the share.

Q Was a new share certificate issued to you?

A Yes, a new share certificate.

THE COURT: Is this another pool, or the same pool?

THE WITNESS: That is the same pool.

MR. BROWN: A second membership in the same pool, Plaintiffs' Exhibit No. 2 for identification.

MR. HARRIS: No objection.

THE COURT: Exhibit No. 2.

(The certificate, marked Plaintiffs' Exhibit No. 2 for identification, was received in evidence.)

BY MR. BROWN:

Q After you obtained the second membership, Mr. Sullivan, what use did you make of these? What did you do to keep them valid?

A Each year we paid the assessment, and the share that we had with our Quander Road house, we assigned to our tenants for their use, and we made use of the one on Coventry Road for our own purposes.

Q Are you required to pay the assessment each year

regardless of whether the membership is used?

A Yes, this is the case.

Q In leasing the house on Quander Road, then what did you do with that membership as you made the lease?

A I assigned it with the house. It was part of the package deal with the house, the yard and the pool share.

Q And when did you make the lease to the present tenant in the house, your first lease?

A Dr. Freeman leased the house from 1 February 1965 for a period of a year, and renewed that on 1 February 1966 for ~~two~~ one year and on 1 February 1967, twice subsequently.

MR. BROWN: Mark these as Plaintiffs' Exhibits Nos. 3, 4 and 5 for identification.

Mr. Sullivan, I have here three leases. I will ask you to identify them, please. Are those the leases that you made as of February 1, 1965 and as of February 1st, each of those succeeding years by which you leased your Quander Road property to Dr. Freeman?

THE WITNESS: Yes, they are.

MR. HARRIS: I have no objection.

THE COURT: All right, 3, 4 and 5.

(The leases, marked Plaintiffs' Exhibits Nos. 3, 4, and 5 for identification, were received in evidence.)

BY MR. BROWN:

Q All right, Mr. Sullivan, will you please read the paragraph in each of these leases, beginning with the word, "Witnesseth?"

A Witnesseth that the said party.

Q This is the 1961 lease?

A 1965 through 1 February 1966. "Witnesseth that the said party of the first part does demise unto the ~~second~~ said party of the second part's personal representatives and assigns, the dwelling located at 6810 Quander Road, Bucknell Manor, Alexandria, Virginia 22307, ~~Division 33226~~, and Little Hunting Park pool share No. 290 ~~Swimming Pool~~, Inc., from 1 February 1965, for the term of one year from thence ~~to the~~ next ensuing, and to expire on 1 February 1966, yielding therefor during the said term the rent of $1,584.00 ~~for the same term~~, payable as follows: 12 monthly installments of $129.00."

THE COURT: You don't need to read any more.

BY MR. BROWN:

Q And each of those three leases are worded identically insofar as the provisions ~~purposes~~ you have just read?

A Yes, sir, there hasn't been any change at all in the agreement.

MR. BROWN: Will the record show that those three leases were admitted into evidence?

After you had leased your house on Quander Road to Dr. Freeman, will you state what you did thereafter to carry

out your contractual obligation to him, so far as the share was concerned?

THE WITNESS: Sometime in late April when the assessments were sent out, I filled out a card for Dr. Freeman and his family, and he signed it, affirming he was a bona fide tenant. We forwarded that with the assessment for the year to, I believe it was the Mount Vernon Bank, which was acting as the collection agent.

BY MR. BROWN:

Q And you paid the assessment that year for how much money?

A I believe it was $37.00.

MR. BROWN: Plaintiffs' Exhibit No. 6.

MR. HARRIS: No objection.

BY MR. BROWN:

Q Mr. Sullivan, is this a photo copy of the form that is required by the board of directors of the association which you used in 1965 to affect the assignment of your share to Dr. Freeman?

A Yes, this is a photo copy.

MR. BROWN: May this be admitted into evidence?

THE COURT: No. 6.

(The photo copy, marked Plaintiffs' Exhibit No. 6 for identification, was received in evidence.)

BY MR. BROWN:

Q What happened, Mr. Sullivan, subsequent to your making out this assignment form? Did the board of directors approve the assignment?

A I received a letter, and I believe it was the 25th of May, which was signed by Mr. Lennon, who was, I believe, the membership chairman or the chairman of the membership committee, stating that at the regular meeting of the board of directors on the 18th of May, the assignment of my share to Dr. Freeman had been disapproved.

MR. HARRIS: No objection.

BY MR. BROWN:

Q Is this the letter signed by Mr. Lennon that you received on May 25, 1965, notifying you that the assignment had been disapproved?

A Yes.

MR. BROWN: May this, Plaintiffs' Exhibit No. 7, be admitted into evidence?

THE COURT: All right.

(The letter, marked Plaintiffs' Exhibit No. 7 for identification, was received in evidence.)

BY MR. BROWN:

Q What did you do, Mr. Sullivan, after receiving Mr. Lennon's letter notifying you of the disapproval of the

assignment to Dr. Freeman?

A I wrote a letter requesting, stating my confusion at this action since my only share went with this house and only I could assign it to Dr. Freeman, who was my tenant. I was liable for the assessment, and when they proposed to deny the right of use of this share, and I requested that I be given an adequate explanation of it, or that it be revoked promptly because the pool was about to open.

THE COURT: Was he your first tenant?

THE WITNESS: No, three tenants previously.

THE COURT: Had you assigned your membership to them?

THE WITNESS: The previous tenant, I had. The tenant before that wasn't really in the house long enough to make use of it.

THE COURT: You are going to introduce those formal assignments?

MR. BROWN: Yes, sir. I hadn't gone into it very thoroughly.

I would ask you who was your previous tenant prior to the Freeman.

THE WITNESS: It was a Technician First Class Orvil Stevens.

BY MR. BROWN:

Q How long did they live in the house?

A They moved in in August, 1962, and left in the early

part of January, 1965.

Q So they lived there through the summer season of 1963 and 1964? Is that correct?

A Yes, that is right.

Q Did you assign your pool membership to each of them during those two years?

A Yes.

THE COURT: Was it approved by the board?

THE WITNESS: I don't believe they went through the form of approval, because they had adopted the rule you could assign only to tenants. I am not certain of that. I believe it was the way it was.

MR. BROWN: If Your Honor please, if I am correct, the record we will show later, and I don't think there is any disagreement, that it has always been a requirement of the association that assignments be approved by the board of directors. It has always been in the bylaws of the association.

THE COURT: All right.

BY MR. BROWN:

Q To go back for a moment, Mr. Sullivan, to the Stevens, the assignment you made to your tenants, Stevens. Am I correct in saying that the assignment was not disapproved by the board of directors? The Stevens made use of the assigned membership the summers of 1963 and 1964. Is that true?

A That is true.

Q I would like to show you what has been identified as Plaintiffs' Exhibit No. 8, and ask, is that a carbon copy of the letter you sent to Mr. Lennon on May 25, 1965?

A Yes, that is.

Q Would you read the last paragraph, please?

A "I want to state that although I have known Mr. Freeman only since his arrival in Washington toward the end of January, this year, I have developed a high regard for him and his family. ~~I know of no reason and I fail completely to understand the board's action.~~ I know of nothing that could make him less desirable than our previous tenants as members of Little Hunting Park and I fail completely to understand the board's action.

"Since the pool is due to open only in a few days, I am sure you will give this matter full consideration."

MR. BROWN: Thank you. May this be introduced into evidence as Plaintiffs' Exhibit No. 8?

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 8 for identification, was received into evidence.)

BY MR. BROWN:

Q What response did you get from Mr. Lennon to your letter of May 25th, Mr. Sullivan?

A I received a phone call. I am trying to see if I can fix the date. It was around the 26th or 27th of May. He called and asked if he could come by the following evening

and discuss my letter which he had received, and I said he might, and that was about all that there was to the conversation.

Q Was there any discussion in the conversation that you had with Mr. Lennon of the disapproval of the assignment to Dr. Freeman or the reason for it?

A No, this was simply, as I see it, a phone call on his part to set up an appointment for the following day.

Q What happened thereafter?

A The next evening at the appointed time, I believe it was eight o'clock, Mr. Lennon arrived with Mr. Egger and Mr. Hanley, and I had never met Mr. Lennon or Mr. Hanley. I knew Mr. Egger, and Mr. Egger introduced the two gentlemen.

We sat down in our living room, and Mr. Lennon of the membership committee, indicated Mr. Hanley would serve as a spokesman, and Mr. Hanley spoke for perhaps three or four minutes, perhaps not that long, perhaps as long as two and one-half or three. When he had finished, it seems to me that he had said that the assignment was disapproved because it was disapproved, and I told him I did not think that sounded like an explanation, so he paused and I think he probably took a breath and he said, "We are aware that Dr. Freeman is a negro," and I waited to see what else he had to say. He apparently had nothing further to add to that.

I said, is that the reason, and he nodded and had

indicated it was the reason that Dr. Freeman's assignment was disapproved, so I asked if they had considered anything else about Dr. Freeman than this fact, and they said they had not, and I think I said that sounded to me like bald faced prejudice, and he, as I recall, said something to the effect it probably is, and at that point, I said why that is immoral. I was really quite confused.

I did not expect to run into race prejudice in my neighborhood at that time of the year, at that time of the day, to that extent, and I asked him if I understood him correctly, if I had a house guest who was a negro, they might be denied entrance into the pool, and he said, "They might," and I asked him what they would do about Mexicans, Porto Ricans or Chinese, if they would similarly be excluded.

I don't recall I got any sort of an answer to that, and the conversation went on, as I recall. Mr. Egger interpolated that this really had nothing to do with morals. It only had to do with economics and property values, I believe is the phrase he used. I think this was prompted from my saying I was amazed at his being involved in a thing like this.

Mr. Hanley, as I recall, suggested that the board of directors was ready to buy my share, which I assigned to Dr. Freeman. If it was their offer, I rejected it, since I felt selling a share with the condition of racial discrimination attached to it was cooperating in an evil. If I had to

pay the price of not cooperating, I would not do it.

However, I questioned whether the action could possibly have been unanimous on the part of the board of directors. Mr. Hanley assured me it was, and I said I thought it was incredible, and he went further to state that its entire membership shared the same view, and I reminded him I was a member and I did not share the view. He treated it as all members minus one, which I still found it very difficult to believe. I believe this was probably the sum of the conversation.

I asked my wife if she had tea, and I offered them tea, and they declined. They stood up and left. I think about that point I thought it was only fair to let them know I was ashamed of them corporately and individually to be involved in a thing like this; that I hoped it would make no difference in our personal relationships whatever they might be. They departed and I shook hands with Mr. Egger, and exchanged a few polite phrases in Spanish, and they went home, and I sat down with my wife to find out what --

Q What was the purpose of the phrases in Spanish?

A Mr. Egger is part Mexican and speaks Spanish. My wife is a Guatemalan and speaks Spanish. I have adopted the language to be able to speak a few polite phrases in Spanish.

MR. BROWN: Your Honor, one of our witnesses arrived late, and I just asked him to leave, Mr. Paul Forbes. He has not yet

been sworn in.

Mr. Sullivan, I am showing counsel for the defendant certain exhibits to which he has indicated no objections. These exhibits are marked Plaintiffs' Exhibits Nos. 9, 10, and 11, and I will show them to you and ask you if you will tell me if that is what they are. The first one is a letter from Mr. John Charles Harris, counsel for the Little Hunting Park, Inc., addressed to you, dated July 30th and attached to it is a document. Is that correct?

THE WITNESS: Yes.

(The letters were marked Plaintiffs' Exhibits Nos. 9, 10 and 11 for identification.)

BY MR. BROWN:

Q Will you tell us what the document is, please?

A It characterizes itself as a statement of the facts alleged by the board of directors of Little Hunting Park, Inc. It constituted conduct inimicable to the corporation's members.

Q What is the other document, Plaintiffs' Exhibit No. 10?

A It is a letter dated August 3,,1965, addressed to Mr. Harris by Mr. Gartlan.

Q Mr. Gartlan was your attorney, representing you at the time?

A Yes.

Q And in that letter, is it correct that Mr. Gartlan asked for further specifications or explanation or clarification of the charges alleged in the document of the issue of July 30th. Is that correct?

A Yes, he requests an itemization of the inadequacies, et cetera.

Q And Plaintiffs' Exhibit No. 11 is a letter from Mr. Harris to Mr. Gartlan, dated August 9, 1965. Is that correct?

A Yes.

Q In which he responds to Mr. Gartlan's letter. Is that correct?

A Yes, sir. He said he has consulted with Mrs. Moore and has determined the following answers.

MR. BROWN: Your Honor, these three documents actually constitute a single one in a sense, because they are the basis for the charges against Mr. Sullivan, and I would like to submit them to you at this time.

THE COURT: They will be admitted without further objection as Plaintiffs' Exhibits Nos. 9, 10, and 11.

(The documents were marked Plaintiffs' Exhibits Nos. 9, 10 and 11 for identification and received in evidence.)

BY MR. BROWN:

Q Mr. Sullivan, in the charges of July 30, 1965, and the letter from Mr. Harris, explaining the charges, there is reference to the May 28th meeting you had when the three gentlemen came to your home. This meeting and what transpired at it constituted the basis for charge No. 3, or allegation No. 3, and also part of charge No. 1 or allegation No. 1. The allegation is made, and I would like to ask you a question concerning it. Did you call any of the three gentlemen who came to your home on May 28th liars?

A No, I did not.

Q Did you accuse them of being untruthful?

A No, I did not.

Q The further assertion is that you cast doubt on their veracity. Did you cast doubt on their veracity?

A I don't believe I did. I did express an inability to believe, which I think is perfectly normal. When one is confronted with an incredible situation, does not necessarily in the terms I would use, reflect on the veracity of the person who may relate it that you may find difficult or impossible to believe.

Q Who else was present during your conversation with these three gentlemen?

A My wife, Flora Sullivan.

Q How long did the entire conversation last?

A Probably fifteen minutes.

Q What did you do after the three gentlemen left your home?

A I got out my copy of the Splash to try and figure out of the constillation of figures across the list of officers of the corporation, and I couldn't find Mr. Hanley's name listed anywhere. I placed a call to Mr. Egger, whom I knew best, and to inquire who Mr. Hanley was. He was out. I identified myself and called Mr. Lennon's house and Mr. Lennon told me Mr. Hanley was a member of the corporation and interested in the matter. It was a very, very brief conversation. I asked for the ~~conversation~~ information, which was received, and we got off the phone.

Q Was anything further said in your conversation with Mr. Egger?

A I didn't talk to Mr. Egger.

Q Mr. Lennon, I beg your pardon.

A No, I don't believe so, no. I said, hello, said who I was and what I wanted to know, and he gave me an explanation, and I thanked him and we both hung up.

Q Did you talk to Mr. Egger on the telephone at that time?

A He did call back the following morning, but I had already found out what I wanted to know. There was no point in prolonging the conversation.

Q I have a letter which has been marked Plaintiffs'

Exhibit No. 12 for identification. It is a letter dated June 5th, or a copy of a letter dated June 5th from you and addressed to the members of the board of Little Hunting Park, Inc. Is that the document? Is this a copy of the document? Just answer, yes or no.

A Yes, this is a letter and an enclosure.

Q And an attached memorandum?

A Yes.

MR. HARRIS: No objection.

MR. BROWN: I would like to introduce this as Plaintiffs' Exhibit No. 12.

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 12 for identification, was received in evidence.)

BY MR. BROWN:

Q Would you explain the circumstances under which you wrote that letter, Mr. Sullivan, and the attachment?

A Well, on the occasion of that visit on the 28th of May, it had been implied that this visit constituted a response to a letter which I had written requesting the reason or a prompt referral of the disapproval of Dr. Freeman, and I would not receive a reply in the mail, and as I say, I found some of the statements made incredible, and I felt the people involved ought to have the opportunity of reviewing this

communication which had been made to me on the occasion of his visit, and affirming or denying that it constituted a valid communication from the corporation, so I drafted this memorandum for the record, reporting the visit of Mr. Lennon with Mr. Egger and Mr. Hanley, and the communication on that occasion was made to me, so that they might review it and offer any amendments or changes or extending statements which might seem reasonable to it.

Q You say you drafted it for the record. What do you mean by that?

A This is one of those things. Just out of practice, with no specific individual in mind for the recipient for the memorandum you make a memorandum for the record and it is a record of an event, an occurrence of one kind or another. In this case, a communication, the minute recording in my office say of a telephone call, and this is why it is entitled, "A memorandum for the record." It is a pat phrase.

Q Did you say anything, and anything in the letter or memorandum about your contract with Dr. Freeman?

A I would have to review it. I do believe, if this were allowed, this statement that I would be in default of my contractual agreement with Dr. Freeman. I did point this out in one of the letters to the corporation. Whether it was this one or the previous one to Mr. Lennon, I am not certain.

Q What did you do after sending the June 5th letter?

Did you consult with Dr. Freeman at all? Did you talk to anyone else about the whole problem, as it had been developing?

A Dr. Freeman and I are both Catholics, and we live in the territory of St. Louis parish and two of the members of the board of directors, the two of whom I knew, were also members of the St. Louis parish. Since this seemed to me a problem of injustice, we consulted with our pastor, who has been Monsignor Walsh, and his first suggestion was that Dr. Freeman just go ahead and use the pool since the share was outstanding. The dues had been paid. I explained to him how the gate was controlled, and you had to have a card at the gate, et cetera, and he then suggested that we then, and Dr. Freeman, particularly, meet with the members of the board of directors, so they could see he didn't have horns or a tail, of any particular animal. In his experience in meeting people face to face, they are pretty decent.

MR. HARRIS: I object to hearsay. It is hearsay.

THE COURT: Exclude it as hearsay, Mr. Sullivan, over his objection. It is what somebody else told you.

MR. BROWN: I think the record might show that Father Walsh was excused by the clerk from complying with the subpoena yesterday for medical reasons. We received a message that he is ill and couldn't attend today, pursuant to a subpoena that has been issued.

Were efforts made to meet with the board of directors,

Mr. Sullivan, at that point? After you talked to Dr. Freeman, what did you do?

THE WITNESS: Well, Dr. Freeman and I both saw Father Walsh, I believe, on the 8th of May, 8th of June, and we left the rectory around 8:30 or a quarter of nine, and went to Dr. Freeman's house, where he called the president of the corporation to try and set up an appointment to meet with the board.

BY MR. BROWN:

Q The president being whom?

A Mrs. Virginia Moore.

Q Who is here in the Courtroom today?

A I believe that is Mrs. Moore, yes, sir.

Q Did you talk to Mrs. Moore about that time?

A Yes, as a matter of fact, the following day when I got home that evening, I had been to Dr. Freeman's around eleven o'clock. I found Mrs. Moore had called my house and asked to speak to me. Since it was too late to call that day, I called the following day.

Q That was what day when you called her back?

A About the 9th of June. I identified myself and asked for Mrs. Moore, or I believe she answered the phone herself. I identified myself.

MR. HARRIS: I can't hear the witness.

THE WITNESS: I have a very bad cold. So I identified

myself again, and I believe Mrs. Moore indicated that the board of directors wasn't going to meet with Dr. Freeman, and I believe I possibly paraphrased the thing. You haven't given me the courtesy of an interview, and she indicated this was correct. There would be no interview with Dr. Freeman. I said that I believed Father Walsh would be very dissappointed because he suggested this approach. She replied, with some vehemence, Father Walsh didn't mean a thing to her.

The conversation from there, I believe, was primarily on her side, and it wasn't what I would call coherent. It would be very difficult to sort out meaning from feeling in the communication she was making, and I did tell her not to become angry and not to be impolite. When she hung up on me, I really think I was rather relieved because she was getting quite out of hand.

BY MR. BROWN:

Q Was anything else said during that conversation?

A Not that I can recall. I said her communication wasn't really clear.

Q How long did the conversation last?

A Probably about three minutes.

Q Where is the telephone located where you made the call?

A It is in the kitchen of our house on Coventry Road.

Q Who else was present when you were talking to

Mrs. Moore?

A My wife, I think, was working at the sink, getting supper ready.

Q Charge No. 4 made against you, allegedly was the basis for your expulsion. It asserts you used abusive language to Mrs. Moore. Did you use any such language?

A No, I did not.

Q Did you accuse Mrs. Moore of being immoral?

A No, I didn't.

Q Did you accuse any member of the board of directors of being immoral?

A No, I didn't.

Q At a later time you were informed, were you not, that you had been expelled from the Little Hunting Park, Inc. Is that not true?

A Yes.

Q When did you receive that letter notifying you of your expulsion?

A I believe it was the 27th of August.

Q I missed that clarification. Were you notified that action was being taken, on what appeared to be due cause for your expulsion?

A I received a letter around the 9th of July, which was dated the 7th of July.

MR. HARRIS: Your Honor, the witness testified to the

fact he received notice that he was to be expelled. It says, "There appeared to be due cause for your expulsion, and in accordance, a meeting will be granted on July 20th. It isn't a notice for the expulsion.

THE COURT: I realize that.

BY MR. BROWN:

Q Will you read the letter into the record, Mr. Sullivan?

THE COURT: He has just read it.

MR. BROWN: No, it has been characterized.

THE COURT: Read it all, Mr. Sullivan.

THE WITNESS: "7 July 1965, addressed to Mr. Paul E. Sullivan, 7113 Coventry Road.

"Dear Mr. Sullivan:

"At the June meeting of the Board of Directors ~~your loan to your tenant on Quander Road~~ non-acceptance of the Board's decision on the assignment of your membership to your tenant on Quander Road, etc., along with the continued harassment of the board members was discussed at length. A motion was made and passed unanimously by the seven members of the board present, that

"Since there seems to be due cause for ~~the~~ your expulsion from the Corporation in accordance with Article III, ~~under~~ Article 6(b), that is, "conduct inimicable to the corporations members," a hearing will be granted you at the July meeting which will be held at 9:00 P.M. on Tuesday, ~~There is a pen correction to~~ 20 July, at the Inc. At this time you'll Little Hunting Park pool area. ~~You will~~ be given an opportunity to be heard, after which the board will take ~~be meeting~~

final action. Virginia Moore."

At the bottom, it says, "A non-stock, non-profit corporation incorporated in Virginia and dedicated to the building of a finer community."

MR. BROWN: The letter identified as Plaintiffs' Exhibit No. 13, I would like to introduce into evidence.

MR. HARRIS: No objection.

THE COURT: Admitted without objection.

(The letter marked Plaintiffs' Exhibit No. 13 for identification, was received in evidence.)

BY MR. BROWN:

Q The date that the board met, as reflected in that letter and decided that due cause appeared for your expulsion, was that the same night you had talked to Mrs. Moore on the telephone, so far as you know?

A I understood they held their meeting on 9 June 1965.

Q What was your reaction, as a government employee and as a Christian in connection with your religious affiliation?

A It is easy to speak in the first place as a Christian member of the church. It had been made quite clear to me over many, many years that racial discrimination is a sin, a matter in the Catholic Church for confession, and in these confessions, one does penance for having done something. To be put in a position where I was expected to

collaborate

~~corroborate~~ or apparently suffer with racial discrimination.

I couldn't see that I really had any choice. ~~The~~ To collaborate in ~~corroboration~~ and racial discrimination is something that I cannot conscientiously do. The other evil would have to be tremendously great to make this the lesser of the two evils, if I can put this in as an illustration, so naturally my conscience was involved, and as a federal employee in the government, and having taken a very forthright stand on non-discrimination, I felt that to even appear to collaborate ~~corroborate~~ with a discriminatory policy, had a depressing effect on my career, as a practical problem, and the problem of conscience however was the over-riding one.

I do believe people manage to obscure the practice. They make a practice of racial discrimination here and there, and still make a career in the government. However, I wanted to be honest both with my employer and with myself and with my tenant, and with my neighbors.

Q Do you work for an agency of the federal government, which is under the general jurisdiction of the Department of Defense?

A I do.

Q I would like to show you a document marked for identification as Plaintiffs' Exhibit No. 14. Will you explain what it is, sir?

A It is a statement that Lyndon B. Johnson made to the

Cabinet, which was sitting as a body.

MR. HARRIS: I object, being hearsay.

THE COURT: Objection sustained.

MR. BROWN: Your Honor, the purpose of this is to show that one of the issues here is Mr. Sullivan's state of mind, whether he was acting out of principle or conscience, or acting out of a desire to be a trouble maker in terms of harassment, and parts of this document and some words we had in mind will show he was acting out of principle, and a mandate which he had received from the employer, the government.

THE COURT: I don't think it is admissible, that paper.

MR. BROWN: I would like to note an exception for the record, please.

Mr. Sullivan, about this time have you received any communications in the course of your employment relating to the subject you felt was involved in this whole matter?

THE WITNESS: As a matter of fact, I believe it was on my very birthday, on the 26th of May that a memorandum had been distributed in the office, which included a statement by President Lyndon Johnson.

MR. HARRIS: I think it is irrelevant.

THE COURT: All right, he has testified to what effect this had on him, if that is anything. Objection overruled.

BY MR. BROWN:

Q Go ahead.

A I received this memorandum in the office, which contained a statement made by the President to his Cabinet, in which he called upon them to let all employees and all offices in all departments to know that he expected and the government expected them to do all in their power to ensure the equal treatment of every citizen regardless of race, creed or national origin. It is a much longer statement, but it is the way I understood it.

MR. BROWN: Plaintiffs' Exhibit No. 14 was rejected.

What is the position of the views of your church in your area toward racial discrimination and how you learned about this?

THE WITNESS: From the scriptures, from the pulpit, from leading publications of more or less a religious type, sponsored by Catholic organizations. I would say the first means by which I knew of the church were teachings on social justice and qualified interpretations of it as given in sermons or writings in Catholic magazines or Catholic newspapers, and in talking with clerics who make a point of studying these things.

BY MR. BROWN:

Q Have the Catholic bishops in the United States made a study of racial discrimination?

A Yes, they made a series of studies.

Q What did they say?

THE COURT: No, don't let us say that. Have you read them?

THE WITNESS: Yes, sir.

THE COURT: And are you familiar with all the preachings and teachings of your church?

THE WITNESS: I believe I am.

THE COURT: You believe in them?

THE WITNESS: Yes, sir.

THE COURT: You are effected by them?

THE WITNESS: I believe they bind me in conscience to act as a Christian, yes.

THE COURT: Number them all, and I will put them in evidence, and you can object to them, and I will rule on them, to do it more quickly.

MR. BROWN: I would like the report to identify these, please.

MR. HARRIS: To save the Court's time, we could go over these exhibits, and let me go over them and see what I will stipulate to and what I will object to.

MR. BROWN: These are Plaintiffs' Exhibits Nos. 14, 15, and 16. They consist of two pastoral letters from the bishops in the United States. The third is the statutes of the diocese in Richmond, which contain in them two specific mandates, and the fourth is a clipping from a newspaper,

"The Catholic," by Bishop Russell in Chicago.

THE COURT: Counsel is testifying.

MR. HARRIS: I object to all of them as hearsay.

THE COURT: Objection sustained.

BY MR. BROWN:

Q What role has this bishop of this diocese played in regard to the subject of racial discrimination in housing?

THE COURT: I don't think that is material. I will sustain your objection to that.

BY MR. BROWN:

Q Mr. Sullivan, after your June 9th telephone conversation with Mrs. Moore, did you write for any further communication with the board of directors? Specifically, I would like to have identified and show you a letter dated June 12th.

THE COURT: Any objection? It is a letter asking for another meeting. Admitted into evidence.

(The letter, marked Plaintiffs' Exhibit No. 14 for identification, was received in evidence.)

BY MR. BROWN:

Q Will you read the last paragraph of that letter, Mr. Sullivan, dated June 12th to you from the board of directors?

A As I stated in my letter, I find the ~~action of the~~ explanation of the to the individual Board members,

Board's action inadequate, and I do not accept it as returned by Little Hunting Park, Inc. If it is determined that racial discrimination is actually being practiced I shall have to consider what implications membership in the corporation may have for my professional career. As you are no doubt aware, the federal government, my employer, has a most positive policy of non-discrimination. I support that policy wholeheartedly, and I cannot permit the sincerity of that support to be put in doubt.

Q Mr. Sullivan, here is a letter dated June 12th, addressed to you from Mrs. Moore. Would you say that is a reply you received from an earlier letter you had written to her?

A Yes.

MR. HARRIS: No objection.

THE COURT: Admitted.

(The letter marked Plaintiffs' Exhibit No. 15 for identification, was received in evidence.)

BY MR. BROWN:

Q Several of the charges that have been made against you as the basis for your expulsion, revolve around a letter dated June 25th from you to Reverend Thomas J. Cassidy. Will you explain the circumstances of your writing that letter, Mr. Sullivan?

A As I said, Dr. Freeman had appealed to our pastor for assistance in resolving this problem, and it appeared to

me that little or nothing was being done by him to try to help. It was also complicated by the fact that at that time I thought Mr. Tracy, whose name appeared on the list of officers of the corporation, was actually a member of the board. It turned out later, or I became aware he wasn't a member of the board, but a designated representative. Mr. Tracy is a designated member of St. Mary's Parish. Inasmuch as there were two parishes involved, I thought the Catholics were not given the kind of leadership in this matter they really were in need of.

I consulted with Father Carl ~~Sadleberg~~ Zaterberg, who was a former pastor. His advise was rather than to write to the bishop, which I had in mind to do, to address myself to Father Cassidy, who was the bishop's representative in the northern area, to address a letter to Father McMahon in Richmond who has a similar parish in that area, and the diocese as I recall told me to be as plain as I could, and he knew my real concern was for these fellow parishoners of mine, as well as racial discrimination.

Q Is this a copy of the letter of June 25, 1965, addressed to the Reverend Thomas J. Cassidy, which you sent at this time?

A Yes, sir.

MR. HARRIS: No objection.

THE COURT: Admitted.

(The letter marked Plaintiffs' Exhibit No. 16 for identification, was received in evidence.)

BY MR. BROWN:

Q What was Father Cassidy's position in the church? You have addressed him as Director of Catholic Charities in Northern Virginia. Is that correct?

A That is how he was known. He is ~~National Counsel~~ Director for Northern Virginia. He apparently has this charge from the bishop, to try to permit justice between people of different races.

THE COURT: Take a five-minute recess.

(Whereupon, a short recess was taken, after which the hearing was resumed as follows:)

BY MR. BROWN:

Q June 25th, Mr. Sullivan, I will leave it there for your reference. I am going to ask you several questions about that letter, because four of the charges against you for the expulsion, were based on that letter. I might say that there were in total eleven charges. One of them, if I am not mistaken, and I believe we can agree, that one of the eleven charges was ultimately abandoned, and has not served as the basis for anything further that has transpired in the case. There are ten charges.

MR. HARRIS: That is correct. No. 10, I believe was

abandoned.

BY MR. BROWN:

Q In relation to Charge No. 1, Mr. Sullivan, it is alleged that in the June 25th letter, you accused both members of practicing bigotry and hatred. Do those words appear any place in the June 25th letter?

A No, they don't.

Q Charge No. 1 also alleges that by means of the June 25th letter, you made certain remarks critical to the board of directors, to one, John Wells. Will you identify John Wells?

A He is the Minister of the Mount Vernon Unitarian Church.

Q Is that located near the neighborhood where Little Hunting Park is located?

A Yes, it is about a quarter of a mile from the house.

Q Did you send a copy of your June 25th letter to John Wells?

A I did not.

Q Did you ever show a copy of it to John Wells?

A No.

Q This letter, so far as you know, you never sent it to him?

A I never gave him a copy or made its contents known to him in anyway, so far as I know.

Q Charge No. 5, also relating to the June 25th letter, alleges you accused board members of lacking in Christianity and participating in a real moral evil. Did you anywhere in the letter state that anyone was lacking in Christianity?

A I am most certain that I did not. I will have to read the entire text, that says that I did. It doesn't ring true of the letter I got.

Q The phrase appeared at the botton of the letter. You used the phrase, "Real moral evil." What is your understanding of this term, and why did you use it?

A My understanding of this term, "A real moral evil," is a sin, personal sins, and that they have damaging effects on the spiritual lives, and all people are affected by it.

Q What are you referring to as a real moral evil? Is it a person or a thing?

A It is a practice.

Q A practice? What practice?

A The practice of racial discrimination.

Q Charge No. 6 made against you is the basis for your expulsion, asserts or suggests that you send a copy of this to the clergymen, to a clergyman. Who in the charge is identified as, "The employer or the Corporation's President?" Who is that clergyman?

A I understand that Mrs. Moore is employed by Father

Wingler of St. Mary's Church.

Q And is Father Wingler a recipient of the letter identified at the bottom of the letter?

A Yes.

Q Did you know at the time you sent Father Wingler a copy of the letter that he was the employer of Mrs. Moore?

A I did not.

Q Were you personally acquainted with Mrs. Moore?

A I actually had never been introduced to Mrs. Moore. I had seen her on several occasions, at meetings, at the hearing, but we never met socially in anyway. As a matter of fact, I believe at the time this letter was written, I had never seen her.

Q At that time did you know of her religious affiliation, or anything about it?

A No, as a matter of fact, from the one occasion when I had mentioned Father Walsh's name, and she had retorted with such vehemence, I incorrectly assumed she was not a Catholic.

Q Have you ever been told in anyway or how in anyway Mrs. Moore's status as an employee of St. Mary's Church, has been adversely affected by your sending a copy of this letter to Father Wingler?

A No, I have never heard of any ill effect it had on Mrs. Moore.

Q At the time of the hearing or at a meeting that was

held before the Board of Directors, at which you were allowed to present your side of the story on the charges for your expulsion, was an affidavit submitted by Father Wingler, or signed by Father Wingler to the effect that Mrs. Moore's employment had not been adversely affected?

MR. HARRIS: I object. Counsel is testifying.

THE COURT: Sustained.

BY MR. BROWN:

Q Can you identify this document, please?

A This is a statement by Father Joseph L. Wingler.

MR. HARRIS: I object, Your Honor. He is identifying, not reading the statement.

THE COURT: All right.

MR. HARRIS: And I object to its being hearsay. Father Wingler is outside.

THE COURT: All right, he can testify.

MR. BROWN: May the witness identify the document?

THE COURT: He has identified it as a statement by Father Wingler, under oath.

MR. HARRIS: This is not an affidavit. This is nothing but a letter.

THE COURT: I thought you called it an affidavit.

MR. HARRIS: He called it an affidavit. It is nothing more than a letter.

THE COURT: It isn't under oath. He can testify to the

contents of it.

THE WITNESS: It certifies --

THE COURT: Don't testify to what is in it. Father Wingler is here. He can identify to what is in it. You can identify it.

THE WITNESS: It was presented on the occasion here.

THE COURT: All right.

MR. BROWN: Your Honor, counsel for the defendants has objected to this statement. I would like to offer it into evidence for the following reason, that it isn't offered at this point to establish the truth of what it contains, but rather as being a document that was submitted on behalf of Mr. Sullivan to the board of directors at the hearing that was held to consider whether or not he should be expelled. This letter is simply a part of the record of that hearing.

Father Wingler is here, if counsel wishes to examine him, and furthermore, we have witnesses to explain the circumstances under which it was obtained.

THE COURT: All right, he has testified it was submitted at the hearing. I think that is all you have to prove on it. I don't think it should come in, if it was objected to.

MR. BROWN: Exception to that ruling, please.

Did Father Wingler state or indicate that Mrs. Moore's employment was in anyway adversely affected?

MR. HARRIS: Father Wingler is here. He can testify. It is all hearsay.

THE COURT: I think it is all hearsay. Whatever he knows, he learned from Father Wingler.

MR. BROWN: It really goes back to the question of the affidavit or letter, if that is what it is to be characterized as. It was submitted a year and a half ago as a letter submitted to Father Wingler, to be submitted to the board. If they want to change it to an affidavit, at least it is presented and reflects whether or not the proceedings under which Mr. Sullivan was expelled were fair, or whether it was--

THE COURT: I will sustain the objection. You have your exception. Go on to something else.

BY MR. BROWN:

Q Charge No. 7, Mr. Sullivan, against you, alleges the basis for your expulsion, asserts that by sending this letter you created a strained relationship between the corporation and a clergyman, who has been identified as Father Walsh, your clergyman. Do you know of anyway in which, or have you ever learned of anyway in which Father Walsh's receipt of a copy of this letter to Father Cassidy created a strained relationship between Father Walsh and the corporation?

A No.

Q Did you at the time of the hearing, at the time of

your expulsion present evidence to the effect no strained relationship had ever been created?

A We did in the form of a letter from Father Walsh.

Q It was to show to the board of directors that no strained relationship was created by sending this letter to Father Walsh?

MR. HARRIS: I object to it, Your Honor, on the basis of being hearsay.

THE COURT: I think it is hearsay, Mr. Brown, but I think the fact that he wrote a letter is evidence that he certainly felt no animosity or no prejudice, whatever it is.

MR. HARRIS: Your Honor, there is no proof that Father Walsh has signed this letter, it is his letter or that he actually wrote the letter.

THE COURT: I am not going to let the letter in.

MR. BROWN: Your Honor, I will say there is further testimony concerning these two matters. First of all, we have Mr. Gartlan, the attorney, who represented Mr. Sullivan at the time and who obtained the two letters, and I want him to testify to the circumstances under which he obtained these letters, and will ask the board of directors whether they received these letters.

Mr. Sullivan, did you receive a reply from Father Cassidy to your letter of June 25th to that effect, and I show you a letter of June 29th from Father Cassidy, addressed to you?

THE WITNESS: Yes, I received this letter.

MR. HARRIS: No objection.

BY MR. BROWN:

Q Would you read the contents of this letter through?

THE COURT: Let the record show, the letter is admitted into evidence without objection.

(The letter marked Plaintiffs' Exhibit No. 17 for identification, was received in evidence.)

THE COURT: Just read the letter.

THE WITNESS: June 29, 1965.

"Mr. Paul E. Sullivan
"71113 Coventry Road
"Alexandria, Virginia

"Dear Mr. Sullivan:

"Thank you for your letter of June 25th, detailing your concern about the non-admission of Dr. Freeman to the local swimming pool.

"I believe as you mentioned that the process is educational. In another sense, I must admit, not being aware of the local picture, I am inclined to get acquainted with it before doing anything else. Hence, I would appreciate your sending me copies of the correspondence you have had in this matter.

"I have talked to both Father Walsh and Father

Wingler. I was happy to learn that prior to the receipt of your letter, they had conferred about the problem. Father Walsh wanted to set up a meeting with Mrs. Moore, President of the Board, but she is out of town until after July 4th. It seems she recently had an operation, and she used the vacation for recuperation. Until she returns, there isn't much we can do about having her call a special meeting.

"In the meantime, we can go over your correspondence and obtain copies of the constitution and bylaws of Little Hunting Park, Inc. I believe it might be beneficial to give us a chance to look over the situation, read up on the correspondence, et cetera.

"Father Walsh, Father Wingler, andd I are in agreement that we can get together on this and work out a solution of the problem. With cordial best wishes, I am

"Sincerely,

"William Cassidy,

Copy to Very Rev. Eugene Walsh,

"Rev. Joseph Wingler,

"Rev. John J. McMahon."

MR. BROWN: July 1st, too.

MR. HARRIS: No objection.

BY MR. BROWN:

Q Mr. Sullivan, I have here a letter dated July 1, 1965, addressed to Reverend Thomas J. Cassidy, signed by you, from you, in which you respond to Reverend Cassidy's letter of June 29th. Would you read the second and third paragraphs in that letter, please?

A "I am sorry I misinterpreted Father Walsh's attitude I had no way of knowing he had taken action of any kind. It seemed to me nothing at all was being done. I feel, ~~however, forceful~~ that active visible leadership will be required for a generation or two to ~~establish charity~~ restore justice and charity among all the members of ~~the Catholic~~ Christ's body, and I must confess that I am impatient to see ~~I would like to see~~ something more than a token gesture in that direction. As a result of this problem with the Board of Little Hunting Park, Inc. and our efforts to solve it, I have good reason to believe that the consciences of only a minority of Catholics in this neighborhood have awakened to the fact that racial discrimination is a sin rather than a custom.

"Thank you for your interest in this problem. I am sure when the ~~imposition~~ injustice of ~~our~~ their action is made clear to them, and they see that their fears are without foundation, the majority of the members of the board will do the right thing."

Q Charge No. 9 made against you as the basis for your expulsion, alleges you used the wording in that letter, the

word, "Sin." Will you state what you referred to? What is the phrase? How did you use the word, "Sin," in that letter, in the second to the last paragraph of that letter?

A I have good reason to believe that in the consciences of only a minority of the good Catholics in that neighborhood, that racial discrimination is a sin rather than an established custom. I think that is clear.

Q Did you accuse, as alleged in Charge No. 9, the members of the board of directors of sin?

A No.

Q What did you do when you received the letter? You have related that on July 7th, this came out previously in your testimony that on July 8th or 9th, you received a letter, a letter written July 7th. This has previously been entered into evidence, in which the board of directors concluded that there was due cause for expelling you from the association, and you were to be given a hearing on July 20th. What did you do with that letter, or what did you do thereafter?

A I gave the letter to Mr. Gartlan, who was representing me, because I felt that this was a thing that I needed legal assistance on.

Q What did Mr. Gartlan do then?

A He wrote a letter to the corporation, requesting that a statement of charges be given us, and requesting that

a postponement of the hearing be made so I could have counsel of my choice in this case, because he was scheduled to go on vacation, during the period when this thing was scheduled for a hearing. I believe that was about the main content of the letter.

Q Did he ask for further information concerning the charges?

A I believe he asked for a statement of what the charges were.

MR. BROWN: Will the record show that No. 18 was admitted into evidence without objection?

(The letter, marked Plaintiffs' Exhibit No. 18 for identification, was received in evidence.)

BY MR. BROWN:

Q Mr. Sullivan, did you receive a copy of Mr. Gartlan's letter addressed to Mrs. Moore, dated July 9, 1965, identified as Plaintiffs' Exhibit No. 19?

A Yes, sir. This is the copy I received.

MR. HARRIS: No objection.

THE COURT: Admitted.

(The letter, marked Plaintiffs' Exhibit No. 19 for identification, was received in evidence.)

BY MR. BROWN:

Q Was a response ever received by you to Mr. Gartlan's letter?

A I believe not.

Q What did you do as a result, or what did your attorney do?

A Mr. Gartlan then filed for an injunction in this Court. I believe it was in this Court, in this Court House at least, to require that I be given a statement of the charges that the postponement of the date of the hearing be granted, so I could have counsel of my choice, and there was a third point which escapes me. I don't recall what it was, that I would be assured of fair procedures in this hearing.

Q What happened in that Court proceedings?

A We came into Court and a stipulation was entered into in which the corporation agreed to these conditions. This was before Judge Van Dyke.

THE COURT: Agreed to what?

THE WITNESS: To give us a statement of the charges, to give us a postponement of the hearing so I could have counsel of my choice, and to give us, as I recall, some statement as to what the procedures of this hearing which was well defined, would be. There might have been other items, but they escape me.

MR. BROWN: Mr. Harris, can we stipulate that was another

cause of action, Sullivan vs. Little Hunting Park, Inc.? I don't want to introduce it, but I want to show that it was another action.

THE COURT: Is that available to me to read if I have to?

MR. HARRIS: Yes.

MR. BROWN: That is styled the case of Paul E. Sullivan vs. Little Hunting Park, Inc., in Chancery No. 21663.

BY Then is it correct, Mr. Sullivan, as a result of the stipulation that was entered into in Court, as a result of this injunction proceedings, this statement of charges was submitted to you. You had not received a statement of it prior to?

THE WITNESS: That is correct.

BY MR. BROWN:

Q After receiving these charges and the letters which explain, or the letter which explained the allegations in it, was a hearing thereafter held before the board of directors?

A Yes, some points required clarification. I believe there was some correspondence to that effect. One of the charges was withdrawn. One was specified in some way, and some points Mr. Gartlan cleared up and a hearing was held on the 17th of August in the office of Harris and Roark.

Q Will you describe the kind of hearing that was held?

What happened?

A Well, in discussions with Mr. Harris apparently before the hearing, Mr. Gartlan advised me we would have no opportunity to cross examine; that no witnesses apparently were being brought against us; that this was considered to be an opportunity for me to defend myself against these charges, and to disapprove them if I could, and that therefore when we went into Mr. Harris' conference room, the procedure was one in which we introduced our only witness, and then Mr. Gartlan took up in turn the charges, interrogating me and Mrs. Sullivan, if necessary, to elucidate the basis of these charges, and he presented statements from these two reverend gentlemen and from three people who had declined to sign my request for a special meeting, which I had circulated, stating that I had not indeed used abusive or violent language toward them when they declined, and Mr. Gartlan begged for me the opportunity to make a statement, which I did, and I believe Mrs. Sullivan had a few words to say, and Mr. Gartlan summed it up, and we left.

Q Who was the witness you had at the hearing?

A Mr. James Sutherland Sullivan, who was a person who alleged to have, or he appeared to state that his call was neither prompted by me or in his view, arranged.

Q Did Mr. Gartlan request in your behalf that a reporter be present at the hearing?

A He did.

Q Was that request denied?

A That request was denied by the board.

Q Did you receive notice thereafter of the board's action?

A Yes, I believe on the 27th of August I received a letter, stating I had been expelled from the corporation.

MR. HARRIS: No objection.

BY MR. BROWN:

Q This is a letter dated August 27, 1965, addressed to you from Mrs. Moore. Is that the letter you received, notifying you that you were expelled?

A That is right, yes.

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 20 for identification, was received in evidence.)

BY MR. BROWN:

Q With respect to the charges made against you, we have now reviewed quite a number of them, and I have some questions that pertain to those charges, or others that don't appear in the testimony.

Charge No. 2, and all these charges, when I speak of them, Your Honor, is when they have been explained in Mr. Harris' subsequent letter or allegations on them.

Charge No. 2 is that you instigated and conducted and caused others to instigate and conduct an harassment of the president and board members by numerous unpleasant phone calls. The evidence shows you had three phone conversations during this period. One after the meeting of May 28th at your house when the three gentlemen were at your house, you called a Mr. Lennon to find out who Mr. Hanley was. You called Mr. Egger, telling him you had got the information you were looking for. You had a subsequent phone conversation from Mrs. Moore. Do you recall any other conversations with any other of the board members?

A Yes, sir, I had a conversation with Mrs. Moore on the 14th of June, when, I believe, I was at Dr. Freeman's house, when Mr. Southerland called and said he had intended to attend the board meeting which Mrs. Moore said was to be attended in regard to Dr. Freeman. He called to find out where it was and the time, et cetera.

I was rather surprised to find out the meeting had already been held. I called Dr. Freeman's house, and then I called Mrs. Moore back. I couldn't believe. She assured me that it was held, and how long. I would be informed by mail. I believe that was the sum total of that conversation.

Q Was that unfriendly?

A I would say very cold.

Q Your manner?

A I believe the manners on both sides was quite cold. You understand that on the occasion of our previous conversation, I had felt compelled and I had returned Mrs. Moore's call, and she behaved in such a manner, and I wrote her a letter asking her not to call me again, so it was with great reluctance that I called her again.

Q Did you ask anyone else who was a member of the association, or otherwise, to make phone calls to members of the board of directors?

A No, I have never asked anyone to make phone calls. I asked people to write letters which I felt had weight in the matter, but I think phone calls are ephemeral things.

Q Do you know of anyone who made anonymous phone calls during this period, as indicated in one of the letters from Mr. Harris?

A No, I don't.

Q Did you at any time during that period by means of phone calls, accuse members of practicing hatred and bigotry?

A I don't believe so.

Q You say Mr. Sutherland made a phone call, and it is indicated in the specifications of the charges that the only caller that the directors were able to identify was Mr. Sutherland. Do you know whether Mr. Sutherland did make a phone call?

A He told me he did.

Q What did you ask people to write letters about?

A I asked them to write and explain how they felt about this particular action of the board.

Q Did you ask people generally, or the members of this corporation?

A People I knew. I did not have the membership list. I really didn't know who was a member of the corporation and who wasn't.

Q Did you ask non-members to write letters?

A No.

Q Do you know how many wrote letters, actually wrote letters?

A I believe five or six did.

Q Do you know Miss Mary Simmons, who lived at 5414 Cavalier Drive?

A No, I don't know who the lady is.

Q You understand who Miss Simmons was?

A I understood in 1965, she was a transfer agent for shares in Little Hunting Park, Inc.

Q Was she an officer of the corporation?

A I don't know.

Q Was she a director of the corporation?

A I believe she was not.

Q Did you make a phone call during that period to

Miss Mary Simmons?

A I don't believe so.

Q It is alleged in the answers to interrogatories served on the defendant that Miss Mary Simmons received harassing phone calls. She was one of the members of the board of directors who received harassing phone calls. You say she wasn't a member of the board of directors. Do you know whether she received any harassing phone calls from any of the people you know?

A I never received any harassing or anonymous phone calls except those I received at one time.

Q Except what?

A I have received harassing phone calls, but I have not asked anyone to make them, or made any myself.

Q In checking the action of the board of directors in their refusal to permit the assignment of Dr. Freeman, did you seek to call a general membership meeting?

A Yes, I did.

Q By what authority?

A It is provided in the bylaws that twenty members must request the special meeting for purposes to be outlined in the request for a special meeting.

Q What did you do pursuant to those bylaws in this regard?

A I drafted it up, a request for a special meeting and

proceeded to ask people who were sympathetic to write the corporation.

Q How many sympathetic members did you ask to have sign it?

A Twenty spaces for names.

Q Twenty-one.

A Twenty-one including me.

THE COURT: Any objection?

MR. HARRIS: No objection.

THE COURT: Admitted.

(The request marked Plaintiffs' Exhibit No. 21 for identification, was received in evidence.)

BY MR. BROWN:

Q This is the letter dated July 14th, a photo copy of a letter dated July 14th, requesting a membership meeting of the members of Little Hunting Park, Inc. with signatures shown below it. Is that the letter you mailed, Mr. Sullivan?

A Yes, it is.

Q And obtained the signatures?

THE COURT: All right, it is admitted.

(The letter marked Plaintiffs' Exhibit No. 22 for identification, was received in evidence.)

BY MR. BROWN:

Q About how many people you circulated that letter to refused to sign it, Mr. Sullivan?

A Oh, perhaps ten or eleven.

Q Did you get angry or violent or abusive with people who refused to sign it?

A No, I did not.

Q Did you ask ~~Miss Helen Withers~~ Mrs. Aileen Winters to sign this letter?

A Yes, I did.

Q And she refused to do so?

A Yes, sir.

Q One of the charges against you specifically is No. 8. As explained by Mr. Harris' letter, it concerns your encounter with Mrs. Winters at the time you asked her to sign this letter. Had you known Mrs. Winters previously before you asked her to sign it?

A I had probably known Mrs. Winters as much as ten years, maybe not that long, but about that long. I had known her in the office and in parish activities. I met her husband and we became very close associates in parish matters. Yes, I knew ~~Helen~~ Aileen Winters at home.

Q Was her husband at home when you called on her?

A No, Mr. Winters had died in March, 1963.

Q Had you been a close friend of ~~hers~~ his?

A Very close when he died.

Q Mrs. Winters was still a member of your parish?

A Mrs. Winters is still a member of St. Louis Parish and Father Walsh's secretary, I believe.

Q Were you surprised and disappointed when Mrs. Winters refused to sign your letter?

A Yes, I was quite disappointed. I was disappointed when anybody refused to sign it, but in Helen, I felt we were much closer together on church doctrine and on the real meaning of the gospel. When she refused to sign it, it was on economic loss as a result of the participation of the legal matters of the members in community affairs. I was very disappointed.

Q Did you discuss the matter with her at that time?

A Yes, when I arrived at Mrs. Winters, Father Walsh was in her dining room. Her brother was on the couch. We didn't discuss it very long in the house, perhaps five or ten minutes. She came out with me as I left, and she stood on the steps talking for perhaps another ten or fifteen minutes.

Q During the course of this conversation, did you raise your voice at all?

A I don't believe so.

Q Charge No. 8 is you used violent and abusive language toward Mrs. Winters. Did you use violent and abusive language?

A No.

Q At the time of the expulsion proceedings before the

board of directors, was evidence introduced to the effect that Father Walsh had been present, and he had not heard you use violent and abusive language?

A It was.

Q In what form?

A In the form of a letter from Father Walsh.

Q At the time of your expulsion, in the proceedings, was evidence submitted on your behalf by persons who had declined to sign the letter that you were circulating, in which they asserted you had not used any violent or abusive language with them?

A Yes, there were three people: Captain Winfredberg, Mrs. Clayton, we call her Kitty. I am not sure of her married name, and Mr. John O'Donnell.

Q And what did they do?

A They signed statements saying I had not used violent or abusive language when they declined to sign the statement for a special meeting.

Q Were they read before the special meeting of the board of directors on August 14th?

MR. HARRIS: I object.

THE COURT: You are too late. He has already read it into the record. Objection overruled. Mr. Brown ought to know they are inadmissible.

MR. BROWN: It wasn't my intention to.

Are these the three? Mr. Sullivan, are these copies of the three statements that were submitted on your behalf by three individuals whom you have named?

THE WITNESS: Yes, they are.

MR. BROWN: I would like this introduced into evidence as Plaintiffs' Exhibits Nos. 22, 23 and 24.

THE COURT: Admitted.

(The statements were marked Plaintiffs' Exhibits Nos. 22, 23 and 24 for identification and received in evidence.)

BY MR. BROWN:

Q Mr. Sullivan, the Charge No. 11 or Allegation No. 11 against you is the assertion that the basis for your expulsion that as a basis for your expulsion, that you were responsible for the officers and directors of Little Hunting Park holding more meetings in 1965 than they would have otherwise, and they were put to additional and unnecessary transportation expense as a result. Do you know how many board of directors' meetings are required by the bylaws?

A Twelve a year.

THE COURT: Let us get the bylaws.

MR. BROWN: We will introduce them through the president of the corporation. One a month. The answers to the interrogatories that have been furnished by the defendants

indicate that aside from the general membership meetings held on July 29, 1965 and the expulsion hearing held on August 17, 1965, that the directors had twelve meetings during that year, the exact number required by the bylaws. The interrogatories also indicate where those meetings were held.

THE COURT: Are you just stating this for the record?

MR. BROWN: Yes, I want to question him about the answers, one of the answers. Since the allegation was made of excessive transportation costs involved in holding these board meetings in 1965, I would like you to identify some of them. You have examined these interrogatories, I believe. Can you identify, Mr. Sullivan, where the meetings were held? They were held at what locations, each of them?

THE WITNESS: In the homes of the members of the board.

MR. HARRIS: The interrogatories are in the record.

THE COURT: Right.

MR. HARRIS: And if we are going to examine the interrogatories to find out how many board of directors' meetings there were, the issue is how many meetings they held and not how.

THE COURT: I don't see how he can answer that anyway. He is not a director, of his own knowledge.

MR. BROWN: Can we stipulate that in the answers to the interrogatories, that all the meetings that were held in the homes of the board members, that each of the board members'

homes are within a geographical distance of one mile from the Little Hunting Park, Inc. facilities or approximately a mile?

MR. HARRIS: I don't see any choice for this, that even though the homes may be grouped in one locality, in this particular case we had someone come from Delaware for a meeting, and --

MR. BROWN: And this evidence?

MR. HARRIS: Yes, this evidence we can put in. It will stand by the locations of the meetings and the number of meetings requested in the interrogatories, not the number of board members or the number of meetings of the people involved here.

MR. BROWN: Limit them to the number of meetings of the board members set forth in the interrogatories. Can we stipulate that the locations were roughly within the geographical distance of Little Hunting Park, Inc.?

MR. HARRIS: Yes, I believe we can do that.

BY MR. BROWN:

Q What is the average distance of these directors' meetings from Little Hunting Park, Inc.?

THE COURT: It is stipulated it is within one mile.

MR. BROWN: Within one mile, all right.

How far is Little Hunting Park's swimming pool and the other facilities, Mr. Sullivan, from your home?

THE WITNESS: Oh, I would say it is less than a quarter

of a mile, about a block and a half.

BY MR. BROWN:

Q Along one street?

A Yes, along Coventry Road.

Q Does one have to cross the street to get there?

A No.

Q Is it within easy walking distance for you and your children?

A Yes, sir.

Q And your wife?

A Yes, sir.

Q Do they frequently walk there?

A The children walk there all the time, at least they used to.

Q Can they frequently walk there and go swimming unattended, without a parent?

A The ones which were old enough, yes.

Q Prior to your being expelled, how often did you and the various members of your family use the pool and the various other facilities of Little Hunting Park, Inc.?

MR. HARRIS: I don't see the relevancy.

THE COURT: He is showing how he is hurt by being expelled.

THE WITNESS: The children used it every day. I probably went out as frequently as twice a week, and my wife hardly at all.

BY MR. BROWN:

Q After you were expelled from Little Hunting Park, Inc. did you have to make alternative arrangements for swimming during the rest of that summer in 1965?

A For the rest of that summer, we just gave up swimming, but after that we made up elaborate plans to go swimming.

Q What sort of places did you go to?

A Timber Lake, Lake Fairfax and Lake Barcroft. The children were invited by friends who belonged to other pools in the neighborhood to use those facilities then.

Q Did those facilities always require automobile transportation to get to?

A Almost always.

Q How far is Timber Lake or Lake Fairfax from your home?

A Twenty-five miles.

Q Each of them?

A They are about the same distance.

Q How much swimming did you do during 1966?

A Well, about every two weeks we took a trip swimming.

Q What other additional expenses did you incur as a result of being expelled?

THE COURT: If any.

BY MR. BROWN:

Q If any. You have an itemization of the expenses that you incurred?

A Well, the filing fees for Sullivan vs. Little Hunting Park, Inc., $25.50.

Q Wait just a moment. Is that this proceedings or the prior proceedings?

A The prior proceedings, when we were forced to go into Court to get a fair proceeding on my expulsion, the transportation cost to Mr. Gartlan while he was on vacation, $7.70 for trips to Fairfax, and I think with a mob like mine it was $10.00 each trip. That came to about $50.00. Since we had such a large group, we had to take both cars. That is $10.00 each trip, gas and wear and tear and swimming fees and guests and our friends, $12.00, and the loss of the assessment on the share that goes with the Quander Road house at $37.00. The total comes to $202.20.

Q The total expenses?

A The total expenses I can recall, yes. There are probably others.

Q Did you lose any annual leave as a result of this hearing?

A Yes, taking the family of seven kids to a pool thirty miles away is a day's work.

Q In connection with the Court hearing you came to in the summer of 1965, and then in connection with the

expulsion hearing.

A I did take a day off to come here with Mr. Gartlan on the day of the trial. I probably took-- I believe I took the whole day because by the time we got through, it was through the day.

Q When was the expulsion hearing?

A Nine to eleven in the evening.

Q Did stories appear in the Washington papers and the metropolitan area concerning your expulsion?

A Yes, when we filed for an injunction, there was a story in the paper, as I saw the story myself alleging that we were being charged with harassment from the board of directors, and therefore they were considering expelling us, and there were other stories, I guess, all into September.

MR. HARRIS: Is counsel intending this testimony as damages of what is in the newspapers?

THE COURT: I don't know what his intention is.

MR. BROWN: The contention is, as a result of the notorietythat Mr. Sullivan received due to the expulsion proceedings brought out by the newspaper stories and the newspaper stories almost always note this, and as a result of the infamy that he incurred, he suffered mental and emotional damages to him and his family, and further he will show on his job it created problems.

MR. HARRIS: We will stipulate that the thing has been

newsworthy and appeared in the papers.

THE COURT: Go ahead.

MR. BROWN: And the newspapers have given prominence to it.

THE COURT: Let him talk. You haven't let him say a thing on any question you asked. Three hours of leading questions. Stop leading the witness and let him talk about it.

BY MR. BROWN:

Q Did the newspaper stories state the reasons for your expulsion?

A They generally said it was because of alleged harassment of the board of directors.

Q Can you tell the date when it first appeared?

A I would say the middle of July, July 15th.

Q What effect did the publication of these stories have on you? What happened on your job?

A Well, at the office, the kind of occupation I am in, it is one where you have a need for anonymity, and any kind of notoriety is not beneficial. I think most of my co-workers were very understanding, and they tried to make light of the situation by jokingly referring to me as an agitator, and this happened, and the situation just created discomfort in this particular situation where anonymity, being a cog in the wheel is an asset.

Q What kind of an agency do you work for?

A It is an intelligence agency.

Q Did you do anything in your office?

A I felt it was necessary to discuss it with the people in personnel, and they duly took note of it, but that is all I can say about their attitude. They did not advise me to do one thing or another.

Q Did anything happen in your neighborhood or your home as a result of these stories?

A The phone used to ring at strange hours. People would call up who apparently found our name and address in the phone book from the name and address in the paper, and some of them would talk and some of them wouldn't, and they would call at two, three, four or five in the morning, and it finally got bad enough so we got a switch put on the telephone so we could have an undisturbed night's rest.

Q Did the newspaper stories have any effect on your children?

A I think they suffered more than all. They know the Freeman children. They don't understand why they should be excluded. They cannot understand why we would be expelled simply for an attempt to right a wrong, or in this case question the rightness or wrongness of an action.

I don't believe we were merely in a job to make a big crusade. We were simply trying to straighten out a

matter that had gone awry.

Q Were your children insulted?

A No, most of the people in the neighborhood are very, very kind. They aren't sympathetic to the attitude of the members of the board, and they like our children, and they are friendly to me and my wife. They would not act that way, but then people who don't know us so well are likely, I believe, to believe that anyone who is expelled from a community association of this type, must have done something. The little five-year old was told if she went across the Little Hunting Park property on the way to school that she would be arrested. She was told this because I was expelled.

MR. BROWN: I have no further questions.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Sullivan, you had a suit prior to this one against the Little Hunting Park, Inc.?

A I really don't know.

Q Did you file another suit prior to this one against LittleHunting Park, filed a suit for an injunction?

A Yes.

Q What did you ask for in that injunction?

A A statement of charges.

Q And you asked to be represented by counsel at the hearing?

A Yes, sir, I asked to be represented by counsel.

Q Did you ask for an extension of time?

A Yes, sir.

Q At this time did you have the signatures of twenty members of the board of directors, the twenty signatures required under the bylaws?

A I did.

Q Were you in Court when Mr. Gartlan dictated the stipulation to the court reporter that he and I entered into?

A Yes.

Q Do you recall anything that was stipulated, other than the three things you told me about?

A No.

Q Did you agree you were to abide unconditionally by the conditions of the members of the board of directors?

MR. BROWN: I object to that. Counsel is leading. See the transcript.

THE COURT: Not yet. He asked him a question. State your objection.

MR. BROWN: The transcript speaks for itself. I am willing to submit it as evidence if counsel wishes me to.

MR. HARRIS: This was brought out. It is in our pleadings.

THE COURT: I will rule on it, but I don't want to cut him short. Did you stipulate?

MR. BROWN: I want to say that it is irrelevant. Whatever was stipulated at that time has no bearing in the suit. There is nothing in that proceedings that was a basis for the expulsion of Mr. Sullivan, and that is the issue here whether there was good cause for expulsion.

THE COURT: Objection overruled.

MR. BROWN: Exception.

BY MR. HARRIS:

Q Did you say you would abide by the special meeting of that membership at that special meeting?

A This wasn't the special meeting I wanted called.

Q This is the special meeting you did call.

A No, I put in a request for a meeting.

THE COURT: It is an easy question, yes or no. Did you agree to abide by the outcome of the vote at the special meeting which you called?

THE WITNESS: Yes.

BY MR. HARRIS:

Q You did agree to abide by the decision of the membership of the special meeting?

A Yes.

Q Was a special meeting held?

A A special meeting was held.

Q At that time did the membership rule in your favor or against you?

A They didn't consider the question that I wanted to have raised.

Q What was the question that you wanted to have raised?

A The request for a meeting, specifying that the members could meet Dr. and Mrs. Freeman; that Dr. Freeman could say a few words to the assembled members, and the members could vote on a proposition which was to the effect that this assignment having been made in due form, and the dues having been paid, et cetera, the board of directors were directed to approve this. This was never allowed to come to a vote at the meeting.

Q You did ask that the board be overruled by the membership?

A No, I asked for these three things.

Q Did you ask that the board be overruled?

A I asked that the board be directed.

Q Was this condition denying your request that the board was overruled?

A Yes.

Q Did they uphold the board or uphold you?

A They were not considered.

Q They were not considered in the verbage that you used? Did the membership vote on anything?

A There was a vote.

Q What was that vote on?

A There was a vote on three items. They were twisted to the point as being put up as a proposition for votes.

THE COURT: Just tell us what they were.

THE WITNESS: The first was turned around to the question of whether or not the membership should meet Dr. and Mrs. Freeman, whether or not Dr. Freeman should be allowed to say a few words, or whether or not the board should be congratulated to the effect for their action.

THE COURT: What was the third?

THE WITNESS: It was quite different from the test that was submitted.

THE COURT: They voted no on the first two, and yes on the third?

THE WITNESS: At that meeting, I believe you would say that the voting went against in three propositions, yes.

BY MR. HARRIS:

Q In other words, the membership was definitely opposed to you?

A I don't know how many people in that room were members.

Q What was the vote? Was it overwhelmingly against you?

A It didn't overwhelm me.

THE COURT: Do you know what the vote was?

THE WITNESS: No, I don't know.

BY MR. HARRIS:

Q Do you know what the vote was?

A It wasn't counted, I believe.

Q Was it ten to one?

THE COURT: He says he doesn't know.

BY MR. HARRIS:

Q You did agree that you would stipulate to whatever the membership voted, whether or not the membership backed you up or denied what you wanted to do, and you would agree to it, and you would stipulate to it in open court.

THE COURT: They didn't do what he asked them to do, so he felt he wasn't bound by the stipulation.

BY MR. HARRIS:

Q I believe we have an exhibit in here of your request for this special meeting.

A Yes, sir.

MR. HARRIS: Exhibit 21.

THE COURT: You mean the notice of the meeting?

MR. HARRIS: I am trying to find the notice of the actual meeting, as to what was actually taken up in this meeting.

THE COURT: This is Exhibit No. 21, which is the request for the meeting and the stated purpose.

BY MR. HARRIS:

Q Did you receive a notice of such meeting?

A Yes, I received the notice that the meeting was called.

BY MR. HARRIS:

Q This Exhibit 21 that you called the special meeting--

A Yes.

Q -- there are three items on the aggenda for the special meeting. Will you read the first one for them, as to the actual wording?

MR. BROWN: I object to this testimony as being irrelevant. There are certain charges that have been made against Mr. Sullivan as the basis for his expulsion. They are spelled out with great specificity in the correspondence of July 30th and the correspondence between the two attorneys, and it seems now that Mr. Harris is embarking on another line of testimony, to suggest that Mr. Sullivan somehow didn't abide by a stipulation, but this wasn't brought out.

THE COURT: I allowed him to go on it in direct examination. I will let Mr. Harris to go in on it on cross examination.

BY MR. HARRIS:

Q Will you read what you wrote in your request for a special meeting?

A To have the members of Little Hunting Park, Inc. meet Dr. and Mrs. T. R. Freeman, Jr.

Q That is the first one. That was the first purpose.

Will you read the items?

A Should the members meet Dr. and Mrs. Freeman.

Q Read the third.

A To permit the membership to listen to brief remarks of Dr. and Mrs. Freeman.

Q Read the next one.

A Should the membership listen to remarks by Dr. and Mrs. Freeman?

Q Read the third question and then what the ~~court~~ board said.

A The ~~grant~~ annual assessment having been paid and the assignment of his share having been made in a prescribed form by Paul E. Sullivan, as landlord, to T. R. Freeman, Jr., as tenant, the board of directors is asked to approve that assignment.

Q Will you read what the ~~court~~ board said?

A Should the assignment to Mr. T. R. Freeman be reversed?

Q Apparently your big objection is in that third paragraph.

A My objection is in the procedure of having people vote against people whom they have not had the opportunity to meet.

Q You aren't going to agree with your stipulation in court, because you say the wording used by the board was so

different from what you proposed, and this is not why you are abiding by the stipulation your counsel made for you in open court?

A In what way am I not abiding by the stipulation in court?

Q Will you read before you signed your bill of complaint?

MR. BROWN: Your Honor, it is apparent that this stipulation was made by a lawyer in court. Now, Mr. Sullivan isn't familiar with the stipulation, by what it said.

THE COURT: He is bound by what his counsel said. You know that.

MR. BROWN: I think it should be read.

BY MR. HARRIS:

Q Did you hear the stipulation?

A I am sure I heard it at the time, but I would have to go through it to recall the text.

MR. HARRIS: I have had several versions of it.

THE COURT: We will recess until two o'clock.

(Whereupon, at 1:00 o'clock, P.M., the hearing was recessed, to reconvene at 2:00 o'clock, P.M.)

AFTERNOON SESSION

(2:00 o'clock, P.M.)

THE COURT: All right, proceed, gentlemen.

Thereupon

PAUL E. SULLIVAN,

plaintiff, resumed, was examined and testified further as follows:

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Sullivan, are you familiar with the bill of complaint you filed in this case. Have you read it?

A Yes, I believe so. I have not read it.

Q Item 28 says: (Reading from Bill of Complaint) Because of such action and policy there you also asked, Mr. Sullivan, that your assignment to Mr. Freeman be approved by the court through the board of directors to approve this assignment.

A That is right.

Q Is this contrary to the stipulation you agreed to in the other suit?

A I believe not.

MR. BROWN: I object. I don't see how this is at all relevant here, if I can state my position.

THE COURT: All right, sir.

MR. BROWN: The stipulation is here. I think it should

read into the record. I think the Court should understand what the stipulation says. It has only been represented here this stipulation says specifically it did not constitute any rights.

MR. HARRIS: On redirect examination, I believe Mr. Brown has a right to put this in, if he wishes. The witness has testified he has agreed he will abide by the decision of the membership.

MR. BROWN: It is also outside of the scope of the direct examination. I never made any mention of this whole line of matter. It has no relevancy to the basis for Mr. Sullivan's expulsion, as stated in the specifications furnished him in July, 1965.

THE COURT: Well, why do you think these questions are proper, Mr. Harris?

MR. HARRIS: The suit that is filed, asked for three things. It asked the Court to reinstate Mr. Sullivan. It asked for approval of his membership for Mr. Freeman, and asked $15,000.00 damages.

There are three prayers in our bill of complaint. My question is directed simply to the one prayer which requests the reinstatement or the approval of the transfer of this one membership to Mr. Freeman. I think if he has agreed and has stipulated in Court, he will abide by the membership. He is not doing it. He has agreed prior to Court that he

will abide by it, and now he comes --

THE COURT: I will let you cross examine. Continue. Mr. Brown, although I agree with you that the stipulation should be in evidence, you can put it in evidence later, now or however you want to do it.

MR. BROWN: I take exception to the ruling that the examination is relevant or material, but I think it should be in the record now.

MR. HARRIS: You offer it.

MR. BROWN: I would like to offer the stipulation. Maybe I better show you what I am talking about, the third point, the beginning of the third paragraph.

MR. HARRIS: I have no objection to its going in.

THE COURT: Let it come in as Plaintiffs' Exhibit No. 25.

(The stipulation, marked Plaintiffs' Exhibit No. 25 for identification, was received in evidence.)

MR. BROWN: The stipulation reads, "The third point is the plaintiff agrees that he will not subsequent to the meeting of the general membership to be held pursuant to his petition calling the same, and as the decision of the membership is to ratify or confirm the decision of the board of directors, disapproving Mr. Sullivan's assignment of his membership to Mr. Freeman, to take no further action, looking to a reversal of the board's decision in that respect, so as

as far as the assignment of the membership for this swimming year is concerned, it being understood and agreed, however, that nothing in this stipulation shall prevent Mr. Sullivan, the plaintiff, from taking such action as may be legal and proper for the purpose of bringing before the general membership at its annual meeting in October, 1965, such matters as may lawfully come before that meeting, which are within his rights as a member of the corporation to do."

THE COURT: All right, you are to leave that with the clerk.

BY MR. HARRIS:

Q Now, Mr. Sullivan, pursuant to your prior court hearing, you had a stipulation on behalf of the club to the effect that you would get a bill of particulars.

A I understood the board of directors of the corporation would provide me with it.

Q Did you get this bill of particulars?

A I received one, yes.

Q Also you had a stipulation you would have counsel at the expulsion hearing.

A Yes.

Q Did you have the right to have counsel there?

A Yes.

Q Were you properly notified of the date and the place of this hearing?

A I believe they informed Mr. Gartlan where it would be, and I learned it from him.

Q Were you present at this hearing?

A I was.

Q Do you know an attorney by the name of Hirschkop?

A Yes, Philip Hirschkop.

Q Was he a guest?

MR. BROWN: I object to any such line of questioning. His name was never mentioned in the direct testimony.

MR. HARRIS: I am trying to lay a foundation for bringing in subsequent actions of the plaintiff in reference to this same situation we are confronted with now.

THE COURT: All right. I will let it come in, Mr. Brown, subject to his connecting it up with what he brought out on direct examination.

BY MR. HARRIS:

Q And was Mr. Hirschkop a guest of yours at the swimming pool at the club?

A He was a guest of mine at Little Hunting Park one day. Yes, he was.

Q Do you know what day that was?

A No, I don't.

Q Was this subsequent to filing these stipulations in that court case?

A Yes.

Q Was Mr. Hirschkop representing Mr. Freeman at this time?

A He was his attorney, yes.

Q Did you bring him to the club as your guest, Mr. Hirschkop?

A I did, he and his wife.

Q During the time he was here did Mr. Freeman show you --

MR. BROWN: I would like to object again to this line of testimony. It appears that the law in dealing with these cases of expulsion, that a party has to be apprised of the reason for his expulsion, and when he is apprised of these reasons, he should be given an opportunity to meet them. There was a recording present up here in 1965, giving the reasons why Mr. Sullivan was expelled and the issue in this Court today is whether the reasons were supported by evidence or whether the board of directors acted improperly, if arbitrarily at that time. Now, this is not a trial de novo.

THE COURT: I don't see the materiality of this, Mr. Harris.

MR. HARRIS: Mr. Brown, when he says the issue in this particular case is whether or not the board acted with malice in expelling Mr. Sullivan or does he, and by so doing, by stating eliminate. That is the issue, the request in the bill of particulars for the approval of the assignment

to Mr. Freeman.

This is what he is asking. I think we should submit proper testimony along the lines of the second request he has in his bill of complaint.

THE COURT: Suppose the Court would find he was improperly expelled from the club? Then wouldn't he be entitled to be heard on having the assignment approved?

MR. HARRIS: I agree with you, Your Honor. I think there are two different issues. One is whether the board was wrong in expelling him, or whether the board was wrong in not approving the assignment to Mr. Freeman.

Now, we have a case coming up next month with Mr. Freeman as the plaintiff. The board was asked to approve Mr. Freeman for membership. As long as this prayer is in here and it becomes an issue in this case, then I think I can pursue that course and bring evidence in, in reference to this second request we have for approval.

THE COURT: How does what you are asking for now have reference to that?

MR. HARRIS: To point out the fact that Mr. Sullivan in his suit here is requesting something very inconsistent with what he had stated before or what he has agreed to before in Court. Before in Court, he agreed he would not take any action to overturn the action of the board of directors, except as pointed out in the stipulation, the action taken at the

special board meeting and then reserve for himself the general meeting in October.

THE COURT: How does taking Dr. Freeman around to the club have anything to do with it?

MR. HARRIS: That is an action to force the admission of Mr. Freeman into the club at a subsequent date, after the stipulation.

THE COURT: I don't see how he can. Taking him around there would justify his friendship but not his eligibility for membership. I would sustain the objection.

BY MR. HARRIS:

Q Mr. Sullivan, are you a member of the Catholic International Council of Northern Virginia?

A Yes, sir.

Q Are you a member of the Fairfax County Human Relations Council?

A No, I am not.

Q What is the purpose of the Catholic International Council of Northern Virginia?

A To promote justice and harmony among men, whatever the color of their skin.

Q Do you think it is a matter for this organization?

A Apparently.

Q Do you think there is a great need for it?

A Within the Catholic Church, I would say, yes.

Q How about outside the Catholic Church?

A To a considerable extent, yes.

Q Is this action, this Interracial Council concerned with the acceptibility of negroes in homes in white neighborhoods?

A I don't understand your question.

Q Is the action in your council directed toward accepting negroes in homes in white neighborhoods? Do you actually try to get negroes in white neighborhoods as part of your council?

A I don't believe so. The council has cooperated in the fair housing drive which took place in March, 1965.

Q The fair housing drive, what is the purpose of that?

A To permit people to buy without prejudice housing which they can afford, wherever it may be, and whatever their color.

Q You conducted a drive you say in this case?

A An inter-faith drive was held in Northern Virginia and the Catholic Interracial Council participated.

Q What was the reaction of the people when you went out on this drive? What were you confronted with?

A As I recall the statistics, some one-third or more of the people who were approached, actually signed fair housing statements.

Q Two-thirds didn't?

A One-third expressed sympathy but did not sign.

Q Of the people you contacted, two-thirds wouldn't sign this pledge for fair housing?

A I think you could read it that way.

Q Do you think these people were motivated by property values?

A I don't know.

MR. BROWN: Objection, Your Honor. He has no way of knowing what the motivation was.

THE COURT: Objection sustained.

BY MR. HARRIS:

Q Did you, personally, go around soliciting these requests for people to sign these pledges for fair housing?

A No, I didn't.

Q Would you say that the majority of the people are reluctant to accept a negro in a neighborhood?

A I don't know what you mean by accept a negro in the neighborhood.

Q In other words, would the majority of the people want to accept a negro in a white neighborhood?

A I don't understand the question really. What accept means in some neighborhoods, means what white means in this case.

Q So far as you are a member of the Catholic International Council in Northern Virginia.

A Yes, sir.

Q And their purpose is to gain the acceptance of negroes in white neighborhoods?

A I don't believe I said that.

THE COURT: You are putting words in his mouth. He said it and he said it proper.

BY MR. HARRIS:

Q You did take part in a drive to get people to sign a statement that they were in favor of this?

A Yes. I should amend this. The statement, and I don't have a copy of it with me, was they simply stated they recognized the moral right of any person without regard to race, creed or national origin for a home anywhere.

Q You stated one-third of the people signed these pledges.

THE COURT: We have been over that. He said that only one-third signed.

BY MR. HARRIS:

Q You said there is a reluctance on the part of the white people to accept the negro.

A I really wouldn't be able to make a statement.

Q Going back to the time when you were going around to get signatures for the special meeting of the membership, did you run into objections from people who objected to signing it?

THE COURT: He said he didn't do it. He didn't take this thing around.

BY MR. HARRIS:

Q No, this is a special request for a special meeting of the membership.

A Yes, sir.

THE COURT: He said about ten refused to sign.

THE WITNESS: Yes, about ten were reluctant to sign it.

BY MR. HARRIS:

Q The people you went to, you thought were favorable to you?

A People I knew were not of my church.

Q With those you met, did you run into difficulties?

A It was a matter of my making a request and their refusing to sign, no discussion.

Q Did anyone mention the economic situation, economic impact that a negro getting into a group of these ten people you talked to?

A No, not these ten people.

Q How about Mrs. Alleen Winters, did she mention it to you?

A Yes, as a matter of fact, she did. She felt, a as I recall her reasoning, if negroes knew they could join Little Hunting Park, Inc. as shareholders, that immediately they would move into in large droves into Bucknell, which she

referred to as lower priced houses. I don't believe they run more than $15,000.00, so I don't know how they could be lower priced.

Q Do you say that the feeling of negroes coming into a neighborhood would have an economic effect on a neighborhood?

A Some people would, but some regard it as a superficial effect, an economic impact, but feel it would be favorable rather than unfavorable.

Q Could you understand that some people feel that there would be an adverse economic impact?

A I understand that some people might, but I don't understand how.

Q You think that there are some people who would not be motivated by bigotry but just motivated by the economic impact of a negro moving next door in the house, say, for instance? Let us take the people who refused to sign a request for a special membership? Could some of those be motivated by economics and not by racial bigotry?

A Gee, I don't know.

Q How about Mrs. Winters?

A Well, Mrs. Winters said that her motivation was an assessment of an economic situation which might arise as a result of this.

Q Do you think Mrs. Winters was a bigot?

A I have never known her to be.

Q Do you think she was concerned with the economic impact for not signing your request for a special meeting?

A I think so.

Q Exhibit No. 1, Certificate 290 of Little Hunting Park, Inc., have you read it?

A I have read it a couple of hours ago.

Q Will you read it to me, just the first line down here?

A Is the owner of one non-negotiable membership to Little Hunting Park, Inc., a corporation?

Q You know the words, "Non-negotiable?"

A Yes.

Q Therefore, according to the wording of this certificate, it wasn't negotiable.

A I don't understand.

Q Was it your impression that this certificate, which you submitted into evidence, was not negotiable?

A The certificate, itself, is not negotiable, but the shares that represent it.

Q You have been a member of this club since 1955?

A I have been a member of Little Hunting Park, Inc. I don't regard that as a club.

Q I am sorry. Are you familiar with the bylaws?

A I became familiar with them as a result of the board's action.

Q Is there anything in the bylaws for approval by the board of directors before anyone can be admitted as a member?

A Yes.

Q You are contending in your suit that you were damaged from an economic standpoint,insofar as the particular property you own on Quander Road has decreased in value because of your inability to assign your membership certificate.

A That is right.

Q Items 3, 4 and 5 were your leases to your property. When did you first lease your property to Mr. Freeman?

A February 1, 1965.

Q Did you again lease it to him on 1 February 1966?

MR. BROWN: Objection.

THE COURT: State your objection.

MR. BROWN: As the intent of the objection is to show that the property did not decrease while Mr. Freeman was the occupant, Mr. Sullivan and Mr. Freeman have entered into a lease. They are still seeking the assignment of this same share to the swimming pool to Mr. Freeman, and on advice of counsel, obtained the identical lease.

THE COURT: Objection overruled.

MR. BROWN: Exception.

BY MR. HARRIS:

Q Did you again execute a lease with Mr. Freeman on 1 February 1966?

A Yes, sir.

THE COURT: It is in evidence.

BY MR. HARRIS:

Q Is it all the same rental for the three years?

A Yes.

Q Getting to the meeting with Messrs. Lenon, Egger, and Hanley, was there any discussion as to the economics of the refusal to approve Mr. Freeman?

A Very little, as I recall.

Q But there was some discussion of economics?

A I believe Mr. Egger raised this point.

Q During that time was there a question of morals raised or the moral issue raised in this case?

A Yes, I raised it.

Q Did you say their action was shocking?

A I believe I said I was shocked, but I am not positive what phrasing I used.

Q You say you were shocked at their conduct?

A I was shocked at this action.

Q You submitted, your Exhibit 6 was the assignment which you had signed and submitted to the board for the approval of Mr. Freeman?

A Yes.

Q Did you read that before you signed it?

A Yes, sir, I did.

Q Do you know that this assignment required the approval of the board of directors?

A That is what it said on the form.

Q Mr. Sullivan, you are rather wrapped up in the problem of racial equality, would you say, you and members of the Catholic membership?

MR. BROWN: Object to that. Counsel has already stated, "Wrapped up."

MR. HARRIS: I feel he is wrapped up in it. At times he does get emotional on the subject.

THE WITNESS: I would say I do.

BY MR. HARRIS:

Q You have been emotional?

A I have been emotional.

Q How about when you met with Mr. Egger, Mr. Lennon and Mr. Hanley, would you say you were emotional at that time?

A I believe not.

Q Were you cool, calm and collected?

A I believe I was quite cold.

Q But you did say you were ashamed of them; that their action was shocking.

A I said I was shocked at their action.

Q You testified you also talked to Mrs. Winters, and asked to have her sign a request for a special membership meeting.

A Yes.

Q Did you get emotional on that occasion?

A I believe not. I may have possibly had a little emotional feeling when I thought I was fooled by Catholics. When Ted Freeman had to have support, he had to go over to the atheists, the Unitarians and Jews, and I believe I made in that case about the most heated statement I made to Mrs. Winters.

Q You made that to Mrs. Winters?

A Yes.

Q That was about the most heated discussion?

A I was standing on the steps, talking extremely low.

Q When you spoke to Messrs. Egger, Hanley and Lennon, you found their statements hard to believe?

A That they were incredible.

Q You had a fifteen-minute discussion with them?

THE COURT: I don't have any trouble hearing. We have been over this ten times. I don't know if he thinks he is getting anywhere or not. I don't believe he is, by going over it again and again.

BY MR. HARRIS:

Q In your direct examination, you stated in your

opinion that racial discrimination is a sin. Do you believe that?

A Yes, sir. I heard this from the pulpit.

Q One did penance?

A One of the penances.

Q "I did not have any choice. The other evil would have had to be tremendously great to make this a lesser evil." Are those your words in your direct examination? You used the word, "Evil," and you used the word, "Sin."

A Yes.

Q You said that the first time to me today, but these words appear in the bill of particulars. Did you use it to Mr. Lennon or Mrs. Winters, or in any of your correspondence before?

A I used it to Mr. Hanley in my conversation with him.

Q Which did you use to Mr. Hanley?

A I believe I used the phrase, of cooperating in a moral evil with Mr. Hanley, when he suggested I should sell my ~~share~~ to my ~~Columbia row~~ Quander Road house to the corporation. In the first place, I had not thought of selling it, and I couldn't sell it without the moral evil attached to it.

Q Getting back to your letter of June 25, 1961 to Reverend Cassidy, which is Exhibit 16, you mentioned that you wrote this at the request of Father ~~Zillenburg~~ Zetzberg.

A Not at the request.

Q Did you send copies of this to Father Walsh, Father Wingler and Father McMahon? What was your purpose in sending this to Father Wingler?

A The territory that Little Hunting Park, Inc. was in, lies in St. Mary's Parish and St. Louis' Parish, and one of the persons on this list was Mr. John Tracy, who is on the board. Mr. Tracy is not a director, as it turned out.

Q Why did you send it to Father Wingler?

A He should know what was going on in his parish.

Q He should know what was going on so far as Mr. Tracy was concerned?

A I thought he should know what was going on so far as Mr. Tracy was concerned.

Q You sent a copy to Father Walsh. Why did you send it to Father Walsh?

A Mr. Freeman and I are two members of ~~the board~~ his parish.

Q You also sent it to Father McMahon, who is in Richmond.

A That is right.

Q What position would he have in Little Hunting Park?

A As I said, I did this at the advice of Father Zillerburg; that Father McMahon had the same role in the diocese as Father McMahon had in the Richmond area for social

justice.

Q What did you expect these priests to do for you?

A Well, it wasn't that I expected them to do much for me. I thought they might be able to lead some of these members of the Catholic Church to consider the moral dimension of this particular action.

Q In this letter, you wanted them to talk to the Catholics, who were members of this club and persuade them that their action was immoral?

A No, I didn't think I said that.

Q In your letter to Father Cassidy, "I ask you to take whatever action you can to --

THE COURT: Is this letter in evidence?

MR. HARRIS: Yes, it is.

THE COURT: All right, read from that.

BY MR. HARRIS:

Q Exhibit No. 16, the top paragraph on Page 3, would you read it out loud?

A "I request you take whatever action that may seem wise to alleviate this situation, with concern only with the Catholic pastors involved, or on a broader scale with their non-Catholic brethern. If this is not done, it will cause bitterness among people."

THE COURT: You were not working with just Catholics, but you asked him to contact their non-Catholic brethern?

THE WITNESS: The reason I phrased it that way, I hoped he would consider it. I requested he do what may seem wise. I am not requesting he do one or the other, but I am requesting.

BY MR. HARRIS:

Q Is Father Walsh, Father Cassidy or Father McMahon members of Little Hunting Park?

A I don't think so.

Q You have this same letter in front of you?

A Yes.

Q Will you locate on the first page, Paragraph 4, on the next to the last line, the third line from the bottom, "When I said it was immoral, my fellow parishoners, it had nothing to do with morals, only economics and real estate values." In effect, are you not calling the action of the board immoral?

A Why yes, I said quite plainly, that is immoral.

Q Do you think the action of the board is illegal?

A Yes.

Q Do you feel the action of the board was a sin?

THE COURT: Are you talking about the action of the board to refuse to assign?

MR. HARRIS: Yes, to assign.

Do you feel it was a sin?

THE WITNESS: Depends on the individual feeling of the

members of the board. I couldn't tell, subjectively.

THE COURT: Subjectively, he couldn't tell.

BY MR. HARRIS:

Q Did you express these views to the members of the board?

A I don't understand.

Q That this was immoral. That this was a sin. That this was evil. Did you express this to any members of the board, that their actions were immoral, evil and a sin?

A I did to Mr. Egger, Mr. Lennon and Mr. Hanley.

Q Did you say it to Mrs. Winters?

A Yes, sir.

THE COURT: Missus who?

BY MR. HARRIS:

Q Mrs. Moore, who was president at the time. You never mentioned that to Mrs. Moore, that you thought her action was evil and immoral?

A No.

Q Was there an occasion when you had a telephone conversation with Mrs. Moore?

A Two occasions.

Q Who called whom at that time?

A I returned the call that Mrs. Moore made to me.

Q You testified to the gist of the conversation. Did you raise your voice to Mrs. Moore?

A I don't believe so.

Q At this time did you think in your mind the action of Mrs. Moore was evil, immoral or a sin?

A I don't understand.

Q Did you think Mrs. Moore's action in voting for the refusal to approve the membership of Mr. Freeman was evil, immoral or sinful when you talked to her on the phone?

A You realize I make a very clear distinction between to be a sinner and a sin. The action I knew to be a sin. Whether Mrs. Moore was supposed to be a sinner, that was her conscience.

Q But you did feel at this time she participated in an evil?

A Yes.

Q Didn't you tell her this?

A I don't believe so.

Q Can you think of anything you told her in that conversation?

A I told her that Father Walsh would be disappointed.

Q Earlier you testified that you didn't know she was a Catholic. Why would Father Walsh be disappointed?

A Because his suggestion had fallen on barren grounds.

THE COURT: You did not know she was a Catholic, or worked for a Catholic, or both?

MR. HARRIS: He did not know she was a Catholic.

THE WITNESS: At that time I wasn't explaining that to him. This was internal conviction on my part, moving me to discuss the matter. It wasn't a matter of communicating from me to her.

BY MR. HARRIS:

Q Did you raise your voice to her on the telephone?

A ~~Yes.~~ No.

Q You are contending she raised her voice to you?

A Yes.

Q You just listened to her?

A I asked her to be calm, not to be angry, and to be civil.

Q But you think there was nothing said so far as she is concerned that would make -- There was nothing said in this conversation that would irritate her in anyway? It was all on her part. She was the one that raised her voice and became angry.

A Angry, I would have to say, yes.

Q On June 9th, you wrote a letter to Mrs. Moore. This was the same day as the conversation?

A Yes.

Q I show you a copy of this letter dated June 9th. Is that the letter you wrote, your signature?

A Yes.

MR. BROWN: No objection.

BY MR. HARRIS:

Q Would you read that letter very briefly?

A "Mrs. Virginia Moore "June 9, 1965
"President of Little Hunting Park, Inc.
"807 Olmi Landrith Drive
"Alexandria, Virginia

"Dear Mrs. Moore:

"Since you, I am sure, found the conversation we had on the telephone today as unsatisfactory as I did, I request you not to call me again. Since the only relationship which exists between us is through our mutual membership in Little Hunting Park, Inc., I am sure anything you may care to say to me may be said by mail.

"Sincerely,"

Q If what you say that she was the only one who raised her voice and the only one that got excited, why do you say in this letter that she should find that telephone conversation as unsatisfactory as you did?

A I would think she would be rather upset in having lost control of herself.

THE COURT: Admitted into evidence as Defendants' Exhibit No. 1.

(The letter, marked Defendants' Exhibit No. 1 for identification, was received in evidence.)

BY MR. HARRIS:

Q Now, as a result of your being informed that the transfer to Mr. Freeman was denied, did you consult with some of your friends over this problem?

A Yes.

Q Did you consult with one, Mr. Wells?

A John Wells, the minister of the Unitarian Church. I did after some time, not immediately.

Q You testified earlier you did not consult with him.

MR. BROWN: Objection. That is not the testimony.

THE COURT: I think he talked to him.

THE WITNESS: No, no.

MR. HARRIS: I know we put Father Walsh and Mr. Wells in the bill of particulars. The testimony was that he had not talked to Mr. Wells.

MR. BROWN: May I explain that?

THE COURT: Yes.

MR. BROWN: The testimony relating to the June 25th letter and the allegation was that, as explained in Mr. Harris' letter of August 9, 1965, the allegation against Mr. Sullivan was that certain statements were made in a letter to Mr. John Wells. The testimony this morning was that Mr. John Wells received no such letter at any time. We have Mr. Wells here and he will so testify. That is the allegation. If you say that is an error, we will agree to drop it.

BY MR. HARRIS:

Q I asked whether he consulted with Mr. Wells in reference to what you thought was the problem in this particular community.

A I answered that.

Q And you also talked to a Father Davis.

A I did.

Q Father Walsh?

A Yes.

Q Did you talk to other people?

A Some, yes.

Q Did you talk to anyone from the Fairfax County Human Relations Counsel?

A Yes.

Q Did you talk to the Catholic Interracial Council?

A What do you mean? I talked to Private Holly.

Q Did you talk to some other people?

A I talked to some other people.

Q What was your purpose in talking to these other people?

A To find out what could be done to resolve this problem.

Q Were there any suggestions that came out of this meeting to find out what could be done?

A What meeting?

Q These people you talked to.

A I wasn't talking about a meeting.

Q You did not meet with these people?

A I met with some people on one occasion.

Q What occasion was that?

A We met at the Unitarian Church one Sunday evening, and we talked for probably an hour and a half.

Q Did you reach any conclusion at that meeting as to what action you should take?

A Conclusion as to what action, no. Conclusion we should try to resolve it in a just and fair manner, yes, sir.

Q You want to resolve it in a just and fair manner?

A Fair.

Q Was there any conversation with anybody about this meeting that you had?

A There might have been, but I don't recall.

Q Did you suggest that they write letters?

A No, not to these people. Many weren't members.

Q Did you suggest to members that they write letters?

A To a lot of members, yes.

Q Did you discuss that they telephone?

A I never suggested that anyone telephone.

Q Did you suggest that they harass these board members with letters?

A Harass, it doesn't sound right.

Q You stated that you came to no conclusion at this meeting you had at the Unitarian Church.

A No, I didn't say we came to a conclusion. I said I don't recall whether we did or not, but there was no action.

Q There was no action with respect to their pursuing it?

A Not that I recall.

Q Let us go back to the letter of June 25th to Father Cassidy. Take the second half of the second paragraph on Page 2, beginning with later that evening. Will you read that?

A Later that same evening, we met, talking about what time? It doesn't say what time. Later that same evening we met with the Freemans, some other interested persons, Father Davis and a negro pastor in Alexandria, and Mr. John Wells, Pastor of the Unitarian Church. We invited Father Walsh to attend, but at the action of the bishop, he declined, and he said that there were many avenues to pursue in this matter.

Q "In our discussion, we came to the conclusion there were many avenues we should pursue in this matter, but until they were resolved, we should pursue them." There was no conclusion?

A That we were to pursue it.

Q How would you pursue it?

A By means that were available to us.

Q What means were available to you?

A I really don't know what the windup of that meeting was.

Q Telephoning of the board of directors?

A That wasn't included.

Q At the expulsion meeting, didn't you ask these people to write letters, but they telephoned instead?

A I asked people to write letters because I didn't feel the telephone calls had much value.

Q Didn't you at that time say some people had called?

A I did not know.

Q Your Exhibit No. 18 is a letter from you to Father Cassidy in which you are enclosing all your correspondence. Now, in the first sentence, in the second paragraph, will you read that to me?

A I am sorry that I misinterpreted Father Walsh's attitude.

Q Yes, go to the next sentence.

A I had no way of knowing he had taken action of any kind and I assumed there was no action being taken of any kind.

Q What action did he take?

A I believe Father Cassidy said in his letter, "To

my personal knowledge, he took no action, but Father Cassidy had said in his letter that Father Walsh had gotten in touch with Father Wingler, and they were trying to get in touch with Mrs. Moore, but she was unavailable, on vacation or something.

Q Will you read all that?

A I feel that action later on will be required for a generation or two for justice and charity among members of all Christ's body and I feel I am impassioned to say something more than a token gesture in that direction.

Q Now, will you continue to read that paragraph?

A "As a result of this problem with the board of Little Hunting Park, Inc. and our efforts to solve it, I have good reason to believe that only the consciences of a majority of Catholics in this neighborhood have been awakened to the fact that racial discrimination is a sin rather than an acceptable custom."

Q You sent copies of this letter to Father Walsh, Father Wingler and Father McMahon?

A Yes, sir.

Q In effect you are saying you are accusing the people of being racially biased, at least the Catholic members of the board.

A I think what I said was only a minority of the Catholics in this neighborhood, and I make no reference to the

board.

Q Go on to the next paragraph.

A "Thank you very much for your interest in this problem. I am sure that when the injustices of their action is made clear to them, and they see that their fears are without foundation, the majority of the members of the board will do the right thing.

Q How did you intend to make sure that the injustice of their actions be made clear to them? With what did you propose that the injustice of their action be made clear to them?

A I didn't propose that. I believe that the clergy might very well concern themselves with that as a problem.

Q Now, Mr. Sullivan, if I accused you of being immoral, if I accused you of sin and of being evil, what would be your reaction?

MR. BROWN: Objection. This is not the accusation. He stated. He characterized racial discrimination as being sinful and immoral. At no point did he say any individuals were guilty of sin or immorality.

THE COURT: How can they be guilty of it and not have it rub off on them? How can they be guilty of an act and not be guilty, themselves?

MR. BROWN: He was referring to the action of the board in refusing the assignment. Now, he did not accuse anyone

individually, and his references in all of his correspondence are opposed to and always concern the matter of racial discrimination as immoral, sinful, et cetera. To It is putting words in his mouth in accusing him. Mr. Sullivan's problem in this whole bill of particulars of these charges made against him, there are a series of characterizations and blowing up and using inflamatory terms to characterize things that he did and things that he said. It seems we should be accurate in quoting what he said.

THE COURT: How can he say the board's action was sinful, immoral and whatever else he said, and not have that rub off on the members, themselves?

MR. BROWN: If they so construe it, it is one thing. He did not say it.

THE COURT: I realize. I think you are just playing with words. I don't think you can say what I do is sinful, and I am not sinful.

MR. BROWN: It is always with reference. My whole point is.

THE COURT: I am going to overrule your objection and let the witness answer.

(The record was read by the reporter.)

THE WITNESS: Does that represent the question?

THE COURT: Yes.

THE WITNESS: My reaction would probably be, you know

my conscience more than I do. These things are true in regard to all men, with respect to gospel and call for redemption.

BY MR. HARRIS:

Q Are all men evil?

A In that sense, yes.

Q Are all men immoral?

A In that sense, yes.

Q There are some people who don't agree with what you said?

A Undoubtedly.

Q Would some people take a violent attitude if you called them evil and a sinner?

A I believe so, if it was taken out of context. I did not. I was very careful to avoid calling people sinners.

Q What is a sinner?

A A sinner is one that does wrong.

Q Then who commits sin?

A One who knowingly commits sin.

Q If someone is accused of committing sin, would you call him a sinner? Everyone who does commit sin is a sinner? If you accuse someone of committing sin, is he the same as a sinner?

A I don't believe so.

Q In other words, you make a distinction. You would say I commit sin, but I am not a sinner?

A If I could use an example.

THE COURT: I believe I get it. I believe as you do that all men are sinful. Whether you know it or not, it doesn't make any difference.

BY MR. HARRIS:

Q Now you mentioned that because of the notoriety that you had received that your feelings were hurt.

A At least once or twice, yes.

Q Do you know who called the newspapers to give the story to the newspapers?

A No, I don't believe so.

Q Did you call them?

A No.

Q Did you appear on television, WTOP?

A After the expulsion hearing. After I received notice of the expulsion hearing.

Q After you received notice of the expulsion hearing?

A Yes.

Q Were you free from publicity when you appeared on wtop?

A No.

Q Would it be much more likely for people to hear you on the television than read about you in the paper?

A I don't know.

Q You stated you don't want to be called an agitator.

A I don't want to be called an agitator.

Q Do you consider you were an agitator?

A No.

Q Can you define what an agitator is?

A An agitator is one who goes about stirring people up.

Q Hasn't this publicity been that you were stirring people up?

A No.

Q Did you consult with all these people in the Unitarian Church? Did you meet with people?

A I consulted with the pastor of the Unitarian Church.

Q Were there other people there?

A Probably six or eight.

Q Did you talk to other people and tell them to write letters?

A I talked to people who I thought were victimized by Little Hunting Park, Inc.

Q Did you write to Father Cassidy?

A I did.

Q Sent copies to Father Wingler, Father McMahon and Father Walsh? Did you call that evidence?

A No, I would call that work, getting within the framework of clerical support, which I had.

MR. HARRIS: That is all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Sullivan, you have been questioned about the fair housing pledge campaign that was conducted in the winter of 1965. I believe you said people were asked to sign pledge cards indicating the fact that they would accept persons as neighbors without regard to their race or creed. Is that correct?

A Yes, sir.

Q Do you know about how many people signed those pledge cards in Northern Virginia?

A I believe it was upwards of 40,000.

Q To what extent have Catholics, aside from the Catholic Interracial Council, as such, participated in that pledge campaign? Was the bishop at all involved?

A Bishop Russell, who is head of the diocese here, was one of the sponsers of the campaign, and he participated to the extent-- First of all, we had pledged to the clergy in the area on the campaign in January and I think again in February. He participated in the fair housing meeting which was held in February at the George Mason High School Auditorium. I believe it was around the 28th of February, somewhere around that area, and he ordered the sermons be preached on the 28th of February classed, "Fair Housing Sunday-Sabbath," which was the coordinated effort among

Catholics, Protestants and Jews, for bringing this particular problem among their congregations.

Q Were you in the congregation where Bishop Russell appeared in February?

A Yes, I was. He spoke very movingly.

Q He spoke very movingly? What was the gist of what he said?

MR. HARRIS: Objection, Your Honor.

THE COURT: I think you are all going into this so much, let him go as far as he wants. Objection overruled.

THE WITNESS: He characterized the problem as being, the Bishop stated and reiterated, primarily a moral and religious problem, the problem of racial discrimination, and that an effort such as we were being involved in at that point, a solution of which would give prompter support than if he worked in a smaller group.

BY MR. BROWN:

Q Were Bishop Russell's remarks publicized in the press in this area?

A Yes, they were. Major papers carried the stories.

Q Was his story carried in the papers in Northern Virginia?

A The Catholic Gazett carried an extensive article on it.

Q Bishop Russell is from where?

A Richmond.

Q There has been some reference to a meeting in the Uniterian Church with John Wells. Will you state, to the best of your recollection, who was at that meeting?

A Dr. Freeman, Mrs. Freeman, John Wells, Father Davis, my wife and I, Paul Forbes, and I believe his wife. I am not certain, and a young lady named Baitrand, who lived at Bucknell Manor.

MR. HARRIS: Mrs. Bartland.

BY MR. BROWN:

Q And who was the other couple?

A The Forbes.

Q Is that all?

A I believe so. I can't recall the other people that were there.

Q Mr. and Mrs. Sutherland were there?

A I don't think so. They may have been.

Q Were the Bartlands, Mr. ahd Mrs. Bartland, and the Forbes are members of Little Hunting Park.

A The Forbes are. Mr. Forbes is a member, but I believe the Bartlands do their swimming at Belvoir.

Q Were they members of Mr. Well's church?

A No.

Q Are the Forbes members of Reverend Wells' church?

A Yes.

Q Will you explain the circumstances on which you appeared on television, WTOP, I guess?

A Well, I received a letter to the effect I had been expelled from Little Hunting Park, and inasmuch as I felt we had presented a complete defense to the charges of this hearing, I was convinced that the action of the board taken on that occasion was unwarranted and unjust, an d it did not really matter to me whether the harm the publicity might cause at that point to me. I felt this ought to be pointed out to people that this thing can happen in a decent God-fearing neighborhood. For virtually no reason at all, a group can constitute itself a god and attempt to take away a man's property.

RECROSS EXAMINATION

BY MR. HARRIS:

Q You were asked to appear on a program?

A I was asked to be interviewed by a news caster, whose name I don't recall, and I did but very brief.

MR. BROWN: No further questions.

THE COURT: Step down.

Thereupon

JOSEPH WINGLER

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q State your name and address.

A Reverend Joseph Wingler, 310 Duke Street, Alexandria, Virginia.

Q And you are the pastor of what church?

A St. Marys.

Q One of the allegations against Paul E. Sullivan, an act for his expulsion from Little Hunting Park, is to the effect he had somehow done something improper by mailing to you a copy of a letter that he had sent under date of June 25, 1965 to Reverend Cassidy, the Director of Catholic Charities of Northern Virginia. ~~The inference raised by that, and you state you were~~ Were you approached by an attorney representing Mr. Sullivan concerning that matter in the summer of 1965?

A Yes.

Q Do you know the attorney's name?

A No, I don't recall.

Q Did you give the attorney a statement relating to the allegation made against Mr. Sullivan?

A Yes.

THE COURT: Any objection to this, Mr. Harris?

MR. HARRIS: No, Your Honor.

THE COURT: Admitted.

(The statement, marked Plaintiffs' Exhibit No. 26 for identification, was received in evidence.)

BY MR. BROWN:

Q You recognize that statement?

A "This is to certify that Mr. Sullivan's letter of June 25, 1965 to Father Cassidy, of which I received a copy, was in no way detrimental to the employment status of Mrs. Virginia Moore, who works for me."

MR. BROWN: That is all I have.

THE COURT: Do any of the people of Little Hunting Park belong to your church?

THE WITNESS: I think so. I don't know any specific ones.

THE COURT: Did you talk to them, talk to your parishioners about this?

THE WITNESS: No.

THE COURT: Do you have any questions?

MR. HARRIS: Yes, Your Honor.

CROSS EXAMINATION

BY MR. HARRIS:

Q There was a list attached to this letter of June 25th. Was there not, Father?

A I don't recall. It was two years ago. I only read the letter once. I think there was.

THE COURT: You say you read it once and threw it away?

THE WITNESS: Yes.

BY MR. HARRIS:

Q "I have talked to both Father Walsh and Father Wingler. I am happy to say, after receipt of this letter, they have conferred about the problem." Would you like to make a statement whether there was any confirmation between you and Father Walsh, or was Father Cassidy mentioned?

A I think it was a very brief statement, a telephone conversation. This just came up following another telephone conversation about another matter. I just asked him what this was all about, and then he mentioned in a few sentences just what it was. It was going on at the present time, and that is all I recall.

Q We had a lot of expositions on Catholism. I am happy to have you on the stand. Is it the policy of the Roman Catholic Church to dictate who will be members of private clubs?

A No.

Q Regardless of race, creed and national origin?

A No.

THE COURT: Were you conscious of the, call it unrest going on down in Bucknell, going on about this swimming pool?

THE WITNESS: Not really to an extent. I was over in McLean, Virginia, and came to Alexandria in May. I believe this letter came to me in June, so I was too new in the area so I hadn't heard about it and heard very little about the people from time to time through Mrs. Moore.

THE COURT: All right, step down. Thank you. May Father Wingler be excused?

MR. BROWN: Yes, Your Honor. Call Mr. Joseph Gartlan. Thereupon

JOSEPH GARTLAN

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Will you state your name and address, please?

A Joseph V. Gartlan, Jr., 3507 Woodside Drive, Alexandria, Virginia, Post Office, Fairfax County.

Q What is your occupation?

A I am an attorney.

Q In the summer, have you previously represented Mr. Sullivan in this matter that is before the Court today?

A Yes, sir.

Q Were you representing him in the summer of 1965, at the time the proceedings were pending against him concerning his expulsion?

A Yes.

Q In the course of preparing a petition for him for purposes of appearance before the board of directors, did you obtain statements from various persons who were in some way

involved in the controversy?

A Yes.

Q Did you attempt to obtain information by way of rebuttal for the various charges made against Mr. Sullivan?

A Yes.

Q In the course of collecting that information and data, did you visit Father Eugene Walsh?

A Yes, I did.

Q Are you a member of his church?

A Yes.

Q Did Father Walsh give you a statement concerning the allegations or the charges against Mr. Sullivan?

A Yes, he did.

Q Plaintiffs' Exhibit 27, I want to show you a statement dated August 16, 1965. Will you identify that, please, and state whether that is the statement you obtained from Father Walsh or a copy of it.

A Yes, this is a statement which was prepared by me after a discussion with Father Walsh of the subject matter contained in the statement, and taken back to him and read by him and signed in my presence.

Q Would you read the statement, please?

A Dated August 16, 1965.

"To whom it may concern:

"I have received and read a copy of a letter

written by Mr. Paul E. Sullivan, dated June 25, 1965, and addressed to Reverend Thomas J. Cassidy, Director, Catholic Charities of Northern Virginia. Mr. Sullivan is a member of St. Louis' parish, Groveton, Virginia. I am his pastor, and a reference is made to me in the last paragraph on the second page of that letter.

"I was present in the home of another parishioner, Mrs. Alleen Winters at the time of Mr. Sullivan's visit, as described in that paragraph. I have no relationship, legal or personal with Little Hunting Park, Inc., its directors or members, other than the fact that some of these individuals are members of my parish.

"Mr. Sullivan's letter, therefore, did not create a strained relationship between the corporation and me, and it would not have had such effect, at least so far as I am concerned, ~~was~~ had any such relationship existed. The letter ~~the latter~~ did not in anyway affect the relationship between me and the corporation's members who belong to St. Louis' parish.

"Mr. Sullivan did not, in my judgment, use violent and abusive language when Mrs. Winters declined to sign his petition for a meeting of

the members of the corporation.

"Very truly yours,

"Eugene P. Walsh

"REVEREND EUGENE P. WALSH
"VF PASTOR, ST. LOUIS PARISH
"GROVETON, VIRGINIA.

MR. BROWN: May this letter be admitted into evidence, please?

THE COURT: No objection?

MR. HARRIS: No objection.

THE COURT: It will be admitted.

(The letter, marked Plaintiffs' Exhibit No. 27 for identification, was received in evidence.)

BY MR. BROWN:

Q Was that letter submitted to the Board of Directors at the time of the August 17th hearing concerning Mr. Sullivan's expulsion?

A Yes, it was.

Q Did you submit it to the board for their consideration in connection with the charges against him? Is that correct?

A In connection with the specific charge, as I recall, that the letter referred to in that exhibit had affected the relationship between Father Walsh and Little Hunting Park, Inc. and in connection with the charge that Mr. Sullivan

had used violent and abusive language. We offered that particular letter in rebuttal.

Q You say it was obtained after thorough discussion with Father Walsh. Was he at all reluctant to give it?

A No, sir.

Q Was he fully apprised of what the issues were in the case, fully informed and aware of what he was signing?

A Yes, as I said, the letter was typed by me, but after a discussion with Father Walsh about the background of the situation, some of which he was already familiar, the letter as typed by me, represented what I fairly understood to be his version of the facts related in that letter, and as I said, I brought the letter back to him. He read it carefully, so far as I could judge, and then signed it, with no reluctance, no hesitation and no reservation.

Q Did you obtain another letter from Reverend Joseph Wingler, also pertaining to one of the charges made against Mr. Sullivan?

A Yes.

Q Was that statement, that letter which has been introduced into evidence, obtained from Reverend Wingler as a result of Reverend Wingler's voluntary act? Did you explain to him what it was all about?

A I called him the same day, maybe the same day. I don't recall, telling him I represented Mr. Sullivan; that

I asked to come and see him about the matter in which Mr. Sullivan was involved with Little Hunting Park. Insofar as it related to Father Wingler, we made an appointment, and I visited him at the rectory at St. Mary's, Alexandria, Virginia.

I told him the purpose of my visit and told him in submitting correspondence which had been initiated with respect to Mr. Freeman; that some of that correspondence had the effect of adversely affecting the relationship of a member of the board of directors of the pool, which was amended by Father Wingler. He knew the employee, and was asked if it had the effect alleged by the corporation, and he said it had not, and I asked him to put that statement in writing, and he wrote out in his own hand.

Q Was that at the time of the expulsion of Mr. Sullivan by the action of the board of directors?

A It was.

Q A question has come up in this proceeding concerning a stipulation you entered into in open court before Judge Calvin Van Dyke on your motion for a preliminary injunction in the middle of July, 1965, and that stipulation has been submitted. I would like to point out part of it.

MR. HARRIS: I think it speaks for itself.

THE COURT: Let him ask the question and then you make an objection.

MR. BROWN: This paragraph --

MR. HARRIS: What is the question?

THE COURT: He hasn't asked it.

MR. HARRIS: I am objecting.

THE COURT: He hasn't asked the question.

BY MR. BROWN:

Q Was that stipulation in anyway intended to constitute a waiver of rights?

MR. HARRIS: Objection.

THE COURT: Go ahead. Let him answer the question.

BY MR. BROWN:

Q Was that statement intended to constitute a waiver in anyway of any rights Mr. Sullivan might have as a member of Little Hunting Park, Inc., insofar as his legal relationship of that park is concerned?

MR. HARRIS: Objection.

THE COURT: Objection sustained. It speaks for itself.

MR. BROWN: Exception.

THE COURT: Note the exception.

MR. HARRIS: I have no questions.

THE COURT: Let me just ask you one. When did you first get involved in this?

THE WITNESS: At the time Mr. Sullivan received notice from the board of directors of their proposed expulsion of him from membership. If I recall correctly, we may have had

some minor degree of discussion.

THE COURT: Were you a member of this park?

THE WITNESS: No, sir.

THE COURT: May he be excused?

MR. BROWN: Yes, Your Honor.

Thereupon

ROBERT A. MARSHALL

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q Please state your name and address.

A My name is Robert A. Marshall, 2003 Paul Spring Road, Alexandria, Virginia.

Q Is that in Fairfax County?

A It is.

Q How long have you resided in Fairfax County?

A Seventeen years.

Q Prior to that time, did you reside in the Washington metropolitan area?

A I did in Prince Georges County.

Q So you have been in the Washington metropolitan area. By whom are you employed?

A Kiplinger Letters, Washington Editors in the District

of Columbia.

Q What is your position with that organization?

A I am one of three senior editors of Changing Times Magazine.

Q Will you please explain the nature of that magazine?

A Changing Times is a nationally circulated monthly magazine that deals mainly with matters relating to personal finances and money management.

Q What else does it have to do with?

A It has to do entirely with the problems that bear on the management of family money, such as buying a home, buying an automobile, insurance, personal investment, and such problems.

Q Would you please explain, if you know, what the approximate circulation and readership of this magazine is?

A We have one and a quarter million subscribers.

Q And this is through the country?

A Yes.

Q Is this magazine directed by an editor, who is your chief?

A Yes.

Q Now, if the editor were to publish an article he wanted to publish, an article on home buying or something of this nature, to which of the three senior editors would he assign ~~ascribe~~ this topic of writing?

A

A To me.

Q Are you the magazine specialist in the matter concerning the rental and purchase of homes and apartments?

A I am.

Q How many articles would you say are published in a years period on this problem of apartment renting and house buying, et cetera?

A Home buying is a stable ingredient in our magazine and there is usually something concerning this topic in every edition, every month.

Q How many issues in a year?

A Twelve.

Q And you supervise and write these articles?

A Yes, sir.

Q In addition to writing and supervising these articles, have you had any other publications?

A I had a book published in 1964, "Before You Buy a House." It was published in paper back and hard cover editions.

Q How many sold?

A To the best of my knowledge, about 20,000.

Q Can you tell me what other experience you have had in this area of housing, what other positions you have held, aside from Kiplinger?

A Before joining the Kiplinger organization, I was

employed by the Federal Housing Administration, a federal agency. I was Executive Secretary to the administrator, and secretary of the architectural advisory committee, which was a committee of well known architects throughout the country, advised the agency on design in public housing projects.

Q Did you have anything to do with the planning of it?

A Before I became Executive Secretary of the Commissioner, I was Acting Publicity Director for two years.

Q Do you belong to any professional committees?

A I formerly belonged to the National Association of Housing and Redevelopment Officials and the American Institute of Architects.

Q Have you done any teaching in this home development?

A For two years, George Washington University, joined with the Potomac Chapter of the American Institute of Architects, presented a course designed for people interested in building homes or buying homes, and I was a lecturer in this course and they used my book as a text in the course.

Q In order to keep abreast in this field of home buying, did you have to consult articles through your magazine, through your lectures, in other words, magazines in the nature of home building, what people are buying and what people are selling, in order to keep abreast?

A Yes, I do that as a matter of keeping informed and abreast of the conditions in this area.

Q Would you consider yourself knowledgeable of what a potential buyer or renter of a home is looking for when they go out to rent or buy a house?

A Yes, sir, I am.

Q In preparation of your articles, did you consult builders in this Washington metropolitan area?

A Yes, sir, I do.

Q Do you think you know generally what they look for in homes in this area, that is to say the northern Virginia area, what they want in a house?

A Yes.

Q What importance would potential buyers or renters of houses attach to the availability of nearby recreational facilities?

MR. HARRIS: I don't think this man has been qualified. He is a newspaper editor of a home magazine. He has no special education along these lines, other than writing an article for the magazine or a book.

MR. EVELETH: He has worked in this field for a number of years.

THE COURT: Let him testify for what it is worth.

BY MR. EVELETH:

Q Would you answer that? What importance would you

say potential buyers and renters of homes attach to the availability of nearby recreational facilities? What importance is it?

A I think the availability of recreational facilities is one of the essential considerations that a person takes into consideration when he selects a place to live, a house to rent or buy. I think this is of particular concern with families with children.

THE COURT: What would you say was the best selling residential area in Fairfax County?

THE WITNESS: Are you speaking of new construction?

THE COURT: Two or three years or four or five years.

THE WITNESS: I am not sure I can answer that.

BY MR. EVELETH:

Q In this area of this Northern Virginia area, are recreational facilities, such as swimming pools, normally owned and operated by municipal authorities or by community organizations such as Little Hunting Park?

A The general pattern is to be operated by community associations. Sometimes they are provided by the developers andd sometimes they are created by the home owners, themselves.

Q Rather than municipally owned and operated?

A That is right.

Q How many municipally owned swimming pools are there in the Northern Virginia metropolitan area?

A There are only two of that type. Alexandria has two and Fairfax County acquired one the last year in Lake Fairfax.

Q I am speaking of an area consisting of Arlington County, Fairfax County, the City of Alexandria, and the City of Falls Church. Would you answer the same when I divide it that way?

A Yes.

Q Do you know what the population of this area is?

A Under 700,000, 690,000 is it.

Q So there are two pools for 690,000 people?

A Publicly owned and operated, a municipal type, yes.

Q You say the pools in this area are normally owned and operated by such organizations as Little Hunting Park are prevalent in this area?

A Yes, they are. There are nearly fifty of them.

THE COURT: How many communities are there?

THE WITNESS: There are more communities than that.

THE COURT: Do you know how many communities there are?

THE WITNESS: No, I didn't say that.

THE COURT: It depends a great deal on the definition. Just take a community such as the Fairfax County Planning Commission defines. How many communities are there?

THE WITNESS: I am not acquainted with what the Fairfax County Planning Commission defines.

BY MR. EVELETH:

Q How many are there?

A The Northern Virginia Swimming League, and they conduct competitive meets, and there are 48 or 50 members in this league.

Q If the head of a family in a suburban subdivision in this area, wanted his family to participate in swimming in a readily accessible area, would he generally have to belong to an organization such as a Home Owners Association?

A I think he would.

Q So then how important would you say the importance of neighborhood swimming facilities would be to the potential renter of housing in this area?

A I think it is an essential consideration for the welfare of his family.

Q Is this less true today than ten years ago, or more true? How important are these things today? Has it become more important or less important?

A It becomes more important. The trend is increased planning in suburban developments to include places and facilities for recreation.

Q You have been giving a lot of conclusions. I am sure the Court would like to know on what you draw your conclusions. How do you find this conclusion? How do you know this is the trend?

A Because I read the professional and trade literature as consistently as I have for fifteen years. I go to builders' meetings and conventions, and I frequently talk to them, interview them.

Q I see. Do you have a particular knowledge of a particular subdivision, or do you have a general knowledge of general parts of the country?

A I try to keep informed of national trends. I write for a national magazine. I am familiar with local conditions, because I live here and in the course of my work, I have occasion to talk to local practitioners in planning and building.

Q You mentioned some sort of professional studies you might base your knowledge on. What sort of professional studies, would you give the Court an example of these studies?

A Yes, there is a study of an organization of the Urban Land Institute in Washington. It is a national organization.

THE COURT: Does it deal with Fairfax County?

THE WITNESS: On occasion, it did.

THE COURT: Did it deal with it on this subject?

THE WITNESS: Yes, they recently published a technical study having to do with open spaces, marketing acceptance of open spaces and marketing conditions of subdivisions. This

was a national study, a particular study of 28 communities across the country, but three of them happened to be in Fairfax County. No, I am sorry. Two of them did, but one was in Washington.

THE COURT: How many in Fairfax County?

THE WITNESS: Georgetown South and Manassas and Reston. The third one in the Washington area is Crofton, which is in Maryland.

BY MR. EVELETH:

Q Who belongs to this Urban Land Institute, what kind of membership?

A There is a membership, of course, which makes its studies available generally to anyone who would be interested in it. It is possible for a member of the public to buy its publications, but they are generally sold to people in the real estate business.

Q You spoke about a particular study, and you told us about how it was conducted. Is this the study?

A It is, yes.

MR. EVELETH: Any objection?

MR. HARRIS: Objection, hearsay, a magazine.

THE COURT: What do you intend to prove by it?

MR. EVELETH: What I intend to do, with the Court's permission, is to read excerpts from it. It is our expert witness, Mr. Marshall, and to ask him whether his opinion and

his view in the matter agreed with the conclusions gone into in this particular study. I would be happy to cite authority for this proposition.

THE COURT: I don't know whether he agrees with it. I might agree, too, but it wouldn't come from any knowledge of it.

MR. EVELETH: It is the type of think he does.

THE COURT: I don't know that he is making it applicable enough to Fairfax County and this particular area. He picks Reston, which is not typical. He is speaking of Georgetown South, which is the housing development in Manassas. Does it have a swimming pool?

THE WITNESS: Yes, sir.

THE COURT: Does it have a golf course?

THE WITNESS: No. I am not sure of the golf course.

THE COURT: I don't think his experience is enough.

MR. EVELETH: If I may address myself on this further, can I ask him a question on how the study is --

THE COURT: I will overrule your objection. Let us get along.

MR. HARRIS: Exception.

BY MR. EVELETH:

Q Chapter 7 on recreation, the study is based on some conclusions from interviews with developers and from purchasers, and this quotation appears in here, and I want you

to tell us whether or not it agrees with your point of view. "Almost no developer who has installed recreation facilities in a subdivision regrets it. The best way to sell families with children is to let the kids see ~~the recreation facilities~~ your recreation areas. And there are several others."

THE COURT: Do you agree with that or disagree with that?

THE WITNESS: Yes, sir, I agree with that.

THE COURT: What is your agreement based on? How many developers have you talked to?

THE WITNESS: I have talked to a great many.

THE COURT: How many?

THE WITNESS: Fifty to one hundred.

THE COURT: Name one.

THE WITNESS: I have talked to?

THE COURT: Any in Fairfax County?

THE WITNESS: Yes, sir.

THE COURT: Anyone?

THE WITNESS: I talked to one ten minutes ago. His name is Hiber, and one in the hall.

THE COURT: What did he have to say?

THE WITNESS: He said he was interested in obtaining a swimming pool for his development that he was planning.

THE COURT: Did he say why?

THE WITNESS: I didn't ask him why.

THE COURT: Have you talked to any other builders in this

area who area, who related their experiences? Tell us what were their experiences.

THE WITNESS: I have talked in the past to Carl Freeman, a builder in this area.

BY MR. EVELETH:

Q What did he say?

A He is a strong ~~opponent~~ proponent of recreational facilities and used them extensively in his apartment facilities.

Q Why does he use them?

A There is a great demand for them.

Q Do you know Mr. Broyhill?

THE COURT: Not unless he has talked to him.

BY MR. EVELETH:

Q Have you talked to Mr. Broyhill?

A No, I have read what Mr. Broyhill said.

THE COURT: No, that is hearsay.

BY MR. EVELETH:

Q Can you name any others that you can recall? I know it is hard for you to remember all your conversations.

A I talked to Mr. Reston. I am not sure. I don't know whether Mr. Scates is building in Fairfax County. I guess not.

Q What was their general opinion? Do they coincide with this, I have just spoken of?

THE COURT: Where is Mr. Rouse's development in Fairfax

County?

THE WITNESS: I am not sure he does.

THE COURT: I am sure he does.

BY MR. EVELETH:

Q There is some general statements of the importance of swimming pools with buyers. It says, "Pools are most popular. Swimming pools are at the top of the list, even though used only for three months in a year in most areas. A pool gets more use in that period than most facilities used the year around. The value of the pool to both the family and the center with no special program, is a real asset, but a pool that has a strong program director and a program all day long for six or seven days long in the community is its greatest talking point." Do you agree from your experience or disagree?

A I ~~disagree~~ agree.

Q I refer to a survey they took, appearing on Page 47, as reported by 721 families. "When all communities are taken together, some 48 percent of the families use the swimming pool and other water activities. This is more than double the popularity of the next category of parks and playgrounds and ~~the other, and~~ shows that pools and water are in a class by themselves."

Does this conform with your opinion or not?

A Yes, it does.

Q Under the section, adult use of recreational facilities, "Pool and other water facilities are more than twice

as popular than anything else." Do you agree or disagree?

A I agree.

MR. EVELETH: I offer Technical Bulletin No. 57, which is marked as Plaintiffs' Exhibit No. 28 into evidence.

THE COURT: Admitted. You note an objection?

MR. HARRIS: I so note.

(The bulletin, marked Plaintiffs' Exhibit No. 28 for identification, was received in evidence.)

BY MR. EVELETH:

Q Previously, you testified to consulting trade journals in your work, and they aided you in forming your opinion concerning the importance of swimming pools. Is that correct?

A Yes, sir.

Q Can you give us an example of such trade journals?

A Among them is House and Home, the Journal of Home Building, published by the National Association of Home Builders, and a journal such as the American Builder and Practical Builder.

Q You mentioned Practical Builder.

THE COURT: Any objection to this?

MR. HARRIS: I object to it.

THE COURT: State your objection.

MR. HARRIS: It is a periodical. What it contains is

hearsay.

THE COURT: Objection overruled.

MR. EVELETH: I hand you --

THE COURT: Have you marked the pages in there too?

MR. EVELETH: Yes, sir.

I hand you Practical Builder, dated February 1, 1964. Are you familiar with this particular issue or excerpt from that issue?

THE WITNESS: Yes.

BY MR. EVELETH:

Q I will read the following statement to you. There are many I won't read. "Recreational facilities take many forms, but the community swimming pool is considered by most builders as one of their most popular sales appeals to people of all ages and income." Do you agree or disagree from your experience with the truth of that statement?

A I agree.

THE COURT: It has already been admitted.

MR. EVELETH: Thank you.

How else do you know that swimming pools are important to people? How do you know that builders think they are important? Do they inform the people of this in anyway?

THE WITNESS: Yes, indeed, they do. They usually make a strong point of the existence of such facilities in their sales literature and advertisement and promotion campaigns.

BY MR. EVELETH:

Q Where would such advertisements appear?

A Any weekend in the Washington newspapers would be a source.

MR. EVELETH: I offer this particularly because it concerns this area, and as the Court has expressed an interest in it, as Plaintiffs' Exhibit No. 29.

Are you familiar with this compilation of newspaper advertisements?

THE WITNESS: I am.

MR. HARRIS: Objection, Your Honor. The newspaper is hearsay. Bring the editor in.

THE COURT: What is the number of it? Thirty?

BY MR. EVELETH:

Q This is a compilation of advertisements appearing in the Washington Post, Evening Star Newspapers. Is that correct?

A That is right.

Q And these appeared over a period from June, 1966 to January 28, 1967. Is that correct?

A I believe the dates are right, yes.

Q These are not all the advertisements that have appeared?

A No.

Q This is a compilation?

A Just a selection.

Q Would you say these generally represent the types of advertisements that appear?

A It is representative.

Q Would you say the advertisements that mention swimming pools at all representative of them? Have we picked only the ones that really push swimming pools?

A No, I think you could get a similar compilation from the next weekend.

MR. EVELETH: I offer the same. First of all, I would like the Judge to take judicial notice of the fact that these advertisements do appear.

THE COURT: Received in evidence as Plaintiffs' Exhibit No. 30.

(The newspaper articles were marked Plaintiffs' Exhibits Nos. 29 and 30 for identification, and received in evidence.)

MR. EVELETH: If Your Honor desires to examine this, I pointed out one section that appeared in the newspaper advertisement of the Evening Star.

THE COURT: I won't have time to read it now. You go ahead and make a note of it.

MR. EVELETH: In the Star of January 20, 1967, a twelve-page supplement, entitled, "Winter Apartments, 1967," and

appearing in there are over fifty advertisements of apartments in which the prominent mention is made of swimming pools. Thank you, Mr. Marshall.

THE COURT: Before you get into your cross examination, let me ask Mr. Brown a question. Suppose the prayers of this bill of complaint are answered in the affirmative, that you ought to reinstate Mr. Sullivan in membership, and he got an assignment, What damages have you got?

MR. BROWN: On the question of the expulsion?

THE COURT: Pain and suffering on the question of the property damages.

MR. BROWN: He listed certain damages this morning specifically, and then the pain and suffering, and because of the malice that certainly was involved.

THE COURT: Pain and suffering, how?

MR. BROWN: Exemplary damages.

THE COURT: What your witness testified to?

MR. BROWN: The purpose of his testimony is to show that the effect that swimming pools have on property value. Now, the fact that Mr. Sullivan has been prohibited under the rules of the board of directors from making an assignment.

THE COURT: Suppose you get that all set aside. How are you then property-wise, which I understand is your witness' testimony.

MR. BROWN: His testimony goes to those matters principally

to the second count of our complaint, which was to the effect of this racial restriction of this swimming pool constitutes a racial cloud on the piece of property that Mr. Sullivan owns in this subdivision. His past suffering of damages, based on that though, I don't believe we can show any, because he hasn't had any intention of selling his property for the past year and a half.

Mr. Freeman has been deprived of certain damages and Mr. Sullivan may be liable to Mr. Freeman. Mr. Freeman has another suit pending against the association.

THE COURT: The purpose of this witness' testimony then is to show that Mr. Sullivan is damaged by the fact that there is racial discrimination against his property in Bucknell?

MR. BROWN: Essentially, yes, and also to show the value to Mr. Sullivan of his membership in the association.

THE COURT: From your bill, I got all the damages you pray for other than $202.90. What other damages does he have, no property damages?

MR. BROWN: As of now, one, and the exemplary damages that we are seeking.

CROSS EXAMINATION

BY MR. HARRIS:

Q You mention that there are about fifty of these community swimming pools in the area.

A Yes.

Q Are they all private clubs?

MR. EVELETH: I object to that characterization.

THE COURT: Objection overruled.

BY MR. HARRIS:

Q Are they private clubs?

A They are related to the neighborhoods in which they are located.

Q Do they have membership?

A I believe they do.

Q And they are private clubs? You mentioned you talked to Mr. Schriber out in the hall in reference to the development he is building now.

A Yes.

Q Do you know what Mr. Schriber is building now?

A No, an apartment development.

Q And he is going to put a swimming pool in the apartment development?

A I am not sure this is what he had reference to.

Q When a builder comes into an area and builds a community, does he remain in that area to build a swimming pool?

A Ordinarily not. It is turned over to a neighborhood association or an association of home owners.

Q Does every community in Fairfax County have a

swimming pool, community or club?

A No.

Q Are you familiar with some of them?

A Some of them, yes.

Q Now, Little Hunting Park, are you familiar with that?

A Yes, sir.

Q Do you know that is a membership corporation?

A Yes.

Q Do you know what the limitation of that corporation is?

A Yes.

Q Do you know of any families in the general area of Little Hunting Park, Inc.?

A No, sir, I don't know that exactly.

Q But everyone in Fairfax County does not have the privilege of belonging to a neighborhood swimming club?

A No, sir.

MR. HARRIS: No further questions.

THE COURT: Do you have any further questions?

MR. EVELETH: No, I don't believe so.

THE COURT: Let me ask you, Mr. Marshall. Isn't it a fact that most of these neighborhood pools were organized and built by the citizens, themselves?

THE WITNESS: That is true of some of them.

THE COURT: Isn't that true of the majority of them?

THE WITNESS: If it is true of the early ones, the trend of late has been for developers --

THE COURT: I don't mean apartment developers. I mean subdivision, independent of individual homes.

THE WITNESS: Detached homes?

THE COURT: Yes, detached homes, all right. Step down, Mr. Marshall. You are through with Mr. Marshall?

MR. EVELETH: Yes, sir.

Thereupon

JAMES F. SUTHERLAND

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Would you state your name and address?

A James F. Sutherland, 6401 Cavalier Drive, Alexandria, Virginia.

Q What subdivision is that in?

A Bucknell Manor.

Q Are you a member of Little Hunting Park?

A Yes.

Q Did you hold a membership in 1965?

A Yes.

Q Are you married and have children?

A Yes.

Q How many children?

A Two children.

Q What is your occupation?

A I am Administrative Assistant to Congressman Claude Pepper of the 11th District of Florida.

Q When did you first learn of the controversy involving the board of directors' rejecting the assignment of membership to Dr. Freeman?

A Mr. Sullivan called me and asked if he could come over and discuss the matter with me. I don't know the exact date.

Q Can you tell us approximately the time that was?

A It would have been in April, the early part, the middle of April. I am not sure of the exact time. The only way I know to place the time is in connection with the meetings of the board, and my conversation with Mrs. Moore.

Q In what month was that?

A I believe it was in April. It was in the spring.

THE COURT: It is immaterial. Were you a member of the board of directors?

THE WITNESS: No.

BY MR. BROWN:

Q When did you learn, or how did you learn about this

whole matter?

THE COURT: Mr. Sullivan called him.

BY MR. BROWN:

Q Mr. Sullivan called you, and what did he say?

A He mentioned that he had rented a house to Dr. Freeman, and that he had received, I believe he had received a letter saying that Dr. Freeman had received a letter turning down his membership, and asked that he come over and discuss the matter with me, and he did come over and we did discuss the matter. This has been a matter of which I have been interested, because I have a friend who is a member of the board of directors of another pool, and a member of our church, and we discussed this problem generally in connection with the swimming pools in our area, so I was very glad to talk to him about it.

Q What was the conclusion of your meeting with Mr. Sullivan?

A And of course I indicated to him my support for his desire to obtain membership for Dr. Freeman and suggested that I indicate my interest by calling the chairman of the board to ask if he could attend the board of directors meeting, which I understood was in the next day of two, so I called and asked for the time and place of the meeting, and indicated I would like to attend. That is the only way I can place the time. I know it was in the next day or two that there was to

be a meeting. Mr. Sullivan said that he thought there was a meeting. Mrs. Moore said the meeting was already held, and she was going on a vacation. It was in that period that I talked with her.

Q Had you attended a meeting at the church, the Unitarian Church with Reverend Wells, in which there had been a discussion of the matter?

A I attended that meeting.

Q Do you remember the date of that meeting?

A No, I don't.

Q Was it before you called Mrs. Moore?

A I am not absolutely sure.

Q When had you been led to believe that there was a meeting of the board of directors?

A After I talked with Paul Sullivan, individually.

Q What date would that have been?

A Somewhere around the middle of April.

Q What more did Mrs. Moore say to you?

A She said that the board had acted in accordance with its authority under the bylaws, and that the matter was closed. I am not sure of the direct back and forth response after this period of time, but I asked that there was some reference that the board was acting in accordance with the best interests of the corporation. Whether I asked her a question that elicited this response, and then I asked if she

really thought it was acting in the best interests of the corporation, and she said it was, and I terminated the conversation, but that she thought it was, and I terminated the conversation, and enjoy your vacation, which she told me she was going on a vacation and wasn't going to be working.

Q Mr. Sutherland, are you certain it was in April? You have told us it was in April.

A It was later. It was in May. It was before the opening of the pool. I am not very good at dates.

Q One of charges against Mr. Sullivan acting for his explusion allegedly was that he was responsible for making an unfriendly phone call to Mrs. Moore. Were you unfriendly?

A No.

Q Did you accuse Mrs. Moore or the members of the board of directors of being "guilty of hatred and bigotry?"

A No, I certainly did not.

Q Did you use the words, "Hatred and bigotry," with her?

A No, I wouldn't have in a conversation over the phone. My purpose was not to do anything more than to indicate my support for this. By seeking to attend the meeting, I certainly had no desire to antagonize the members of the board.

Q You identified yourself when you called. Did you?

A Oh, yes.

Q Did you at any other time during the period of May

through August, 1965 make any other calls to board members?

A No.

Q You observed Mr. Sullivan on several occasions during this period, I believe.

A Yes.

Q Would you describe his manner, please, and how he acted? Was he emotional about this whole thing?

A No, quite to the contrary.

Q Was he calm?

A He was calm. He was logical about it. He struck me he was a man who did what his conscience dictated. If anything, I thought he might be a little naive in perhaps having a higher opinion of how the membership of the pool would react to this question than I did. He wasn't emotional, and I think he under estimated the emotional feeling that this would arouse.

Q You have stated this phone call conversation you had with Mrs. Moore occurred in April. Could it have been June, the middle of June?

A It could have been June, yes. I did not go to the pool much. I took a new job in April, so this undoubtedly followed sometime after that.

Q The board did not act to reject the assignment to Dr. Freeman until late May. This had to be subsequent thereto. Is that right?

A That is right. I don't normally peg things to certain dates. I gauge things from events. It was well after I took a job on the 9th of April.

Q Say that again.

A I took my new job in April. It would have to be well after that. One of the occasions I had in my life was working for a southern Congressman. Whether I could afford to participate in a matter which I felt was a matter of principle, and of course, the question of identifying myself was a part of it. I had been in the job a couple of months, so June was probably the likely time. I felt I had to participate, and I did identify myself.

MR. BROWN: That is all.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Sutherland, how many times have you talked to Mrs. Moore during this period of time you have been discussing?

A ~~No~~ One, by telephone.

Q You did not call her a second time?

A No. I spoke to her at the meeting when I asked permission to speak, and we had what almost amounted to a conversation at the pool one day, although it wasn't direct.

Q When Mr. Sullivan called you shortly after he was notified the board turned down Mr. Freeman, at that time did you feel the board acted contrary to the wishes of the

membership?

A I thought it acted contrary to the best interests of the membership.

Q Were you present at the membership meeting?

A Yes, sir.

Q Did you see the expressions of the membership?

A Yes, sir.

Q Do you think that the board acted in compliance with the membership?

A I think when it raised that point, the membership were supporting the board's action. It had become strong. One of the things I remember in our native State of North Carolina where the responsible authorities acted in fulfillment of their responsibilities, in these cases the people tend to support them. If they act on what might be a racial basis, then it tends to inflame the situation.

Q You say, if the people acted properly?

THE COURT: He did not say that.

THE WITNESS: I did not say properly.

BY MR. HARRIS:

Q If the board acts improperly, whichever way it acted, whichever way they will, would be a reaction?

A It would affect the membership.

MR. HARRIS: I have no further questions.

THE COURT: How many attended the meeting?

THE WITNESS: It was in the hundreds, standing room in the cafeteria.

THE COURT: Everybody was there? Do you know whether there was a count of the membership?

THE WITNESS: No, sir. It wasn't necessary to do that. It wasn't necessary.

THE COURT: That is all.

Thereupon

FLORA SULLIVAN,

plaintiff, was called as a witness in her own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q State your name and address, please.

A Flora Sullivan, 7113 Coventry Road, Alexandria, Fairfax County, Virginia.

Q Are you the wife of Paul E. Sullivan, and also a plaintiff in this case?

A I am.

Q Do you recall the occasion on May 28, 1965, when three gentlemen visited your home to discuss the matter of your husband's assignment of his share to Dr. Freeman?

A Yes, I do.

Q Who were the gentlemen?

A One was Mr. Egger, whom I knew for a long time, and the other two gentlemen were introduced as Mr. Hanley and Mr. Lennon, whom I had not known long before.

Q Did the gentlemen explain why the assignment to Dr. Freeman had been disapproved?

A Not really. I heard Mr. Hanley say that the assignment had been disapproved because it had been disapproved, and my husband questioned that, "Is that the reason, or did I hear you correctly," and he nodded, and after awhile Mr. Hanley said, "We are aware that Dr. Freeman is a negro," so my husband asked, "Is that the reason," and Mr. Hanley nodded, and my husband asked if he had considered anything else about Dr. Freeman than his race, and they said, "No." Mr. Hanley said, "No," so my husband said, "I would call that bald faced prejudice," and I believe he said, "You may call it what you may," something to that effect.

Q Was that all that was said? Excuse me.

A No, I believe Mr. Hanley stated that this was the unanimous feeling of the board, and my husband said he couldn't believe it. It was incredible, and he asked if he would bring a colored guest to the pool, would he be allowed in and they said, "He might or he might not." I don't remember exactly. Would this apply to Mexicans, Porto Ricans, Chinese or other nationalities? He didn't give much of an answer to that.

Q Did your husband accuse the board of directors of practicing bigotry and hatred, to use the words in the allegation?

A No, he did not.

Q Did he call the three gentlemen liars?

A No.

Q Did he say they were, "Untruthful?"

A No.

Q Were you present in the room when your husband called Mrs. Moore on June 9, 1965?

A Yes, I was.

Q How did he happen to call her?

A Mrs. Moore had called the evening before, and my husband wasn't there, and I asked if she wanted to be called back. She said, "Yes," so when my husband got back, it was about eleven o'clock. It was too late to call her back then, so he called her back the next day as soon as he got back from work.

Q What did you hear him say during the conversation?

A I only heard him say he was returning her call and whatever Mrs. Moore said, he said, "I believe Father Walsh would be disappointed. Please, Mrs. Moore, don't be upset. Please, Mrs. Moore, don't be angry. Please, you are being impolite," and a few minutes later, I guess she had hung up on him.

Q How do you know that?

A Because I asked, did you hang up, and he said, "No, she did."

Q Did you hear everything he said during that conversation?

A Yes.

Q Did you hear him say anything else?

A No.

Q Did he use abusive language in your judgment?

A No, sir.

Q Did he accuse Mrs. Moore of being emotional?

A No.

Q Subsequent to the expulsion proceedings that were initiated against you in Mid-July or the early part of July, or after you have received word of the expulsion proceedings and the communication appeared in the newspaper concerning that. Is that correct?

A Yes.

Q Did you collect the newspaper clippings on the subject that appeared?

A I did. If anybody gave me an extra paper, I cut them out.

Q Did you give me a collection of newspaper clippings you had collected on this subject, which gave prominent notice to the fact that there were expulsion proceedings

pending against your husband?

A Yes.

Q And what did they accuse you of?

THE COURT: You are going to introduce them into evidence?

MR. BROWN: Yes.

THE COURT: Any objection?

MR. HARRIS: I think we have the newspaper, of the Washington Star into the record already, so I have no objection.

THE COURT: Just tell her what number to put on it.

MR. BROWN: 31.

THE COURT: Let them be admitted from 31 on up.

(The newspaper clippings, marked Plaintiffs' Exhibits Nos. 31 thru 38 for identification, were received in evidence.)

BY MR. BROWN:

Q Was prominent mention given to the effect that expulsion proceedings against your husband were pending because of his harassment before the board of directors?

A Yes, sir, it seems that every time I read anything about it was due to the alleged harassment of my husband.

Q Was there any mention made in the articles about the place of business of your husband?

A Yes, there was one time it gave the wrong address of the national agency. He does not work there any longer.

Q Following the publication of these articles, did your family experience any affect?

A Yes, we did. We started getting a lot of anonymous calls. They would call any time during the day and say nothing. They would call one particular evening. We were getting called at one, two, three and four o'clock in the morning. I could hear machines in the background, but no one would say a word. I would answer the tlephone and say, "Hello." There was nobody there. We were getting called so frequently that I called the telephone company and disconnected the bell so I wouldn't hear it at night.

Q When was this?

A July 26th that they disconnected it.

Q Would you describe generally the effect that this expulsion from the pool has had on you and the members of your family?

A Well, I think that there are many, really. For one thing, I don't feel comfortable in going to my own church because there were a lot of dirty looks and people making remarks against my children and myself, so I found it very trying. Constantly, it seems to me I have been stigmatized permanently, because when someone gets expelled from a corporation, I am sure people say, "They must have done

something to be expelled." They don't feel it was just expulsion. It is very hard to explain to children why they cannot go to the same pool they have been used to for many years. Many evenings I have watched my children. The other children go by to their swimming pool. We are so close to it. I think it is a very trying situation.

I think I have had a loss of quite a few friends, and I have been kept out of going to even a PTA Meeting. I have to think twice before I can make up my min d I am going to be comfortable in those situations, and I think I have been kept out of invitations if they knew other people might be present that might have a different view than we did, and a couple of times our mail box was pulled up by the roots from the front of the yard, and I made a complaint to the post master about that. This type of things seems to be in the air constantly.

Q You were in the Courtroom this morning when your husband testified concerning expenses, inconveniences and general observations you experienced in going swimming the last year or more. Is there anything you would like to add?

A It is inconvenient to go that far to take children to swim.

MR. BROWN: That is all.

THE COURT: While I am thinking of it, I want a copy of

the bylaws. I would like it tonight.

MR. HARRIS: There is no objection. I think Mr. Brown has been waiting for Mrs. Moore.

THE COURT: Let me have them. I would like them before Court tomorrow. Plaintiffs' Exhibit No. 39 admitted without objection, the bylaws.

(The bylaws, marked Plaintiffs' Exhibit No. 39 for identification, was received in evidence.)

THE COURT: Do you want to cross examine?

MR. HARRIS: Yes, Your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. HARRIS:

Q At this meeting when Messrs. Egger, Hanley and Lennon came to your house, did you hear Mr. Sullivan say he was ashamed of them?

A Yes, I did.

Q Did you hear them say they were ashamed?

A No.

Q Did you hear him say they were immoral?

A No.

Q Did you hear him say it was shocking?

A No, he may have said he was shocked or disappointed. I don't remember the exact words, but he did not say they were

evil.

Q Did you hear any discussion on economics?

A I think Mr. Egger made a remark to the effect this had nothing to do with racial discrimination. It was property values and real estate, and something like that.

Q Did you hear your husband call that incredible?

A No, not that.

Q Was this at the first meeting?

A In my home, yes.

Q Did you see your husband on the television?

A Yes, I did.

Q Did you listen to what he said?

A Yes, I did.

Q Did he make a statement to the effect that he would abide by the decision of the membership at the next membership meeting that was coming up?

A During that interview on the T.V.?

Q During that interview on the T.V.

A I don't remember that particularly. I think I heard that comment on another occasion that he would abide by whatever the vote of the membership would be, but the vote that came up in that meeting, we did not consider it a vote as such, because there were members there that were not members of Little Hunting Park. I knew some were from Hollin Hills, so he didn't interpret that as a vote.

Q Let me state this. You stated that there were non-members at this meeting.

A Yes.

Q Was Mr. Freeman there?

A No, he wasn't.

Q Why was not Mr. Freeman there?

A He wasn't allowed in.

Q Did they allow other people in?

A Yes, I know one woman from Hollin Hills, who was there.

Q Could these people from Hollin Hills belong?

A Yes, it they moved to that area.

Q Did you notice any checking at the door?

A Yes, we got little tickets as we entered. I thought these were the votes.

Q Do you know how many voted in favor of your husband's proposition at this meeting?

A I don't think the vote ever came up.

Q How did the people vote, raise their hands?

A I would call that chaos. The rules weren't even followed of procedure.

Q Do you know how many voted with you?

A Nobody voted, so far as I can remember.

Q There were ayes and nayes?

A Anybody could make a lot of nayes.

Q Wasn't there silence when there were a lot of nayes?

A I don't think there was a vote. I believe there was a lot of noise to show the feeling, but there wasn't a true vote, as in an organized meeting.

Q Did you hear Mr. Sutherland say that the vote against you was overwhelming?

A The noise was.

Q How did you signify your vote, by noise, ayes and nayes?

A No, anybody could.

THE COURT: Don't argue.

BY MR. HARRIS:

Q These calls you received during the early morning hours, do you attribute these to the board of directors of the corporation?

A No way we could tell.

Q You don't hold them against the corporation?

A No way I could do that.

MR. HARRIS: I have no further questions.

THE COURT: Let me ask you one question. You had two memberships. Didn't you?

THE WITNESS: Yes, sir.

THE COURT: It isn't clear today whether both memberships were cancelled, withdrawn or rescinded.

THE WITNESS: I believe that as the first membership went, the second one went along with it.

THE COURT: All right.

MR. BROWN: I think we can agree that both memberships have been revoked on that day.

MR. HARRIS: The way it went is at this meeting, as Mr. Sullivan testified, the three members were there and offered to pay him for the memberships.

MR. BROWN: That isn't the question I asked, if we could agree.

MR. HARRIS: When Mr. Sullivan was expelled, he was tendered a check for both memberships.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Mrs. Sullivan, when was this membership meeting held?

A I believe it was July 29th.

Q The expulsion proceedings before the board of directors was what date?

A August 17th.

Q What happened when people who supported your husband's position tried to speak at the membership meeting?

A They were yelled out and called all kinds of vituperations.

Q What do you mean by that word?

THE COURT: I know what it means.

BY MR. BROWN:

Q Were there obsenities shouted?

A Yes.

Q Would you characterize the meeting as being an ordinary one or very unruly?

A Very unruly.

Q Do you know whether there was anyone representing a newspaper invited into the meeting room?

A I do.

Q Was there someone representing a newspaper there?

A Yes.

Q And that person had got in?

A I don't know whether he got in. He talked to us later.

MR. BROWN: That is all.

THE COURT: Step down. Have you got anyone, any other witnesses who are not parties? Let us try to get them to testify so they won't come tomorrow.

Thereupon

THEODORE R. FREEMAN, JR.

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q Please state your name and address.

A My name is Theodore R. Freeman, Jr., 6810 Quander Road.

Q Are you married, Dr. Freeman?

A Yes.

Q Do you have any children?

A Two boys.

Q What are their ages?

A Six and eight.

Q Do you rent your present residence from Paul E. Sullivan, the plaintiff?

A Yes, I do.

Q How long have you lived under that lease arrangement?

A Two years.

Q When was it entered into?

A February 19, 1965.

THE COURT: The lease speaks for itself, counsel.

BY MR. EVELETH:

Q What is your occupation, Dr. Freeman?

A Agricultural Economist, Foreign Agriculture, Department of Agriculture.

Q How long have you been so employed?

A Two years.

Q Please state your educational background and degrees?

A Bachelor of Science in Agriculture and Master of Science in Agriculture Economics, in Ballview, Texas, Doctor of Philosophy, University of Wisconsin, 1965.

Q Do you belong to any honorary societies?

A Yes, the Phi Delta Gamma.

Q What is that?

A Honorary fraternity for people occupied in the field of [illegible] education.

Q Did you serve in the armed forces?

A Yes, sir.

Q Do you hold any rank?

A Yes, sir. I am presently a captain in the D.C. National Guard.

Q Have you been convicted of any crime?

A No.

Q What church do you attend?

A Catholic Church.

THE COURT: I don't think he has been given any refusal for the assignment, except he is a negro.

MR. EVELETH: It isn't on the record.

Who is your pastor?

THE WITNESS: Father Walsh.

MR. EVELETH: Are you willing to stipulate that it is

economics?

THE COURT: You won't admit it, so let us go ahead.

BY MR. EVELETH:

Q What is your race, Dr. Freeman?

A I am a negro.

Q This is the race of your family?

A Right.

Q Did you attend the special membership meeting of July 29th, at which the membership was to consider the board's action in respect to your assignment?

A No, I attempted to, but I wasn't admitted to the meeting.

MR. EVELETH: That is all I have.

THE COURT: Do you have any questions, Mr. Harris?

CROSS EXAMINATION

BY MR. HARRIS:

Q Dr. Freeman, when you signed this form for membership in this club, did you realize it was subject to the approval of the board of directors?

A I did not sign a form for membership.

Q You did not?

A No, not for membership.

Q For assignment of membership or assignment of Mr. Sullivan's membership?

A No, I did not.

Q You did not sign it?

A I did not realize it had to be approved by the board.

Q Did Mr. Sullivan tell you? He told you it was subject to the approval of the board of directors?

A I don't remember that he did.

Q Do you remember the form that you signed for the assignment?

A Vaguely.

Q I believe that is Exhibit 6. Is that your signature on the bottom?

A Yes.

Q You signed it below the printing up here?

MR. EVELETH: Objection. What is the relevancy of this line of questioning. He has admitted he signed it.

THE COURT: I believe he wants him to read where it is subject to the approval of the board of directors.

BY MR. HARRIS:

Q Will you read the printing about your signature? Does it say you are subject to the approval of the board of directors?

A It says, "Bound by the bylaws of the board of directors."

Q Does it say subject to the approval of the board of directors? Read that there, "This assignment is subject

to the approval of the board of directors." Is that what is says?

A Right. That is not where I signed it. It is where Mr. Sullivan signed it.

MR. HARRIS: I think I have no other questions.

THE COURT: Thank you, Dr. Freeman. You don't have any other witness, except you are going to call Mrs. Moore and the preacher, the Unitarian preacher.

MR. EVELETH: That is correct, unless the testimony that has been already put into the record is contradicted.

THE COURT: Let us adjourn until tomorrow at ten o'clock.

(Whereupon, at 5:30 o'clock, P.M., the hearing was recessed, to reconvene, Thursday, March 23, 1965, at 10:00 o'clock, A.M.)

REPORTER'S CERTIFICATE

I, Isabel Warner, reporter, do hereby certify that this is a correct transcript of the proceedings in the above-entitled cause.

Isabel Warner
Reporter

Certificate:
This volume of the transcript was tendered to me June 12, 1967. In the morning mail on that date I received a copy of a letter from Hanoff's counsel, John M. Alexander, addressed to defendant's counsel, John Charles Harris, dated June 9, 1967, (over)

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Rec'd. 8-3-67 D.B.B.

PAUL E. SULLIVAN, et al,

Plaintiffs,

vs.

In Chancery No. 22751

LITTLE HUNTING PARK, INC., et al,

Defendants.

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Fairfax, Virginia

Thursday, March 23, 1967.

ISABEL WARNER
Court Reporter
412 Jackson Street
Falls Church, Va.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
For the Plaintiffs:				
VIRGINIA MOORE	182	231	234	
For the Defendants:				
JOHN R. HANLEY	249	256	257	
VERNON LEROY LENNON	258	267	275	
OSKAR EGGER	277	285	289	
JEWELL GONZALEZ (Recalled)	292 315	297		
VIRGINIA MOORE	298	310		
For the Plaintiffs, Rebuttal:				
RALPH FORBES	317	322		
JOHN W. WELLS	326	331		

EXHIBITS

	FOR IDENT.	IN EVID.
Plaintiffs' Nos. 41 and 41	203	203
Plaintiffs' No. 42	207	207
Plaintiffs' No. 43	215	215
Plaintiffs' Nos. 44 thru 48	224	224
Plaintiffs' No. 49	226	
Plaintiffs' Nos. 49, 50 and 51	227	227
Plaintiffs' No. 52	234	234
Plaintiffs' Nos. 53 thru 56	315	315
Defendants' No. 2	294	294

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al, Plaintiffs,	:	
vs.	:	In Chancery No. 22751
LITTLE HUNTING PARK, INC., et al, Defendants.	:	

Fairfax, Virginia

Thursday, March 23, 1967.

The above-entitled matter, pursuant to adjournment, came on for further hearing before Judge JAMES KEITH, in Courtroom No. 3, Thursday, March 23, 1967, at 10:00 o'clock, P.M.

APPEARANCES:

ROBERT M. ALEXANDER, ESQUIRE,
ALLISON W. BROWN, ESQUIRE, and
PETER A. EVELETH, ESQUIRE,
for the Plaintiffs.

JOHN CHARLES HARRIS, ESQUIRE,
for the Defendants.

MR. EVELETH: We call as our first witness this morning a Mrs. Virginia Moore.

Thereupon

VIRGINIA MOORE

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q Would you please state your name and address?

A Virginia Moore, 6417 Olmi-Landrith Drive, Alexandria, Virginia, in Fairfax County.

Q Mrs. Moore, were you president of Little Hunting Park during the entire year of 1965?

A I was.

Q Were you a member of the board of directors during that entire period?

A I was.

Q Have you held any other positions or offices with Little Hunting Park, Inc.?

A I was a member of the board of directors for four years. I was assistant treasurer two years, and vice president for one year, and president for one year.

Q Could you give me the years? Do you remember?

A It was just previous. It was consecutive until

1965. The first two years I was assistant treasurer. The third, I was vice president, and the fourth year I was president.

Q Did you hold any positions in 1966?

A I did not.

Q And this year?

A I do not.

Q How long have you been a member of Little Hunting Park?

A I think we joined sometime in 1958.

Q During the period of your presidency in 1965, were you familiar with the bylaws of that organization?

A As familiar as any member, I think.

Q And you are probably a little more familiar since you were president.

A I don't think so.

Q I believe that we have previously introduced the bylaws and articles of incorporation. How are they marked?

THE COURT: Plaintiffs' Exhibit 39.

BY MR. EVELETH:

Q I show you Plaintiffs' Exhibit No. 39, which is entitled, "Revised Bylaws of Little Hunting Park, dated April 18, 1961." Are those the bylaws that were in effect during that time, during your presidency?

A Yes.

Q Also attached to the back of that as part of Exhibit 39 are the articles of incorporation of Little Hunting Park, Inc., dated 11/23/54, and as I said, have been admitted into evidence. Were these articles of incorporation effective during the entire year 1965?

A I don't think the articles of incorporation were changed. I have no knowledge of their changing.

Q With respect to the certificate of incorporation, would you turn to that, please? I am going to read a portion of that and I want you to correct me if I misstate anything in here.

"This is to certify that we do hereby associate ourselves to establish a corporation not organized for profit, in which no capital stock is required or to be issued, under and by virtue of Section 13-220 of Title 13, Code of Virginia 1950, and of acts amendatory thereof for the purposes and under the corporate name."

THE COURT: Are you going to read the whole thing?

MR. EVELETH: No, I am not. "For the purposes and under the corporate name hereinbefore mentioned and to that end we do by this certificate set forth as follows:" Does that appear therein?

THE WITNESS: It does.

BY MR. EVELETH:

Q No. 3 reads, "The purpose of the corporation shall

be: (a) To construct, operate and maintain a swimming pool and all necessary facilities appurtenant thereto. (b) To develop, operate and maintain a community park and playground facilities. (c) To lease, own and manage real and personal property for community recreation purposes. (d) To construct and manage any structures necessary to the foregoing purposes. (e) To do any and all things necessary to carry out the above purposes." Does that appear therein?

A It does.

Q Does this certificate of incorporation set forth any other purposes than the purposes I have just read?

A There is more here. I haven't read it.

Q Do you notice any purposes stated?

A No, I don't.

Q Now, with respect to the bylaws, looking at Article 3, I will again read it and ask if it appears thereon. Article 3, Membership, Section 1. Pardon me. Going back, it reads -- Going back to Article 2, it reads, "Purposes. The purpose of the corporation shall be to own (or lease), construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the corporation's members, said facilities to include a swimming pool, a park and such other appurtenances as the corporation may deem desirable." Does that appear thereon?

A It does.

Q Are there any other purposes set forth therein?

A There aren't.

Q In the bylaws? All right, now, referring to Article III of the bylaws, Article III, Membership, Section I: "Membership in the corporation is, (a) Established by the purchase of a Certificate of membership, and (b) Maintained in good standing by the prompt payment of all charges and assessments, and (c) Limited to persons who reside in, or who own, or who have owned housing units in the subdivisions presently defined and known as Bucknell Manor, Beacon Manor, White Oaks and Bucknell Heights, and such other area(s) as may be authorized by the board of directors, and (d) Limited to six hundred (600) in number except that, exclusive of all other provisions herein, there shall be forty (40) memberships available to residents of the subdivision known as White Oaks, over and above the number of White Oaks memberships of record as of May 1, 1955."

Section 3 of that article reads: "Each membership in the corporation shall be issued to one adult person. If said person be a member of a family unit, the membership, maintained in good standing, shall entitle all members of the family unit to utilize the corporation's facilities. A family unit is defined as all pedsons of the same immediate family, including all persons dependent on the holder of a membership and who permanently reside in the same housing

unit." Does that appear therein?

A It does.

Q Would you explain to the Court how a person acquires a certificate of membership or a share in Little Hunting Park, and how such certificates are sold, transferred or assigned?

A They are not all the same. A membership is purchased by making application. The application comes before the board of directors and the board of directors approves or disapproves it. The only assignment that we have at the present time is from an owner to his tenant.

Q How are certificates sold, if they are sold? Is there such a transaction as a sale?

A Yes, there is a transaction known as a sale.

Q That is from whom to whom?

A From the corporation. The corporation has a list of memberships that are up for sale. They sell them, and at one time in 1965 only the corporation was allowed to sell a membership, because there were so many for sale.

Q I don't want you to ramble on. I want you to answer the question.

A I am answering the question.

Q You are elaborating more than I want you to. How are they transferred? Who are the parties involved in a transfer?

A Either the corporation or an individual upon approval of the board of directors.

Q When we say a transfer, do we mean a permanent transfer, as opposed to a new certificate?

A A new certificate is used.

Q Is the procedure for purchasing, selling, transferring and assigning certificates covered by Article 3, Sections 2 and 5 of the bylaws, Mrs. Moore?

A Article 3, section what?

Q Sections 2 and 5. Let me read these.

THE COURT: Doesn't that call for a conclusion? Doesn't it speak for itself? If it does, it does. If it doesn't, it doesn't.

MR. EVELETH: I am trying to find out whether there are any other requirements, other than those set forth in the bylaws.

THE COURT: Ask her that.

BY MR. EVELETH:

Q Let me read these two. Article III, Section 2 reads, "Each application for membership must be made in writing, and must be approved by the board of directors. In the sale or resale of memberships by the corporation, applications by residents of the subdivisions specifically named in Section 1(c) shall be given prior consideration before all others." Does it read that way?

A Yes.

Q And Section 5 reads as follows: "Memberships may be transferred, or assigned for temporary use, as follows: (a) Permanent transfer to another eligible person may be effected, (b) The use of the membership may be temporarily assigned to eligible persons for periods not to exceed one year. Re-assignment to such eligible person is permissible, (c) Transfers and assignments of membership must be by written instrument in such form as prescribed by the board of directors and subject to the approval of the board." Does it appear therein as I stated it?

A It does.

Q Do you know of any other requirements in the bylaws, affecting the transfer, sale, and assignment of shares?

A No.

Q Does the certificate of incorporation which you have in your hand, set forth any requirements for membership in Little Hunting Park?

A It does not.

Q Does it set forth any restrictions on the transfer, sale, assignment or use of certificates of membership?

A It does not.

Q What is the greatest number of membership certificates that any one person now owns in Little Hunting

Park?

A Two, I think.

Q Would it be possible that three would be the answer?

A It could be. I haven't checked the records.

Q Well, we received --

MR. HARRIS: It is your witness. Go ahead, Mr. Eveleth.

BY MR. EVELETH:

Q We received a letter from your attorney, who stated three. Would you think that was right?

MR. HARRIS: The witness said, "It might be."

THE WITNESS: I have no knowledge, myself, of that. I have not been a member of the board of directors since 1966.

BY MR. EVELETH:

Q But people do own more than one membership. Is that correct? There are some people who own more than one membership. Is that correct, yes or no?

A Yes.

Q Do the bylaws or certificate of incorporation of Little Hunting Park set forth any restriction on the use of the facilities of Little Hunting Park by guests of members or guests of assignees of the membership? An assignee, I take it.

A What do you mean by facilities?

Q Of the pool or the tennis court.

A If they have been approved, they can use them.

Q Where does it state in the bylaws that guests must be approved by the board of directors or by anybody else? You see anything in there, Mrs. Moore?

A I haven't finished reading it.

MR. HARRIS: Your Honor, I think the bylaws speak for themselves.

THE COURT: I certainly feel that they do, Mr. Harris.

BY MR. EVELETH:

Q Do you know of any restrictions, Mrs. Moore, of your own personal knowledge?

A I do not. I know the gate has control of who comes in and who does not come in.

Q What standards do they apply at the gate? Who sets forth who gets in and who does not get in?

A The board of directors.

Q And is that pursuant to the bylaws?

A I didn't see it in the bylaws. It is pursuant to the good management of the pool for the operation of the membership.

Q What are the requirements for the guests that the people at the gate would impose?

A That they would be over sixteen. If they were coming with someone, under sixteen. Actually, a twelve year old could not bring in a guest alone.

Q Let us assume that I was a member and I brought in my brother, who was thirty-five years old and his wife. Would they be eligible to come in?

A Yes, if the pool wasn't over crowded.

Q Is that all?

A That is all I can recall.

Q Have the bylaws of the corporation always provided that applications for membership and transfers and assignments of shares are subject to the approval of the board of directors?

A So far as I know.

Q How many times have membership certificates changed ownership since the incorporation of Little Hunting Park?

A I would have no knowledge. That is quite a voluminous record to go through.

Q Was that answered in your interrogatories?

A I don't remember.

Q Did we refer to them during your deposition?

A I don't remember.

MR. HARRIS: I believe the interrogatories are in the record.

MR. EVELETH: My memory is 1,183.

MR. HARRIS: 1,183 times, there have been changes in membership certificates?

BY MR. EVELETH:

Q (reading) "The records of the corporation record that the membership certificates have changed since the incorporation of the defendant corporation."

MR. HARRIS: It is in writing.

BY MR. EVELETH:

Q Is Little Hunting Park under its bylaws or certificate of incorporation required to buy back membership shares of members who wish to sell their shares?

A No.

Q If a member of the corporation does not sell his share to the corporation, must he sell to someone living in this geographical area which we have been talking about before?

A No.

Q For the purchaser to be eligible for membership in Little Hunting Park?

A No.

Q He can sell it to anybody?

A Upon approval of the board of directors, yes.

Q Doesn't Article III, Section 1(c) say that membership is limited to persons who lived in or who own or have owned housing?

A In Bucknell Manor, Beacon Manner, White Oak, and Bucknell Heights and such other areas as have been authorized

by the board of directors.

Q What other areas have been utilized by the board of directors?

A Alexandria for one.

Q Are these people who formerly lived in Bucknell Manor?

A No.

Q But they would have to sell to someone in the area approved by the board of directors?

A That is right.

Q When a member of Little Hunting Park sells his house, assuming he doesn't want to use his membership any more or he is leaving the state, does he customarily transfer his share in his house to the purchaser of his house?

A He may come. He doesn't.

Q Who does he transfer it to?

A He tries to sell it to an individual, to our knowledge to people who buy houses in Bucknell Manor --

THE COURT: Let the lady answer a simple answer.

THE WITNESS: Or in Beacon Manor. When they buy the house, they do not have the money to buy a membership in Little Hunting Park.

BY MR. EVELETH:

Q How do you know this?

A I have been on the board of directors. I have been

president and I know because of the large volume of sales that we have had.

Q You have talked to purchasers of houses that could not afford the price of a membership?

A It was $175.00 when I was president. Now, I don't know what it is.

Q And these people told you they could not afford this money?

A That is right.

Q And you talked to how many of these purchasers?

A I had the knowledge of it because these people --

Q How many purchasers have you spoken to?

A I have spoken to three within the last two months.

Q How many others did you speak to?

A I don't recall.

Q How many sellers told you they couldn't sell to the purchaser of their house?

A None of them actually told me.

Q That is all I asked. After a share is transferred and the transferee is approved by the board of directors, a new numbered share is issued to the transferee, or does he keep the same number as the transferer had?

A No, he does not. A new certificate is issued.

Q What becomes of the old numbered certificate?

A I presume the seller still has it.

Q There are no rights to the corporation with this any more. Is this right?

A That is right.

Q While memberships are transferable, the share certificates are non-negotiable in the sense that a new numbered certificate is issued.

A A new numbered certificate is issued.

Q In addition to the 1,183 permanent memberships which you mentioned, how many transfers in Little Hunting Park to the present?

A I don't know.

MR. EVELETH: Mr. Harris, would you agree to 322?

MR. HARRIS: Ask the witness.

BY MR. EVELETH:

Q I show you the answer to the interrogatories, starting at the beginning answer.

A This figure was not of my knowledge. I had that particular figure prepared.

Q You say it is wrong?

A No, I wouldn't say it is wrong.

MR. EVELETH: You aren't willing to stipulate to that fact? This is the answer to the question asked in the interrogatories.

THE WITNESS: I did not prepare that particular thing.

MR. HARRIS: The interrogatories are in the record.

MR. EVELETH: They are not in the evidence. They are not part of the transcript.

MR. HARRIS: Therefore, how can I deny them? I am sure His Honor can read them.

BY MR. EVELETH:

Q The corporation has approved 322 temporary assignments or transfers since the incorporation to the present. When a temporary assignment is approved, is a new numbered share issued to the tenant?

A No.

Q I see. He has the same certificate as his landlord?

A He does not get a certificate.

Q But he has the right to use the pool from that ~~section?~~ certificate?

A If he has been approved.

Q If he has been approved?

A If he has been approved and made application in writing.

Q How many times have applications for membership in Little Hunting Park been denied by the board of directors from its incorporation to the present?

A I do not know.

Q I show you Answer 5 to the interrogatories.

THE COURT: She said she did not prepare that.

MR. EVELETH: She may be aware of this fact though.

You may refresh your recollection. She must have known. She was vice president and president and everything else.

THE WITNESS: I still did not have the records.

BY MR. EVELETH:

Q Are you aware of any?

A Any what?

Q Any denials of membership applications.

A No, I am not.

Q The answer to the interrogatory stated --

THE COURT: I don't think that is evidence. That was asked for your information and in the preparation of the case. Isn't that right?

MR. EVELETH: I feel it is an admission on the part of the corporation.

THE COURT: You can't prove it by this witness, apparently.

MR. EVELETH: It is an admission by the corporation. She is a member of the corporation. She is liable.

THE COURT: I don't think it is the right way to do it. If you want to read it into the record, and Mr. Harris doesn't object. Do you want it into the record?

MR. HARRIS: I don't know what he is going to do.

MR. EVELETH: (reading) "The records of the corporation do not always reflect denial of membership. However, in May, 1961 an application was denied but the record doesn't disclose the

reason for such denial." And in our interrogatories, we asked how many applications were denied for membership, and we asked for the dates, the times and under what circumstances and for what reason.

How many times, Mrs. Moore, to your knowledge, have temporary assignments been disapproved?

THE WITNESS: I don't know.

BY MR. EVELETH:

Q Do you know if they have ever been disapproved?

THE COURT: We all know of one.

THE WITNESS: I wouldn't have direct knowledge of that.

BY MR. EVELETH:

Q You have direct knowledge of one?

A I don't have direct knowledge of any.

Q This was out of the interrogatories, Answer 6 to the interrogatories, (reading) "Again, the corporation records do not always reflect the denial of assignment or transfer, and there is no record in the minutes reflecting a refusal of assignment," and we asked once again, have you information stating the reasons therefor, and to that what is the answer?

A No.

Q Does Little Hunting Park make an annual assessment against each membership share?

A Yes.

Q Must this assessment be paid to keep the share in good standing and valid where the member uses the facility?

A Yes.

Q Is it a rule that an assignment of membership may be made only from a landlord member to a tenant?

A That is right.

Q And therefore a tenant could only obtain a temporary assignment from his own landlord?

A That was in 1965. Prior to that anybody could make an assignment, subject to the approval of the board.

Q Thank you. I show you a copy of Plaintiffs' Exhibit No. 6. I show you Plaintiffs' Exhibit No. 6, which purports to be the assignment form and executed by Sullivan to Freeman. Now, does that form set forth the two rules you have just related?

A What rule?

Q That the assessments must be paid to keep the membership in good standing and assignment only by the landlord to the tenant. I asked whether or not those two rules were on the form.

THE COURT: The form speaks for itself. If it is on there, it is on there. If it isn't on there, it isn't on there.

BY MR. EVELETH:

Q Did you preside at the meeting of the board of directors, during which the directors voted to disapprove the assignment of Mr. Sullivan's membership certificate to Dr. Freeman?

A Yes, I did.

Q What was the date of that meeting?

A It was sometime in May, I believe. I do not recall the date of the meeting.

THE COURT: What meeting was this, Mr. Eveleth?

MR. EVELETH: I contend it was May 18th.

THE COURT: What meeting was it?

MR. EVELETH: It was a meeting at which the board of directors voted to disapprove Dr. Freeman.

THE COURT: All right.

THE WITNESS: It was a board of directors meeting.

BY MR. EVELETH:

Q Who was present at that meeting?

A I don't recall. There was a quorum present. We did not conduct the meetings without a quorum.

Q Do you recognize the signature of Jewell Gonzalez, your secretary?

A I think I do.

Q Is that her signature?

A I think so.

Q And are these the minutes of May 18th?

A It is a copy of the minutes.

Q It is a copy of the minutes? They were provided by you to us?

A I presume so.

Q Would you tell me who attended that meeting?

THE COURT: Are you going to introduce these?

MR. EVELETH: I would be happy to.

MR. HARRIS: May I see them first?

MR. EVELETH: I am just asking her who was present?

MR. HARRIS: Are you asking her to testify from the minutes?

BY MR. EVELETH:

Q Does that refresh your recollection who attended the meeting?

A It says here.

THE COURT: No, that is not the question. The question, does that refresh your recollection? These are not your notes, and I don't know that it is proper for her to use those notes to refresh her recollection.

MR. EVELETH: Mark this Plaintiffs' Exhibit No. 40.

THE COURT: Any objection, Mr. Harris.

MR. EVELETH: Take a look and see. One of them is the minutes and that one is the correction of the previous minutes.

MR. HARRIS: No objection.

THE COURT: Let it be admitted into evidence. What is

the number?

THE CLERK: 40 and 41.

(The minutes were marked Plaintiffs' Exhibits Nos. 40 and 41 for identification and received in evidence.)

BY MR. EVELETH:

Q This is the minutes of May 18th, Exhibit 40 and Exhibit 41 is the next meeting, at which these prior minutes were corrected. Would you tell me from the minutes of May 18th who attended that meeting?

THE COURT: Don't the minutes speak for themselves?

MR. EVELETH: It isn't in the record, and we have to establish individual liability.

THE COURT: Isn't it in the record? If it is admitted into evidence, does it become a part of the record?

MR. EVELETH: I don't believe so. It isn't part of the transcript.

THE COURT: I will admit that.

MR. EVELETH: And I am not certain that can be designated.

THE COURT: That becomes a part of the record when they are admitted into evidence. Don't have to be. I don't want to read all of these things, if I don't have to.

MR. EVELETH: It is very important to establish the structure of this corporation.

Will you tell us who was present, Mrs. Moore, with the

Court's permission?

THE COURT: Read quickly the names that were present.

THE WITNESS: Mrs. Moore, Mrs. Madsen, Messrs. Johnson, Lemmon, Gutow, Egger, Riesgo, Dunlop, Donohoe, and Arnette, and Donohoe. Treasurer O'Boyle.

BY MR. EVELETH:

Q You said someone was absent.

A Treasurer, Mr. O'Boyle, he wasn't a member of the board of directors. He was an appointed member.

Q I see. In the next minutes, do they make any corrections so far as who attended the previous meeting of May 18th? They do not. Is that correct?

A What was your question?

Q The second meeting, what was the date of the second one, June 11th?

A That is right.

Q There are certain corrections made in the minutes of the meeting of May 18th. There were no corrections as to who was present at the meeting. Are there?

A No, not any that I can see.

Q Was the action unanimous?

A I believe so.

Q At the time the board voted to disapprove the assignment, they were aware that Dr. Freeman was a negro?

A Yes.

Q Did Dr. Freeman meet all the requirements established

by the bylaws for membership?

A Yes.

Q So that Dr. Freeman's race was his only disqualification?

A No.

Q What other disqualification appearing in the bylaws or in the articles of incorporation did he not meet?

A According to the bylaws, the board of directors is empowered.

Q I want to know what qualifications set forth in there that he did not meet.

THE COURT: I would allow the witness to answer. I think she was giving an answer. Go ahead and answer.

THE WITNESS: The board of directors uses the bylaws to run the corporation to the best interests of the membership. The best interests of the membership in this case was not to approve this assignment.

BY MR. EVELETH:

Q And is that set forth in one of the sections a member has to be in the opinion of the board of directors, et cetera, as you stated? Is that another qualification set forth in the bylaws?

A No, the board has the right to approve an assignee.

Q Thank you. May I have Plaintiffs' Exhibit 13, please? I show you Plaintiffs' Exhibit 13, which has

separately been introduced but not read into the record. I ask if you sent this letter, and if so, please read it from "Dear Mr. Sullivan," down.

A "At the June meeting of the Board of Directors, your non-acceptance of the board's decision on the assignment of your membership to your tenant on Quander Road, along with the continued harassment of the board members, et cetera, was discussed at length. A motion was made and passed unanimously by the seven members of the board present; that since there appears to be due cause for your expulsion from the corporation in accordance with Article III, Section 6(b), that is, conduct inimicable to the corporation's members, a hearing will be granted you at the July meeting, which will be held at 9:00 P.M., 20th of July at the corporate pool area. At this time, you will be given an opportunity to be heard, after which the board will take final action."

Q Who was it signed by?

A Virginia Moore.

Q That is your writing?

A That is right.

Q Would you read Article III, Section 6 of the bylaws? Do you have that in front of you?

THE COURT: Hasn't she already read that?

THE WITNESS: Article III, Section 6?

BY MR. EVELETH:

Q It goes (a), (b), and (c).

A Yes, sir. "A member may, for due cause, and after having been granted an opportunity for a hearing, ~~shall~~ be suspended for a specified period of time or expelled from the Corporation by a two-thirds (2/3) vote of the entire ~~vote~~ membership of the Board of ~~Directions~~ Directors. b. Due cause for ~~expulsion for any delinquency~~ suspension or expulsion of a member shall consist of delinquency in payment of any charge and assessments, or of ~~or~~ violation of these bylaws ~~of~~ or the Corporation's rules and regulations or ~~for~~ of conduct inimicable to the Corporation's members. c. Suspension or expulsion shall not operate to relieve a member of any liability to the Corporation. In the event of expulsion, the Corporation shall offer the membership for sale at the stated ~~at a private~~ price (Article VI, Section 2(n), The expelled member shall be paid the balance, if any, of the proceeds of such sale after deducting ~~to purchase the expelled member's share.~~" therefrom any indebtedness due the Corporation, plus a reasonable fee to cover expenses of the sale.

MR. EVELETH: Mark this please. I have marked here for identification a notice of special membership meeting. Do you have any objection?

MR. HARRIS: No objection.

MR. EVELETH: I can offer it into evidence.

THE COURT: Admitted without objection.

(The notice, marked Plaintiffs' Exhibit No. 42 for identification, was received in evidence.)

BY MR. EVELETH:

Q Is this the special membership meeting notice?

A It is.

Q And your name is signed at the bottom?

A That is right.

MR. EVELETH: May I see Plaintiffs' Exhibit No. 21, please?

BY MR. EVELETH:

Q I also show you Plaintiffs' Exhibit No. 21, which is a petition signed by twenty-one members calling for a special membership meeting. Now, Mr. Sullivan was examined on this yesterday. I want you to read to yourself those two, and let me ask you a couple of questions about it. I don't care about the signatures, who signed it. Have you examined those, Mrs. Moore?

A Yes.

Q Now, a letter signed by the twenty-one people. It says -- I won't read the whole thing, but the purpose of this special meeting shall be, and it sets forth three things: To have the members of Little Hunting Park, Inc. meet Dr. and Mrs. Freeman. Second, to permit, ~~period~~ the members to listen to a brief remarks ~~public~~ by Dr. ~~Mrs. and Mrs.~~ Freeman, and a vote stating they should be reversed in their ~~assignment~~ refusal to permit the assignment.

A That is right.

Q The aggenda doesn't quite word it that way. Does it?

A No.

Q It says, "Should the membership meet Dr. and Mrs. Freeman, and should they listen to the remarks, and should they vote," and at the bottom it says, "The membership shall have the right to vote on each of the points on the aggenda."

A That is right.

Q So when the notice of the special membership meeting says, "The aggenda of this meeting, as set forth by petitioner, is this," is that a correct statement?

A Where it says what?

Q The aggenda for this meeting. This is just before one. The aggenda for this meeting as set forth in this meeting. Is that the same as the aggenda set forth?

A Essentially, it is the same, but it isn't the same wording.

Q They are not the same wording? Did these twenty-one members suggest that they thought people should vote first before they heard Dr. Freeman?

A I don't know.

Q And it says, "The purpose shall be to have them meet." It doesn't say that first we vote and then we will meet with Dr. Freeman. Does it?

A No.

Q Then they are different?

A Right.

Q Did the members at the special membership meeting, did any members suggest to the rewording of the aggenda?

A They did.

Q And you ruled them out of order, or did someone rule them out of order?

A (No response)

Q Did you preside at that meeting?

A I did.

Q Did you rule them our of order?

THE COURT: She had pandemonium at the time.

THE WITNESS: I don't know who at the time ruled them out of order. I don't have the minutes before me.

BY MR. EVELETH:

Q Was Dr. Freeman permitted to come into the hall and speak?

A He wasn't in the hall to speak.

Q Did anybody say that he had been turned away and someone make a motion?

A I wasn't at the door.

Q I didn't say that. I said, did anyone of the members protest and say that Dr. Freeman had been turned away?

A I don't recall.

Q I see. Now, didn't Mr. Sullivan call you up or have a telephone conversation with you in which he suggested that it would be a good idea or he desired to have the board of directors meet with Dr. Freeman?

A When was this?

Q Do you remember any such conversation with him, when he expressed a desire?

A I remember a conversation with him.

Q Did he express a desire that the board would meet with Dr. Freeman and find out who he was? In the words of Mr. Sullivan, he wanted to show that Dr. Freeman didn't have a horns or a tail. He may not have used those words with you, but didn't he say that?

A So far as this petition, yes. So far as the telephone conversation, I don't recall anything.

Q Didn't Dr. Freeman make a telephone call to you?

A Yes, sir.

Q Didn't he request a meeting with the board of directors? Didn't he say he and Mr. Sullivan talked about it?

A I don't believe he said that he and Mr. Sullivan talked about it.

Q Did you see a copy of a letter sent to Reverend Cassidy?

A I did.

Q Signed by Paul Sullivan?

A I did.

Q Purportedly signed by him, I guess there is no doubt about that. Didn't he indicate in that letter that (Reading) Dr. Freeman and I visited our pastor, Father Walsh? "He suggested that now since the people met him, it might do some good, and if Dr. Freeman ... the Board." Dr. Freeman did request an interview and none was ever granted. (Reading) And "The by-laws provided that twenty members ... request a

special ~~membership~~ meeting of the corporation, and I am in the process of getting signatures now. Doesn't the tone of the letter in effect say that Paul Sullivan wanted Dr. Freeman to meet with the members?

A I don't know what Mr. Sullivan wanted.

Q How do you interpret that letter?

A I don't know. I haven't read the letter.

Q You haven't read the letter?

A Yes, I have read the letter.

Q I will show it to you now, and you can tell me what his intention was.

A I don't know what his intention was.

Q You have to draw a conclusion from letters.

MR. HARRIS: Objection.

BY MR. EVELETH:

Q That Father Cassidy had an adverse --

A I didn't talk to Father Cassidy. I have no idea what Father Cassidy would have felt about it.

Q Pardon me, Father Wingler.

A What part do you want?

Q I want to find out whether you are familiar with the letter, and remember anything being in here.

A This letter is three pages long, and I read this letter two years ago.

Q Starting with the second paragraph, I don't want you to read it out loud.

A That is what it says here.

Q Thank you, and you saw that letter?

A Yes, I have seen that letter.

Q So you probably knew what his wishes were. Didn't you?

A I did not know what his wishes were.

Q What did you think from that letter what his wishes were?

A That letter to me, I considered. As Father Wingler said, put it in the wastebasket.

Q Fine, thank you. Are you currently employed by St. Mary's Catholic Church?

A I am.

Q That is the same employment you had in 1965?

A It is.

Q You haven't been discharged?

A He couldn't afford to discharge me.

Q I didn't ask you that.

Q Who is Mrs. Simmons?

A She was one of us. I don't know whether she is or not, but she was transfer agent when I was president of the corporation.

Q What is her relationship, other than that of Little Hunting Park?

A She is a member.

Q Is she a member of the board of directors?

A No.

Q Are you familiar with the charges against Paul Sullivan that served as the basis for his expulsion?

A Yes.

Q Charge No. 2, that you did among other things, conduct an harassment of the president and board members by numerous telephone calls to the president and the board members, indicating to the board members that they are guilty of hatred and bigotry. Is that correct?

A That is correct.

Q Are you familiar with the answers to the interrogatories?

A I don't recall them at this point. I haven't read them since they were taken.

Q We ~~ask~~ asked to find out who the directors were who received these telephone calls from the plaintiff. There was listed: Mrs. Moore, Mr. Lennon and Mrs. Simmons. Would that be incorrect if Mrs. Simmons wasn't a member of the board of directors? Let me show you this.

A She was appointed a member of the board of directors. She was an elected member of the board of directors.

Q She was an appointed member of the board of directors? Did she vote on anything?

A No, she didn't have a vote on the board of directors.

Q She was appointed but not voting? When was she appointed?

A I don't recall now.

Q Take a guess from your knowledge of it.

MR. HARRIS: Your Honor, she said she didn't know. Don't tell her to guess as an answer.

BY MR. EVELETH:

Q Approximately when, to your knowledge? Do you have any knowledge?

A I don't know whether it was in 1964, 1965 or 1963.

THE COURT: What was she, sort of an ex officio member, because she was a transfer agent?

THE WITNESS: There was so much work involved in the transfer. We felt it was necessary to get someone. I was on the board four years. I don't recall what year it was.

BY MR. EVELETH:

Q I show you an issue of Splash. Mark this for identification as No. 43. Mr. Harris?

MR. HARRIS: No objection.

MR. EVELETH: May I introduce into evidence as Plaintiffs' Exhibit No. 43, this issue of the Splash?

THE COURT: Admitted without objection.

(The issue of the Splash was marked Plaintiffs' Exhibit No. 43 for identification, and received in evidence.)

BY MR. EVELETH:

Q It says, "A list of board members and their assignments for 1965. Does Mrs. Simmons' name appear thereon?

A No.

Q Look at the back. There is more on the back. Mrs. Moore, is that a publication of your organization, of Little Hunting Park?

THE COURT: Is the lady's name anywhere on there?

BY MR. EVELETH:

Q Is the lady's name anywhere on there?

A No.

Q Is that an official publication of your organization?

A Yes, the Splash is.

Q Thank you. Was Mr. Sullivan expelled from your organization because he made any phone calls to Mrs. Simmons?

A I don't know.

Q And were you at the meeting when he was voted, or when it was voted on that he would be expelled?

A I was.

Q Was any telephone conversation, alleged conversation between Mr. Sullivan and Mrs. Simmons discussed at that meeting?

A No, not that I recall.

Q Did you vote to throw him out?

A I did not vote.

Q Why was that, Mrs. Moore?

A The president doesn't have a vote.

Q Thank you.

A Unless there is a tie.

Q In your capacity as president of Little Hunting Park, did you receive letters from members of the corporation indicating support of Mr. Sullivan's view in respect to Dr. Freeman's assignment?

A I did.

Q And disagreement with the board's action?

A I did.

Q How many did you receive?

A At this point, I don't recall.

Q How many would you say?

A I don't know.

Q Did you receive, do you think a half as many as a half dozen?

A Four, five or six, I don't know.

Q Are you familiar at all, or do you remember anything at all about the contents of these letters?

A No.

Q Do you remember whether they expressed disapproval?

A They expressed disapproval.

Q With the board's action? Did they express this in strong words?

A I would have to reread the letters. It has been two years ago. I don't know.

Q Do you remember when you received these letters, the date?

A No, the dates, no, sometime in 1965.

Q Sometime in 1965? Would you know? Would you remember when in relation to the board's decision that there was good cause to expell Mr. Sullivan, and that he would be notified of a hearing? There was a meeting in which you decided there was good cause and he would be granted a hearing. Is that right?

A On June 8th, I believe it was. I received a telephone call from Mr. Freeman. He asked for a meeting with the board of directors.

Q That is not answering my question. I asked you, was there a meeting in which the directors decided there was due cause for Mr. Sullivan's expulsion?

A Yes.

Q And you would grant him a hearing, and these letters when did you receive them in relation to this hearing?

A I don't know the date of the letter.

Q I didn't ask you that. I asked you, was it before or after that?

A No, I don't know.

MR. EVELETH: Will you mark these for identification?

MR. HARRIS: Your Honor, these are letters apparently from members that were received by Mrs. Moore, and as offered are hearsay, and I would object to their materiality, except I would not object to their admission if counsel for the plaintiffs were offering them all. There were five times as many letters that came in in favor of the board of directors, if you want to combine them.

THE COURT: Do you want to put them all in?

MR. EVELETH: I have no objection. Let us get everything on the record.

Would you look at the dates of these letters and tell me whether this refreshes your memory about when you received them? Did you receive them shortly after the dates listed thereon? I want you to look at the distribution. Does that refresh your memory as to when you received these letters?

THE WITNESS: I would presume I received them shortly after the date. I have no knowledge of the dates of them.

BY MR. EVELETH:

Q Do you know whether any letters were received by you or by members of the corporation to your knowledge, expressing disapproval of the board's action, received prior to the vote in which you decided there was due cause for Mr. Sullivan's expulsion? Do you understand my question?

A Not really.

Q If you don't, just ask me.

THE COURT: Didn't you mean whether they decided? There was a hearing and another one when they expelled him. Which meeting are you referring to?

MR. EVELETH: I am referring to the first meeting.

THE COURT: July 7th.

MR. EVELETH: In early June?

THE WITNESS: It is June 11th.

BY MR. EVELETH:

Q It is June 11th?

A That is right.

Q You say it was June 11th. Is that correct?

A I think that is what the minutes here stated.

Q Did you receive any letters prior to that meeting in which members expressed disapproval of the board's action?

A I would imagine I received most of those, because they are all dated June 9th, 10th and 11th.

Q And after receiving these letters, you decided there was good cause for expelling?

A I didn't decide there was good cause for expelling.

Q Did the corporation decide after receiving these letters?

A They decided to consider his expulsion.

Q They must have considered there there possible grounds for his expulsion in order to have a hearing. Is that right?

A That is right.

Q And did these letters form the basis for that?

A Not entirely.

Q Part of it? Did people use very strong language in these letters? Do you think?

A I don't know. I haven't read them for two years.

Q You have a letter before you, Mrs. Moore, signed by Paul Scott Forbes. Is that correct?

A Yes.

Q Dated June 10, 1965?

A Yes.

Q And does he use these terms?

MR. HARRIS: Are we going to read all these letters?

MR. EVELETH: No, I don't intend to. I use the strongest ones I can. "My wife and I, members of Little Hunting Park, Inc. were shocked and dismayed by the narrow minded and totally unjustifiable action of the board in arbitrarily excluding a qualified membership holder on the basis of race." Does it say that?

THE WITNESS: That is what it says.

BY MR. EVELETH:

Q "This flagrantly unchristian violation of the scriptural admonition, "Do unto others as you would have them do unto you," cannot be justified on any grounds and casts an ugly shadow of bigotry on our community, which is

undeserved." Does it say that?

A Yes, sir.

Q On the next page, it says, "Even if this were not so, the board's action is un-American and sullies the memory of the ~~deaths~~ thousands of Americans who died in the revolution, in the Civil War and in World War II to preserve the idea that all men are created equal, and that human rights must always come before property rights."

A That is what the letter says.

Q At the end, it says, "I pledge to take ~~what~~ all measures possible -- including legal ones if necessary to attain ~~action is necessary, to take what legal action is necessary~~ ~~toward~~ these ends." Is that pretty strong?

A Yes, sir.

Q As strong as Mr. Sullivan's alleged action?

A Yes, sir.

Q You didn't expell Mr. Forbes. Did you?

A No.

Q Would you look at the letter of June 10th? Mrs. Ellis ~~signs~~ signed this, Mrs. Richard C. Ellis. Do you see that?

A I don't have them.

Q I thought I gave them all to you.

THE COURT: Have these letters been all admitted into evidence?

MR. EVELETH: Yes, Your Honor.

I think you ~~are~~ were talking before, Mrs. Moore, in terms

of your interest in the community and the corporation's financial stability, or something of that nature. You are talking about the board of directors has a great interest, aside from who is set forth here or who is to be admitted, and who is not. Didn't you say something in this nature about you were concerned about the investment of the corporation.

THE WITNESS: The investment of the individual in the corporation, and we were charged with preserving their investment. I said nothing about the community.

BY MR. EVELETH:

Q Does Mrs. Ellis' letter read, "I see no mad rush to move out of Bucknell since the Freemans moved in, no empty houses, no panic."

A She doesn't live there. How does she know.

Q When did the Freemans move in?

A I have no idea when the Freemans moved in.

Q (reading) "The houses on Beacon Hill Road and those behind add to the appearance of and all and kept neat by Negroes. Rollins Drive, ~~including~~ Bucknell, are lived in, ~~There might be an issue.~~ The school has had no problem integrating - ~~is now integrated.~~ Why make an issue of the pool?"

A It says that.

Q (reading) "I have met Ted and Laura Freeman and their little boys, and I not only like them, ~~I~~ I think they are an asset to our community, and therefore eligible to swim in our pool.

A It says that.

Q Did you find Dr. and Mrs. Freeman the same way? Did you get the same impression of them?

A I have never met them.

Q I see.

THE COURT: Plaintiffs' Exhibits Nos. 44 through 48.

(The letters, marked Plaintiffs' Exhibits Nos. 44 through 48 for identification, were received in evidence.)

BY MR. EVELETH:

Q Isn't it a fact, Mrs. Moore, that the corporation has never expelled anyone other than for nonpayment of assessment, with the exception of Mr. Sullivan?

A I don't know that to be a fact.

Q Do you know of any expulsions aside from Mr. Sullivan and nonpayment of assessments?

A I don't know of any except Mr. Sullivan.

Q Were you pretty annoyed with Mr. Sullivan because he was attempting to overrule the board's action?

A No, I wasn't.

Q You weren't annoyed?

A No.

Q It didn't bother you at all?

A How do you mean that?

Q Were you annoyed, upset?

A I was annoyed when he sent that letter to my employer.

Q Were you upset at his attempt to get the members in a special membership meeting to overrule the action of the board of directors?

A It is his privilege, or was his privilege to call a special meeting. I wasn't annoyed at that.

Q You were not annoyed at that?

A No.

Q Weren't you annoyed? It was a small group of people.

MR. HARRIS: 21 people.

BY MR. EVELETH:

Q That were forcing your action in this.

A No, that was something that was required.

Q Didn't it bother you? It was such a small group.

A No.

Q Didn't you recommend to the board of directors that they require ten percent of the members?

A I don't believe I did.

Q To call a special meeting. Ten percent of the members would be sixty. Wouldn't it?

A I don't believe I did.

Q Is this signed by Mrs. Gonzalez?

A Yes.

MR. EVELETH: Mark this for identification, 49, the minutes of the meeting of the board of directors, 16 November 1965.

THE COURT: Are you going to present that in evidence?

MR. EVELETH: Do you have any objection?

MR. HARRIS: No objection.

(The minutes were marked Plaintiffs' Exhibit No. 49 for identification.)

BY MR. EVELETH:

Q It says in here, " Mrs. Moore made the following suggestions for the coming year: " No. 3 is [illegible], " bylaws should be revised to require fifty persons signing a petition to cause ~~to put through~~ Twenty people is too small a percentage of the membership. It is ~~an~~ action. [illegible] felt that ten percent ~~would~~ should be a figure required to call a special meeting of the membership. There was ~~a~~ with discussion on this subject, ~~but~~ no firm agreement reached. There is to be more discussion on the matter at a later date. "

THE COURT: What is that, a copy of the minutes?

MR. EVELETH: That is correct.

THE COURT: Are you going to put that in evidence?

MR. EVELETH: I offer that in evidence. Mr. Harris hasn't objected.

THE COURT: It will be admitted.

THE WITNESS: Those are as a suggestion.

BY MR. EVELETH:

Q I see. What date, after the expulsion hearing was held, did the board vote to expell Mr. Sullivan?

A I don't recall the date.

Q Could it have been the 24th of August, 1965?

A It could have been.

MR. EVELETH: Mr. Harris, do you have any objection to these two documents? I ask the clerk whether Exhibits 44 through 48 have been admitted into evidence. They have been? These letters were?

MR. HARRIS: Yes, they have. They are admitted.

MR. EVELETH: Is everything else we have marked, admitted?

THE CLERK: 50 is admitted. 49 is still out.

MR. BROWN: There seems to be a lot of confusion. Off the record.

(Further discussion was held off the record.)

MR. EVELETH: On the record. Mr. Harris, do you have any objections to Plaintiffs' Exhibits Nos. 50 and 51? Plaintiffs' Exhibit No. 50 is a special meeting of the board of directors, 24 August 1965. These are the minutes signed by Mrs. Gonzalez.

THE WITNESS: Those are the minutes signed by her.

(The documents, marked Plaintiffs' Exhibits Nos. 49, 50 and 51 for identification, were received in evidence.)

BY MR. EVELETH:

Q Who was present at that meeting?

A Mrs. Moore, Mrs. Madsen, Messrs. Donohoe, Egger, ~~and Lennon.~~ Cutow, Ainette and Lennow.

Q Who was ~~present~~ absent?

A Mr. Riesgo, Mr. Johnson and the treasurer, Mr. O'Boyle.

Q Was the vote taken on the motion to expell Mr. Sullivan, and was that vote unanimous?

A It was.

Q What facilities does Little Hunting Park, Inc. operate besides the swimming pool?

A A tennis court.

Q Does it have a bath house?

A Yes, sir.

Q Have a concession stand?

A Yes.

Q How many acres would you say, three or four?

A I don't know.

Q Does Little Hunting Park belong to the Northern Virginia Swimming League?

A I believe so. I think they are a member.

Q Mrs. Moore, I believe you spoke when we were discussing away back at the beginning of the testimony, to the fact that some people who move out of their homes in Beacon Manor, don't sell their membership certificates or

transfer their membership certificates to the purchaser of their house. Is that correct?

A That is correct, Beacon, Bucknell, or wherever they live.

Q That is true of all the houses in the neighborhoods of all the subdivisions, including the subdivision of White Oaks?

A They may or may not. They don't always.

Q What is the most common thing?

A The most common thing is to sell it direct.

Q To whom?

A To anyone who wants to buy our membership, subject to the approval of the board of directors.

Q Do they commonly sell to the purchasers of their homes?

A No, they don't.

MR. HARRIS: She said they did not.

MR. EVELETH: She said Beacon, not Bucknell.

THE WITNESS: I did not specify Beacon Manor, specifically because I have no knowledge of Beacon Manor. I live in Bucknell Manor. I was talking about Bucknell Manor, and I am discussing Beacon Manor, as president of the corporation.

BY MR. EVELETH:

Q Did you say people could not afford to do it?

A That is right.

Q Would that be in a particular subdivision that they could not afford to do it?

A I know a lot of them in Bucknell Manor who could not afford to buy a membership. On my street, I am the only one who owns a membership.

MR. EVELETH: I believe that is all I have of this witness.

THE COURT: Take a five-minute recess.

(Whereupon a short recess was taken, after which the hearing resumed as follows:)

MR. EVELETH: One further questions. Can I ask for a stipulation, Mr. Harris, as to this item here? Off the record.

(Further discussion was held off the record.)

MR. EVELETH: On the record. Mr. Harris and I have entered into a stipulation that the following is correct. The question is, "State the number of members the defendant corporation has had each year from 1955 through 1966, ~~unanswered.~~ For answering, State the number at that time in each year when the membership was at its greatest," and the answer: The number of members of the defendant corporation each year, at the time the membership was greatest, for the years 1955 through 1966 is as follows: 1955, 490; 1956, 517; 1957, 552; 1958, 552; 1959, 600; 1960, 600; 1961, 600; 1962, 600; 1963, 600; 1964, 566; 1965, 564, and 1966, 549.

Do you so stipulate?

MR. HARRIS: I so stipulate.

MR. EVELETH: That is all I have.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mrs. Moore, does the board of directors promulgate rules and regulations for running the swimming pool?

A Yes, there are rules and regulations.

Q Included in these rules and regulations is there also a regulation concerning a guest?

A I believe so.

Q Now, in reference to the notice of the special meeting, did you consult with the corporation's counsel before notice was sent out?

A I did.

Q And the notice had actually gone out? Was that prepared by you or by counsel for the corporation?

A It was prepared by counsel, along with the other board members. I did not prepare it myself, individually.

Q Do you recall the reason given to you by counsel for the plaintiff?

A Yes, the counsel felt that by the bylaws, we could not call a membership meeting to meet any individual.

Q This was included, I understand in the call. The question wasn't whether.

A I did not.

Q There was included in the call that they should meet Dr. and Mrs. Freeman. I believe that was included in the call.

A You asked me why it was made.

Q I am making a particular reference to the third item in there. Do you know why the third item was changed by the call to the 21 members that was suggested?

A The membership does not have a right to vote on an approval of an assignment. That is the right accorded by the bylaws to the board of directors.

Q That wasn't responsive to my question.

A I don't understand your question, because I don't have those here.

Q Put in evidence here were some letters from members, expressing disapproval with the action of the board of directors. Do you respect the right of these people to express their views?

A Oh, yes.

Q Did they take any other action, other than write a letter to you?

A No.

Q Did you also receive letters from members that were favorable to the position of the board?

A Yes.

Q Were these more in number than the ones that were against the board?

A I think so.

Q Substantially so?

A I think so.

MR. HARRIS: Your Honor, I have nothing more of this witness. I intend to call her as my witness.

THE COURT: All right, step down.

MR. EVELETH: May I have redirect examination?

THE COURT: All right.

MR. EVELETH: If the Court will bear with me, one of these exhibits, Mr. Harris, it was subject to your objection.

MR. HARRIS: I have no objection. I didn't object before.

MR. EVELETH: I move that Exhibit 42 be admitted into evidence. I move that all exhibits generally that we have identified, be admitted into evidence. Do you remember any objections?

MR. HARRIS: You say all exhibits?

MR. EVELETH: This morning that we have identified.

THE COURT: I don't know if any were excluded or not.

MR. HARRIS: I think if they have been admitted, I don't remember objecting to any.

MR. EVELETH: All right, if you will mark this one.

MR. HARRIS: No objection.

MR. EVELETH: I offer Plaintiffs' Exhibit No. 52 into evidence.

THE COURT: All right, it will be admitted.

(The document, marked Plaintiffs' Exhibit No. 52, for identification, was received in evidence.)

REDIRECT EXAMINATION

BY MR. EVELETH:

Q You refer to Mr. Harris' recommendations to you in respect to the special membership meeting.

A Yes, sir.

Q And the call on the aggenda of the meeting?

A Yes, sir.

Q These are the minutes of 20 July 1965. Would you read the marked portions out loud?

A "In connection with the scheduled special meeting of the membership for July 29th, Mr. Harris stated that it may be better to permit all requested items on the aggenda. If we eliminate the first two items, it may be construed to be unfair and give the 20 members permission to again petition the board. It was then agreed that all requested aggenda items be presented to the membership of the special meeting, however, that they be rewritten to put them into correct resolutions, keeping them as near as possible to the original form (a copy of the letter to the membership with the aggenda

items, listed along with the letter signed by 20 members, requesting a special meeting are filed in a special file).

Q You spoke about rules and regulations covering guests to Mr. Harris. Mr. Harris asked you if there were any regulations covering the membership's guests.

A Yes.

Q Were these regulations any different than what you stated to me?

A I don't think so. I don't have a copy of the regulations. I don't recall them.

MR. EVELETH: Thank you. That is all I have.

THE COURT: Step down.

MR. BROWN: Your Honor, we are through with the presentation of our case. We have two possible rebuttal witnesses. We will hold them.

MR. HARRIS: At this time, I would like to make a motion to strike and to be heard on the motion. I think it is necessary.

THE COURT: All right.

MR. HARRIS: Your Honor, this suit is filed, saying that the action of the board was arbitrary and capricious, contrary to the certificate of incorporation bylaws, and contrary to public policy and malicious. That is what I have come prepared to defend against, and this is, I believe, the issue before the Court.

Now, what we have here is quite evident, Your Honor. From the bylaws, which are in evidence, we run into a situation of a private corporation that is run by a board of directors elected by the membership, for the benefit of the membership, and by the bylaws, they are permitted to exclude or select members as they see fit.

Now, the issue of selection and expulsion of members in a private organization is something that is very basic, and I find very little law on it because it is so basic. I find Corpus Juris Secundus No. 7, in Paragraph 23, it says, "The right of the refusal of membership in a voluntary association is a matter within the complete control of that organization, which has the power to pass actual laws governing the omission of the members and to place restriction on the right of the membership. Membership is a privilege the society may accord or withhold, and a court of equity will not interfere to compel the admission of a person not legally elected, where no right of property or person is affected and no right of citizenship is infringed upon."

In this particular case, the property right of the complainant is his investment, his membership, and I think there is in evidence proof that his investment was tendered to him. So far as the right to assign his second membership to the tenant of his house, this was a conditional one, and it was conditional on the approval of the board of directors.

There was some allegation of leasing his property, and in leasing his property, he agreed with his tenant he would assign. This, he knew, himself. He is the complainant, Mr. Sullivan. He knew, himself, that this was a conditional right he had. It was his duty to inform his tenant this was a conditional right and any transfer that he would agree to was subject to the approval of the board of directors.

Now, so far as getting further into expulsions, so far as judicial interference, 7 Corpus Juris Secundus 25(e) contains the following statement: "A proceeding by an association for the expulsion or suspension of a membership is quasi judicial and a court will not interfere to prevent an expulsion or suspension, except to ascertain whether the society is proceeding in good faith and in accordance with the bylaws and law of the land, in order to grant relief against the accused member, against his alleged suspension or expulsion.

Now, the evidence before the Court is that Mr. Sullivan had a hearing before the board of directors or the membership club. He was permitted to submit evidence on his behalf, bring witnesses in, and be represented by counsel. In addition, he was given a statement of facts of the charges against him and given ample notice to appear. This goes further than the bylaws, insofar as the bylaws are silent on the right of a member to be represented by counsel. Again,

the basic right of an association to select members is so basic that again it is hard to find cases particularly in Virginia. In Cheney vs. Ketcham, 5 Ohio N.P. 139, they held legal rules of an association are not binding on the expulsory tribunal of a club, and Anin vs. Verta, D.C. 106 Fed 2d 145, they held a court, which would amount to a retrial of a case, will determine anew whether the member will be expelled. The evidence will be strictly limited to the relevant statement of the grounds justifying court interference.

We definitely did not show that in this particular case, but the burden is on the complainant to prove noncompliance with the bylaws, malice and an arbitrary attitude and a capricious attitude. In proceeding under our bylaws, the board was confronted with the word, "Inimicable," and since it isn't a legal word, they must give to it its ordinary definition, which I quoted to Your Honor yesterday. It is unfriendly, hostile, having a disposition of an enemy, unfriendly, opposed, adverse and antagonistic.

Evey the complainants' case, it appears there was justification. Again, all the specifications in the bill of particulars do not have to be answered or proven conclusively to wllow this quasi judicial tribunal action of the club to expel. The circumstances involving all of them, of one of the allegations being true, would be sufficient to expel him.

In this particular case, we do have the admission of

Mr. Sullivan that he wrote these letters. Now, he denies he knew he was writing the letter to the president, the president of the defendant corporation, but he is still responsible for any acts or any damage that would occur because of this act. Fortunately, no damage did occur, but he is still responsible for that particular act. He admits in his letters. He does say the actions in these two weeks, in the letters he wrote, were immoral. He is particularly certain of the letters he wrote, apparently with libel in mind. It is apparent in reading them he wants these clergymen to do something. The reason he was going to the clergymen was because these people were participating in a great immoral or evil thing.

Now, I don't know how Your Honor would feel about this. I may be a sinner, but I wouldn't like to be called one, and I think anyone calling me evil or anyone calling me immoral wouldn't be the type of person I would like to associate with.

Now, we go to the question of race. I say the reason the board, and we haven't heard this. There has been conversation from the complainant that the only reason they did this was because of Dr. Freeman's race. This is immaterial. I believe that if it is a non-profit association, the reason is immaterial.

We know that if this Court decides, it is going to rule

on the admission of a member or the expulsion of a member from a non-profit corporation. The black ball as we know it in most organizations, is no longer legal. The Masons and the Knights of Columbus use the black ball, and fifth other secret groups throughout Fairfax County select their members.

The board said they were motivated. In the letters and by the admission of Mr. Sullivan, they were motivated by economics, and I don't think that we even have to put on evidence to the fact that there is a reluctance on the part of people to buy a house next door to a negro. There is also a reluctance upon people, of white people, to join an organization that is integrated.

I can see a person's concern over a negro's moving in next door to them, but I don't consider myself a bigot or a raciest, but I can see the monitory loss to the particular person whose house is next door to a house sold to a negro. The same thing is shown in the evidence of the membership over the years in this organization, and the last three years the membership has been dropping. Therefore, the availability of membership is greatly exceeding the demands. Now, if a negro is elected to membership, then you are going to find the demand is going to drop.

I think the Court will take judicial notice of it. Whether it is right or wrong, is not the problem. These people are concerned with the over-all financial well being

of this corporation. They are elected, the board of directors, for this purpose. I can say they could come to no other conclusion but this, particularly in this organization where membership is dropping. Therefore, Your Honor, I feel that the issue in this case was whether the board acted contrary to the bylaws, whether they were noxious, and I contend and I submit that the complainants' evidence has not proven this point.

THE COURT: All right, Mr. Brown.

MR. BROWN: May it please the Court, in Gotleib against Acme Stores, the case I gave to the Court yesterday, the Supreme Court of Appeals was very specific in holding an association may expel a member who violates the objectives and purposes of a corporation. The court in that case discussed the distinction between a member's activities, which will adversely affect the objectives and purposes of a corporation as a whole, and the only affect of it may be adverse to the member, a single member of a corporation.

If the Court will read that decision, you will note that the trial court in Norfolk dismissed and found inadequacies. As in the grounds for the expulsion of Gotlieb, in that case the fact that he had engaged in a disagreement or altercation or dispute with one member, the court said was inadequate for his expulsion. Therefore, the members have to affect the objectives and purposes of the corporate body,

and we submit that this clause in the bylaws of Little Hunting Park, which is rather inartistically worded and spelled out, perhaps, can only be construed as referring to the members of the corporate body. That is, the members may be only expelled under the association by the applicable laws of Virginia, for activities inimicable to the corporate body, corporation members, individually.

It is a fact. They may take it a member's actions are not grounds for his expulsion. This type of association is one which the courts recognize merits a higher standard of judicial scrutiny insofar as an expulsion is concerned. There is far more involved in this corporation than is customarily the case in a confidential fraternal organization or a club. This organization has in its activity, a profound economic affect on the property of the individual who belongs to it, and who lives in one of the neighborhoods. They are affected by its authorities.

Going back to the learned Jaffits in Harvard Law School, he pointed out that associations that have an economic-stable hold or a strong economic affect on the members' lives must require a far higher standard of misconduct before they can expel him.

The association here, as we have seen the loss of membership in this association, has a distinct and a very profound affect on the economic life, the whole social life

of the family who is expelled. In the case of Mr. Sullivan, he loses two memberships. It has a distinct limitation therefore on the persons to whom he can rent either of his homes. For one thing, as we have seen from the evidence, a tenant can only obtain a membership from a landlord, and if the landlord cannot assign his pool membership, obviously the market to whom he may rent his home is severely limited.

I think we will show in further argument to the Court, that there are ways in which these memberships are in fact appurtenant to the property. They are an adjunct to the real estate of the home owners in the property and indeed the membership in many ways, and in fact runs with the property, so we submit that the property interests here are subh that a member may not be really expelled and may not be expelled for reason, unless for reasons which do not bear a high degree of scrutiny. It is our position, as the evidence shows, that this board acted. They acted initially on June 9th, or June 11th, it appears, 1965. It now appears it was June 11th, although the record indicated it was June 9th. They decided there was due cause for the expulsion of Mr. Sullivan even before June 11th.

He had only known for ten or twelve days that his membership assignment to Dr. Freeman had been disapproved, and even though the entire charges placed against him, only two incidents occurred prior to June 11th, and we submit that all the other

charges that were later constructed and put together do form the basis of the expulsion here, they were in the nature of afterthoughts. They decided initially that there was due cause or appeared to be due cause to expel him twelve days after he knew of his expulsion for assigning Dr. Freeman. This shows strong evidence that they acted initially and through this proceedings not for good cause, but out of hostility, and out of malice, and in order to vindicate their point of view, and they were extremely incensed by Mr. Sullivan's efforts to over-ride their independent decision by his appealing to the membership and his calling a special membership meeting.

In the case of a special membership meeting, the court there is very careful to point out that an association may not enforce a requirement a requirement on its members that is immoral or contrary to public policy or the law. It is judically recognized, and we will be very pleased to supply the Court later with numerous authorities on this fact, that an association may not force on its membership that the membership forego constitutional rights.

One of the most esteemed constitutional rights is the right of freedom of speech. A member may not be expelled from an association for the exercise of freedom of speech. To do so is to go against the Constitution. It is legend where the courts have suspended the rights of members to express their

views in opposition to the leadership of the association. Members may not be expelled merely because they dod not accept the leadership's point of view, or they take steps to override the leadership's desire to terminate the association. Members, therefore, may express their point of view within the association. They may seek to gain support in their position from fellow members, and indeed they may go outside the association. The cases show that a member of a association may go outside the association. He may go to a public place or take court action because of some policy which may have been adopted, and he may not be forcibly expelled for it.

These are rights guaranteed to him by the Constitution, and in joining a private association, he does not contract to forego his rights. The very essence of private organizations is that members participate on a democratic basis. The cases are also legend where members go so far as to tear out the encumbent's leadership. They try and many engage in an active campaign. They may accuse them of mismanagement of funds, accuse them of various deeds of infamy. This is not uncommon in associations. This may be extremely offensive to the leadership, but it isn't grounds for expelling. It may be offensive to the individual member of the organization, but it isn't for the basic purpose of the association or organixation.

Of course, many times the encumbent leadership,,as part of their resentment against the decedent member, assumes that if his point of view is to prevail, it will result in the renunciation of the organization and is detrimental to the economic well being of the individual members. These cases are particularly prevalent in associations of the kind that we are talking about here.

It isn't an association that is based on close, social ties among members, personal membership. Its only qualification of membership is that an individual reside in a neighborhood and he be an adult. Those are the only qualifications set forth here. They are the only qualifications that have ever been involved by any report. No record has ever been shown of any member ever having been refused membership or being expelled, so we submit that when the association therefore says that what Mr. Sullivan was doing throughout this period was expressing his right of free speech, his right to disagree with the policies that had been established by the association's leadership, and of course, as the evidence shows, there was a number of people who agree with him and used language every bit as colorful as his, and they were not expelled.

Therefore, we submit that there is no basis in the evidence, nor under the law of Virginia to justify this expulsion, and it is arbitrary and capricious, and the action

should be set aside and Mr. Sullivan reinstated for both his memberships.

If the Court wants to hear argument on this the second aspect of the case, this one I just discussed goes primarily to the evidence I have submitted concerning the wrongfulness and illegality of his expulsion. We have put in virtually no evidence except Mr. Marshall, the expert, concerning the effect of the racial restriction in this association on it and the effect of that on Mr. Sullivan's property and whether that racial restriction, as we contend in Count 2 in our complaint, is unlawful. It is our claim it is unlawful.

We would like legal arguments. I would like to submit to the Court in a memorandum and I don't believe the evidence goes to this primarily, the argument on constitutional matters, and the validity of the court's showing in an association where the membership effects the building of an individual to eliminate his property. We submit that for the court to give validity to this racial situation goes against Shelley vs. Kramer, and invalidates racial covenants.

We have a detailed argument starting from the Virginia corporation law, whereby we assert and will demonstrate that there is no authority in this association to impose a racial restriction; that its certificate of incorporation does

not permit it. Its bylaws do not permit it, and under the Virginia Corporation Act its restriction is ultra vires, and that goes to Count 2.

THE COURT: Is it your position that nothing took place, let us say after June 11th, as a basis for the expulsion?

MR. BROWN: No, we don't take that position. Our position is that the board's action at that time, based on the very limited things that had happened prior thereto, is strong evidence of ill will and malicious intent. We will show, however, we do not need to establish maliciousness and ill willor any improper intent toward Mr. Sullivan to get him reinstated.

It is our position that everything that happened after June 11th, which is alleged in that so-called bill of complaint against him, or charges, that the evidence will show that these matters are either untrue or are woven out of whole cloth, a complete fabrication, a cooked-up, pre-determined decision that had been made by the board of directors on June 9th. The latter was just window dressing that the hearing that was accorded Mr. Sullivan, the so-called hearing, the fact that Mr. Sullivan had to go to court to deal with Mr. Harris and the association in this matter and the type of hearing that was conducted, all these things are further indicative of the malicious intent that lay behind their actions.

We will nevertheless assert that whether maliciousness

is shown or not, the reasons do not support in law the expulsion.

THE COURT: I will take the motion under advisement. Go ahead and put on your case.

MR. BROWN: When I say malice, it is obvious that malice under the law in Virginia, as well as many other states does not necessarily have to be actual malice. It can be malice in law, actions with disregard to the rights of persons. If nothing else, we belive we have made a case to show malice in law, if nothing else.

THE COURT: All right.

Thereupon

JOHN R. HANLEY

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Please state your name and address.

A John R. Hanley, 8326 Bound Brook Lane, Alexandria, Virginia.

Q Are you a member of Little Hunting Park, Inc.?

A I am.

Q State how long you have been a member.

A I was a charter member.

Q From the beginning?

A 1954 or 1955, I don't know which.

Q Have you served in any offices in the corporation?

A Yes.

Q What offices were they?

A I served two years as treasurer, one year as president, and one year as park administrator, and three years on the board of directors.

Q You were one of the charter members, first members?

A Yes, I hold Certificate No. 183.

Q Could you state how this corporation came into being?

A Through a group of individuals that incorporated and negotiated for land and advertised through circulars for members to join a swimming pool. I joined at the beginning, but I was not at that time involved in its promotion.

Q What was the purpose of your getting together, these people? You said a swimming pool, to construct a swimming pool?

A Yes.

Q Have you ever issued stock in the corporation?

A As a stock corporation?

Q Yes.

A No.

Q Is this chartered as a non-stock corporation?

A This is a non-stock corporation, yes.

Q Has it ever operated for profit?

A No, it was for the benefit of any individual or group of individuals.

Q Yes?

A No.

Q Does it issue membership certificates?

A No.

Q Do you know whether these membership certificates are limited in number?

A Under our charter, we are limited to 600 members, yes.

Q What year were you president of the organization?

A 1961.

Q At that time, was there a revision of the bylaws?

A Yes, there was.

Q Were you familiar with the prior bylaws?

A Yes.

Q Was there any provision in the prior bylaws prior to the revision in 1961, requiring that all memberships be approved by a board of directors?

A Yes, in the bylaws.

Q And of April 18, 1961, was this provision carried on?

A Yes, sir, that was incorporated.

Q Has it always been a requirement that anyone applying for membership or assignment be approved by the board of directors?

A Definitely.

Q Now, I direct your attention to Article III, Section 1 (d) of the bylaws in reference to the number of members, and it says that the maximum number is 600.

A Yes.

Q And they are restricted to certain subdivisions?

A Well, 3(c) provides that.

Q Did I say 6?

A Yes.

Q I am sorry. Was there any reason for limiting these memberships to the particular locality?

A Well, I am afraid I can't say. I found that from experience as the thing. It was at the time it was originated.

Q Do you think it was at the convenience of the people in the area, since this was where the pool was?

A It was probably felt that these would be the people who would profit more from it, and it would be the area from which we would draw from.

Q In the area known as Bucknell Manor, Beacon Manner and Bucknell Heights, do you know how many families there are from that area?

A I can answer during the time I was on the board

it is a smaller area than that, not that specific area, no.

Q When you say, "A larger area," what area are you talking about?

A From the area encompassed from a shopping area, from the S is a triangular area from U.S. 1, shopping area and U.S.

Q How many people are you speaking of?

MR. BROWN: He is not talking about the same area.

THE COURT: Go ahead.

MR. BROWN: The question was, how many families lived in the area circumscribed by the bylaws of the corporation. He is given an area, type, the size circumscribed by the bylaws.

THE COURT: You mentioned there are two questions. One is, what area is mentioned in the bylaws and what the other was circumscribed. The last answer wasn't responsive to the question.

MR. HARRIS: I will withdraw it.

THE COURT: Rephrase the question.

BY MR. HARRIS:

Q Do you know how many families there are in Bucknell Manor?

A I can only give an estimate. Approximately 750, I believe.

Q How about Beacon Manor, is that equally large?

A Bucknell Manor and Beacon Manor are considered the

same.

Q How about White Oaks?

A I am not sure. I don't know.

Q How about Bucknell Heights?

A Bucknell Heights is 174.

Q The corporation was limited to 600 members.

A Right. Counsel, may I enlarge upon the question that was considered to be nonresponsive?

THE COURT: I think he rephrased that and abandoned it.

THE WITNESS: All right.

BY MR. HARRIS:

Q Do you have social activities in this club?

A Yes.

Q And could you explain some of your social activities?

A You normally give an Easter Egg Hunt in the spring for the children. There would be den parties. There would be adult parties within the pool area, a Fourth of July ceremony, this sort of thing.

Q Were these activities limited to members and their guests?

A Yes, in varying ways.

Q All right. Now, directing your attention to the 29th of May, 1965, did you have occasion to visit Mr. Sullivan in his home?

A Yes, I did.

Q Who accompanied you on that visit?

A Mr. Leroy Lennon and Mr. Oskar Egger.

Q What was your purpose in making this visit to Mr. Sullivan?

A To carry a proposition to him from the board.

Q Were you appointed by the board as a committee to go and see Mr. Sullivan?

A Yes, we were.

Q What was the proposition were you taking to him?

A In the letter which Mr. Sullivan had sent to the board, he had complained about the economic aspects of the rejection of his assignment. That is, that he had the membership. It could not be used, and because he would be faced with the economic position of paying for something that could not be used, now the board determined, and an offer was made to buy this second membership from him so he would not be faced with this.

Q How long did you stay in Mr. Sullivan's home?

A I would say thirty to forty-five minutes.

Q And during that time was there discussion between you and Mr. Sullivan and Mr. Lennon and Mr. Egger?

A Yes.

Q And what was Mr. Sullivan's attitude toward you?

A If I might characterize it, I felt sort of like

the errant school boy before the head school master.

Q Do you think his conduct was insulting toward you?

A Yes, I think it was definitely insulting toward me.

Q Was it rude?

A Yes.

Q Do you remember some of the statements he made?

A He said several times he was ashamed of us. He used the words, immoral and sinful. Our behavior was shocking, things of this nature.

Q When using the words, sin, evil and immoral, did he apply them to you or to the board of directors?

A That would be hard to characterize. The terms used could be either singular or plural, of course, so I couldn't actually say. I didn't want to get too involved in this.

Q Was he emotional at this time?

A No, I think he kept things under control pretty well that way. He did speak rather sharply on a couple of occasions.

MR. HARRIS: I have no further questions.

CROSS EXAMINATION

BY MR. EVELETH:

Q You mentioned as one of the affairs of Little Hunting Park, an Easter egg hunt. Is that right?

A Yes, sir.

Q This was open only to the members or open to other people in the community?

A I don't know.

Q The May 28th meeting at Mr. Sullivan's house, you said he had an insulting attitude toward you.

A I think I considered it so.

Q Were you pretty upset by what he said?

A I was upset. Enough so that when I left his home, I wasn't concerned what he thought of me.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Did he call you, personally, immoral?

A I don't know.

Q Did he say?

A I would assume that he included me in the term, "You."

Q Did he say the action was immoral or you, personally, are immoral? You, personally, means as a person there?

A That was two years ago. I am afraid I can't recall now.

Q Does this sound about right? He informed us he was ashamed of us. He thought it was immoral. He thought it was evil, and various other things like that. Do you think it was said?

A It could have been.

MR. HARRIS: No further questions.

MR. HARRIS: That is all I have of this witness.

THE COURT: All right, step down.

THE COURT: One thing I didn't get, Mr. Harris. Is Mr. Hanley a member of the board?

MR. HARRIS: Not at this time. He was at one time, but not at this time.

Thereupon

VERNON LEROY LENNON

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q State your name, and address, please.

A Vernon Leroy Lennon, 2316 Woodlawn Lane, Alexandria, Virginia.

Q Are you a member of Little Hunting Park, Inc.?

A I am.

Q How long have you been a member?

A I hold Certificate 100. I am one of the original members.

Q Do you consider this a private membership club?

A I certainly do, yes, sir.

Q Directing your attention to the 28th of May, 1965, did you and Mr. Egger and Mr. Hanley go to see Mr. Sullivan at his home?

A Yes, sir, we did.

Q What was the purpose of your going there?

A The purpose was two-fold. The first, of course, he had received notification of the rejection of his assignment, and he had requested an explanation from the board, and for this reason I gave him a call and set up an appointment, and we visited his home.

Q Now, at this time were you a member of the board?

A Yes, I was.

Q Were you also membership chairman at this time?

A Yes, I was.

Q Will you explain what transpired at this meeting with Mr. Sullivan?

A We entered the home and Mr. Egger had known the Sullivans for sometime and introduced us, each one, and then we went into a discussion as to the problem of his membership, discussing, of course first his having a membership that had been rejected, both phases of it, Mr. Freeman and also the economic factor. This was mentioned.

MR. BROWN: I am afraid I can't hear the witness.

BY MR. HARRIS:

Q Will you speak up?

A There was a discussion as to the economic impact that it would make by rejecting him, and also the right of the board to accept or reject applications for membership, or assignments.

Q How about his attitude at this time?

A He reaponded with the action, our action was shocking, and he was personally ashamed of us for our actions were immoral, sinful, this type of thing, and when he got to this point, I suggested that we leave. I, personally, resented being exposed to this treatment.

Q What is your religious denomination, Mr. Lennon?

A I am a Baptist.

Q How do you feel when someone calls you a sinner?

A Well, I take exception to it. I mean, I am not normally called a sinner.

Q And to give you a question that would probably come from the other side, did this upset you much?

A Yes, it really did. This is when I suggested we leave.

Q Let's skip over to the special meeting of the membership, which was held on July, 1965. Were you in attendance at that meeting?

A Yes, sir.

Q Did you have any special job at that meeting?

A At that meeting, I was representing the corporation

as membership chairman. I was working with Mr. and Mrs. Simmons, Mrs. Simmons being transfer agent and familiar with the members, and we admitted the members at the door at this meeting, and we controlled. We allowed the members only in.

Q To your knocledge did any non-members get in?

A Not to my knowledge, no. There was some that did approach the door. Of course we had this where others did come to the door to be admitted, but were turned away because they were not members.

Q By admitting only members, were you complying with the regulations of the board of directors?

A Yes, sir, I was.

Q How many people were in attendance at that meeting?

A There were 300. There was an actual ~~count~~ count at this time. I wouldn't like to be held to account. I believe there were 308. That is 308 membership represented. That is up to 616 persons.

Q That is, in other words, each family has a membership?

A Has one vote, husband and wife.

Q And you only counted --

A 308, I believe was the actual count. This count is available to us.

Q As far as the conduct of the meeting, was there a parlimentarian?

A There was a parlimentarian appointed.

Q Were there any rules laid down for the conduct of the meeting?

A The ground rules were laid down, I believe, by motion at the opening of the meeting.

Q Do you know what those ground rules are?

A I can say that each side were limited to a certain time limit. Just what the actual minutes were, I don't recall, but each side were limited to a certain number of minutes. There was an official time keeper appointed, and the meeting was noisy, because people were very much interested, but I think it was kept under control. The president and everyone there was aware of all actions taken, and each side was heard.

Q Did Mr. Sullivan speak at this meeting?

A I know his side was spoken for. I really wouldn't want to say for sure. I do remember one or two speaking for this side, Mr. Sullivan and one or two others.

Q Did there come a course of time when you received telephone calls from people in reference to the subject of the Freeman refusal of membership?

A All right, sir.

Q Could you tell us something about these telephone

calls?

A Shortly after notifying Mr. Sullivan of his rejection at the meeting at Mr. Sullivan's house, shortly after that, I did receive some anonymous phone calls from individuals asking us why our actions were such, and thiso type of thing, and we did have a number of calls where no one answered. We would pick up the phone, and it was a dead phone.

Q Did you notify anyone other than Mr. Sullivan of your action?

A None, other than Mrs. Moore. I did call Mrs. Moore after leaving.

Q I am talking about the action of the board in rejecting Mr. Freeman.

A No, I didn't think it was necessary.

Q Did you notify the newspapers?

A No, sir. This was a private matter so far as I was concerned.

Q Now, you said at all the board meetings that Mr. Sullivan appeared to show cause why he should not be expelled.

A Yes, I did.

Q Did you listen fully to Mr. Sullivan's side of this particular case?

A Yes, sir, I did.

Q Was there any curtailment of evidence that Mr. Sullivan --

THE COURT: Are you moving off to another meeting?

MR. HARRIS: Yes, sir.

THE COURT: What meeting is this?

MR. HARRIS: This is a meeting of the board. It was a hearing for Mr. Sullivan to show cause why he should not be expelled, and this occurred on August 17th.

THE WITNESS: Right.

BY MR. HARRIS:

Q The record discloses it?

A Yes.

Q As I said, was there any curtailment of any statement or evidence submitted by Mr. Sullivan at that meeting?

A No, sir, there wasn't.

Q And he was represented by counsel?

A Yes, he was.

Q Was the meeting conducted fairly?

A Yes, sir, it was.

Q And you did vote on expelling him?

A Yes, sir, I did it later, at a later date.

Q Before you voted, did you consider? Did you read these letters that he had written to the clergymen?

A Yes, sir, I did.

Q Did you talk to Mrs. Winters?

A I, personally, did not talk to Mrs. Winters.

Q Did one of the members of the board talk to Mrs. Winters?

A Yes, they did.

Q You did talk to that member of the board?

A Yes, sir.

Q Did you talk to the president of the corporation about telephone calls that she may have received, or may have had with Mr. Sullivan?

A Yes, sir, I did.

Q Now, there is in evidence that there were twelve meetings of the board of directors during 1965. Did you hold other meetings, other than board of directors meetings?

A Yes, sir, there were several meetings held.

Q Did you have occasion to consult with me on various occasions?

A Yes, sir, I did.

Q And these were extra meetings?

A Right, sir.

Q When this meeting was called on August 17th, for the expulsion, were you in town at that time?

A No, sir. I had been out of town at that time. I was on vacation at this time. I came back.

Q In considering, you stated that you considered all the evidence that is in this bill of particulars.

A Yes, sir.

Q Prior to making a decision as to whether or not Mr. Sullivan should be expelled of membership --

MR. BROWN: I object. I think it is a conclusion, unless he is charged.

BY MR. HARRIS:

Q Did you consider the evidence before reaching a decision as to whether or not you should vote to expel Mr. Sullivan? Did you consider the bill of particulars?

A Yes, sir, I did.

Q And you also heard Mr. Sullivan's side of it?

A Yes, sir, I did.

Q And as a result of considering the evidence alleged in the bill of particulars, which we went over earlier with Mr. Sullivan, how did you vote?

A I voted for expulsion.

MR. HARRIS: I have no further questions.

THE COURT: Are both minutes in evidence?

MR. HARRIS: Yes, they are, Your Honor.

THE COURT: Recess for lunch until two o'clock.

(Whereupon, at 1:00 o'clock, P.M., the hearing was recessed, to reconvene at 2:00 o'clock, P.M.)

AFTERNOON SESSION

(2:00 o'clock, P.M.)

THE COURT: How many more witnesses do you have, Mr. Harris?

MR. HARRIS: Three more after this. The testimony will be all very short in all of them.

CROSS EXAMINATION

BY MR. EVELETH:

Q Mr. Lennon, you spoke and testified about the special membership meeting. Is that correct?

A Yes.

Q Did you testify that only members of the corporation were present at that meeting?

A Yes, sir, to my knowledge, there were only members present.

Q And how did you assure yourself there were only members present?

A We had a gentleman standing at another entrance. There were two entrances to the particular room where we were holding the meeting. There was someone standing at the other door, so far as I know all the time, and there were four of us at the entrance door, and each name was checked off as they came up. We had a membership roster there and a person signed in as they came in.

Q Was he issued a ticket or anything like that?

A Not to my knowledge, but each person signed in as they came in.

Q Was membership in your corporation issued only to adults?

A The membership certificates bear only adult names.

Q Does that membership apply to the bylaws? You don't have anything before this. Are these normally issued to the male in the household?

A In the majority, the males usually apply. It doesn't necessarily apply.

Q To the families, then?

A They would be entitled to.

Q They wouldn't be per se members, the person who receives the membership for the member?

A This person and his family are a member of the corporation.

Q Each individual is a member then?

A They would not have a vote as such. There is only one vote per each membership. They are all entitled to the privileges of the park.

Q Who exercises the privilege?

A Either member. It would have to be an adult member.

Q I see. Were there women and children at this meeting?

A Possibly some individuals brought their children.

Q You were there.

A Yes, I would say possibly if someone didn't get a baby sitter, they may have brought the child. I imagine out of that number you would find that fact.

Q Do you remember a Mrs. Linda Tarr's being at the meeting?

A Yes, I do.

Q Did you speak to her?

A Yes, sir.

Q Did you ask her to identify herself?

A Yes, sir.

Q Did she identify herself as not being a member?

A She identified herself.

Q And you said, since she wasn't a member, she couldn't speak?

A Right.

Q So she was a non-member, who was present?

A Again, this situation where the husband was acting in a capacity of -- Can I ask one question? This is an unusual circumstance. The husband of Mrs. Tarr was acting on behalf of his father who was incapacitated, and he was there to represent his father.

Q Why wasn't she allowed to speak?

A Because he was the assignee only on this occasion.

Q Were there children there? You mentioned there might be some children there. Do you know a Peggy Berg? Do you know if she was there?

A This name I don't recall.

Q James Callihan, do you know if he was there?

A I don't recall.

Q Was a vote taken on these three propositions on the aggenda?

A Voted by acclamation.

Q You mean they did not write it down?

A No, because the feeling was overwhelming.

Q Was there a hand count? You have the vote taken, 300 to 1. Did they actually count hands that were up, or was it acclamation?

A I believe it was one or the other. At this point, I wouldn't swear as to which it was, to be real honest with you. It seemed I counted hands, but I wouldn't be sure, because it might have been by voice vote.

Q Then if it was a voice vote, then there would be voices of children and women who were not members. Is that right?

A Again, if there was a vote of everybody present by acclamation.

Q So people who were non-members were voting?

A The only instance I know of anyone in there is of

Linda Tarr and small child. There were not enough children there.

Q How many would you estimate?

A I wouldn't attempt to estimate.

Q They didn't talk, didn't yell out?

A I did not say this.

Q Did they yell out?

A There were not enough children, and I noticed it.

Q What do you mean, not enough?

A I didn't pay any attention to children. There were not enough of them that I notice there being children there.

THE COURT: Was there any request for any sort of division or count?

THE WITNESS: I will put it this way. The meeting was orderly, and a motion was brought before the membership as a whole.

THE COURT: I said, did anybody ask for a count? Was there a motion made for a count?

THE WITNESS: No, because it was overwhelming.

BY MR. EVELETH:

Q Were people given a fair opportunity to speak, to present their point of view without being hooted down?

A Yes, there was a fair opportunity to speak given.

Q You kept order so if anyone wanted to speak, you

said there were time limits?

A One or two times we had individuals who were noisy, but we attempted to hold them down, and we did hold them down. The people were able to speak whatever they wanted to.

Q One or two people were noisy?

A There wasn't noise to the point there was confusion. Let me put it this way. We always understood what was going on. No one spoke that wasn't heard.

Q That is one point. I have another point, however. It is charged in the complaint that Mr. Sullivan made numerous unfriendly, harassing phone calls to the president and board members who were accused of hatred and bigotry.

MR. HARRIS: I object. It isn't the wording of the complaint.

THE COURT: Read it to him.

BY MR. EVELETH:

Q All right, Count 2, "That you did instigate and conduct." It was referring to Mr. Sullivan, "-and cause others to instigate and conduct a harassment of the president and board members by numerous ~~and~~ unfriendly telephone calls to the president and board members, indicating ~~and indicate~~ in such calls that the board members were guilty of hatred and bigotry." Did you receive such a phone call from Mr. Sullivan?

A I did talk to Mr. Sullivan on the phone.

Q Did you receive a phone call that meets this description?

A I received a phone call from Mr. Sullivan in one instance.

Q What did he say in that telephone call?

A He called in reference to meeting the secretary of the corporation to review the corporation's records. He was very upset because she could not meet him at a time when he felt that she should. It was inconvenient for her, and so he called me to tell her to.

Q He was requesting the books of account or minutes of the meeting?

A Something of that nature.

Q He had a right to do that in the bylaws.

A Yes, sir.

Q And he accused you in that telephone conversation of being guilty of hatred and bigotry because --

A I wouldn't go along with him, so he didn't say anything.

Q This charge says --

MR. HARRIS: The charge doesn't say specifically that Mr. Sullivan made these statements. It says that you did instigate and conduct and cause others to instigate and conduct and by numerous unfriendly telephone calls.

THE COURT: He said he didn't say anything in this

telephone call.

THE WITNESS: No, he didn't.

BY MR. EVELETH:

Q Do you know of any telephone calls that you made to him or he made to you that he did what was charged in this statement?

THE COURT: Or anybody else?

THE WITNESS: Others did, persons who would not identify themselves.

BY MR. EVELETH:

Q Mr. Sullivan?

A Mr. Sullivan became impatient on occasion, but he did not accuse me of hatred or bigotry in the phone calls.

Q It is stated in the interrogatory that you received such a phone call.

MR. HARRIS: The witness just testified he did receive such a telephone call.

BY MR. EVELETH:

Q Did you say you received a phone call accusing you of hatred and bigotry? In the interrogatories, in the answers to the interrogatories, Answer No. 11 which you made as receiving such telephone calls as stated in the complaint.

MR. HARRIS: Will you state what you mean by telephone calls?

BY MR. EVELETH:

Q I will read what you said verbatim with respect to Paragraph No. 2. The statement of facts sent by the defendant corporation about Paul E. Sullivan by letter setting forth matters alleged to have been the basis for the expulsion of Mr. Sullivan. That is Charge No. 2. State the names of all members of the board of directors whose receipt of such telephone calls form the basis for the assertion in said paragraph. Your name was listed in the answers to the interrogatories as one of those persons.

A Yes.

Q The records available indicate the ones that received such telephone calls were Mrs. Moore, Mr. Lennon and Mrs. Simmons.

A Yes.

Q And now you testified you received them.

MR. HARRIS: He said he received friendly telephone calls. What are you talking about?

THE COURT: Specification No. 2 doesn't limit the phone calls and harassing acts to the plaintiff.

MR. ALEXANDER: Right.

MR. EVELETH: Your Honor, if I may say, the interrogatories ask for the directors who received a call, I believe, from Mr. Sullivan.

THE COURT: No, it doesn't. It says, "In accordance with Paragraph 2."

MR. EVELETH: Excuse me. I stand corrected. That is all I have.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q One thing, you admitted Mrs. Tarr to this meeting?

A Yes, sir, I did.

Q Did Mrs. Tarr want to speak at the meeting?

A Yes, sir, she did.

Q And you refused to allow her to speak because she wasn't a member?

A Yes, sir.

Q Did she indicate whether she wanted to speak on Mr. Sullivan's side or against it?

A No, sir, she didn't.

Q Did Mr. Sullivan?

A He related we would have another Selma with our particular situation.

MR. HARRIS: That is all I have.

THE COURT: You were at the various directors' meetings, all of them?

THE WITNESS: Yes, sir.

THE COURT: What did Mr. Sullivan do that was inimicable to the welfare of the corporation?

THE WITNESS: On this particular occasion?

THE COURT: You tell me the particular occasion.

THE WITNESS: We will go right from the start. Originally, he refused to accept the ruling of the board. We felt we were justified in answering for this reason. We discussed it with him. At this time, at the meeting in his home, he accused us of being immoral and sinful, this type of thing, which I felt was irrelevant to our accepting or rejecting his assignment. We felt we were acting in the best interests of the corporation. He then conducted or he would call on the phone, in this particular instance in reference to the record. He was impatient if you were not ready. If you weren't ready at that time, he couldn't reason. You couldn't reason with him as to why the person wasn't available or had another appointment.

On another instance, at a later date, he brought a lawyer to the pool for business, in order to create an incident at our gate. This has not been brought out, but this did happen on several occasions. The gate attendant informed me he was membership chairman and as such had control of the gate. The persons at the gate would ask him to sign and he would go into the pool without signing. He knew this was the rule of the board. The notoriety we would receive I thought was uncalled for.

THE COURT: Tell us about that.

THE WITNESS: The phone calls from the press when he knew

the board members weren't interested in this, was one of the things that we did not appreciate. Of course, he had a right to call the membership meeting. This was in accordance with our bylaws, but we gave him a bill of particulars. We felt that our bylaws did not call for this, but we proved to him that the general membership of the corporation did not approve his assignment at the meeting, and also I believe there was a resolution introduced on the floor at this particular meeting, endorsing our action wholeheartedly. Even though the board of directors had the sole authority to approve or reject, this resolution was introduced on the floor and accepted by the membership. We had any number of letters overwhelmingly endorsing our action, and he continued to insist that we must overturn our decision.

THE COURT: All right, that is all.

Thereupon

OSKAR EGGER

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q State your name and address.

A Oskar Egger, 7003 Stanford Drive, Alexandria, Virginia.

Q Are you a defendant in this case?

A Yes, sir, I am.

Q Were you a member of the board of directors at the time of the expulsion of Mr. Sullivan?

A I was.

Q And at that hearing on expulsion, did Mr. Sullivan have an opportunity to present evidence?

A He did.

Q Did he appear by counsel?

A Yes, sir.

Q Did you consider the evidence submitted by him?

A I did consider it.

Q Did you also consider the evidence submitted by the other members of the board of directors? Did you consider the other evidence that was submitted by the statement of facts submitted to Mr. Sullivan?

A I did.

Q Did you read the letters that Mr. Sullivan wrote to the clergymen?

A I did.

Q Are you a member of any of the churches involved in Father Wingler's or Father Walsh's churches?

A I am a member of one of the churches.

Q Which one of them?

A St. Louis.

Q Who is the pastor of that church?

A Father Edward Walsh.

Q Did that cause any friction between that particular church and the association?

A I would say it caused friction. I am very much opposted to the Catholic Church being drawn into a private club's affairs or bringing any pressure into it. We are a non-demoninational, private corporation. I don't know whether some of my friends in the club felt any antagonism or ill feeling. I felt resentment in a very strong way to a letter of that type.

Q Did you discuss this with your pastor?

A I did.

Q Was there any friction as a result of this discussion between the corporation or yourself and Father Walsh?

MR. BROWN: I object. That isn't the charge that was made against Mr. Sullivan. There is no such word as friction in here.

MR. HARRIS: I am sorry I used the wrong word. Do you think the relationship was strained between Father Walsh and the board members?

THE WITNESS: Perhaps not on the part of Father Walsh, but on the part of some of the corporation members.

BY MR. HARRIS.

Q Did you have occasion to see Mr. Sullivan on television?

A I did.

Q Do you remember what remarks he made on television?

A Some of the remarks made on television when Mr. Sullivan was interviewed was to the extent he would abide by the wishes of the general membership meeting, which he had called by his twenty signatures.

Q Did he in your opinion abide by it?

A He did not.

Q On the 28th of May, you visited Mr. Sullivan in his home?

A I did.

Q In conjunction with Mr. Lennon and Mr. Hanley?

A I did.

Q Will you tell the Court what happened on that particular occasion?

A The purpose of our visit was because Mr. Sullivan requested an explanation of the rejection of the assignment of his other membership to Mr. Freeman, and we thought we better go over and visit with him to perhaps see what we could explain. In addition to that, Mr. Sullivan mentioned he was put in an adverse position because here he had leased his house according to his own terms and the membership was supposed to go, according to his feelings, with the lease,

which is apart from the fact that it isn't. It would be a conditional thing that the membership would go with it. However, we felt it was necessary to be fair, since we are not permitting him to transfer it with his lease. We must go over and offer to purchase his membership, since it is putting him in a predicament.

Mr. Hanley spoke to Mr. Sullivan and said he was willing to buy back his membership. Mr. Sullivan said that he disapproved of the action of the board and was told he could. There was some discussion about Mr. Freeman's being a negro, and also some discussion about the economic aspects.

I, personally mentioned the fact, as a representative of the club, of the corporation, being on the board, that I felt it was in the best interests for economy sake to disapprove the assignment, and apparently Mr. Sullivan did not agree with my thinking. He did say he was rather surprised to see me as being part of this group on the board of the people who made the decision to disapprove it.

Q Why did he say that?

A Why did Paul say this, because we were members of the same church.

Q Do you remember any words he said at this meeting?

A He did say he was shocked and ashamed. I don't know whether it was the action or we, as individuals, were

immoral and sinful. I don't see much difference that my action is immoral and I am not.

Q The three of you did explain to him the economics involved?

A Well, I had explained this to Mr. Sullivan previously.

Q What was his reaction to your statement, that it was a question of economics?

A Well, he wouldn't accept it.

Q Did he doubt your veracity?

A Well, if he doesn't accept the way I think, I would say he questions me.

Q Going back to the board meeting in which you voted to expell Mr. Sullivan, did Mrs. Moore tell you that Mr. Sullivan used abusive language on the telephone to her?

A Mrs. Moore testified about the abusive language. Abusive defined, means improper language, because she had an occasion. It could have been on this, of one person that did not realize what abusive meant, and he said, "Well, no, he wasn't abusive to her."

Q Did you read the letter that was written to Father Cassidy by Mr. Sullivan?

A I did.

Q Do you remember the accusations made in there?

A I do. May I mention one particular thing?

Q All right, go ahead.

A He questioned my pastor, sitting there in the living room of a home where he went to try and get a signature on the petition. He questioned, "What is the priest doing about it?"

Q Did you have occasion talk to one, Aileen Winters?

A I did.

Q She is one of the persons to whom it is alleged that Mr. Sullivan was rude, insulting. Had she informed you prior to the meeting of the board, that he was rude to her?

THE COURT: That is hearsay.

MR. HARRIS: He was sitting as a judge on that board. I am trying to find out what evidence was presented to him, just as Your Honor was a moment ago.

THE COURT: I think you can say that she appeared at the meeting, but not what she said.

MR. HARRIS: I don't think the rules of evidence apply to the board of directors.

THE COURT: No, you asked what she said.

BY MR. HARRIS:

Q Did you talk to her before you went to this expulsion meeting?

A In August?

Q In August.

A Yes, and her brother.

Q And you also talked to her brother?

A Yes.

Q Her brother was present, as I understand it, when Mr. Sullivan came in?

A I don't know in what part of the room, but I remember from yesterday's testimony that he was in there.

Q Did you report the result of your conversation with Mrs. Winters and her brother to the board?

A Yes, I mentioned it to some board members.

THE COURT: At the meeting, is what you meant?

THE WITNESS: Oh, at the meeting, at the meeting for the hearing. The meeting was geared mostly to Mr. Sullivan.

BY MR. HARRIS:

Q Did you report it to the board prior to the meeting?

A Prior to the meeting, yes. It wouldn't have been mentioned in the stipulation if I hadn't.

Q We are talking about the meeting of 17 August, to the board in which Mr. Sullivan presented his side of the case. Where were you at that time?

A I was in Bethany, Delaware.

Q You came back to the meeting?

A I thought it important enough to be at the hearing.

Q Now, in addition to the twelve regular board meetings during the course of 1965, was it necessary for you to attend other meetings in connection with this Sullivan action?

A I don't recall each one or anything, but the meetings that weren't official board meetings, they were meetings to discuss different things.

Q After considering the evidence which was available to the board and considering the statement and the evidence submitted by Mr. Sullivan at this meeting, did you come to the conclusion that Mr. Sullivan's conduct was unfriendly, hostile and having the disposition of an enemy, and opposed or antagonistic to the interests of the corporation?

A Without a doubt.

MR. HARRIS: No further questions.

CROSS EXAMINATION

BY MR. BROWN:

Q You mentioned on May 28th when you visited Mr. Sullivan's home, that you made an offer to buy back both shares that he owned in the corporation. Is that true?

A No.

Q Which?

A Just the share he was assigning to Dr. Freeman, and

I didn't make the offer. Mr. Hanley did, but at any rate, the three of us were there.

Q In view of his oblihation in his lease to assign that share to Dr. Freeman, do you think, or what kind of reaction do you think, or what relationship would that have created between him and Dr. Freeman?

A What he puts in the lease contrary to the bylaws of the corporation, I have no concern over what kind of a lease he wants to make. His lease was improper by not putting that condition in there. His lease was improper.

Q In view of the fact he had it in his lease, and he was obligated to Dr. Freeman, do you think or really feel he should take your offer seriously?

A Since he was making a mistake, we were being benevolent in returning his money.

Q Be penalized if he had made an agreement?

THE COURT: It was obvious. Go ahead.

THE WITNESS: Yes, he is.

BY MR. BROWN:

Q On the occasion of August 17th and the hearing before the board, at which the board considered Mr. Sullivan's expulsion, you said that it was geared to Mr. Sullivan's presenting his case. Is that correct?

A We granted Mr. Sullivan a hearing so that he could tell the board why we didn't have grounds to expel him.

Q Aside from what is stated in the correspondence in the charges, you say Mr. Sullivan presented his side of the story?

A We granted him a hearing to give us reason why he should not be expelled, or what action we could take on the expulsion.

Q What evidence was presented by the board or board members or accusations of Mr. Sullivan at that hearing?

A Well, you had the bill of particulars which was presented in Court here at the time of the injunction. That was part of the agreement here in Court. It was my understanding that this is what we were charging Mr. Sullivan with, and this was what he would come back and testify or refute our arguments. In addition to that, it was also our thinking that in view of the fact that Mr. Sullivan had called a special meeting to satisfy his own feeling as to whether his membership or the board's decision upheld or rejected, that he would abide by the decision of the general membership.

Q What evidence was presented at that hearing to support the charges against Mr. Sullivan?

A At the hearing?

Q At the hearing, was any evidence introduced to support or in anyway substantiate the charges against Mr. Sullivan?

A Well, it was already presented in the bill of particulars which Mr. Gartlan, his counsel, came in to recite with Mr. Sullivan or his witnesses.

Q So it was all on the paper, piece of paper?

A I have mentioned another item.

Q Yes?

A The fact that Mr. Sullivan said he would abide by the decision of the membership, and he did not. He did not abide by the members' decision because as late as August 14th he created another situation at the gate.

Q Are you familiar with the charges made against Mr. Sullivan?

A For the most part, I would have to read each one. There was a letter to Father Wingler, which may have jeopardized --

Q Do you know if he is charged with a refusal to abide by the membership's decision as a basis for his expulsion?

A No, there was an agreement with this bill of particulars. We could not do that because when counsel came into Court here, we could not have it in his bill of particulars, but I understand it was agreed to in court that this is part of the bill of particulars, the fact that he would abide by the decision of the membership, and he would not create any other incident and no more harassment,

let us say.

Q Aside from these papers that were before you, did anyone appear as his witness to support the charges against Mr. Sullivan?

A How do you mean that?

Q Did anyone appear that he could have questioned or his lawyer could have questioned?

A That he could have questioned?

Q Or his lawyer.

A He brought witnesses with him.

Q Did anyone appear to support the charges of the board that Mr. Sullivan's lawyer would have been in a position to question?

A No, it wasn't a legal type of cross examination. It was the board of directors giving one of the members a hearing. It wasn't a matter of him requesting a court.

MR. BROWN: That is all.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Egger, at this meeting were you there? Naturally, you were at this expulsion meeting.

A Yes, sir.

Q Mrs. Moore was there?

A Yes.

Q Mr. Lennon was there?

A Mr. Lennon.

Q In other words, all of the board members?

A No, not all of the board members. There were two board members absent, Ray Riesgo and Mr. Johnson.

Q Was Mr. Gartlan asked to cross examine Mrs. Moore and Mr. Lennon?

A I don't know. There may have been a conversation between our counsel and Mr. Gartlan, but I don't know if I was asked specifically.

Q I was just asking if Mr. Gartlan was asked if he could cross examine you, for instance.

A I don't know.

Q You don't recall that he did?

A No.

MR. HARRIS: I have no further questions.

THE COURT: Let me ask you a question. The bylaws provided that a member after talking about and after having been granted an opportunity for hearing, be suspended, and it goes on to provide due care for suspension or expulsion is considered, et cetera. Did you feel he was entitled to a hearing before he was expelled?

THE WITNESS: Certainly.

THE COURT: What did you understand the hearing to be that he would be presented with the charges against him?

THE WITNESS: Yes, and that he would explain to us

why the charges are rescinded, or why he should not be expelled because of his actions.

THE COURT: But all he would have is just a copy of the charges against him. Nobody was there to answer any questions.

THE WITNESS: In this particular occasion of his defense, certainly he could defend himself.

THE COURT: Did he undertake or did anybody undertake to back up these charges against him?

THE WITNESS: The board members made those charges.

THE COURT: Did you do anything other than put it in writing?

THE WITNESS: The letter, for example, to Father Cassidy from one of the board members' employee, was in our hands. That was evidence. The letter which he refuses to accept the membership in accordance with the bylaws of the corporation, that was put in evidence. The letter that asks for an explanation after our visit. The fact that I was present with the other board member when he called our names. I don't know what else we could have done but have it before the board of directors, and we had to have it before the board of directors before the next meeting and explain it.

THE COURT: I have no further questions.

Thereupon

JEWELL GONZALEZ,

defendant, was called as a witness in her own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q State your name and address, please.

A Jewell Gonzalez, 2701 Easterly Drive, Alexandria.

Q Are you a member of Little Hunting Park, Inc.?

A Yes.

Q And you hold an office with that corporation?

A Yes.

Q And what office do you hold?

A Secretary.

Q Now, as secretary, you have charge of the records of the corporation?

A That is right.

Q Are you a member of the board of directors?

A Not a voting member.

Q In other words, you are not elected as a member of the board of directors?

A No.

Q But you do sit on the board meetings?

A Yes, sir.

Q What do you do, take records of the minutes of the

meetings?

A That is right.

Q You have information pertaining to the business of the corporation?

A Yes, sir.

Q Now, were you present at the special meeting of the membership, held on the 29th of July, 1965?

A No, I wasn't.

Q Were you present at the general meeting of the membership of the corporation in October, 1965?

A I am sorry. I thought that was the same meeting.

Q No, this was in October, the general meeting, the general meeting of the membership.

A A special meeting that was called?

Q No, the general meeting. You had a special meeting in July, and the annual meeting.

A The annual meeting, yes, I was there.

Q At that time was there any resolutions passed concerning the actions of the board of directors during the prior year?

A Well, there was. The membership showed their support of the board of directors in what they had done.

Q This is the annual meeting. I show you an extract of the minutes of the meeting of October, 1965, and there is a signature on the bottom line. Is that your

signature?

A Yes.

Q And that is a true and exact extract of the meeting?

A Yes.

MR. BROWN: We have a set of the complete minutes of this meeting. We would like to compare those with. We would like to find them. We have them somewhere. No objection.

THE COURT: Let it be admitted.

MR. HARRIS: Defendants' Exhibit No. 2, Your Honor.

(The minutes, marked Defendants' Exhibit No. 2 for identification, were received in evidence.)

BY MR. HARRIS:

Q Will you tell the Court what occurred at that particular meeting in reference to this particular resolution?

A I am sorry. I will have to read this, because I have not read the minutes since that time. I don't know what you want me to say, except what was recorded here.

MR. HARRIS: Read what was recorded then.

MR. BROWN: I object. It is unclear to me what particular resolution you are talking about. Are you talking about the one that he considered? The membership gives a

vote of confidence. Is that the one you are talking about?

MR. HARRIS: It is the same one.

MR. BROWN: Is that the particular resolution, or is it the second one, the discussion going on about selling stock, or buying stock?

MR. HARRIS: I am talking about the particular one.

MR. BROWN: I don't object to that, but I do object to the rest of it.

MR. HARRIS: I think I will put this part in.

MR. BROWN: I do object to the part about the treasury stock and that discussion.

BY MR. HARRIS:

Q Did you type this?

A Yes.

Q The particular motion we wanted, we are interested only in the first part. The rest was what came in.

MR. BROWN: I have no objection to this extent, if you are not offering the second part.

MR. HARRIS: The second part has no bearing on the first occasion, and it is about buying stock.

MR. BROWN: Will you agree that it isn't being offered for what it says? That is the discussion about the treasury stock?

MR. HARRIS: No, we aren't concerned with that.

THE WITNESS: The vote of confidence of the actions

taken by the board during the year, and this was another way for the membership to show that they did approve of what the board had done through the year.

BY MR. HARRIS:

Q Mrs. Gonzalez, are you familiar with the value placed on these membership certificates by the board of directors?

A Yes.

Q Do you know that prior to 1963? Do you know the value that was placed in the certificate by the board of directors?

A Well, if you go beyond 1963, I am not sure. I think it was 200 beyond 1963, but at some point there I couldn't tell without rereading. It was reduced. It has been reduced.

Q It has been reduced?

A Yes.

Q How about the market for membership certificates, are you familiar with that?

A I am sorry.

Q Whether there are people looking for them or whether there were more certificates than people looking for membership certificates.

A No, there are memberships for sale. There are more for sale than there are members looking.

Q Again, are you familiar with the board of directors denying membership to any person other than Mr. Freeman?

A Not since I worked for the board, that I can recall.

Q Did you have occasion to work at the meetings to determine whether or not there was actually a denial of membership in the past?

A I am sorry. I can't recall if I saw it in the minutes.

THE COURT: You mean whether there was anybody else expelled or rejected admittance?

MR. HARRIS: Refused membership.

THE WITNESS: Someone has been refused membership, but whether I saw it written in the minutes, I can't say.

BY MR. HARRIS:

Q But someone else has been refused?

A Yes.

MR. HARRIS: I have no further questions.

CROSS EXAMINATION

BY MR. EVELETH:

Q Mrs. Gonzalez, I believe you said to your knowledge or belief, a membership was denied.

A I just recall hearing about it. I am sorry. I can't say, officially.

Q You don't know why it was denied, or when it was denied?

A No, sir. I am afraid not.

Q Could it possibly have been because the applicant didn't live in the geographical area specified?

A I am sorry. I just can't recall.

THE COURT: Thank you, ma'am.

MR. HARRIS: Mrs. Moore is our last witness.

Thereupon

VIRGINIA MOORE,

defendant, was recalled as a witness, and testified further as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q You have already been on the stand. You were the president of Little Hunting Park, Inc.?

A In 1965.

Q Now, did you receive any telephone calls after the board had expelled or denied membership to Mr. Freeman?

A Denied the assignment. Yes, I received one from Mr. Freeman, asking that he meet with the board of directors, be allowed to meet with the board of directors. I said he would have to take that up with Mr. Sullivan. He asked why he had been denied. I said he would have to take that up with Mr. Sullivan. We had nothing to do with him.

Q Did you hear from Mr. Sullivan?

A I called Mr. Sullivan that day. He was out. He returned my telephone call on June 9th.

Q Will you tell what transpired in this telephone conversation?

A I told him he should not have Mr. Freeman call me. He should tell Mr. Freeman why he was being denied the assignment. He said, "Father Walsh had recommended the assignment." It made no difference to me what Father Walsh recommended. He wasn't a member of the corporation. He very sarcastically said, "You don't care what Father Walsh said?" I said, no.

Q What did he say?

A I tried to tell him it was for economic reasons. He repeatedly kept interrupting me, and I said, you are rude and hung up on him.

Q What did he say before you hung up on him?

A He said, "The action of the board was immoral and illegal."

Q Did he mention anything else?

A I can't recall anything else.

Q Now, Mr. Sullivan's letter of June 25, 1965 was mailed to your employer, Father Wingler?

A Right.

Q Did Father Wingler talk to you about it when he

received it?

A He showed me the letter.

Q Did he have any comment?

A Other than it was none of his business. It was a private corporation.

Q Did you ever talk to Father Cassidy about this letter?

A No, sir. I called him three times, and he didn't return my call. I advised his office why I wanted to talk to him.

Q Are you familiar with the division of the membership in Little Hunting Park, Inc. according to subdivision?

A I did make a study of it while I was a member of the board of directors.

Q Do you recall making a list of the various numbers of members in each subdivision?

A I do.

Q And you made notes of the various numbers?

A There was an estimate, yes.

Q And you gave it to me?

A I did.

Q To refresh your memory, are these the notes that you gave to me?

A Yes.

Q Now, how many houses are there in Bucknell Manor?

A I have been told when we moved into Bucknell Manor that we were the seventh family in there. I have been told. I did not make the actual count.

MR. EVELETH: I object. It is rank hearsay.

BY MR. HARRIS:

Q Do you know for a fact approximately how many houses are in Bucknell Manor?

A About 800.

Q How many people in Bucknell Manor belong to Little Hunting Park, Inc.?

A Around 115, that is an estimate. In going through the records, some of the streets I may have missed.

Q How about Bucknell Heights, how many houses were in Bucknell Heights?

A I don't know.

Q Do you have an estimate?

A No, I don't.

Q Do you know how many people in Bucknell Heights were members of Little Hunting Park, Inc.?

A Approximately 136.

Q Do you know how many members you have in Alexandria City?

A In Alexandria City, there are, I think, about eleven, sixteen on here.

Q How many do you have that are not in the area specified in the bylaws and Alexandria City? How many are out of those two areas?

MR. EVELETH: I must object. I feel she is reading from that thing. She should use her recollection.

THE COURT: I believe she prepared it.

MR. EVELETH: I object. I don't think he has laid a proper foundation. He hasn't shown where she got that information from.

THE COURT: She made a study.

MR. EVELETH: It doesn't mean anything to me.

THE COURT: You may cross examine on it.

BY MR. HARRIS:

Q How many outside the area?

A 117.

Q Is West Grove in your area, when you mention 117 out of the area? This is the area that is covered by the bylaws, so far as the georgraphical limits.

A No, it is covered by the area, according to the area designated by the board of directors. Geographically, there are no areas.

Q There are no areas now?

A There are people in Stratford in Sulgrave Manor. There were people in Waynewood. There were people in Hollin Hills, and people in Hollin Hills that belong to Hollin

Hills, Inc.

Q This particular Little Hunting Park, Inc. stopped in Bucknell Manor?

A It could be either at Bucknell Manor or Bucknell Heights. It is adjacent to the Bucknell Elementary School.

Q And roughly sixteen percent of the people from Bucknell Manor belong to it. You say there are about 800 people in Bucknell Manor, and there are 717.

A If that is 16 percent, yes, sir.

Q How long have you been a member of Little Hunting Park, Inc.?

A I think we joined in 1958. I am not sure.

Q Since that time, it has always been a private club membership only?

A That is right.

Q And are you familiar with,when you were president, the supply and demand of memberships? In other words, were there more people looking for membership than memberships available, or the other way around?

A We had a hard time selling memberships. I was membership chairman. We had a very difficult time getting rid of the memberships. As a matter of fact, the corporation had to buy back the treasury stock in order to reach a sustaining level. There are 147 memberships and 145 members instead of 600. The area even after we opened it up, won't

include 600 members.

Q This treasury stock was put in the corporation?

A The people were fussing because their membership was up for two or three years, and they didn't have anyone to buy it.

Q Did you have occasion to see any advertisements so far as selling these memberships?

A Yes, I have seen advertisements in the newspaper. I have seen it on the bulletin board in the Bellview Shopping Center.

Q What was the price requested for a membership?

A $125.00 and $150.00.

Q What did that originally cost?

MR. EVELETH: I object. She hasn't identified that.

THE WITNESS: We paid $200.00 for our membership when we bought it in 1958 or 1959, whenever it happened to be.

BY MR. HARRIS:

Q Going on to the special meeting of the membership, were you the presiding officer at that meeting?

A I was.

Q In your opinion, was the meeting conducted fairly?

A It was. We had a set of rules set up. Each side was allowed a certain amount of time, and each member who wished to speak was allowed two minutes, and we had a time keeper on each side, and everybody was allowed to speak.

Q Did Mr. Sullivan's side get an opportunity to speak?

A They did.

Q When it came to the questions that were submitted to the special meeting, how did you handle this, by acclamation, a showing of hands, or how?

A It was by acclamation. We had ballots printed. The room was small. People were standing. We felt we could not give out the ballots properly, so we had the vote by acclamation.

Q Out of these three questions that were submitted to the membership, how did the vote go?

A It was overwhelming for, I believe, the three things. It isn't for me to tell how they went.

Q Do you recall? Was it any one of the three propositions submitted to the membership or was the vote overwhelming on all three?

A The vote was overwhelming on all three.

Q Now, in the meeting of the board of directors on 17 August 1965, which Mr. Sullivan appeared to show why he should not be expelled, did you preside at that meeting?

A Not really, no.

Q Did you vote?

A I didn't vote at that meeting on the 17th.

Q You voted at the next meeting. You voted at the

subsequent meeting?

A The board of directors, yes.

Q Did you vote to expel Mr. Sullivan?

A I did not vote.

Q Was the vote unanimous?

A The vote was unanimous.

Q And there was a quorum present?

A There was. I believe there was more than a quorum because it takes more than two-thirds of the board of directors in order to expel a member.

Q Going back to the telephone calls, did you receive any unfriendly telephone calls as a result of this accident and the rejection of the assignment to Mr. Freeman?

A Yes, I received a number of them. Some of them identified themselves as members of the corporation. However, I don't recall their names. The one name I do recall was Mr. Sutherland. He called and asked if he could be present at a board meeting.

This was in June. I advised him that the board meeting had already been held, and I would see if he could be allowed to attend the July meeting. I think his name did come up, and then Mr. Sullivan called me and was very cool and very put out because he felt that the board meeting was going to be on the regularly scheduled third Tuesday.

However, the meeting had been held the previous

to allow members to go on vacation. I felt in his manner that I should have advised him that the meeting was held prior to the third Tuesday, and then Mr. Sutherland called me back and he was very unhappy about the meeting having been held on Thursday. I told him that demands were being made to call a special meeting, whereby this matter would be resolved. He said that wasn't quick enough, and I will take legal means, and said very sarcastically, "I hope you have a good vacation."

Q Did you talk to Mr. Sullivan again that evening?

A No.

Q Did you receive any other telephone calls?

A I received many anonymous telephone calls.

Q What was the tenor of the telephone calls?

A One woman used language I don't approve of. "Woman, stick to your guns," and things like that, that I don't approve of.

Q How about hostile telephone calls, did anyone make telephone calls that were hostile?

A Yes.

Q How many of those hostile telephone calls did you receive?

A I would say half a dozen.

Q Did you notify anybody but Mr. Sullivan about the application of the assignment to Mr. Freeman?

A I did not.

Q Did you notify the newspapers in this regard?

A I did not.

Q Mr. Sullivan filed a suit against the corporation prior to this one.

A Yes.

Q And I think in the record we have a letter from Mr. Gartlan asking that the date set for the expulsion hearing to be continued.

A Yes.

Q Did you talk to Mr. Gartlan in reference to that?

A I don't believe I did.

Q What next transpired after that, do you remember?

A Yes, I gave you the letter. I may have called Mr. Gartlan, but I don't recall.

Q Now, prior to the meeting of the 17th of August, which was the expulsion meeting, did the board discuss, whether sitting as a board or otherwise, the situation of Mr. Sullivan's harassment?

A Yes, we had numerous meetings, and this was discussed. We called in members who are still members, but who were the original board of directors to get their views on this, because I felt I wasn't qualified to make any decision on my own; that we needed advice from these other people, and we had three or four meetings as such.

Q Now, all the items that are alleged in this bill of particulars that was given to Mr. Sullivan, was the board fully apprised of each and every item?

A Yes.

Q Prior to the expulsion meeting?

A Yes.

Q Did Mr. Gartlan ask to cross examine you at this particular expulsion meeting?

A He did not.

Q Did he ask to cross examine anybody?

A He did not.

Q Did he have full opportunity submit witnesses?

A He submitted witnesses, yes.

Q At this particular meeting you heard Mr. Gartlan's defense of Mr. Sullivan, and you heard evidence to substantiate this bill of particulars.

A Right.

Q And on the basis of the evidence submitted to you, would you consider the conduct of Mr. Sullivan unfriendly, hostile, having a disposition of an enemy, opposed, adverse, or antagonistic to it?

MR. BROWN: I object. This is not how it is spelled out in the bill of particulars.

MR. HARRIS: It is Webster's definition.

THE WITNESS: Did I feel?

BY MR. HARRIS:

Q Did you feel that Mr. Sullivan's conduct was?

A Yes, sir, and I took exception to this letter that he wrote to my employer, Father Wingler. He had been there only a month, and if he had been a different person, I would be out of a job.

MR. EVELETH: I object.

THE COURT: Strike the last part of the answer. It isn't responsive to the question.

MR. HARRIS: I have no further questions.

CROSS EXAMINATION

BY MR. EVELETH:

Q Mr. Sullivan, it is charged, did use abusive language to the corporation's president. This is one of the charges that was a basis for his expulsion. Is that correct?

A Yes, sir.

Q What was the abusive language he used, and when?

A When he called me and told me the board of directors were immoran in their decision, and he was --

Q He called you, Mrs. Moore?

A Yes, he called me.

Q Was he returning your call?

A Yes.

Q All right, continue.

A I don't know where I was.

Q I was asking how he was abusive during that conversation.

A He was abusive in the fact that he asked me a question, would not let me finish my answer, and in the way he replied when I said I did not care whom Father Walsh recommended.

Q What was the abusive language he used?

A That to me was abusive.

Q What was the abusive language?

A That was the abusive language, and the way he answered me and being rude and not letting me finish.

Q What was the abusive language, not his manner or anything like that.

A When he said, "You don't care what Father Walsh said," and accused the board of which I was a member of being evil and immoral.

Q Who presided at the August 17th meeting with Mr. Sullivan?

A Mr. Harris, the attorney.

Q I believe you said that there were three or four extra meetings in relation to the Sullivan matter.

A Right.

Q And were these meetings such that it caused you to use time? What is the basis of the complaint in this discussion?

A Yes, it took considerable time.

Q Did you consider the matters to be irrelevant?

A What do you mean? I considered what matters were irrelevant?

Q The matters which Mr. Sullivan was raising with you.

A I don't know how you mean that question.

Q Well, you said he caused you to have mee extra meetings. Isn't that the job of the board of directors to have meetings?

A Regular meetings, not extra meetings for something like this.

Q Something like this? What do you mean, something like this?

A I mean to ask to have meetings, and he wouldn't accept the decision of the board of directors.

Q What was discussed in all of these extra meetings?

A We discussed whether it was in the bylaws that we could expel a person, or if we had to accept every assignment that was given to us.

Q I believe you said, "Expel," that you could expel a person.

A A person for a cause.

Q That Mr. Sullivan caused that extra meeting. You were pleased about his expulsion because you had to have an

extra meeting.

A There were a number of meetings.

Q What were the dates?

A I don't know. They were important meetings.

Q I got a figure. I am not clear if I understand how many members there are presently in the corporation.

A Right now, I don't know.

Q I may have mistaken something. I thought you said something like 135.

A Members in the corporation?

Q Yes.

A No, I did not.

Q You said it had dropped down from 600.

A To 500 and something.

Q I must have misunderstood your testimony. Are you asserting that the corporation is having financial difficulties?

A I am asserting that the corporation is having difficulties in selling memberships.

Q What affect does that have on the financial stability of the corporation?

A The dues go up, and we don't have the amount of money to spend on the pool, which is ten or twelve years old, and it is necessary.

Q Have you not spent a lot of money on the pool in

the last few years? Haven't you put in a new tennis court?

A No.

Q Have you repaired your swimming pool?

A Yes.

Q You spent about four thousand dollars on it?

A I don't know how much was spent.

Q Did you buy a new chlorinator in January, 1965?

A I don't recall.

Q How would you compare the financial situation of this corporation with other similar membership-type corporations with swimming pools?

A I have no knowledge of any other type.

Q You don't know whether you are better off or worse off than they are?

A No, I don't.

Q Off the record.

(Further discussion was held off the record.)

THE COURT: Go ahead. Do you have any objection to these? Look at them.

MR. HARRIS: These are items concerning bank accounts and things. I object.

THE COURT: Would you swear to the authenticity of the minutes? Go back to the lady back there and see if she will sign them. Step down, Mrs. Moore. Take the stand, Mrs. Gonzalez.

Thereupon

JEWELL GONZALEZ

was recalled as a witness, and testified further as follows:

THE COURT: He hands you a set of minutes of the corporation, bearing some date.

MR. EVELETH: March 16, 1965.

THE COURT: Marked Exhibits Nos. 53 through 56. Are those true copies of the minutes of the meeting?

DIRECT EXAMINATION

BY MR. EVELETH:

Q I have what purports to be minutes, dated March 16, 1965, March 15, 1966, May 17, 1966 and October 26, 1965. I ask you if these are true copies of the minutes.

A This one is signed, yes.

THE COURT: The answer is, yes. You may step down, all right.

Thereupon

VIRGINIA MOORE,

defendant, resumed, and testified further as follows:

MR. EVELETH: I offer these minutes into evidence.

THE COURT: You object?

MR. HARRIS: I have no objection, Your Honor.

THE COURT: All right, let them be admitted.

(The minutes, marked Plaintiffs' Exhibits Nos. 53 thru 56 for identification, were received in evidence.)

FURTHER CROSS EXAMINATION

BY MR. EVELETH:

Q I have one final question, and I would like for you to read the final sections of these minutes that I have marked. I hand you Plaintiffs' Exhibit 53, and I ask you to read Section (b) here out loud.

A "Mr. Lennon reported that there are 20 delinquents from in 1964. Presently, we have 51 memberships listed for sale with the corporation. It was agreed, however, that the corporation is in better shape this year than it has been in the past few years. Mr. Lennon approved the membership of the board as follows:"

Q And the date of that is what?

A March 16, 1965.

Q Plaintiffs' Exhibit No. 54, dated March 15, 1966. Will you please read what is in brackets?

A " Mr. Lennon paid and Mr. O'Boyle has compared our bank account with other pools in the area, and he informed us we are in better shape than most any other pools in the area."

Q I show you Plaintiffs' Exhibit No. 55, dated 17 May, 1966. Read the material in brackets.

A "Mr. O'Boyle suggested that some thought be given to buying back all eighty memberships that are now outstanding. It is his feeling we are in financial good shape, and in better shape than most all other pools in the area."

Q I show you Plaintiffs' Exhibit No. 56, dated 26 October, 1965. Will you read that, please?

A "Mr. Lennon reported that the corporation now has 564 members, with 49 memberships for sale. There were 27 assignments this year and 58 listed. There were 27 assignments this year and 58 transfers. He reported 49 members delinquent with their dues and advised that delinquency letters have been forwarded to them. He has first ~~of all~~ He reported that conditions have improved concerning the large number of sales that the corporation has been having. Last year we had 75 memberships for sale. This year we have 49. This concluded his report."

MR. EVELETH: I have no further questions of Mrs. Moore.

MR. HARRIS: That is my case, Your Honor.

THE COURT: You are going to have two rebuttal witnesses?

MR. BROWN: On further reflection, we would still like to stick to the previous resolve of calling two rebuttal witnesses, instead of three.

THE COURT: All right.

Thereupon

PAUL ~~RALPH~~ FORBES

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q State your name and address for the record, please.

A Paul Scott Forbes, 6910 University Drive, Alexandria, Virginia.

Q Are you married, Mr. Forbes?

A I am.

Q Do you have any children?

A Yes.

Q How many?

A One.

Q Are you a member of Little Hunting Park, Inc.?

A Yes.

Q Were you in 1965?

A Yes, I was.

Q What is your occupation?

A I am a ~~special~~ public relations counsel.

Q What is your higher educational background, Mr. Forbes?

A Graduate from the Foreign Institute of Applied Sciences.

Q Were you present at the special meeting held on July 29, 1965?

A Yes, I was.

Q Would you describe what transpired at that meeting and how it was conducted, please?

A Well, it was a very well attended meeting. It seemed the membership was just about everyone. The meeting

took place in the cafeteria of Bucknell Elementary School. People were standing on the tables, outside the doors, and outside looking in. The atmosphere was quite charged. It was evident that there was a high level of interest in the proceedings. I noted that entire families had come. There were husbands and wives, and even children were there.

If my memory serves me, I believe I was the first one to offer a motion to the effect that I didn't think it was proper that the Freemans had been excluded from attending. From the very beginning, the response from the people present was extremely emotional. I was shouted down and not given an opportunity to speak and complete my motion.

The impression I got was that the meeting was not at any time wholly under the control of the chair. On several occasions I protested to the chair on the basis of making some parlimentarian motion. I appealed to point of personal privilege to ask the chairman to keep people from shouting. My appeals were ignored. At one point, I referred to Roberts Rules of Order, and asked that the meeting be conducted in accordance with generally accepted procedures, and the parlimentarian stated he wasn't familiar with Roberts Rules of Order. I happened to have a copy of that pamphlet in my hand and took it up to him. He put it in his hand and laid it down and never referred to it.

During this time I sat next to the plaintiff, Mr. Paul Sullivan, and had an opportunity to observe his actions and conduct very closely. As the controversy and emotion swelled around him and he maintained his dignity and calm, and all the time I don't think I could, as it was all centered around him. I believe he was most discourteously treated by those who supported the action of the board. Whether those were in the majority or not, I could not tell, but they certainly were the most vocal.

Q Why couldn't you tell?

A As I said, it was a large attendance of men, women and children. Most of the votes, or I think if my recollection serves me, were voice votes. There was no way of determining who were voting, whether they were members or non-members. Let us take a hypothetical figure and say there were 300 bodies present. It is entirely possible that one-third of these were members, and you only had two-thirds of the people that were shouting, but you had no way of telling whether these people were actually members.

The movement was very ugly. Here I am only me, my personal membership. I am a member sitting in the middle of a lynching mob. When I left the meeting, I walked across the street to my home and met two of my neighbors. One said, "What is going on? It sounded like a Nuremberg-Nazi meeting. There was so much shouting going on. This is the

impression I got.

Q Who was the parlimentarian at that meeting? Do you know?

A Hanley.

Q Was the gentleman in this room today? Do you know?

A I don't know Mr. Hanley. I just seemed to remember the name.

Q Is there a door? Are you familiar with the physical layout of the cafeteria at the Bucknell School?

A I am.

Q You live across the street from it?

A Yes, I do.

Q Is there a back door to that room whereby people could wander in from the playground?

A Yes.

Q Without anybody's knowing about it?

A Yes, there is, and the door was open. It was quite warm, as I recall because of the number of people. The door was open and people standing in the door.

Q And people could wander in from the playground?

A I don't remember whether they did, but they could have.

Q Did you observe Mr. Sullivan at other times during the period that this whole controversy was current? That is during the period that Mr. Freeman, the assignment to

Mr. Freeman had been rejected, et cetera?

A Yes, sir, I saw him on two or three occasions.

Q Did you see him at times when he was highly emotional?

A Not outwardly.

Q Not outwardly? What was his manner?

A Well, I would say that in the short time I have known Mr. Sullivan, I haven't known him except during this controversy. I have found him to be unusual in his control of his emotions. In fact, this is one of the surprising things I have noticed about Mr. Sullivan, and remarked to my wife in many meetings with him, that if I had the provocation and was involved in the situation as he was, I couldn't remain as calm and cool and reasonable as he was. I think he was an extremely calm man under the circumstances.

CROSS EXAMINATION

BY MR. HARRIS:

Q You mentioned you walked by this second door.

A No, I did not walk by it.

Q You saw a second door?

A Oh, yes.

Q And you saw people standing in the door?

A Yes.

Q Did you attempt to go in that door?

A No.

Q Did you recognize anybody standing in that door?

A It was a sea of faces.

Q You don't know whether they were there to keep people out or standing there for the exercise of standing?

A No, my impression, from where I was sitting, and the front door was about there and the back door was about there, and there was a sea of people all around including in the doorway. It was pretty hard to discern who was where.

Q Would you say the majority of the people were the ones making the noise?

A I beg your pardon.

Q Would you say the majority of the people were making noise?

A I would say the atmosphere was a noisy and unruly one.

Q They were shouting?

A Down the actions of the board.

Q Apparently this action was a blow?

A Yes, it was.

Q Do you think that of the membership, that a majority were for Mr. Sullivan?

A I have no way of knowing what the majority were for. In my view, there was no attempt to segregate or separate the legal voters from the general people who were attending

that meeting.

Q You had a book on Roberts Rules of Order?

A Yes, I did.

Q And you said you gave this to the parlimentarian?

A Yes.

Q There was a vote taken on the three questions that were submitted to the membership, a vote by acclamation?

A What are you talking about?

Q I am talking about when the vote came out, there were three questions submitted to the board.

A Are these the three items submitted by Mr. Sullivan?

THE COURT: These are the three that came out of the notice of the meeting.

THE WITNESS: As I recall, they did not take a vote on the items as requested by Mr. Sullivan.

THE COURT: That is not what he asked you.

THE WITNESS: I don't remember the two questions.

BY MR. HARRIS:

Q You don't remember whether there were three questions?

A I remember there were several questions.

Q Several?

A Several means more than one. I don't remember the exact questions.

Q You consider yourself well versed in Roberts Rules of Order?

A I was past president of the Toastmasters Club.

Q Did you ask for a show of hands?

A I attempted to. I asked, could we have another vote and a showing of hands?

Q Who did you ask to show hands?

A The chairman.

Q Who is the chairman?

A Mrs. Moore.

Q Is she in the Courtroom?

A Right there. I was told it was out of order because there was a different motion on the floor. Then afterwards when that was voted on by acclamation, then I attempted to stand up and make that point, and everybody -- Nobody adjourned the meeting. It just exploded. It disappeared and people disappeared.

Q And the chairman did nothing to regain order?

A No, not at that time.

Q At any time?

A I won't say that the chairman never did anything to retain order. I don't remember that closely. I won't say on that point. She did not do anything to regain order, but there was a general atmosphere in which order wasn't maintained in most cases.

Q Did you attend the meeting of the membership on the 26th of October, 1965? This was a general meeting of the membership.

A No, the only meeting I attended was the one that the Freeman question came up.

Q The only meeting you attended of Little Hunting Park?

A That is right.

MR. HARRIS: I have no further questions.

Thereupon

JOHN M. WELLS

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Will you state your name and address for the record, please?

A My name is John M. Wells. I live at 1911 Windmill Lane in Fairfax County. My address is Alexandria, Virginia.

Q What is your occupation?

A I am a Unitarian Minister.

Q Of what church?

A Of the Mount Vernon Unitarian Church.

Q Where is your church located in relation to the

neighborhood where Little Hunting Park is situated?

A Well, the church is located just off Fort Hunt Road, which is just a few miles from the Little Hunting Park area.

Q How far?

A A couple of miles as the crow flies. You have to go a little farther around the road to get there.

Q Are you acquainted with Paul E. Sullivan?

A Yes.

Q Did you ever receive a copy of a letter sent through the mail to you? Were you ever delivered a copy of a letter from Mr. Sullivan dated June 25, 1965, addressed to a Reverend Cassidy, Director of the Northern Virginia Catholic Charities?

A No.

Q Was there an occasion in June, 1965 when persons met with you when Mr. Sullivan and others met with you?

A Yes, sometime toward the middle of June, and I think it was about June 13th, but I don't remember that exactly. My memory was refreshed on that, but I don't remember exactly.

Q Do you recall who was at the meeting?

A I remember who was there. Mr. and Mrs. Sullivan, Dr. and Mrs. Freeman were there and then there was a Reverend Mr. Davis. THE COURT: What was the date of this meeting?

Q June 13th, the witness testified to.

A At this church, yes. Let me say this. My church is a little different from most in that we don't have a building like a church. The church bought an estate, and I live upstairs in what is called the mansion of the estate, and the church is held downstairs in what is called the fireplace room, because there is a fireplace there.

Q Was the same building where you reside, comparable to the rectory of the church?

A Yes, but the downstairs portion is for church and Sunday School classes and get together. This is where the meeting occurred. There was a Reverend Mr. Davis, who is a Episcopal minister, who was there, and members of my church were there, and Mr. and Mrs. James Sutherland and Mr. and Mrs. Paul Forbes, and if there were any others there, I don't recall. I think that might be the group, but it has been two years ago.

THE COURT: Were the Freemans there?

THE WITNESS: Yes, they were there.

BY MR. BROWN:

Q What was the conclusion or result of that meeting?

A There were some rather unusual occurrences. That is, it seemed to me unusual. During the course of the spring, we had in the community where I live, and that includes the Bucknell area and Hollin Hills and several

of the members of my church had been actively participating in filling an open house drive to see what the tenor of the community might be in reference to negroes moving in, and people who would be willing to sell their homes. There had been a tremendous amount of cooperation among the people, particularly among the Catholic people and Unitarian, and we found this change to be wonderful.

It was surprising to me to find from my congregation that a negro and his family who had moved into our neighborhood, had not been permitted to become associated with, join, or I don't know what the exact details are at the swimming pool, where the members of my church were members. We got together. I was called and asked, did I know anything about it? I said, no. At that time I hadn't heard about it. I did not know Mr. Sullivan at that time. I had heard of him. He came and his wife and Dr. and Mrs. Freeman and Reverend Mr. Davis, who I see is a negro Episcopalian Minister and members of my church and me, and the question in our own community, for quite a few of us had worked in a spirit of unanimity and a spirit of good brotherhood, our open community, to find that for some reason or other that we did not know, that Dr. and Mrs. Freeman and their children were not permitted to perform actively in the swimming pool situation.

There are no public swimming pools in our area.

They are all community type swimming pools. This meeting was to discuss why this could happen in our community, where we, as church leaders, failed to see how this might be.

I have a very peculiar background. I was an attorney much longer than I have been a minister, and there are differences. I was asked as to what the legal rights of the parties involved were.

THE COURT: Did you tell them?

THE WITNESS: No, I did not. I have been urged by many of my friends to be admitted to the bar in Virginia, which is under the law of Virginia. I would be eligible to be admitted, but I have very good reason why I have not done this. It is because I don't want to practice law. It would take too much of my time. I want to continue as a Unitarian Minister, and I studiously avoid letting this become a legal get together.

The question came up as to what should be done or should not be done. You asked for the conclusion of this meeting. My work was at that time as a minister, and I guess all my legal training comes through in spite of my efforts not to let it, and that there should not be any legal maneuvering of any kind. This was the nature of the meeting. This was it. Primarily, it was almost unbelievable on the part of myself and on the part of Reverend Davis and

Mr. and Mrs. Sutherland and Mr. and Mrs. Forbes, that this could happen. There was discussion about what might be done, and I left shortly thereafter for New Hampshire, and I got back from New Hampshire, and I left for six weeks in Georgia, so that was about the extent of my participation in this.

BY MR. BROWN:

Q Was it concluded at that meeting that anything should be done by way of conducting a phone campaign to members of the board of directors of Little Hunting Park?

A Not to my knowledge. There were no real conclusions of any kind. Certainly there was no effort made to call or influence anyone. If there was any question of any phone calls of any kind, I don't know anything about it.

Q You were there for the whole meeting?

A I was there. We could very well leave. I was home for the whole meeting, of course.

MR. BROWN: Nothing more.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Wells, are you a member of Little Hunting Park?

A No, I am not.

Q Is Father Davis, Reverend Davis, a member of

Little Hunting Park?

A I can't answer that. I don't know whether he was or not.

Q Do you know whether or not the members of your church who were available for this meeting, were members of the Little Hunting Park, Inc.?

A It seems to me that Mr. and Mrs. Sutherland were members, and from what they said there, I believe that Mr. and Mrs. Forbes were members.

Q You mentioned, "Our neighborhood." You live in Bucknell Manor?

A No, I don't.

Q Do you live in Beacon Manor or White Oaks?

A No, no.

Q Or in Bucknell Heights?

A No.

Q How did you find out about the fact that Mr. Freeman was denied membership?

A I was told originally by Mrs. Forbes, and then subsequently by Mrs. Sutherland and Mr. Sutherland. Mr. Sutherland at that time was chairman of the board of my church.

Q You said you held this meeting to find out what you, as minister of the community, or how you as minister had failed. Now, where is Reverend Davis' church?

A In Alexandria. I don't know exactly where his church is. I should know, but I don't. He has been in my house. I don't know where his church is. I don't know.

Q We have a letter dated 25 June to Revenend Cassidy. In this letter Mr. Sullivan gave his impression of this meeting he held with you. Let me read. "Later that same evening, we met with the Freemans, some interested members and Mr. John Wells, a minister of the Mount Vernon Unitarian Church. We invited Father Walsh but because of the bishop's presence in the area, he declined to attend. In the discussion, we came to the conclusion there were many avenues of action. Until they were all exhausted, we should pursue the matter." Do you disagree with this conclusion of Mr. Sullivan so far as the result of this meeting?

A Well, when he says in that letter that there were a number of avenues open, there is always a feeling generated at a meeting of hope, and we will move along to it.

Q I think your testimony was to the effect that you suggested that they proceeded through the organization provided by the club. Did you not?

A Well, normally, you see, before you would proceed any other way, you would proceed that way.

Q But Mr. Sullivan said, "Until all these things

were exhausted, we should pursue the matter."

A Well, in the discussion as to what was to be done, there seemed to be, if my memory serves me correctly, a feeling of surprise by the people who were there that the Freemans wouldn't be treated like anybody else, and would be treated if they wanted to join the swimming pool. We are members of the Hollin Meadow swimming pool, and one of the specific questions I asked, was this open to everyone who wants to join, yes, and I asked the same of the Hollin Hill pool. Was it open to anybody, and they said, "No." I thought it was followed by all pools in the neighborhood. I was surprised. Maybe I am naive. I had been raised in the south all my life.

Q Do you consider this area quasi south?

A Well, it isn't as southern as some places.

Q In the south are negroes accepted freely at all in country clubs?

A No, in fact when I grew up a little bit south of Atlanta, I never went to the country club. In my county,, Brant, for us there were no negroes.

Q How long ago was this?

A I left Atlanta when I graduated from the university law school in 1952, and I haven't lived there since.

Q Has the situation changed in Atlanta drastically since?

A I know it has.

Q Would negroes be accepted?

A In this capital where there is a little less of opposition, they would have gone a little further than Atlanta.

Q How do you feel about a country club? Do you think a country club has a right to select its members as they see fit?

A You ask how I feel?

MR. BROWN: Objection, Your Honor.

THE COURT: Objection sustained.

MR. HARRIS: No further questions.

MR. BROWN: That concludes our rebuttal.

MR. HARRIS: Your Honor, I would like to renew my motion to strike.

THE COURT: All right, I am not going to rule on it. Do you want to argue? I would be interested in some things. Where does the burden of proof lie in this, or anything else you want to argue on? I think I understand your positions pretty well. I could decide it this afternoon. I would rather not do it. I have a lot of material that has been introduced. I would rather read it over and think about it before I decide the case. I would like to have the benefit of anything that counsel can say and one thing that occurs to me --

MR. BROWN: Your Honor, do I understand that you would like to have that now? We would like to submit a memorandum to you within a few days.

THE COURT: I don't want to put this off a long time. My inclination is to decide it right now. I don't believe in sitting on things too long, but would like to have a time to consider this so if you are talking about a week, that would be all right with me.

MR. BROWN: By all means, we can have a memorandum within a week and a day.

MR. HARRIS: Your Honor, the only authority I can give you --

THE COURT: You prepare a memorandum.

MR. HARRIS: I will be happy to prepare a memorandum. The one that alleges must prove. The only difference is in the case of an affirmative defense. This is a lawsuit. They have alleged malice, but the burden of proof is on them, but I will submit a memorandum to you.

THE COURT: All right. Let us have it no later than Thursday. Would it be necessary to refute anything?

MR. HARRIS: I think everything is here.

MR. BROWN: Would there be any time allowed for reply?

THE COURT: I just asked you. Do you want time?

MR. HARRIS: Your Honor, I think if your question is burden of proof, I can submit a memorandum.

THE COURT: I didn't say that. You can submit any memorandum. I don't know whether you want ten days or more than ten days. Give me your memorandum in a week and let me decide.

(Whereupon, at 5:30 o'clock, P.M., the hearing was concluded.)

REPORTER'S CERTIFICATE

I, Isabel Warner, reporter, do hereby certify that this is a correct transcript of the proceedings in the above-entitled matter.

Isabel Warner
Reporter

Certificate:
This volume of the transcript was tendered to me June 12. 1967. In the morning mail on that date I received a copy of a letter from Plaintiff's Counsel, Robert M Alexander addressed to Defendant's counsel, John Charles Harris dated June 9. 1967, advising Mr Harris that the transcript was being delivered to me, Judge Keith, on the same day. The transcript was left at my office with my secretary on June 9. 1967. I received it June 12. 1967 at 9 A.M.
Signed by me June 20. 1967
Frank Keith
Trial Judge