



3 0307 00036 1736

COPY

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

In the Matter of the Election Contest
of Jack Fena, Contestant, against
Barney Bischoff, Contestee, for the
office of State Legislator of District
63, in the General Election of
November 5, 1968.

TRANSCRIPT

FILE NO. 12522

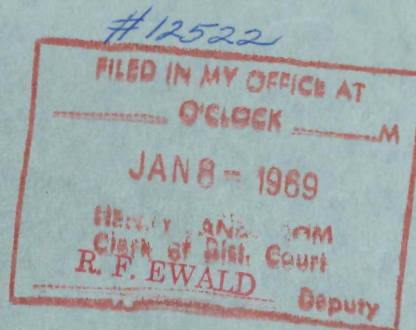
DATE: December 9, 1968, Hibbing, Minnesota.

BEFORE: Honorable Leslie L. Anderson, judge, without a jury.

APPEARANCES: MICHAEL F. RYAN, Esq., of Ryan & Ryan, First National Bank Building, Aitkin, Minnesota, for the Contestant.

JOHN E. SIMONETT, Esq., 72 East Broadway, Little Falls, Minnesota, for the Contestee.

OCT 19 1972



Reporter:
Robert F. Peterson
Court House
Hibbing, Minnesota

LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
SAINT PAUL, MINNESOTA 55104

(P) E 16.16
8970
1968

I N D E X

CONTESTANT'S WITNESSES

ROBERT J. MANNEY	
Direct examination	3
Cross-examination	5
Redirect examination	8
Re-cross examination	8
LESTER A. RUTSTEIN	
Direct examination	8
Cross-examination	11
CARL BLOOMQUIST	
Direct examination	13
Cross-examination	16
BERNARD J. BISCHOFF	
Cross-examination	22
BERT ACKERSON	
Direct examination	67
Cross-examination	69
LESTER MILLER	
Direct examination	72
Cross-examination	76
Redirect examination	82
Re-cross examination	84
Redirect examination	85
Re-cross examination	87
N. S. CHANAK	
Direct examination	88
Cross-examination	93
DONALD C. ODDEN	
Direct examination	94
WALTER J. WILLIAMS	
Direct examination	96
Cross-examination	99

I N D E X II

CONTESTANT'S WITNESSES (Contd.)

HOWARD A. REED	
Direct examination	100
JOSEPH CHAMERNICK	
Direct examination	102
Cross-examination	106
Redirect examination	108
Re-cross examination	109
HAZEL RICKE	
Direct examination	110
Cross-examination	112
JACK FENA	
Direct examination	112
recalled:	
Direct examination	125
Cross-examination	141
recalled:	
Cross-examination	155
Redirect examination	196
JOHN DURFEE	
Direct examination	118
Cross-examination	121
PETER J. MULVAHILL	
Direct examination	123
Cross-examination	125
ELMER PETERSON	
Direct examination	151
Cross-examination	154

I N D E X_ III

CONTESTEE'S WITNESSES

ELIZABETH KENNEDY

Direct examination	198
Cross-examination	201

ROBERT MATHIAS

Direct examination	202
Cross-examination	207
Redirect examination	208

EDWARD MATONICH

Direct examination	210
Cross-examination	218
Redirect examination	221

BERNARD J. BISCHOFF

Direct examination	222
Cross-examination	258

CONTESTANT'S EXHIBITS

	Marked	Recd.
A - Manney Shopper Circulation Listing	4	5
B - St. Louis County Map	8	9
C - WMFG Coverage Map	11	11
D - WEVE Coverage Map	13	14
E - WEVE Bischoff Broadcasts	15	16
F - WEVE Fena Broadcasts	15	16
G - Bischoff Newspaper Advertisement	20	20
H - Transcript of Bischoff Broadcast	29	29
I - Map of Proposed Range Expressway	83	84
J - WMFG Fena and Bischoff Programming	117	117
K - Newspaper Article	264	---
L - Fena Brochure	270	270

I N D E X I V

CONTESTEE'S EXHIBITS

		Marked	Recd.
1	1 - Resolution of Fayal Township	86	86
2	2 - Copy of Letter of John Durfee	122	123
3	3 - Canvass of Primary Election	140	141
4	4 - Canvass of General Election	140	141
5	5 - Sheet #14, Primary Election	140	141
6	6 - Sheet #21, General Election	140	141
7	7 - Fena Advertisement	145	146
8	8 - Fena Advertisement	148	149
9	9 - Resolution of City of Eveleth	174	175
10	10 - Transcript of Fena Broadcast	180	181
11	11 - Transcript of Fena Broadcast	182	182
12	12 - Notes of Edward Matonich	212	214
13	13 - St. Louis County Map	223	224
14	14 - Bischoff Letter	230	230
15	15 - Town of Stuntz Map	230	232
16	16 - Transcript of Bischoff Broadcast #1	234	235
17	17 - " " " #2	234	235
18	18 - " " " #3	234	235
19	19 - " " " #4	234	235
20	20 - " " " #5	234	235
21	21 - Copy of Warranty Deed	245	246
22	22 - Consolidated Abstract Co. Letter	246	247
23	23 - Newspaper Clippings	249	252
24	24 - Photocopies of Newspaper Articles	252	253
25	25 - Bischoff Brochure	254	254
26	26 - Bischoff Mailing List	255	255
27	27 - Manney Shopper	258	258

Contestant rests 198-270

Contestee rests 270

Reporter's Certificate 271

1 STATE OF MINNESOTA
2 COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

3 -----
4 In the Matter of the Election Contest
5 of Jack Fena, Contestant, against
6 Barney Bischoff, Contestee, for the
7 office of State Legislator of District
8 63, in the General Election of
9 November 5, 1968.
10 -----

TRANSCRIPT
FILE NO. 12522

11 The above entitled matter came regularly on for hearing
12 before the Hon. Leslie L. Anderson, one of the judges of the
13 Fourth Judicial District assigned by Order of the Supreme
14 Court of the State of Minnesota to hear said case, without a
15 jury, on the 9th day of December, 1968, in the Court House,
16 Village of Hibbing, County of St. Louis and State of Minnesota.

17 A P P E A R A N C E S

18 MICHAEL F. RYAN, Esq., of Ryan & Ryan, First National
19 Bank Building, Aitkin, Minnesota, appeared as counsel for and
20 on behalf of the contestant.

21 JOHN E. SIMONETT, Esq., 72 East Broadway, Little Falls,
22 Minnesota, appeared as counsel for and on behalf of the contestee.

23 Thereupon proceedings were had, as follows:

24 Mr. Ryan: May it please the Court, I would like to make
25 a very brief opening statement, your Honor, in behalf of the
contestant, Jack Fena. In this case, we are, through our
Notice of Contest, charging Mr. Bischoff with seriously,

1 materially and deliberately violating the Fair Campaign
2 Practices Act, Election Laws of the State of Minnesota. This
3 charge is based upon a newspaper ad that we will put in
4 evidence and a radio address given over, I believe, two or
5 three stations in the area on October 31, 1968, and again on
6 November 4, 1968, the day before election. The ad and the
7 broadcasts, we contend falsely charge Mr. Fena with wrongdoing,
8 improper conduct as an incumbent legislator, and the two
9 statutes in particular which form the basis of our charge of
10 violating the Fair Campaign Practices Act are Section 210.11
11 and 211.08.

12 M.S.A. Section 210.11 states: "Every person who writes,
13 prints, posts or distributes, or causes to be written, printed,
14 posted or distributed, except by broadcasting, any circular,
15 poster, or other written or printed matter containing false
16 information with respect to the personal or political character
17 or acts of any candidate, which is designed or tends to elect,
18 injure or defeat any candidate for nomination or election to a
19 public office, shall be guilty of a gross misdemeanor."

20 Section 211.08 reads in part - that particular part
21 which is applicable in this case: "Any person, firm, corporation
22 or committee who shall knowingly make or publish or cause to be
23 published, any false statement in relation to any candidate or
24 proposition to be voted upon, which statement is intended to or
25 tends to affect any voting at any primary or election, shall be

1 guilty of a misdemeanor."

2 Now, obviously we are not in court in a criminal case.
3 These are penal statutes, but that is not the object of our
4 being here today. This is a civil case, but we are charging
5 Mr. Bischoff with having violated these two sections of the
6 Fair Campaign Practices Act, Minnesota Election Laws. We take
7 the position that the ad and the broadcast of Thursday,
8 October 31, over the Eveleth station, and on Monday, November 4,
9 over Hibbing and Eveleth, that both of these broadcasts and the
10 ad in their total are false and we will take issue with certain
11 specific parts of the ad and broadcasts as we proceed; but we
12 do contend the overall impression created in the mind of the
13 voter upon reading the whole ad and listening to the whole
14 broadcast is one of false statements made of Mr. Pena.

15 Mr. Simonett: I don't believe there is any need to make
16 an opening statement on the part of the contestee at this time,
17 your Honor. We, of course, will have our turn.

18 ROBERT J. MANNEY

19 Called as a witness, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Ryan:

23 Q What is your full name, Mr. Manney?

24 A Robert James Manney.

25 Q And what is your business?

1 A Printing and publishing.

2 Q And what do you publish?

3 A Manney's Weekly Shopper.

4 Q And what day of the week is the Shopper circulated?

5 A It is official Monday publication, but it is circulated
6 partially on Sunday.

7 Q Partially on Sunday and Monday?

8 A Yes.

9 Q And when was your last issue published prior to the
10 general election of November 9?

11 A Monday, November 4.

12 (Circulation listing marked Contestant's Exhibit A for
13 identification.)

14 Q Did you at my request, Mr. Manney, prepare from your
15 business records a synopsis of the circulation of the shopper
16 within the 63rd District?

17 A Yes.

18 Q And showing you what has been marked as Contestant's
19 Exhibit A, would you identify that?

20 A Yes.

21 Q What is it?

22 A This is a complete total circulation showing the
23 circulation in the 63rd District of 9,861.

24 Q Don't tell the totals yet. Is this a synopsis from your
25 records?

1 A From my records of the circulation, yes.

2 Mr. Ryan: We will offer Contestant's Exhibit A.

3 Mr. Simonett: No objection.

4 The Court: Received.

5 Q (Mr. Ryan) Total circulation of the Shopper within the
6 63rd District is what?

7 A 9,861 copies, give or take a few, of course.

8 Q Mr. Manney, when must a person who seeks to put an ad
9 in the Shopper get that ad to you prior to publication? What
10 is your deadline?

11 A Deadline is Thursday at five o'clock, but we do break
12 this deadline on several occasions, depending on how far the
13 Shopper is and if there is room left open on Friday.

14 Q The thing is in print when, Saturday?

15 A We start printing Thursday noon. We do not print on a
16 Webb feed, but we sheet feed it so we do not print the entire
17 publication at one time.

18 Q So it depends on how far you get starting Thursday as to
19 whether or not you will permit a change in an ad?

20 A That is right.

21 Mr. Ryan: That is all I have.

22 CROSS EXAMINATION

23 By Mr. Simonett:

24 Q Mr. Manney, you stated that part of your weekly edition
25 is distributed on Sunday?

1 A Yes.

2 Q I note on Exhibit A, your list of circulation, certain
3 issues are distributed by the Hibbing carriers and Chisholm
4 carriers.

5 A Yes.

6 Q What are those?

7 A Those are boys from the age of 14 to 16 that I have our
8 own personal carriers.

9 Q And what day do they carry?

10 A Sunday.

11 Q So, in other words, Hibbing carriers show that they
12 circulated or do circulate about 4,827 issues of your Shopper?

13 A Yes.

14 Q That would have been on Sunday?

15 A That is right.

16 Q And the Chisholm carriers circulated 2,045 issues, again
17 that would have been on Sunday?

18 A That is right.

19 Q Any other circulated on Sunday?

20 A Yes, the rest. The only thing not circulated on Sunday
21 is what is mailed, and that comes out through the mail; that is
22 about 3,400 copies.

23 Q Well, when you say that 3,000 copies on Monday, are you
24 including there some of your issues which are circulated outside
25 the 63rd District?

1 A I don't understand.

2 Q You show the total circulation of 11,954.

3 A That is right.

4 Q Of that, 9,861 is in the 63rd District?

5 A That is right.

6 Q 2,093 are outside?

7 A That is right.

8 Q My question is as to the paper circulated on Monday, you
9 gave about a 3,000 figure.

10 A Yes, about that. You see, the Star routes and the
11 rural routes are mailed and they are listed right there and
12 could be added.

13 Q So the Star routes and the rural routes would be those
14 that are mailed?

15 A Yes, and Hibbing carrier #8 post office, it says.

16 Q Those would be put in the mail on Saturday?

17 A They would be mailed Saturday and delivered Monday.

18 Q Delivered on Monday. But at least we know this, of the
19 total circulation in the 63rd District of about 9,861 papers,
20 some 6,872 would have been delivered on Sunday?

21 A Approximately.

22 Q Where I got those figures is totaling Hibbing and
23 Chisholm carriers.

24 A Yes.

25 Q And I gather the Hibbing carriers and Chisholm carriers,

1 that these boys are delivering those papers generally in the
2 Hibbing and Chisholm communities?

3 A Yes.

4 Mr. Simonett: That is all I have.

5 REDIRECT EXAMINATION

6 By Mr. Ryan:

7 Q What time are they usually delivered by the carriers?

8 A Before one o'clock. Some deliver a little before
9 church. They go to church and finish after. Some do it
10 entirely before church. Most of them are finished before one.

11 Mr. Ryan: That is all.

12 RE-CROSS EXAMINATION

13 By Mr. Simonett:

14 Q Well, I think this is clear, but just so there is no
15 question about it on the record, the 6,872 copies delivered by
16 the Hibbing carriers and Chisholm carriers would be copies
17 delivered on Sunday within the 63rd District?

18 A Yes.

19 Mr. Simonett: Thank you. That is all I have.

20 (Witness excused)

21 (Map of St. Louis County marked Contestant's Exhibit B
22 for identification.)

23 LESTER A. RUTSTEIN

24 Called as a witness, having been first duly sworn,
25 testified as follows:

DIRECT EXAMINATION

By Mr. Ryan:

Q Mr. Rutstein, what is your occupation?

A General Manager of Radio Station WMFG in Hibbing.

Q And how long have you been manager?

A Since 1966.

Q As manager, are you familiar with the geographic area of the 63rd Legislative District that your station will cover?

A To a certain portion, yes.

Q Showing you what has been marked as Contestant's Exhibit B, a county map of St. Louis County, would you be able to designate on this map generally what area your station would cover?

A Well, to the best of my knowledge.

Q You think you could do that?

A I would like to refer to my coverage map.

Q Referring to your own records and looking at this Contestant's Exhibit B, do you think you can sketch for us on Exhibit B the general area that the station covers? Answer yes or no.

A Yes, I could.

Mr. Ryan: We will offer Contestant's Exhibit B.

Mr. Simonett: No objection.

The Court: Received.

Mr. Simonett: The record should show Exhibit B already

1 has an area outlined in red, and I assume that is meant to show
2 generally the boundary lines of the 63rd Legislative District.

3 Mr. Ryan: That is correct.

4 Q (Mr. Ryan) Mr. Rutstein, on Contestant's Exhibit B,
5 would you show with a red mark please the northerly and southerly
6 terminus of a broadcast area of WMFG?

7 A Here is your northern and there is the southern
8 boundaries of my primary coverage.

9 Q Would you mind indicating above those line the call
10 signal of your station?

11 A This is primary coverage, sir. I have a secondary
12 coverage that extends farther.

13 Q What do you mean by secondary coverage?

14 A Well, sir, my primary coverage incorporates my boundary
15 through Calumet to the west, just beyond Buhl to the east,
16 Silica to the south, and I would say pretty close to this area
17 here to the north. That is my class A signal. Now, the
18 secondary signal, because we are on 1,000 watts during the day -
19 we operate on 250 watts pre-sunrise, and then I increase my
20 power to 1,000 watts from sunrise to sunset. From sunset on,
21 night-time, I revert back to 250 watts, so I have what is called
22 a primary and secondary. My coverage is larger, of course,
23 when I increase my power. As I decrease my power, then it is
24 apparent that I do lose listeners in this area here.

Q Looking at the information sheet that you brought with you,

1 Mr. Rutstein, may we use this as an exhibit?

2 A Yes, sir.

3 (Coverage map marked Contestant's Exhibit C for
4 identification.)

5 Q Showing you what has been marked as Contestant's
6 Exhibit C, would you identify it?

7 A This is a coverage map of our Radio Station WMFG showing
8 the primary and secondary coverage.

9 Mr. Ryan: We offer Contestant's Exhibit C.

10 Mr. Simonett: No objection to Contestant's Exhibit C.

11 The Court: Received.

12 Q (Mr. Ryan) Referring to the statement about primary and
13 secondary coverage again, Mr. Rutstein, what hours of the day do
14 you reach your primary area, from eight in the morning, did you
15 say, or sunup to sunset?

16 A It is sunrise to sunset, yes.

17 Q And the secondary area?

18 A Would be post sunset and pre-sunrise, I would say.

19 Mr. Ryan: That is all I have.

20 CROSS EXAMINATION

21 By Mr. Simonett:

22 Q Your sales brochure, Exhibit C, also refers to the
Virginia station, does it not?

A Yes, sir.

Q Is there a management connection between the two stations?

1 A It is common ownership, sir. Mr. Befera owns both.

2 Q And is there any difference in your coverage on Saturdays
3 or Sundays, primary coverage, daytime hours, from other weekdays?

4 A No. Powerwise, we maintain that through our entire
5 seven day per week.

6 Q Reception should be about the same?

7 A Should be, yes.

8 Mr. Simonett: That is all I have.

9 (Witness excused)

10 Mr. Simonett: Excuse me. Your Honor, I wonder if I
11 might - and this should be on the record - present a question
12 to Mr. Rutstein, who has stepped down from the witness stand.
13 Mr. Rutstein, I am wondering if during the morning you could
14 from your records find for us the time slots that Mr. Fena had
15 political advertisements on your station during the last week
16 of the campaign, and the same for Mr. Bischoff. Would it be
17 very difficult to do it?

18 Mr. Rutstein: No, I can just check our daily logs. Are
19 you talking about political programs or announcements?

20 Mr. Simonett: Programs and announcements.

21 Mr. Ryan: You want spots too?

22 Mr. Simonett: And spots.

Mr. Rutstein: From what time to what time, sir?

Mr. Simonett: If you would do it please from October 26th
through November 4th.

1 Mr. Rutstein: Any particular hours, from our sign-on to
2 sign-off?

3 Mr. Simonett: Yes. To save your time, if it is some-
4 thing you can reduce to writing on a sheet of paper, that would
5 be fine, and you could just submit it to Mr. Ryan and myself and
6 we could offer it in evidence and you wouldn't have to appear
7 here.

8 Mr. Ryan: If you put it in writing, show the dates and
9 whether they were spots or whether they were five minute or ten
10 minute tapes, and give us each a copy.

11 Mr. Rutstein: All right.

12 CARL BLOOMQUIST

13 Called as a witness, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Ryan:

17 Q Mr. Bloomquist, what is your occupation please?

18 A I am the owner of Radio Station WEVE in Eveleth.

19 Q Does WEVE in Eveleth cover in its broadcasts areas of the
20 63rd Legislative District?

21 A Yes.

22 Q Would you be able to identify and show on a map generally
the area that your station does reach?

A I have a coverage map with me.

(Coverage map marked Contestant's Exhibit D for

1 identification.)

2 Q Showing you, Mr. Bloomquist, what has been marked as
3 Contestant's Exhibit D, would you identify it please? Tell us
4 what it is.

5 A The white area here indicates the listenable signal, that
6 is primarily daytime.

7 Q What is the overall document itself?

8 A It is a coverage map of the station.

9 Mr. Ryan: We offer Contestant's Exhibit D.

10 Mr. Simonett: No objection.

11 The Court: Received.

12 Q (Mr. Ryan) Showing you again what has been marked as
13 Contestant's Exhibit D, would you tell us what the exhibit is
14 designed to show?

15 A Well, it is designed to show the coverage of the radio
16 station.

17 Q What is the white area?

18 A The white area is considered the listenable signal during
19 the daytime.

20 Q And the grey area?

21 A It is a signal we get there, but not regularly.

22 Q Not always receiveable?

A Yes, that is correct.

Q Your station is a 1,000 watts daytime operation?

A Yes.

1 Q And 250 at night?

2 A Yes.

3 Q The same as WMFG?

4 A Yes.

5 Q And the white circle on the drawing is your primary area?

6 A Well, it is considered in technical terms half a mill.
7 area, which is a listenable signal.

8 Q Mr. Bloomquist, do you have any information with you now
9 that you could tell us on what dates and at what times Mr. Pena
10 and Mr. Bischoff had campaign broadcasts over your station from
11 October 26 through November 4?

12 A I think I have.

13 Q Mr. Bloomquist, do you have enough here with you today in
14 the courtroom so you could make a list of these broadcasts of
15 each of the candidates and leave it with us before you return
16 home?

17 Mr. Simonett: I think the witness is one up on us. He
18 has already done it.

19 Witness: Yes, I have.

20 (List of Bischoff broadcasts marked Contestant's Exhibit E
21 and list of Pena broadcasts marked Contestant's Exhibit F for
22 identification.)

Q (Mr. Ryan) Mr. Bloomquist, showing you what has been
marked as Contestant's Exhibits E and F, could you tell us what
they are?

1 A Those are the announcements and programs that were used
2 by the respective candidates, and the information, I think, is
3 taken from our log.

4 Mr. Ryan: We offer Contestant's Exhibits E and F.

5 Mr. Simonett: No objection.

6 The Court: Received.

7 Q (Mr. Ryan) Mr. Bloomquist, is it fair to say that the
8 radio stations in Hibbing, Virginia and Eveleth fairly well
9 blanket the 63rd District with their coverage?

10 Mr. Simonett: We will object, no foundation.

11 The Court: Sustained.

12 Q (Mr. Ryan) Are you familiar, Mr. Bloomquist, with the
13 areas covered generally by the Hibbing station and by the
14 Virginia station - generally familiar with the geographical
15 areas those stations cover?

16 A Reasonably, yes. I have a reasonable idea of what they
17 would cover.

18 Q Based upon that and your own knowledge of your own
19 particular station, can you give us an opinion as to the extent
20 of the coverage of the three stations over the 63rd District?

21 A I would say that during the daytime hours, which probably
are from sunrise to sunset, that the three stations would cover
the 63rd Legislative District.

Mr. Ryan: Thank you, that is all I have.

CROSS EXAMINATION

1 By Mr. Simonett:

2 Q On your sales brochure, Exhibit D, Mr. Bloomquist, I
3 gather the area in white is the area where there is a receiveable
4 signal?

5 A Correct. A listenable signal, I put it.

6 Q Okay. And does that vary sometimes from weather conditions
7 and atmospheric conditions?

8 A Definitely.

9 Q You are familiar with what is meant in the radio business
10 as primary coverage. The area in white is not meant to portray
11 the primary coverage?

12 A No, sir, it is not.

13 Q It would be much smaller than the white area on your
14 brochure?

15 A Well, primary area I would assume in most radio presenta-
16 tions for sales perhaps wouldn't definitely include Grand Rapids
17 or Nashwauk.

18 Q You do cover Hibbing and Chisholm?

19 A Yes.

20 Q You overlap the local radio station?

21 A Yes.

22 Q Does your signal go all the way up then to the Canadian
border?

A Does the signal go to the Canadian border?

Q Yes. Is that part of your audio signal?

1 A Well, sometimes they can hear it up there. Some people
2 hear it at times, but not consistently.

3 Q You are aware the 63rd District does go to the border?

4 A I am aware it goes to Orr and that area.

5 Q You yourself are a resident of Eveleth?

6 A Yes.

7 Q Outside the 63rd District?

8 A Yes.

9 Q I am showing you Exhibit E. This is a list that you made
10 from your log, first of all, of Mr. Bischoff's radio time.

11 A Yes.

12 Q That is for the period of October 29, 1968, through
13 November 4. Is that correct?

14 A I believe so, yes. It was taken from the log.

15 Q And what is meant by promotion? Every now and then there
16 will be a few seconds devoted to promotion and some to intro-
17 duction.

18 A I think those are spots that call attention to listen to
19 the program of a certain candidate.

20 Q Then showing you Exhibit F, which is a list you made from
21 your log as to Mr. Fena's radio time from October 31 through
November 4 -

A Yes.

Q Did Mr. Fena have any time in your program on October 29th
or 30th, do you know?

1 A Well, that I don't know.

2 Q I notice his time starts two days later than Mr. Bischoff.
3 Was there any reason that you know of that you picked up
4 Mr. Fena's time as of the 31st?

5 A Well, I think in the summons I got it suggested that I
6 bring in information from the 31st.

7 Q But did the summons say as to Mr. Bischoff they wanted
8 the time as of October 29th?

9 A I don't believe so. I have a copy of the summons here.

10 Q The subpoena asks for time from October 31st.

11 A Yes.

12 Q Well now, on Exhibit F, Mr. Fena's log, it refers to
13 sixty seconds, fifteen seconds. Were those promotions or were
14 those introductions to a speech later in the day, do you know?

15 A That I don't know.

16 Q For example, it would appear in the listing here that at
17 3:45 P.M. on October 31st that Mr. Fena gave a ten minute talk.

18 A Yes.

19 Q Do you know whether or not it was promoted earlier during
20 the day on the station?

21 A That I don't know if it was promoted or not - if it was
22 a regular announcement or promotional announcement.

23 Q Still referring to Exhibit F, the last page, the log for
24 November 4, 1968, you have here on the right-hand column talks,
25 five minutes. Does that mean he gave a five minute talk on

1 six different occasions that day?

2 A I can't answer whether that is a five minute talk. I
3 can't tell you.

4 Q Maybe Mr. Fena can tell us. Under talks, five minutes,
5 it says 9:50 A.M., #1. Would you know what that meant?

6 A That I would assume to be tape #1.

7 Q And again on November 4 at 3:45 P.M., cut #2.

8 A That is the same thing, same information - second tape.

9 Mr. Simonett: That is all I have.

10 (Witness excused)

11 (Newspaper advertisement marked Contestant's Exhibit G
12 for identification.)

13 Mr. Ryan: We offer in evidence Contestant's Exhibit G.

14 Mr. Simonett: Will you identify it for the record.

15 Mr. Ryan: Contestant's Exhibit G is the ad placed by
16 Mr. Bischoff in the Manney's Weekly Shopper of November 4, 1968.

17 Mr. Simonett: I suppose it is November 3rd and 4th. We
18 have no objection.

19 The Court: Received.

20 Mr. Ryan: Call the contestee, Mr. Bischoff, for cross
21 examination.

Mr. Simonett: We object, your Honor, if they intend to
call Mr. Bischoff for cross examination. We recognize the Rules
of Civil Procedure ordinarily would be appropriate and would
apply in an election contest, but here where the contestant is

1 making a charge which amounts to a gross misdemeanor, we don't
2 think it is proper to call him for cross examination. He must
3 prove his own case first, and if he does call Mr. Bischoff, it
4 is as his own witness and he is bound by his testimony.

5 Mr. Ryan: Your Honor, the Supreme Court has said that -
6 I think the statute states that the Rules of Civil Procedure
7 shall apply in election contest hearings unless they are changed
8 by statute. There is no statute that prevents the contestant
9 from calling the contestee for cross examination, and we are not
10 here endeavoring to prove a criminal charge of what amounts to
11 a gross misdemeanor, as I stated in my opening statement. I
12 think under the statute we have a perfect right to cross
13 examination in our case.

14 The Court: Well, while you are not attempting to prove
15 a criminal charge, you do set up the criminal statute, do you
16 not, as the basis for the violation.

17 Mr. Ryan: Fair Campaign Practices Act, yes, your Honor,
18 we do; but in no way are we treating the case as a criminal
19 matter.

20 The Court: I am anticipating something else too. What
21 is the nature of the type of thing that you want to ask, is it
the sort of thing that is just as available to you as it would
be to the other side?

Mr. Ryan: No, I don't think so. I want to go into the
source of information that Mr. Bischoff had for making the

1 statements that he did in the ad.

2 The Court: While you are not pressing the criminal angle
3 to it, if you ask him to testify, aren't you asking in effect to
4 lay himself open to something that on your theory he might
5 possibly be prosecuted even?

6 Mr. Ryan: No, I don't think so, your Honor. He can
7 refuse to testify if he wants to. But my understanding of the
8 election laws are that in a civil matter - when the case is a
9 civil contest and not a criminal matter, you can elicit the
10 question. We have a right to cross examine.

11 The Court: I would be inclined to overrule the objection.

12 BERNARD J. BISCHOFF

13 Called as a witness, having been first duly sworn,
14 testified as follows:

15 CROSS EXAMINATION

16 By Mr. Ryan:

17 Q Your full name.

18 A Barney Bischoff, also known as Bernard J. Bischoff.

19 Q How old are you, Mr. Bischoff?

20 A 37.

21 Q And what is your profession?

22 A I am an attorney.

23 Q And where do you live?

24 A In Hibbing.

25 Q How long have you lived in Hibbing?

1 A Well, I was born and raised here, but I was gone for
2 about ten or twelve years.

3 Q How long have you been a practicing lawyer in the Village
4 of Hibbing?

5 A Since 1963.

6 Q And did you practice the legal profession in other areas
7 prior to that time?

8 A Yes. I worked as a patent attorney in Milwaukee for
9 about two and a half years, and I worked for an insurance
10 company in Minneapolis for about a year and a half.

11 Q And when were you admitted to the bar in the State of
12 Minnesota?

13 A 1959.

14 Q Where did you receive your legal education?

15 A University of Minnesota Law School.

16 Q When in 1963 did you practice in Hibbing - start your
17 practice here?

18 A I believe it was September that I came.

19 Q And did you practice alone or did you join a firm
20 immediately upon coming to town?

21 A I associated with Bob Nickoloff when I came back.

22 Q You associated with him?

23 A Right.

24 Q When did you become a partner in that firm, or are you
not yet a partner?

1 A I became a full partner, I believe, in '67. We were on
2 a limited partnership and a full partnership starting in '68.
3 No, I am wrong. The full partnership started in '67.

4 Q All right. You were practicing law then in the Hibbing
5 area since 1963, and what did you say, a year and a half before
6 that time.

7 A No. I came back to Hibbing in 1963. I worked for an
8 insurance company in the claims department. I don't know if
9 you call that practicing law.

10 Q After you were admitted?

11 A Right.

12 Q Okay. What political experience do you have, Mr.
13 Bischoff?

14 A You mean party politics?

15 Q Yes. What has been your own personal experience as far
16 as engaging in party activities?

17 A Well, I have always been very active in politics.

18 Q Tell us how.

19 A Well, any time there is an election, I normally affiliate
20 with the party group. I was active, well, since returning to
Hibbing particularly, in the DFL party or organization. I
have been vice-chairman and chairman.

Q Of what group?

A 63rd Legislative District DFL.

Q Do you hold any offices within the DFL party now?

1 A No, I don't.

2 Q When did you last hold an office?

3 A I don't remember when the elections were, but it was in
4 the early part of this year I completed my term.

5 Q And as chairman?

6 A Yes.

7 Q How long had you been chairman?

8 A For two years.

9 Q Did you get into party activities shortly after your
10 return to Hibbing in 1963?

11 A Oh, yes; right away.

12 Q Did you hold any lesser jobs in the party?

13 A Yes. I was vice-chairman prior to being chairman.

14 Q How long did you hold that office?

15 A Two years.

16 Q So approximately the year after you got here you became
17 party officer in 1964, and you held that chairmanship.

18 A Within six months.

19 Q Within six months after you came to Hibbing?

20 A Approximately that.

21 Q Have you engaged in any other political activity outside
of the immediate area?

A Well, I have been active as a delegate to the state
convention and active as St. Louis County DFL delegate and
state convention delegate.

1 Q Have you ever been in the position of giving legal
2 advice as a member of any party organization?

3 Mr. Simonett: You mean --

4 Q (Mr. Ryan) To the organization of which you are a member.

5 A No, not really.

6 Q Any other political offices that you have run for your-
7 self?

8 A No.

9 Q None prior to the campaign for the 63rd seat?

10 A That is correct.

11 Q Have you assisted others in campaigning for legislative
12 office?

13 A Yes, I have many times.

14 Q Quite actively?

15 A Well, any time I could, I guess.

16 Q Have you ever acted as legal advisor for any candidate
17 seeking public office?

18 A No.

19 Q Do any of your business associates hold any public office?

20 A You are talking about my clients now?

Q Do you have clients that do hold public office?

A No, I don't; none that I can think of.

Q Do any of your business associates? How many members
are in your firm, three of you?

A Three of us, yes.

1 Q Mr. Nickoloff and Mr. --

2 A Matonich.

3 Q Do either of them hold public office at the present time?

4 A No, they don't.

5 Q Since you have been in office, have either of them
6 held public office?

7 A Yes. Mr. Nickoloff was the -- Well, party office he has
8 held, not public office.

9 Q All right. How about party office?

10 A Yes. Bob was Eighth District DFL Chairman and I think
11 before that he was vice-chairman of the Eighth District DFL.

12 Q As a candidate, Mr. Bischoff, for this legislative
13 office, I assume you are very familiar with the Minnesota
14 election laws and particularly the Fair Campaign Practices Act.

15 A Yes, I am familiar with them.

16 Q And have you ever advised other political candidates
17 of the Minnesota election laws?

18 A No, I haven't.

19 Q Have you ever represented any candidate in an election
20 contest?

21 A No, I haven't.

22 Q When you say that you were familiar with Minnesota
23 election laws, particularly the Fair Campaign Practices Act,
24 surely you familiarized yourself with these laws prior to the
25 time that you ran for office for the state legislative seat in

1 the 63rd Legislative District.

2 A Yes, I did. After I filed, a copy was mailed to me and
3 I did go through them.

4 Q You studied that over?

5 A I looked it over, yes.

6 Q You what?

7 A I looked through them.

8 Q Well, did you in looking through it determine the limits,
9 legal limits within which you could conduct a campaign?

10 A As best I could, yes.

11 Q So that it is fair to say that as a candidate and as a
12 lawyer seeking this office, you were familiar with our laws
13 governing campaigns for office.

14 A I'd say that is fair, yes.

15 Q Okay. You were familiar, in particular with Minnesota
16 Statutes 210.11 and 211.08.

17 A I did read through them, yes.

18 Q More than once?

19 A I am just trying to recall. I don't recall reading
20 them more than once, but you are talking about prior --

Q I am talking about prior to the time you began your
campaign.

A Right. I doubt that I read them more than once.

Q All right. And when did you next read them?

A Oh, I am sure the next time I recall reading them was

1 after the action.

2 Q After this contest was initiated?

3 A After the contest.

4 Q Did you read them at all between the time you initiated
5 your campaign and October 31, 1968?

6 A I really don't recall.

7 (Transcript of broadcast marked Contestant's Exhibit H
8 for identification.)

9 Q Showing you what has been marked as Contestant's Exhibit
10 H, would you identify that please, Mr. Bischoff.

11 A Yes. This is a transcript of a radio talk I gave over --
12 Do you want the time?

13 Q Fine.

14 A Over Station W E V E on Thursday, October 31st, and
15 then again on Monday, November 4th over Station W E V E and
16 also Station W M F G in Hibbing.

17 Mr. Ryan: We offer Contestant's Exhibit H.

18 Mr. Simonett: No objection.

19 The Court: Received.

20 Q (Mr. Ryan) Now showing you Contestant's Exhibit H and
Contestant's Exhibit G, is the general content of these two
exhibits the same, or do you want to examine them first before
you answer?

A The general content, I would have to say yes.

Q Referring to Contestant's Exhibit G and H, the newspaper

1 ad and the radio transcript, Mr. Bischoff, you were the author
2 of each. Correct?

3 A That is correct.

4 Q And the sole author of each?

5 A Yes, very definitely.

6 Q You were the sole judge of the contents of each?

7 A Yes, I was.

8 Q You placed the ad in the Shopper and you personally
9 made the broadcast over the air and stations as you told us.

10 A Yes, I did.

11 Q During the course of the campaign, you personally placed
12 a number of other ads in the Shopper and in the area newspapers.
13 Is that correct?

14 A That is correct.

15 Q And during the course of the campaign, you made numerous
16 other broadcasts over area radio stations.

17 A The broadcasts were limited to the last week of the
18 campaign.

19 Q You did no radio broadcasting prior to that time?

20 A None whatever.

21 Q All right. Now, the purpose for the campaign ads and
22 the radio broadcast was to influence voters in your behalf and
23 against Fena. Is that a fair statement?

24 A That is a fair statement.

25 Q And the content of the ad and the contents of the broad-

1 casts were deliberately made on your part.

2 A The contents, yes. They were deliberately made.

3 Q And you obviously were familiar with the contents as
4 you were the author.

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q And during the course of your campaign, you made every
9 effort to conduct your campaign in such a way that you felt
10 would win the election for you. Correct?

11 A Would you repeat that question please.

12 Q In the course of preparation of your ads and your radio
13 broadcasts, your efforts were directed toward winning the
14 election.

15 A That is true.

16 Q And in the selection of ad material and broadcast material,
17 you used what you felt was pertinent, important, and serious
18 issues for the electorate of the 63rd District.

19 Mr. Simonett: That is a different question. I don't
20 know if I understand either one of them. Of course, he was
21 trying to campaign to win the election as opposed to campaigning
22 to lose it; but if you mean something else by your question,
23 then I think the question should be made clear.

24 Q (Mr. Ryan) I will state the question again, Mr. Bischoff.
25 In selecting the material for your ad and your broadcasts, you

1 chose those issues and those items to insert in the ad and
2 broadcast that you felt were material and would assist you in
3 winning the election.

4 A That is true.

5 Q And you had to pay for the ads and broadcast. Correct?

6 A That is true.

7 Q You weren't interested in wasting any money in either
8 case.

9 A No.

10 Q And in trying to achieve an election win, when preparing
11 the ads and broadcast, you felt that the material in them were
12 material things for the electorate to consider.

13 Mr. Simonett: Do you understand the question?

14 Witness: I believe I do. I understand the question to
15 be that I considered the things in the ad that I placed in the
16 ad as being material things. I do.

17 Q (Mr. Ryan) All right. You felt that everything stated
18 in the ad and in the broadcast was material to the issues in
19 this election here.

20 Mr. Simonett: You mean material in the sense of
21 relevancy, Mr. Ryan?

22 Q (Mr. Ryan) Yes. Material in the sense that you weren't
23 interested in filling ads or your campaign broadcasts with
24 information that was not of importance to you or to the
25 electorate.

1 A On that I would say some of it certainly is more material
2 than others, and some is used to bridge the gap between things.
3 I don't feel every word is that material, but I think the
4 general content is. Yes, it is all material.

5 Q All right. And with specific reference to broadcasts,
6 you stated that you didn't begin broadcasting until what, the
7 last week or two weeks?

8 A The last week.

9 Q The last week. So you were saving this until the end.
10 Is that correct?

11 A Yes.

12 Q All right. And why?

13 A Well, because basically I was campaigning on limited
14 funds and I wanted to concentrate my advertising campaign where
15 it would do the most good.

16 Q And the same may be said for the ad in the Shopper on
17 the 3rd and 4th. Is that correct?

A This ad was a last minute thing. It wasn't something
that was in my program of ads at all.

Q Nevertheless, this ad was the last ad that you got into
print before the electorate prior to the general election. Is
that correct?

A Yes, that is true.

Q And it is fair to say, is it not, that the content of
ad and of the radio broadcasts was of a serious nature.

1 A I think so, yes.

2 The Court: Mr. Ryan, I think we will recess for about
3 ten minutes.

4 AFTER RECESS

5 Q (Mr. Ryan) Now, referring, Mr. Bischoff, to a portion
6 of your ad and radio broadcast which I am going to quote,
7 "More recently on both of the last two occasions that the
8 public defender job in Hibbing was open it was awarded to
9 Mr. Fena's firm. It is significant that on both occasions
10 Mr. Fena brought in a man from out of the area who was awarded
11 the job even though there were several local attorneys who were
12 interested. How was Mr. Fena able to get these appointments?
13 Is it mere coincidence he serves on the Judiciary Committee
14 which considers salary increases for the district judges and
15 the public defenders? I hardly think so." Now, it is fair to
16 say, is it not, Mr. Bischoff, that the intended meaning of
17 that paragraph is that Mr. Fena influenced the judges and the
18 district public defender in their selection of assistant public
19 defenders?

20 A No, I don't think that is fair.

21 Q You don't think that is a fair statement?

22 A No.

23 Q You don't think that that is what the ad implies and
24 broadcast implies?

25 A No.

1 Q What is the method of selection of assistant public
2 defenders, do you know?

3 A Yes, I think I understand it.

4 Q You know the statutory method?

5 A I am familiar with the statute now. Yes, I am.

6 Q When did you become familiar with it?

7 A I believe I looked the statute up after the action
8 started.

9 Q You had never looked at it beforehand to determine how
10 an assistant public defender is appointed?

11 A No, I didn't.

12 Q Or whose responsibility it was to appoint?

13 A That is true.

14 Q You gave this no consideration prior to the time that you
15 printed this ad then?

16 A I gave it consideration. Yes, I did.

17 Q Without checking the law.

18 A That is true.

19 Q Why didn't you check the law?

20 A Because we had a procedure here I was familiar with and
21 the way it was normally handled, and I had been told by
22 different people that talked to the judge, so I assumed the judge
23 made the final appointment.

Q But when you printed your ad, you didn't know what the
law said, did you?

1 A That is true.

2 Q Don't you think you should have known what it said?

3 Mr. Simonett: I will object to that as argumentative.

4 The Court: I think it is.

5 Q (Mr. Ryan) Since the contest was begun then, Mr.
6 Bischoff, you say that you have examined the applicable laws.

7 A Right.

8 Q --of the State of Minnesota. What does the law say?

9 A I can't quote it, but I believe the final decision is
10 vested in the assistant public defender.

11 Q In the public defender, not the assistant?

12 A This is true. The district public defender, I should
13 say.

14 Q The statute, in fact, doesn't say final decision. It
15 just says the public defender shall make appointments of
16 assistant public defenders, does it not?

17 A I am not sure.

18 Q Mr. Bischoff, did in fact Mr. Fena influence the judges
19 of this district?

20 A Did he?

Q Just a minute. Let me finish the question. Did, in
fact, Mr. Fena influence the judges of this district or the
public defender to obtain the two assistant defender positions?

A I missed the first part of your question. I am sorry.

Q Did Mr. Fena in fact influence the judges of the district

1 or the public defender to obtain the two assistant defender
2 positions for lawyers in his office?

3 A I would have no way of knowing that.

4 Q Answer the question yes or no.

5 Mr. Simonett: He has answered.

6 The Court: I think he has.

7 Q (Mr. Ryan) You spend considerable amount of space in
8 your ad talking about the appointment of assistant public
9 defenders, and implying that Mr. Fena was involved in their
10 selection. Are you saying now that you don't know if Mr. Fena
11 did attempt to influence judges or Mr. Durfee?

12 Mr. Simonett: Now, first of all, I object to that
13 question. It is a misstatement of the witness's testimony as
14 to what the ad implied or did not imply; and then it goes on
15 to argue from a false premise as to what he had said.

16 The Court: You want a ruling?

17 Mr. Ryan: If I may, your Honor.

18 The Court: Well, I think you are starting with a premise
19 which isn't where you are giving an interpretation of something
20 that I think might not be the same as what Mr. Bischoff says.

21 Q (Mr. Ryan) Can you tell us, Mr. Bischoff, one instance
22 that you know of where Mr. Fena attempted to influence a judge
23 or judges of the district in order to obtain the assistant
24 public defender post for a member of his firm?

25 A No, I can't.

1 Q Can you tell me of one instance where Mr. Fena attempted
2 to influence the selection of assistant public defenders by
3 influence over Mr. Durfee, who is public defender?

4 A No, I can't.

5 Q Mr. Bischoff, were you an applicant on both the last
6 two occasions on which this job was filled of assistant public
7 defender?

8 A Was I interested both times, yes. Did I formally make
9 written application; only in the latter occasion, but I did
10 contact the judge on the first occasion too.

11 Q You sought the appointment?

12 A Yes, I did.

13 Q If it was attainable on both the last two occasions?

14 A Yes.

15 Q At that time did you examine the statute to determine
16 how the assistant is appointed?

17 A No, I didn't.

18 Q In your Answer to the Notice of Contest on page two,
19 the bottom paragraph, you state, and I quote, "That the
20 advertisement did not state that the Judiciary Committee sets
21 the salary of the assistant public defenders, that instead
22 they state, 'the Judiciary Committee considers salary increases
23 for the district judges and public defenders'; that said
24 committee does consider salary increases for district judges and
25 and in fact consider such a bill during the last session;

1 that legislation affecting public defenders is also considered
2 by the Judiciary Committee, even though some salaries are set
3 administratively; that the distinction is not a material one
4 and that the misstatement was neither knowingly nor deliberately
5 made." Is it fair to state from this part of your Answer,
6 Mr. Bischoff, that the statement or inference that the Judiciary
7 Committee of the house considers salary increases for the
8 public defenders is false?

9 A That is a misstatement. That is true.

10 Q It is a false statement?

11 A That is true.

12 Q Did you check on that factor before you published your
13 ad or made your broadcast?

14 A No, I didn't.

15 Q Would you agree, Mr. Bischoff, that if you had made
16 this statement in your ad and in your broadcast, "Mr. Fena
17 influenced the judges and the public defender to obtain the
18 appointment of the municipal judge and assistant public
19 defender", that that statement would be false?

A I would have no way of knowing that.

Q Well, but you talked about this in your ad, both the
manner in which appointments were made and how Mr. Fena was
involved. His name has been associated with both of these
appointments in two or three different places.

A That is right.

1 Q In your ad and in your broadcast.

2 A That is true.

3 Q And you can't say whether if that statement were made that
4 he did influence judges and the public defender. You can't say
5 whether that would be true or a false statement.

6 Mr. Simonett: He didn't make the statement.

7 Witness: I can't.

8 Mr. Ryan: I guess that is why we are in court, John.

9 Q (Mr. Ryan) Would you agree, Mr. Bischoff, that if
10 substantially the same type of statement that Fena influenced
11 the judges and the public defender in order to obtain the
12 appointment of assistant public defender for his personnel,
13 if he made that statement by inference or innuendo or by the
14 use of questions, that it would constitute a false statement?

15 A No, I don't agree to that.

16 Q In your opinion in order to have a false statement then
17 the statement must be a very dogmatic one and one that is open
18 to only one interpretation.

19 A I don't say necessarily go that far either.

20 Q What do you say?

Mr. Simonett: About what?

Mr. Ryan: About what we are talking about. I think he
21 knows the general import of my question.

22 Q (Mr. Ryan) He just said he wouldn't go that far. How
23 far would you go?

1 A I wonder if you might repeat both questions so I might
2 get a little better understanding.

3 Q Would you agree that if substantially the same thing
4 were said by inference or innuendo or by the use of questions
5 that Mr. Pena influenced judges or a judge or public defender
6 to gain the appointment of assistant public defender for his
7 associates that this would constitute a false statement?

8 A What is the second one? There were two questions.

9 Q That is the second question I gave.

10 Mr. Simonett: Wait a minute. The question pending was
11 -- Well, what was it? It had something to do with whether the
12 statement was dogmatic or not.

13 Mr. Ryan: I am going to get to that.

14 Witness: I am a little confused just by your questions,
15 trying to recall exactly what you have asked me.

16 Q (Mr. Ryan) Two matters which the statement could be
17 made; one, by the statement that Mr. Pena influenced the judges
18 and the public defender to obtain the appointments, and if you
19 had so done by making that statement, would you agree that that
20 is a false statement.

21 Mr. Simonett: Well, I am going to object to this sparring
22 around, your Honor. The witness has testified that isn't what
23 he said; and if he had said it, then he would have proof of it
24 and it wouldn't have been false. Where does this lead us to?

25 Mr. Ryan: Your Honor, this is cross-examination. I

1 think we have a right to examine.

2 The Court: You are stating hypothetical questions with
3 facts at least that have not been admitted by the witness.
4 Isn't that correct.

5 Mr. Simonett: If in your hypothetical question you
6 want him to assume not only that he said that, but further that
7 he had no fact to back it up, and then ask him if his opinion
8 if such a statement would be false, and I suppose his answer
9 would be yes, it was false, but lets not try to trap him.

10 Mr. Ryan: I am not trying to create a trap for him.
11 The question is very simple, it seems to me, your Honor. If a
12 statement were made that Mr. Fena influenced the judges or the
13 public defender in the appointment, is such a statement false.

14 Witness: I said I had no way of knowing.

15 The Court: He hasn't admitted making the statement, so
16 whether it is true or false wouldn't be material.

17 Q (Mr. Ryan) Do you claim, Mr. Bischoff, that you don't
18 charge in your ad and in your broadcasts, you do not charge
19 Mr. Fena with having influenced the judges or public defender?

20 A Yes, that is my claim.

21 Q You do claim that?

22 A Yes, I do.

23 Q All right. Now I am asking you, if you made the flat
24 statement instead of the way you did it in the ad and in the
25 broadcast that Mr. Fena influenced the judges and the defender,

1 would the statement be false?

2 A I would have no way of knowing that.

3 Q You just told us in answer to my prior question that it
4 is your claim that he influenced them.

5 A No, I didn't say that.

6 Mr. Ryan: That was my understanding of the answer.

7 The Court: It was mine too. I think there is some
8 misunderstanding.

9 Mr. Simonett: It was mine too.

10 Witness: I said that Mr. Fena influenced them?

11 Mr. Simonett: Yes.

12 Witness: No, I didn't say that.

13 Q (Mr. Ryan) Now you are saying that you cannot claim
14 therefore that Mr. Fena influenced --

15 A I thought your question was if I made that statement,
16 a direct statement he influenced the judges, that would be false
17 and to that I said yes. If I made that statement, that was my
18 understanding.

Q Okay. Now we are back where we started.

A I never said that I made it.

Q Now you do say so --

Mr. Simonett: Wait a minute. Are you through with
19 your answer?

Witness: Yes, I am through now.

Q (Mr. Ryan) So now you did say that if you had made

1 such a statement that Mr. Fena influenced judges and public
2 defender, the statement would be a false one.

3 A On that I wouldn't even have any way of knowing really,
4 but I didn't make that statement.

5 Q Do you agree that the general tenor of your ad and your
6 broadcast is such that you are claiming influence on the part
7 of Mr. Fena either over judges or over Mr. Durfee, the defender,
8 as to those assistant public defender appointments?

9 A No, I don't agree with that.

10 Q You don't agree with that?

11 A No, I don't.

12 Q And you are denying then that Mr. Fena in any way
13 attempted to influence the judges or the public defender in
14 obtaining those appointments?

15 A That I have no way of knowing. My point is simply that
16 the facts on their face raise a question here as to this
17 appointment, and I feel strongly about it. I feel I have a
18 right to comment about it. I do not feel --

19 Q You feel then, Mr. Bischoff, that you have the right as
20 a candidate for one of the highest offices in the State of
21 Minnesota to raise a question about another candidate's integrity
22 so to speak, and I think that is what is involved here. Do you
23 agree that it is integrity that is involved if you were to try
24 to influence a judge or defender in those appointments?

25 A That is true.

1 Q And if he did try to do so, it would be an improper
2 act on his part. Would you agree to that?

3 A That I agree with.

4 Q Yet all you are doing in your ad and in your broadcast
5 is raising the question because of the fact that two employees
6 of his were appointed by the public defender to those posts.

7 A Yes, that and the facts on their face raise that question
8 themselves.

9 Q And by making the statement that you did in the ad, you
10 can create in the minds of the electorate this question, did
11 Fena influence the judges or influence Mr. Durfee. Is that
12 correct?

13 A That is true.

14 Q And this is what the impression you sought to create,
15 didn't you?

16 A To raise that question, yes, that is true.

17 Q You sought to create the impression in the minds of the
electorate that Mr. Fena tried to influence judges or Mr. Durfee
in the appointment of those assistant jobs or you would have no
reason to put it in your ad. Am I correct?

A Not completely. The facts raise that question. I feel
it is proper for me to bring those facts and that question to
the public, and I feel the facts on themselves tend to indicate
that.

Q You are assuming then before you placed this ad and

1 these broadcasts that Mr. Fena because of the fact the appoint-
2 ments went there that Mr. Fena influenced the judges and the
3 public defender.

4 A Not completely. I am looking at the facts which tend to
5 support that conclusion, and I am posing that question. I
6 don't think I have to take the next step and assume that is in
7 fact the case when I have no way of proving it.

8 Q You personally feel that Mr. Fena influenced the judges
9 and the public defender in those appointments, do you not?

10 A Well, I'll put it this way. I have a serious question
11 in my mind. I really don't know.

12 Q Let's not play games, Mr. Bischoff.

13 A I can't answer.

14 Q When you wrote this ad and you made these broadcasts,
15 you personally felt and made the personal decision Mr. Fena
16 influenced the judges and influenced the public defender in
17 order to get those appointments in his office.

18 A My thought would be that he probably did. I would have
19 no way of absolutely knowing. I will stand on that.

20 Q But you went far enough in your ad and in the broadcast
21 to raise the issue without having any knowledge, without
22 checking with the judges and without checking with the public
23 defender as to whether or not he in fact did try to influence
24 them. Is that correct?

25 A Yes, I didn't. That is true.

1 Q It is correct, isn't it?

2 A That is correct.

3 Q And you never did check with Mr. Durfee, did you, to
4 see whether Mr. Pena contacted him and tried to get those
5 appointments?

6 A No, I didn't.

7 Q And you never did check with the judges to see whether
8 Mr. Pena personally tried to influence them and get those
9 appointments?

10 A No, I didn't.

11 Q Why didn't you?

12 A Because obviously if this were the case, if this were
13 a case of influence, they wouldn't admit it if it were.

14 Q Now you are saying the judges wouldn't have told you
15 the truth?

16 A I think that is true. I don't think they would.

17 Q You are saying the judges wouldn't have told you the
18 truth. Is that what you are saying?

19 A Yes, I say that.

20 Q And you are saying the public defender would not have
21 told you the truth.

22 A If somebody were trying to influence him then, that is
23 true.

24 Q How long have you known the judges of this district?

25 A Since I have been back in town, I have really known

1 them. Five years.

2 Q You know them quite well?

3 A Yes, I do.

4 Q Judge Chanak?

5 A Yes.

6 Q Judge Odden?

7 A That is true.

8 Q You have been in court before both of them?

9 A I don't believe I was in court before Judge Odden.

10 Q Has there been any occasion in your contact with either
11 of those Judges that would lead you to form the conclusion that
12 they would be dishonest with you if asked if they were contacted
13 by Mr. Fena? Have either one of them ever lied to you before?

14 A No.

15 Q Has Mr. Durfee ever lied to you before?

16 A No. I haven't talked to Mr. Durfee that much. I don't
17 know him very well.

18 Q You have any other grounds at all, Mr. Bischoff, for
19 questioning the integrity of either of those two Judges or the
20 defender?

21 A To question their integrity? I don't question their
22 integrity one bit.

23 Q Yet you don't feel they would have told you the truth
24 if you had asked them the question about Mr. Fena.

25 A I don't think this is a reflection on their integrity.

1 The Court: I see it is time to recess for the noon
2 period.

3 (Thereupon a recess was had until one-thirty o'clock P.M.,
4 Monday, December 9, 1968, at which time proceedings were had,
5 as follows:)

6 Q (Mr. Ryan) Mr. Bischoff, would you agree that a
7 candidate for a legislative office has a duty to the voting
8 public, the other candidates and to himself to know what the
9 facts are about which he speaks and writes in the campaign?

10 A Yes, I do.

11 Q Would you agree that this is particularly true --
12 particularly the duty of a lawyer who seeks such an office?

13 A No, I don't see any distinction in the duties there.

14 Q You would agree, would you not, that a lawyer should
certainly be more cognizant of the Minnesota election laws
than perhaps an iron miner or farmer?

 A Right. I agree with that.

 Q Referring to Contestant's Exhibit G, the ad, and I
quote from it, "Back in July of 1965, Mr. Pena and three of
his friends purchased a total of 13 forties of land -- about
five hundred twenty acres -- just south of the highway near the
Libbing-Chisholm airport. It is interesting to note that at
the time, the airport highway was being considered as a possible
route for the cross-range expressway and Mr. Pena was then
usually involved in the project." Is it fair to say,

1 Mr. Bischoff, that the implication in this paragraph is that
2 Mr. Fena purchased this land with fore-knowledge that the cross-
3 range highway was to be located on or very near that land?

4 A No.

5 Q You don't think that is the implication of your ad?

6 A No, it isn't.

7 Q -- and broadcast. Is it not further the implication that
8 as a legislator he was involved in its location, that is the
9 location of the expressway, and improperly used his influence
10 with the highway department to obtain its location over or near
11 his land so as to enrich himself either by condemnation or by
12 sale or by development of the property on a major expressway?
13 Can that be implied from your ad?

14 A I missed part in the middle that he was improperly
15 using his influence.

16 Q Let me read it again. Can it not be implied from the ad
that Mr. Fena as a legislator was involved in the location and
the picking of the location of the expressway and that he used
his influence to obtain the location of the expressway over or
near his land so as to enrich himself either by condemnation or
by sale or by further development of the property on the
expressway?

A No, I don't agree with that.

Q You don't agree that that implication is within the
phraseology of the ad?

1 A No, I don't.

2 Q And, Mr. Eischoff, who did you contact in the highway
3 department about the airport highway being considered as a
4 possible route of the expressway?

5 A I didn't say I contacted anybody from the highway
6 department.

7 Q Did you ever contact any member of the Minnesota Highway
8 Department to determine whether the airport road was a
9 probable location of the cross-range expressway?

10 A The word I used was "possible" and the answer to your
11 question, no, I didn't.

12 Q No contacts made within the highway department?

13 A No, I didn't.

14 Q You never talked to Mr. Miller, who is the District
15 Engineer in Duluth?

16 A No, I didn't.

17 Q No highway employee, I gather, told you that Mr. Pena
made any attempt whatsoever to influence the department to
locate the expressway on the airport highway or near the farm
land that he purchased?

A Nobody told me that.

Q Do you know when Mr. Pena purchased this farm?

A I know what the date on the deed is and the approximate
date it was recorded.

Q What year was that and month?

1 A In July of '65, and recorded in August of '65.

2 Q And the instrument you say was a deed. Are you certain
3 of that?

4 A Yes, I am certain of that.

5 Q Are you familiar with the efforts that Mr. Fena made
6 to, in fact, have the highway located in an area much further
7 north than where his interest in this farm area is located?

8 A What period of time are you talking about now?

9 Q Any time.

10 A No, I am not familiar with that.

11 Q You don't know yourself of any efforts he made with
12 interested groups in the range area to have the expressway
13 located much further north from his land.

14 A I don't remember him pushing a particular route. No,
15 I don't.

16 Q Isn't the apparent implication of your ad and broadcast
that Mr. Fena wanted the route of the new expressway either
over or very near his farm property?

A That wasn't the implication I intended, and I don't think
it necessarily follows.

Q Why is it in the ad?

A I think that the facts again here point up the question,
question I personally feel a legislator should not put himself

. I look at it as a conflict of interest.

Q Tell us what that conflict of interest is please. If

1 you haven't finished answering my question, go ahead.

2 A The conflict of interest I feel is this, if he owns land
3 by the highway, that any bills that would be passed that could
4 have an adverse or unofficial effect on that property, the
5 question also arises on the face is whether or not he is
6 representing the public interest or his own.

7 Q You know of no legislative bill that was passed or was
8 considered having to do with the highway that would have
9 directly benefited him there, do you?

10 A That would have directly benefited him?

11 Q Yes, as to that location of property.

12 A I know of a highway bill that -- I don't know what
13 benefit would follow, but I do know a bill was considered in
14 1965 that included improvements of this particular highway.

15 Q Had nothing to do with an expressway, did it?

16 A Well, this expressway now -- if you upgrade the existing
17 highway, to a lot of people, this means expressway.

18 Q What bill are we talking about in 1965?

19 A I believe there was a Range highway improvement bonding
20 bill.

21 Q Do you know offhand what the House file number was?

22 A No, I don't.

23 Q And this had to do with the improvement of Highway 37?

24 A I believe it did.

25 Q Using the language of your ad, the cross-range expressway,

1 was that involved in the bill at all?

2 A I really don't know.

3 Q Your best recollection is that it was not though, isn't
4 it?

5 A Well, again, this is a matter of definition. Cross-range
6 expressway depends on the extent of the improvement, whether it
7 is going to be regarded as an expressway. I thought that that
8 bill was more or less an expressway bill.

9 Q Is it your position, Mr. Bischoff, that a legislator
10 should not own private property while he is in the legislature,
11 which property is adjacent to a public highway?

12 A No. My position is simply that the facts again, when
13 the legislator does that, when he buys it, when he is working
14 on this type of program, it raises a question on the face of it,
15 and that it is proper for me to comment on it. I am not saying
16 that because he goes in the legislature he should automatically
17 sell all his property or anything, but I think a distinction can
18 be made when he is working on these programs and does buy land.

19 Q All right. The language of your ad states that Mr. Fena
20 was actually involved in the project. Are you saying that you
21 know of your own knowledge Mr. Fena was actually involved in a
22 project to get legislation passed improving Highway 37?

23 A I am saying that he is working on the highway programs.
24 went to a lot of meetings and Jack was at the meetings and he
25 d be talking about the highway system. I am talking about

1 the general highway project.

2 Q In your ad you don't say general highway programs. You
3 say cross-range expressway.

4 A That is true.

5 Q And the phrase or term "cross-range expressway" has a
6 rather definite meaning to the people of this area, does it not?

7 A It is rather definite, yes; but it is pretty ill-defined
8 too.

9 Q Referring again to Contestant's Exhibit G, the ad, the
10 content of which is similar to the broadcast, and I quote from
11 it, "The full page ads in behalf of Mr. Fena play up his
12 position on the Judiciary Committee - but they don't say anything
13 about how he manages to keep the public defender job for his
14 firm. The ads list Mr. Fena's work on the highway program - but
15 they don't mention the land he owns by the highway. It should
16 be clear that the ads do not tell the whole story." What do
17 you mean by the rest of the story, Mr. Bischoff?

18 A What I mean right there is that I listed enough facts
19 to create a question, and I want the people to consider. This
20 is what I am trying to get across to them, that I don't really
21 know the answers to all the questions that I am posing myself,
22 but that -

Q Would you agree that these questions are such that if
they were given an interpretation, that they do lend themselves
to an interpretation that Mr. Fena is guilty of some sinister

1 or underhanded or improper conduct in connection with the
2 appointments and location of the highway?

3 A No. I feel that if they lend themselves to this
4 interpretation, that if by working on these programs, and if
5 the programs are pushed through that he could benefit, and
6 because of them, and therefore you have this conflict that I
7 referred to, in whose interest is he actually working.

8 Q Okay. What programs are we talking about?

9 A I am talking about any programs, for example, to upgrade
10 Highway 37 or susceptible to the interpretation they could have
11 a beneficial interest on his property, and I think this is an
12 effect that follows on the face of the fact.

13 Q Where did you obtain the information he was involved in
14 seeing that Highway 37 would be upgraded?

15 A That is my recollection from all the talk that was going
16 on back there in this period.

17 Q You didn't check on this with any other authority that
18 might know?

19 A Not before I read the ad, no.

20 Q Have you since?

21 A Yes.

22 Q With whom?

23 A I have gone through the newspapers and stuff.

24 Q What did you find in the newspaper?

25 A Well, I found that the bill being considered in '65 had

1 died. It was, as I recall it, a ten thousand or ten million
2 dollar bonding bill. It included close to - well, one million
3 seven hundred thousand approximately for the upgrading of
4 Highway 37.

5 Q And the balance of it?

6 A Was a range road improvement bill.

7 Q And do you know whether that included the expressway?

8 A No, it did not refer to it as an expressway.

9 Q Referring again to Contestant's Exhibit G and H, the
10 ad and the broadcast, I quote, "TOWN OF STUNTZ: During 1967
11 alone, he received \$7,500.00 extra for handling a single case
12 which never went to court and which required very little effort
13 on his part." From whom did you obtain this information,
14 Mr. Bischoff?

15 A My initial source was my associate, Ed Matonich.

16 Q And he was your source as to what information, what part
17 of that quote?

18 A All three. The three main points, the amount, the fact
19 it never went to court, and third point the fact it didn't
20 require very little effort.

21 Q And Mr. Matonich told you all three of these things?

22 A Yes, he did.

23 Q Do you know where he got his information?

24 A Yes. Initially Bob Mathias mentioned the fact. Bob
Mathias, who was a former associate of Jack Pena, mentioned it.

1 Now, I realized Jack had several positions, and I suggested to
2 Ed he check out the amounts of money involved in these different
3 positions, and he did it at my request.

4 Q Do you know how extensively he made inquiry?

5 A Yes. We had considerable exchange on it. He checked
6 pretty thoroughly, I think.

7 Q Largely through Mr. Mathias, as far as you know?

8 A No, through Mr. Mathias and Mr. Grekela and also Ralph
9 Deger.

10 Q What is the last name?

11 A Ralph Deger. He is township assessor.

12 Q Did they tell you that this case didn't go to court?

13 A The only one I talked to on it, and I called the last
14 day to confirm it with Ralph. I wanted to confirm it.

15 Q Ralph who?

16 A Ralph Deger. Excuse me. Ralph is the one I talked to
17 personally on it.

18 Q What did Mr. Deger tell you?

19 A He verified the fact of the amount and the fact it didn't
20 go to court, and on the other things he said he put everything
21 together in a package and turned it over to Mr. Fena and Mr. Fena
22 just brought it to a head, more or less.

Q Did he say anything to you at all about the work that
Mr. Fena did on it? Did he know himself what work Mr. Fena did?

A I don't know that he did; but in talking to him, he

1 confirmed there wasn't much work done. He had done the main
2 fact finding and investigation work on it completely himself.

3 Q Did he take part in any of the negotiating with the
4 company?

5 A I really don't know.

6 Q This is a tax valuation case, is it not?

7 A I am not familiar with the case at all.

8 Q You are not?

9 A I am not.

10 Q You mean you put this in the ad and in the broadcast
11 without even finding out what kind of case it was?

12 A That is correct.

13 Q Didn't it occur to you that maybe you had that responsi-
14 bility as a candidate to at least find out what the case was
15 about?

16 A I was just thinking that may have been mentioned. If I
17 may correct myself on that. That was mentioned it had something
18 to do with the mining company. I was wrong on it. I did know
19 a little bit about it, the fact it had to do with the mining
20 company and valuation. Yes, that is true.

21 Q As another lawyer though, Mr. Bischoff, you are not
22 going to take the word of a member of the town government, are
23 you, in finally deciding to what extent the attorney did work
24 on the file?

25 A Well, as I explained, I had several different sources and

1 got the same conclusions from each, and that is the basis of
2 my information.

3 Q Your several different sources now are Deger, Grekela, and
4 who else?

5 A Bob Mathias.

6 Q When did you get this information?

7 A I believe it was several weeks before the first time I
8 heard the seventy-five hundred dollar figure. It would be
9 approximately - and I am guessing a little bit on this -
10 approximately a week before that - possibly two weeks before -
11 that Ed told me seventy-five hundred and the fact it didn't go
12 to court and the fact it required very little effort, and then
13 during the last week, this was the period Ed was double checking,
14 and it was the morning I gave the talk that I called Mr. Deger.

15 Q Were you ever told that Mr. Pena made an appearance before
16 the tax court?

17 A No, I wasn't.

18 Q Did you know whether or not he did?

19 A I had seen it raised in his answer, and I assume it is
20 true.

21 Q Now, as an attorney, Mr. Bischoff, you had files in your
22 office, I am sure, where you as the lawyer were involved in
23 negotiation of settlement, either with an insurance company or
24 another party to a matter, where the client - your own client -
25 is not a party to those negotiations, and these negotiations

1 are often extensive.

2 A Yes.

3 Q There are times, aren't there, in fact, very often when
4 a lawyer will not have his client present when matters are
5 being negotiated?

6 A That is true.

7 Q And the client really doesn't know the extent of work that
8 went into the negotiation and final result, does he?

9 A That is true.

10 Q In your Answer, page 5, paragraph E, contestant's
11 allegations, Mr. Bischoff stated during 1967 alone he received
12 some seventy-five hundred dollars extra for handling a single
13 case which never went to court and which required very little
14 effort on his part. The facts are that the work in this case
15 covered a period of 1965, 1966 and 1967, that the case did go
16 to court and that it was before the tax court and Mr. Fena
17 appeared before the same, that this case required a great deal
18 of effort, long hours and study on his part, that out of said
19 fee Mr. Fena paid a legal consultant fee and had travel and
20 other expenses involved, that Mr. Bischoff is a lawyer and
21 should have known about these things. In contestant's answer
22 to contestee's allegation, and I quote from the answer, "The
statements in the advertisement were substantially correct and
any misstatements were for the most part not serious or
material, that none of said misstatements were made either

1 knowingly or deliberately." It is fair to conclude from this
2 portion of your answer, is it not, Mr. Bischoff, that you did
3 misstate the facts in regard to this fee and the legal work
4 that Mr. Fena did for the Town of Stuntz on that tax valuation
5 case?

6 A I misstated?

7 Q I should state both cases. There were two cases
8 involved.

9 A Well, I believe I am admitting there is a possibility
10 of a misstatement, depending on how you interpret it, yes.

11 Q Did you know there were two cases involved, not just one?

12 A I thought you meant by two cases, you were referring to
13 the two separate facts, the fact whether or not he went to court,
14 and secondly, the amount of work he did. No, I didn't know
15 anything about two cases.

16 Q But as far as your misstatement is concerned, you admit
17 in the answer that -

18 A I admit there is a possible misstatement.

19 Q As to what?

20 A To either the fact he went to court or to the fact he
21 did very little work.

22 Q You don't know now and you didn't know then when the ad
was placed whether Mr. Fena properly earned a fee in those two
cases?

A That is true.

1 Q How long before you made this ad did you tell us that you
2 first made some inquiry about these two cases that Mr. Fena
3 had in behalf of the town, seven weeks - five weeks?

4 A I would say that the first time Ed told me about it was
5 probably - oh - it had to be over a month.

6 Q And when did you make your decision to put this in the
7 ad?

8 A After I got the confirmation from Deger.

9 Q When was that?

10 A The morning I wrote the ad.

11 Q And you wrote the ad when?

12 A On Thursday morning. On the same day I gave it.

13 Q You submitted it on that deadline Thursday?

14 A Right.

15 Q This ad was kind of your last shot at Fena, right?

16 A Actually, this talk was part of a series of radio talks,
17 and it ran from Tuesday through Saturday. This was a Thursday
18 talk, and after I made up the talk for that day - now, I had
19 already submitted my radio program to Manney. Then I decided
20 to run an ad on it too after I got all the research done and
21 prepared the radio talk and then I prepared the talk.

22 Q This was your last shot at Fena, right, in the campaign?

23 A It was my last air campaign material, yes.

24 Q And fair to say you were saving the best for the last?

25 A Not really. I didn't ever intend to run that ad until

1 Q How long before you made this ad did you tell us that you
2 first made some inquiry about these two cases that Mr. Fena
3 had in behalf of the town, seven weeks - five weeks?

4 A I would say that the first time Ed told me about it was
5 probably - oh - it had to be over a month.

6 Q And when did you make your decision to put this in the
7 ad?

8 A After I got the confirmation from Deger.

9 Q When was that?

10 A The morning I wrote the ad.

11 Q And you wrote the ad when?

12 A On Thursday morning. On the same day I gave it.

13 Q You submitted it on that deadline Thursday?

14 A Right.

15 Q This ad was kind of your last shot at Fena, right?

16 A Actually, this talk was part of a series of radio talks,
17 and it ran from Tuesday through Saturday. This was a Thursday
18 talk, and after I made up the talk for that day - now, I had
19 already submitted my radio program to Manney. Then I decided
20 to run an ad on it too after I got all the research done and
prepared the radio talk and then I prepared the talk.

Q This was your last shot at Fena, right, in the campaign?

A It was my last air campaign material, yes.

Q And fair to say you were saving the best for the last?

A Not really. I didn't ever intend to run that ad until

1 that day.

2 Q Yet you told us earlier you felt the contents of this ad
3 was material.

4 A Yes, but I intended to handle that material strictly in
5 my radio talk. That was my intention.

6 Q But you changed your intention?

7 A Yes, I did.

8 Q And you knew, did you not, that there would be no
9 opportunity for Mr. Fena to respond to that ad in the same
10 medium in which it was carried, that is the Manney Shopper?

11 A Well, I never would have run it in Manney if I hadn't
12 run it first in the radio.

13 Q You knew when you placed the ad in the Shopper that there
14 would be no opportunity for Mr. Fena to respond to it in the
15 Shopper.

16 A In the Shopper, yes, I did.

17 Q You knew Mr. Fena wouldn't see that ad until Sunday at
18 the earliest.

19 A That is true, but he heard the radio talk before then,
20 which had the same material.

21 Q But there is no way of knowing whether people who read the
22 Shopper listened to your broadcast.

23 A Would you restate that again.

24 Q There is no way of knowing that the people who read the
25 Shopper would listen to a radio broadcast.

1 A That is true.

2 Q Again referring to your answer, Mr. Bischoff, page 6,
3 paragraph C, contestee's answer, I quote: "That Jack Fena also
4 had full page ad space reserved for Monday, November 4, 1968,
5 in both the Manney Weekly Shopper and the Hibbing Daily Tribune
6 which could have been used to answer the charges."

7 A That is true.

8 Q Where did you get the information that he had space
9 reserved in the Shopper and in the Tribune that your ad could
10 have answered?

11 A Because you have a deadline on newspaper advertising -
12 at least I do - and the Shopper, you have to reserve your space
13 on Thursday, but you can make up your ad on Friday; and the
14 Tribune had a deadline too of two days, and that wasn't so much
15 for contents as it was for space, so he must have had the space
16 reserved.

17 Q Until he saw your ad, he couldn't answer it in the
18 Shopper, could he?

19 A He could have answered the radio talk in the Shopper.

20 Q Did you say anything to Mr. Fena about it ahead of time,
21 either the broadcast or the ad?

22 A No, I didn't.

23 Q What stations did you have that broadcast on?

24 A On Thursday, which would be the 31st of October, I ran
it on Eveleth.

1 Q Eveleth?

2 A Just Eveleth. On Monday, we ran it on Eveleth and
3 Hibbing.

4 Q Let's go back to Thursday, because if he was going to
5 answer you by newspaper, he would have to have known about it
6 by Thursday.

7 A Right.

8 Q All right. Referring you to Contestant's Exhibit E,
9 would you look at this exhibit and tell me what time this
10 address was given over WEVE on Thursday, the 31st.

11 A It doesn't show up here. I don't see it. Excuse me.
12 3:15 P.M.

13 Q So Mr. Fena would have to have been listening to his
14 radio at 3:15 on October 31.

15 A Right.

16 Q And then he would have to sit down quickly and prepare
17 his ad and get it over to the Shopper so he can hopefully get it
18 into the Sunday or Monday edition.

19 A That is true.

20 Q Did you check with the managing editor or owner or
21 whoever it is of the Hibbing Tribune, or anyone there, to
22 determine when the deadline is? In your Answer - go ahead and
23 answer that first.

24 A The ad men that were over and seen me and told me about
25 two days - a deadline for space on political ads. That is

1 my understanding.

2 Q When would you have to get an ad into the newspaper in
3 order to get it into Monday's publication?

4 Mr. Simonett: What paper are we talking about?

5 Q (Mr. Ryan) Hibbing Tribune.

6 A Well, assuming the space was reserved, I would think it
7 would be either Friday or Saturday. I don't really know.

8 Mr. Ryan: That is all.

9 Mr. Simonett: I have many questions to ask Mr. Bischoff,
10 but I would prefer to reserve them until our own case in chief,
11 so I have no questions at this time.

12 (Witness excused)

13 BERT ACKERSON

14 Called as a witness, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Ryan:

18 Q Your full name please.

19 A Bert Ackerson.

20 Q And where do you live, Mr. Ackerson?

21 A Hibbing.

22 Q And what is your occupation?

23 A Managing Editor of the Hibbing Tribune.

24 Q And how long have you held that position?

25 A Oh, about twenty-five years.

1 Q I gather you are familiar with deadlines for political
2 advertising.

3 A Yes, not only political but all other types.

4 Q If Mr. Fena wished to place in the Hibbing Tribune an
5 ad for publication on November 4th - Monday, November 4th -
6 when would this ad have to be presented to your office?

7 A By 5:00 P.M. the preceding Friday.

8 Q Preceding Friday?

9 A Two days. Space must be contracted for by noon and copy
10 in by 5:00 P.M. two days prior to publication on all advertising.

11 Q Did Mr. Fena have space reserved in the newspaper for
12 Monday's publication of November 4?

13 A Yes, he did.

14 Q And had he submitted an ad to you the prior week for
15 that space?

16 A He had not submitted any advertising to me.

17 Q Had he submitted it to the paper?

18 A Yes.

19 Q Do you know when that was?

20 A I have no idea.

21 Q At any rate, he had prior to the deadline given to your
22 newspaper an ad to be run on Monday, November 4.

23 A Yes.

24 Q Now, at any time over that weekend, did Mr. Fena call you
25 seek if at all possible a change in his ad?

1 A Yes.

2 Q Do you remember what day he called?

3 A Sunday.

4 Q Was he disturbed?

5 A Well, actually, we had a conversation three times, and
6 the first time he was.

7 Mr. Simonett: I am going to object to any conversation
8 as hearsay. I guess the question only asked if he was
9 disturbed. I have no objection to that.

10 Witness: Yes.

11 Q (Mr. Ryan) How many times that day did he call you?

12 A Three times.

13 Q What did he want to do?

14 A Either to change copy in the advertisement he had
15 already placed or to purchase space for an additional ad.

16 Q Were you able to extend either one of these to him?

17 A No.

18 Q And you told him so?

19 A I did.

20 Mr. Ryan: Thank you, Mr. Ackerson.

CROSS EXAMINATION

By Mr. Simonett:

Q Mr. Fena then did have space reserved in the Hibbing
Daily Tribune for the issue of Monday, November 4.

A He did.

1 Q Do you know the ad he was going to put in that space?

2 A Personally know what it was going to contain?

3 Q Yes.

4 A No.

5 Q Do you know if it was a repeat of an earlier ad?

6 A I know after having seen it, it was a repeat. I didn't
7 know what he had scheduled.

8 Q If he had gotten any copy in to you by 5:00 P.M. on
9 Friday preceding Monday, November 4, you would have been able to
10 put it in.

11 A Yes. But may I elaborate.

12 Q All right.

13 A The way that works on re-runs, they get - in other words,
14 they have an advertisement that is published one day and you
15 re-run it, you get a - I don't know just what rate it is, but
16 you get a rate for running it a second time, that is without
17 any change in copy.

18 Q A cheaper rate?

19 A Yes. A more favorable rate without any change in copy.
20 Any change in copy, you have to pay the full rate.

21 Q Well, the point is though he could have brought in new
22 copy to you for an ad at any time prior to 5:00 P.M. on Friday.

23 A Definitely.

24 Q And you would have put it in Monday's issue?

25 A Yes.

1 Q During the course of the campaign, did your paper also
2 from time to time publish news releases about various candidates
3 for state representative?

4 A Yes.

5 Q Was there any charge for those?

6 A No.

7 Q Again, can a news release - does that have the same dead-
8 line as an advertisement?

9 A No.

10 Q For your Monday edition, for example, November 4, up to
11 what time can your editor present copy to the printer and get it
12 in that days issue?

13 A I would have to offer a little detail there. It would
depend entirely on the story and its import and whether it would
be in the classified field, such as courts or area, local or
society or general.

Q Say general news.

A General news. It could handle it up until about 1:00 P.M.

Q And does the Hibbing Daily Tribune also publish on
Saturday?

A Yes.

Q And the deadline for general news for Saturday's edition,
would that also be 1:00 P.M.?

A If it were really important, yes.

Q And the same for Friday?

1 A Definitely.

2 Mr. Simonett: Thank you, Mr. Ackerson.

3 (Witness excused)

4 LESTER MILLER

5 Called as a witness, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Ryan:

9 Q Where do you live, Mr. Miller?

10 A Duluth.

11 Q And what is your occupation?

12 A I am District Engineer for the Minnesota Highway Depart-
13 ment covering northeast Minnesota.

14 Q And how long have you held that position?

15 A Thirteen years.

16 Q What is your responsibility with regard to the establish-
17 ment of locations of new highways within the district?

18 A Well, it is my responsibility to make the recommendations
19 for route, pursue it with local authorities and with our staff
20 in St. Paul.

21 Q In connection with the cross-range expressway, did Mr. Fena
22 ever talk to you about locating the cross-range expressway on
23 the present location of Highway 37?

24 A No.

25 Q Did he at any time as far as you know attempt to influence

1 the location of the expressway on or near 37 with any other
2 employees of your staff - any other employees of your office?

3 A No.

4 Q As a practical matter, when it comes to the locating of
5 new highways, does St. Paul rely in almost all cases upon the
6 recommendation of its District Engineer?

7 A Yes.

8 Q So that if the cross-range expressway were to be located
9 near some property owned by Mr. Fena on Highway 37, the man
10 for Mr. Fena to contact would have been yourself as far as this
11 district is concerned. Is that correct?

12 A Yes.

13 Q When was the location of the cross-range expressway
14 decided, Mr. Miller?

15 A In the spring of 1965, there was a series of meetings -
16 January, February, March, probably as late as April - and during
17 that period it was decided.

18 Q Do you recall whether Mr. Fena was in attendance at any
19 of those meetings?

20 A Yes.

21 Q Do you recall whether in any of those meetings any attempt
22 was made by Mr. Fena or any attempt made by Mr. Fena to seek to
23 have that expressway located on 37?

24 A I don't know how to answer that.

25 Q Do you recall from your presence at those meetings whether

1 Mr. Fena took the position at the meetings that the expressway
2 should be located on the present route of Highway 37?

3 A No.

4 Q He did not do so?

5 A That is right.

6 Q Was Highway 37, or commonly referred to up here as the
7 airport road and referred to as the airport road in Mr. Bischoff's
8 ad and broadcasts, was that road ever considered by you or your
9 department as the location of the expressway?

10 A No.

11 Q Not even tentatively considered as the location, was it?

12 A No.

13 Q Mr. Miller, do you know whether an individual involved
14 in highway planning sought in 1967 to have the route of the
15 expressway changed to Highway 37?

16 Mr. Simonett: Repeat that question please.

17 Mr. Ryan: Strike the question.

18 Q (Mr. Ryan) Did Mr. Aguar a couple of years ago or a year
19 ago recommend as a planner the location of an additional express-
20 way for 1990 over what is now the route of Highway 37?

21 A No.

22 Q Or near the area?

23 A Yes. He had a recommendation for an outer beltline
around Hitting that would have come close to the airport
property.

1 Q Do you know whether Mr. Fena appeared and sought to
2 defeat that proposal?

3 A Yes.

4 Q What position did he take?

5 A He was opposed to any change and recommended that if and
6 when necessary the existing Hibbing beltline be upgraded to
7 meet traffic conditions.

8 Q Did he propose interchanges on the present beltline?

9 A Yes.

10 Q Did Mr. Fena with Senator Holland seek to have the cross-
11 range expressway's location located even further north than its
12 final location was as determined by you? Do you recall that?

13 A No, I do not.

14 Q Did the Department of Highways propose the location of
15 the expressway on the Spudville Road?

16 A Yes.

17 Q And it is true, isn't it, Mr. Fena, along with Senator
18 Holland, tried to and did seek to have the expressway advanced
19 even further north?

20 A Yes.

21 Q How far north of Highway 37 is the Spudville Road
22 approximately?

23 A Oh, it takes off of 169 between Hibbing and Chisholm.
24 I would say about four miles north of Hibbing.

25 Q The Spudville Road?

1 A Yes.

2 Q That is north of 37?

3 A Yes.

4 Q And how far north of that was the location of the
5 expressway established at the recommendation -

6 A It is practically at Chisholm. That would be about
7 around six miles.

8 Q And Mr. Fena urged this very strongly, didn't he?

9 A Yes.

10 Q Do you recall what his reasons were for urging the
11 location of the expressway further north?

12 A Yes. One was the required legislation to change the
13 routing of Trunk Highway 169, which is constitutional 35. It
14 would mean adding miles to the Trunk Highway system, which both
15 Mr. Fena, Senator Holland and other legislators agreed was
16 almost hopeless at this time. Second, that he figured following
17 closer to the present route of 169 would better serve the
18 adjoining communities.

19 Q And lend itself more to the idea of a crossway expressway?

20 A Yes.

Mr. Ryan: That is all, Mr. Miller.

CROSS EXAMINATION

By Mr. Simonett:

Q Do I understand, Mr. Miller, that as the District
Engineer for the Highway Department in this district that you

1 make final decision on the located routes of roads.

2 A No.

3 Q You would make a recommendation to other authorities who
4 do make that decision.

5 A Yes.

6 Q Who would have the final say?

7 A Well, I suppose you could say the Commissioner of Highways
8 through his staff and the deputy commissioner, chief planning
9 engineer, probably about five of his immediate staff aid in
10 making this decision.

11 Q Would your recommendation be based primarily on engineer-
12 ing information?

13 A No. It is on public opinion also.

14 Q Did the federal government have - was it going to
15 participate in this project?

16 A It was expected that they would, yes.

17 Q And would they have to be consulted then as well on
even such matters as the route?

18 A In the final analysis. They take very little part in
the preliminary. When the final plan is presented, it has to
have their approval.

19 Q What is the status of the expressway today?

20 A Right now it is all programed for construction starting
in '69 - 70 and 71.

21 Q None of it has actually been started as yet.

1 A Well, -

2 Q I mean actual construction.

3 A Well, other than the Hibbing-Chisholm route, which is
4 part of the range expressway, that has been constructed.

5 Q Now, I think you indicated that one of the considerations
6 involved in the location of a highway through here is public
7 sentiment.

8 A Yes.

9 Q You do hold numerous hearings.

10 A Yes.

11 Q And did so in this case.

12 A Yes.

13 Q When did the interest in the range expressway first
14 develop?

15 A Well, it is not a definite thing. Improvement of
16 Trunk Highway 169 has been talked of probably since 1962, but
17 with the passage of the Taconite Amendment and decrease of the
18 operation of the natural ore mines, the commuter traffic
19 started to pick up considerably, and this brought it on to
20 about 1965, because the taconite plants were being built in
'63 and '64 and '65; so I would say about the latter part of
'64 and spring of '65 is when the interest developed in the
range expressway.

Q Were the taconite plants and mines more on the eastern
end of the range?

1 A No. Right now, it is more in the central part.

2 Q In the central. But oftentime located at some distance
3 from the homes of the workers.

4 A That is right.

5 Q And that was one of the reasons for much public interest
6 in improved roads to get to and from work.

7 A Yes.

8 Q Then did you yourself hold a series of meetings to
9 determine public sentiment?

10 A Yes.

11 Q Is it true that it early developed that there were
12 differences of opinions among the communities as to the route
13 of this expressway?

14 A Oh, there is some difference, yes.

15 Q And by an expressway, what generally was meant?

16 A Well, generally meant a four-lane divided highway in
17 which access is restricted and where principal intersections
18 and crossroads are separated from the main highway, the express-
19 way.

20 Q So there was some difference of opinion among the public
21 as to the location of the route. One proposal was to pretty
22 much follow old 169. Is that right?

23 A Yes.

24 Q Another, as I gather here from Mr. Ryan's questions, was
25 to follow the Spudville route.

1 A Yes.

2 Q And generally would that have taken it north - rather
3 northerly of Highway 169?

4 A No, southerly.

5 Q Southerly?

6 A Yes.

7 Q Now, as to Highway 169, there was some objections to
8 that route, were there not? I am speaking here now of segments
9 of the public.

10 A I would say very little from the public.

11 Q The public preferred that generally?

12 A Yes.

13 Q Now, was Mr. Fena active in these discussions as to the
14 location of the route?

15 A Yes.

16 Q And I think you pointed out as to following 169, which
17 seemed to have general public favor, he pointed out two
18 objections; one, you would run afoul of the constitutional
19 problem of increasing mileage on the trunk highways.

20 A Of getting off of 169 you are talking of?

21 Q Yes.

22 A Yes.

23 Q Or maybe I didn't make myself clear.

24 Mr. Ryan: I think he is talking about the Spudville Road.

25 Q (Mr. Simonett) The Spudville route would have required

1 a constitutional amendment.

2 A Yes.

3 Q But as to 169, were there any objections to that?

4 A Not in the final analysis, no.

5 Q Did your department have any - speaking during the early
6 discussion?

7 A No, we did not other than to by-pass the built up
8 portions of the town. That was our desire.

9 Q Were some groups of public concerned of 169 if it was
10 revised as an expressway would go over bodies of ore?

11 A Yes, I suppose particularly the mining companies.

12 Q And as to the Spudville route, were there any communities
that objected to that?

13 A Yes.

14 Q Such as?

15 A Well, it would by-pass Chisholm, Fraser, Euhl. I expect
they all objected at one time or another.

16 Q What you were trying to accomplish by this expressway,
17 or what the people were trying to accomplish, is better trans-
18 portation across the Range, particularly for workers to and
19 from the taconite plants.

20 A Yes.

21 Q And such better transportation would exist not only
22 in respect to the new expressway but as to repairing or
23 showing already other existing roads.

1 A Yes.

2 Q Was there talk of improving Highway 37?

3 A Yes.

4 Q Whether we speak of it strictly from the standpoint of
5 using it as an expressway or not, it was discussed as to
6 improving it.

7 A Yes.

8 Q And during the same period of time.

9 A Yes.

10 Q It came up at these meetings where the range expressway
11 itself was being talked about.

12 A I think perhaps it did at many of the meetings.

13 Mr. Simonett: I believe that is all.

14 REDIRECT EXAMINATION

15 By Mr. Ryan:

16 Q There was in fact, Mr. Miller, a specific project
17 designated a cross-range expressway project, wasn't there?

18 A Yes.

19 Q That was altogether different project than the bundle
20 of other highway improvement programs within the area.

A Yes.

Q How was Highway 37 to be improved?

A The traffic it carries and with the development of
taconite plants and this commuter traffic we have been speaking
of, the only place we are having problems on 37 is at some of

1 the principal road intersections, so we propose to provide
2 channelization at three principal road intersections on Trunk
3 Highway 37 between Hibbing and Trunk Highway 53 by either a
4 double lane or a short distance, by widening the narrow
5 bridges over the railroad tracks on Trunk Highway 37 to better
6 accommodate our two-lane traffic.

7 Q And these particular improvement points on 37 are a
8 considerable distance from the airport area.

9 A Yes. The only one I can think of - well, there is
10 County Road 5 is perhaps as close --

11 Q How many miles away would that be?

12 A It is probably a couple of miles.

13 Q Could it be more than that?

14 A Yes. I am just guessing.

15 Q Maybe you ought to check your map if you have a drawing
16 of it.

17 A I would say it is at least two and a half miles east of
18 the airport.

19 Q That would be the closest improvement point from the
20 airport?

21 A Yes.

22 Q Mr. Miller, do you have other copies of these maps
23 available?

24 A Yes.

(Map marked Contestant's Exhibit I for identification.)

1 Q Showing you what has been marked Contestant's Exhibit I,
2 Mr. Miller, could you identify it for us please.

3 A Yes. This is a small scale layout of the proposed
4 range expressway extending from Deer River to Aurora. It is
5 colored. The purple coloring represents the known limits of
6 the ore formation. The incorporated municipalities are colored
7 in in yellow. The existing Trunk Highway 169 is shown in
8 brown, and the proposed changes by reason of our range
9 expressway are shown in green on the map.

10 Mr. Ryan: We offer Contestant's Exhibit I.

11 Mr. Simonett: There is no objection.

12 The Court: Received.

13 Q (Mr. Ryan) When were the changes to be made in Highway
14 37 announced - a decision made as to them?

15 A I believe that was as far back - probably about in '64 -
16 the fall of '64, and repeated - I noticed some correspondence
17 in the spring of '65.

18 Mr. Ryan: That is all.

RE-CROSS EXAMINATION

By Mr. Simonett:

Q Were you aware in 1965 while these discussions as to
the route was going on and you were holding hearings that there
were certain groups urging Highway 37 as the proposed route of
the expressway?

A No.

1 Q Is it possible there could have been some?

2 A Yes.

3 Q And are there improvements being made on 37 now?

4 A Yes. There will be some improvements made this year.

5 We did a little work last year on one of the bridge structures.

6 Q And you have some more under your proposed plans?

7 A Yes.

8 Q Do you know the total cost of those improvements to 37?

9 A I don't have it with me, no.

10 Q Approximately.

11 A Probably amount to about four or five hundred thousand
12 dollars worth.

13 Mr. Simonett: That is all.

14 REDIRECT EXAMINATION

15 By Mr. Ryan:

16 Q Mr. Miller, if there had been groups interested in
17 Highway 37 as a location of the expressway, you would have
18 known about them, would you not?

A Well, yes, if they expressed themselves at a meeting or
by letter, and we never got that expression.

Q These improvements being made on 37 are a long distance
from the airport. Is that correct?

A Yes, they are. In fact, one of the principal ones is
on County Road 7, just south of Virginia, which is many miles
away - must be fifteen miles. Another one must be seven or

1 eight miles.

2 Q East?

3 A East. And the closest one is about two and a half miles
4 east.

5 Mr. Ryan: That is all.

6 (Certified copy of Resolution marked Contestee's
7 Exhibit 1.)

8 Mr. Simonett: We will offer in evidence Contestee's
9 Exhibit 1, a certified copy of a Resolution of Fayal Township
10 Board.

11 Mr. Ryan: For purposes of making an objection, your
12 Honor, I would like to ask the witness a couple of questions.

13 Q (Mr. Ryan) Mr. Miller, what is the difference between
14 an inter-range expressway and a cross-range expressway?

15 A I suppose there would be various opinions, but I would
16 say inter-range expressway would be something within the limits
17 of the Range. It might be a mile, five miles, two miles.
18 While the cross-range expressway, like I have explained it,
19 extends all the way across the ore formation from Deer River
20 to Aurora.

Mr. Ryan: With regard to Contestee's Exhibit 1, your
Honor, we have no objection to it.

The Court: All right. Received.

Q (Mr. Ryan) Was there a proposal, Mr. Miller, to build
a highway from Highway 53 to the North Shore?

1 A Yes. That has been discussed for many, many years.
2 There isn't exactly a proposal. There is a talk and wish in
3 many people's minds, but the means of financing hasn't been
4 arrived at.

5 Q Would that be connected with Highway 37 in any way?

6 A Well, it is proposed to follow the route of County High-
7 way 16 is the last proposal I heard, which is I believe a couple
8 miles south from where County Highway 37 junctions with 53,
9 but indirectly or more or less directly it would furnish a
10 route from the range to the North Shore.

11 Q This would not have been a cross range expressway?

12 A No.

13 Q Were the people - what is the name of the township?

14 Mr. Simonett: Fayal.

15 Q (Mr. Ryan) --Fayal Township opposed to the location of
16 the expressway on 169?

17 A Not to my knowledge. They were not affected by it in
18 any way.

19 Q Theirs was already built.

20 A The part of it extending through their area was built,
21 yes.

22 Mr. Ryan: That is all I have.

RE-CROSS EXAMINATION

23 By Mr. Simonett:

24 Q Well, in March of 1965, were there two proposals then;

1 one an inter-range expressway and another a cross range express-
2 way?

3 A No, there was not.

4 Q In the minds of the people, it was just one expressway
5 across the range one way or another.

6 A Yes.

7 Q Well, you haven't seen this, Mr. Miller, and perhaps
8 aren't familiar with it; but showing you Contestee's Exhibit 1--
9 it is in evidence and it is a Resolution by the Fayal Township
10 Board entitled Resolution Opposing Proposed New Inter-Range
11 Expressway. It goes on record supporting the proposition that
12 Highway 37 be utilized as the inter-range expressway, and I
13 note a copy was to be sent to the Highway Commissioner, but
14 were you ever advised of that?

15 A I have no recollection of it, no.

16 Mr. Simonett: That is all I have.

17 (Witness excused)

18 The Court: This might be a good time for a recess.
19 Recess for about ten minutes.

20 AFTER RECESS

21 N. S. CHANAK

22 Called as a witness, having been first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Ryan:

1 Q Your full name please, Judge.

2 A N. S. Chanak.

3 Q And you are a judge of what court?

4 A District Court.

5 Q For what district?

6 A Sixth.

7 Q And where are your chambers?

8 A Hibbing.

9 Q You preside in cases throughout the district?

10 A Yes.

11 Q Would you tell us, Judge, what has been the method of
12 selection of assistant public defenders for the Hibbing area
13 insofar as the last two appointments are concerned.

14 A Back in December, 1966, Peter Mulvahill, the then
15 assistant public defender, submitted his resignation by letter,
16 dated December 20, 1966, a copy of which I have in my hand
17 here. I asked him to submit the name of an attorney who might
18 be satisfactory as a successor to his position. In his letter
19 to me of December 20th, he recommended that Robert Mathias
20 would be a proper and adequate assistant public defender for
21 this area.

22 Q Was it the practice, Judge, of the judges in the district
23 to make recommendations to the public defender?

24 A To the district public defender, yes.

25 Q To make recommendations as to assistants?

1 A. Yes. And by letter of the same date to our chief judge
2 then, the Honorable Mark Nolan, I advised him as follows, and I
3 quote in part here: "I have had three lawyers inquire as to
4 the possibility of appointment to succeed Mr. Mulvahill. They
5 are Leonard Kne, Tom Wangenstein and Robert Mathias. I am
6 inclined to concur in the recommendation of Mr. Mulvahill that
7 Robert Mathias be appointed." I further wrote to Judge Nolan
8 as follows: "Would you kindly take this matter up with the
9 other judges and advise Mr. Durfee of the recommendation of
10 the district judges. I am not sure whether Mr. Durfee or the
11 district judges make the recommendation to the Judicial Council."
12 Now, I was present in the courtroom this morning when
13 Mr. Bischoff testified that he had inquired or indicated an
14 interest at that time for appointment. I don't recall that
15 conversation, but if Mr. Bischoff says he did do it, I will
16 not deny it. Subsequent thereto, I assume that Judge Nolan as
17 chief judge took the matter up with the other judges of the
district, submitted the names to the district public defender,
Mr. John Durfee, and in due course Mr. Mathias was appointed.
The statute provides that the district public defender appoint
with the approval of the Judicial Council, and I assume that
was followed. Mr. Mathias then continued in office, and in
December, 1967, Mr. Mathias wrote me a letter submitting his
resignation because he was becoming associated with a law firm
in Duluth; and I believe that I followed the same procedure as

1 I had in the prior appointment and asked him whether or not he
2 had someone to recommend as his successor. He writes as follows:
3 "Because I have been in this area for a relatively short period
4 of time, I find myself somewhat reluctant to make any recommenda-
5 tion as to my successor. However, Tom Wangensteen of Chisholm
6 has approached me about the job and appears to be extremely
7 interested in obtaining the position. I have known Tom since
8 I came to Hibbing and I feel that he is highly qualified for
9 the position and would do a good job if he were appointed.
10 Barney Bischoff is also interested in the position and if
11 appointed would probably do a good job." Subsequent to that,
12 by letter of December 13, 1967, I received a letter from
13 Tom Wangensteen indicating his interest in the position; and
14 by letter dated December 14, 1967, I received a letter from
15 Mr. Bischoff indicating his interest in the appointment. By
16 my letter dated December 22nd, 1967, to Mr. Durfee as district
17 public defender, I advised him in essence of the resignation
18 of Robert Mathias and stated to Mr. Durfee as follows: "During
19 the past several weeks, three attorneys in the Hibbing-Chisholm
20 area have either by letter or orally requested consideration
21 for appointment to that office. Pursuant to your authority
22 and responsibility to submit names of proposed appointees, I
23 submit the names of the three attorneys who have personally
24 indicated their interest in the position in the order of their
25 request: Tom Wangensteen, Wangensteen & Bangs, Chisholm;

1 James Randall, Fena, Randall & Murray, Hibbing; Bernard Bischoff,
2 Nickoloff & Bischoff, Hibbing. In addition to the above named
3 three attorneys, at the time of the original appointment of
4 Mr. Mathias interest was expressed in the appointment by
5 Mr. Leonard Kne, an attorney in Chisholm. This additional
6 name is submitted for your information and such action as you
7 deem necessary." I further advised him, "Recently you informed
8 me it was your intention to visit each of these applicants
9 personally in their respective offices. I am certain that you
10 will give due consideration to each applicant. An applicant
11 appointed at the earliest possible date would be appreciated
12 by the court." Now, you asked me about the general procedure.
13 I might say with reference to the appointment or recommendations
14 that followed the resignation of Mr. Mulvahill, I recall having
15 a conversation with Tom Wangensteen and Robert Mathias about
16 their interest. I don't recall any conversation with Leonard
17 Kne, although he must have talked to me because I have his name
18 in the letter; and as I testified earlier, I don't recall any
19 conversation with Mr. Bischoff, although, as I said before, his
20 statements he had such a conversation, I don't deny it. With
21 reference to this vacancy for 1968, I recall a conversation by
22 or with Tom Wangensteen and James Randall. Wangensteen wrote
23 to me in addition to his conversation with me; and as far as
24 Mr. Bischoff is concerned, the only thing I have from him was
25 a letter to which I have referred earlier. Then in response to

1 my letter of December 22nd, 1967, to Mr. Durfee, I received a
2 letter from Mr. Durfee dated January 4, 1968, in which he
3 informs me that he has chosen James Randall and he states his
4 reasons in the letter. Subsequent to that appointment, I
5 received a copy of a letter from Mr. Bischoff addressed to
6 Mr. Durfee dated January 5, 1967, in which he expresses his
7 appreciation for consideration of appointment and states
8 further that he was deeply disappointed, and his last paragraph
9 states as follows: "As I interpret the third paragraph of your
10 letter, your decision is one in favor of the Fena firm. Since
11 this firm was awarded the position the last time it was open,
12 it would seem only fair that the other three applicants be
13 given added consideration at this time." This is a copy of a
14 letter I received from Mr. Bischoff which was addressed to
15 Mr. Durfee, and that in essence is what I have to say about
16 this appointment.

17 Q Judge Chanak, prior to these appointments, do you have
any recollection of Mr. Fena personally approaching you and
asking you to make the appointment in his office?

A No personal recollection, no.

Mr. Ryan: That is all.

CROSS EXAMINATION

By Mr. Simonett:

Q It is a novel opportunity, Judge, for me to be able to
ask the questions. Usually it is the other way around. But I

1 think both Mr. Ryan and I asked you to refer to your file as to
2 what you could find on the whole public defender question, and
3 what you have related to us, does that pretty well cover your
4 file?

5 A I think it does, it does my written file - my corres-
6 pondence.

7 Q As well as any personal recollection that comes to mind.

8 A Except for what I said about conversations with these
9 various applicants. I don't recall anything specifically. I
10 was surprised this morning to hear Mr. Bischoff say he talked
11 to me at the first opening. And if he said it was so, I again
12 accept his opinion.

13 Mr. Simonett: That is all I have. Thank you.

14 Witness: I wonder, counsel. I have Thermofax copies
15 of all this correspondence. If you wish, you may have them.

16 Mr. Ryan: I don't think so. The contestant doesn't
17 need any of the correspondence.

Mr. Simonett: Nor do I.

(Witness excused)

DONALD C. ODDEN

Called as a witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Mr. Ryan:

Q Judge, you have heard your fellow Judge Chanak testify

1 as to the role I believe that the district judges take in the
2 selection or recommendation of assistant defenders. Is what
3 he had to say your concept of your role also?

4 A Pretty much so. Because of the geographical problems
5 in this county, we leave those matters in Hibbing to the Hibbing
6 judges and lawyers, and matters in Virginia to the Virginia
7 lawyers and judges, and those matters in Duluth usually to the
8 Duluth judges and lawyers.

9 Q Now, the public defender, is he appointed by the district
10 judges?

11 A Well, initially he was - not appointed by the judges,
12 but initially the recommendation was made to the State Judicial
13 Council which confirmed the appointment and did appoint him
14 and set a salary.

15 Q And during the time the last two assistant public defender
16 jobs were filled in Hibbing, the public defender was Mr. John
17 Durfee of Duluth. Is that correct?

A Right.

Q Now, prior to the last two appointments of assistant
public defender, did Mr. Fena, according to your best recollection,
personally contact you and request the appointment or the
recommendation from you of the assistant public defender job to
his office?

A Mr. Fena has never talked to me about the public defender
or the assistant public defender.

1 Mr. Ryan: That is all.

2 Mr. Simonett: I have no questions, thank you.

3 (Witness excused)

4 WALTER J. WILLIAMS

5 Called as a witness, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Ryan:

9 Q Your full name.

10 A Walter J. Williams.

11 Q Where do you live, Mr. Williams?

12 A In Hibbing.

13 Q How long have you lived here?

14 A All my life.

15 Q How old are you?

16 A 57.

17 Q And what occupation are you in now?

18 A More or less semi-retired right now. I have a little
19 affiliation with Williams Lumber Company.

20 Q Did you own Williams Lumber?

21 A Yes.

22 Q You have been engaged in this lumber business in this
23 area for most of your adult life?

24 A About fifteen years.

25 Q Fifteen?

1 A Fifteen, yes.

2 Q I see. Have you in the years that you have been here
3 bought and sold real estate?

4 A Quite a bit, yes.

5 Q You can't nod your head. You are going to have to answer
6 out loud.

7 A Yes.

8 Q How extensive, Mr. Williams?

9 A Well, right now I have sold quite a few of my holdings,
10 but I have a number of lots in Hibbing yet. I have some land
11 at Leach Lake, Swan Lake and in Florida.

12 Q You purchased and sold a lot of real estate over the
13 years?

14 A Yes. Some of it I kept for building and business.

15 Q How many parcels would you say you owned over the years
16 in St. Louis County alone?

17 A Thirty or forty. I don't know exactly.

18 Q Are you one of the co-owners of the farm property
purchased near the airport on Highway 37?

19 A Yes.

20 Q And do you recall approximately when you entered into
that purchase?

21 A I think it was in the late summer or fall of '63. I
not sure.

22 Q And who are the other owners?

1 A Joe Chamernick, Jack Fena and Happy Reed.

2 Q How did the four of you get together? How did it come
3 about the four of you purchased this farm? Do you recall?

4 A Well, I don't know. We just was talking about it,
5 thought it would probably be a good deal. We didn't really
6 have much in mind when we bought it, but we had talked about
7 a housing project and stock farm.

8 Q Do you know the other owners quite well?

9 A Yes.

10 Q Has Mr. Fena represented you at times in the past?

11 A Yes.

12 Q And you know Mr. Reed and Mr. Chamernick?

13 A Yes.

14 Q You have known them for a long time?

15 A A number of years, yes.

16 Q Did you have any specific projects in mind for the
property when you purchased it?

A No, we didn't talk too much about that.

Q Were you able to rent the property?

A We thought it was a good investment. I don't know.

Q You felt it was a good speculative investment?

A Well, I had in the back of my mind all the time it would
make a nice place for a housing project. We never got that
far along with it.

Q What is the property being used for now?

1 A The last, we had it rented last summer for pasture --
2 rented it out for grazing. This last summer, we cut hay off it.

3 Q Is there a dwelling on the property?

4 A Yes.

5 Q Is that rented?

6 A That is rented, yes.

7 Q Well, Mr. Williams, of course the time you owned the
8 property prior thereto, was there ever any conversation amongst
9 all of you or any of you that the property should be purchased
10 as a possible site for a cross-range expressway?

11 A No. There is eleven forties there and it is just a
12 small forty on the highway to start with. I don't think you
13 would buy eleven forties of land to sell a little strip in
14 front to the state.

15 Q You have one forty out of the eleven or thirteen on the
16 highway?

17 A On the highway.

18 Mr. Ryan: That is all.

19 CROSS EXAMINATION

20 By Mr. Simonett:

Q Do you remember the purchase price of that property,
Mr. Williams?

A Yes.

Q What was it?

A Twenty-five thousand dollars.

1 Q And was there a purchase mortgage money back, do you
2 know?

3 A Mortgage money back?

4 Q Purchase money mortgage back, or was the full purchase
5 price paid?

6 A No, we are still making payments on it.

7 Q You gave a mortgage back to the party from whom you
8 purchased it?

9 A Yes.

10 Q And that mortgage was in what amount?

11 A Must have been in the neighborhood of eighteen thousand
12 dollars. I think we each put in two thousand to start with.

13 Q I am sorry. What did you say the purchase price was?

14 A Twenty-five thousand dollars.

15 Q So your group had seven thousand dollars cash invested
16 in it. Is that it?

17 A Roughly, yes.

18 Q And as you say, you are holding it for whatever might
19 be a good deal that would come along.

20 A Yes.

Mr. Simonetti: Thank you very much.

(Witness excused)

HOWARD A. REED

Called as a witness, having been first duly sworn,
testified as follows:

1 DIRECT EXAMINATION

2 By Mr. Ryan:

3 Q Where do you live, Mr. Reed?

4 A In Hibbing.

5 Q How old are you?

6 A 58.

7 Q How long have you lived here?

8 A All my life except twelve years.

9 Q Twelve years early in life or late in life?

10 A Early in life.

11 Q Have you bought and sold real estate in St. Louis
12 County in the course of your adult lifetime?

13 A I have.

14 Q Do you presently own real estate?

15 A I do, considerable.

16 Q You are one of the owners of the property referred to
as the 513 acre farm or 520 acre farm out near the airport on
Highway 37.

A I am.

Q Now, prior to the time the property was purchased, did
you or any of the other owners ever discuss the use of this
property or possible routing of the highway, the cross-range
expressway, on or near that farm?

A No.

Mr. Ryan: That is all.

1 Mr. Simonett: I have no questions.

2 (Witness excused)

3 JOSEPH CHAMERNICK

4 Called as a witness, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Ryan:

8 Q How old are, Mr. Chamernick?

9 A 39.

10 Q Where do you live?

11 A Hibbing.

12 Q How long have you lived here?

13 A All my life.

14 Q Have you bought and sold real estate in the area of
15 Hibbing or St. Louis County in your adult life?

16 A Yes, I have.

17 Q Very much?

18 A Well, it is quite a bit for me.

19 Q What is your employment?

20 A I am maintenance mechanic for M. A. Hanna Mining Company.

21 Q What other real estate do you own other than your
22 residence and this farm - interest in the farm we have talked
23 about?

24 A Well, I have a summer cabin cottage at the lake, and
25 then I have two other homes plus numerous lots.

1 Q Are you also a member of the town board of the Town of
2 Stuntz?

3 A Yes, I am.

4 Q In what capacity do you serve?

5 A Well, I am supervisor on the board.

6 Q Have you ever served as chairman?

7 A Yes, I have.

8 Q When is the last time you did?

9 A 1966.

10 Q Is that at the time the ore valuation cases were under
11 way with the mining companies that Mr. Fena represented your
12 township in?

13 A Yes.

14 Q And did your board have knowledge of how other cases of
15 that nature had been handled by attorneys in the area as far as
16 fees were concerned?

17 A Well, yes. We discussed the possibility of what it
18 would cost, because naturally we in the town or our township
19 doesn't have that kind of money that was expended in similar
20 cases in the Village of Hibbing, which was around, according
21 to Mr. Fena - he was advising us - around forty thousand dollars
22 in fees, or something of that order.

23 Q In a case of a similar nature?

24 A Yes.

25 Q All right. So what did your board do with respect to

1 employing Mr. Fena to represent you in the Town of Stuntz cases?

2 A Well, my recollection is that it would cost us fifteen
3 or twenty thousand dollars, so we were a small part of the case.
4 At least in my opinion, I thought we were. We contacted the
5 school board -

6 Q You are a small part in comparison to what?

7 A Small part in comparison to the way the money would have
8 been divided had the school and county been in on the case with
9 us.

10 Q Did the county and school join in retaining an attorney?

11 A No. The county didn't want to join in the case at all.

12 Q The county attorney didn't?

13 A We had a meeting at Mr. Fena's office at one time with
14 the county attorney. Subsequently after that, he recommended
to get out of the case, I guess.

Q The county got out?

A The county got out but the school didn't respond to -
well, the school board -

Q Did the school board agree to join in the first instance?

A No.

Q They never did want to get involved?

A No.

Q So what arrangement was made between the Town of Stuntz
and Mr. Fena?

A Well, we told him that we couldn't go along with this

1 case if we had to dish out fifteen or twenty thousand dollars.

2 Q In fees, you mean?

3 A Yes, outright fees.

4 Q Hourly fees?

5 A Well, I would assume - whatever they call it - contingency
6 basis or something.

7 Q So what arrangement did you make with him?

8 A Well, he and the town board got together on this.

9 Q And he agreed to take it on a contingent basis?

10 A Yes. I don't know. One-third basis or one-third-two-
11 third, you know. So we went along with that kind of set-up.

12 Q Did you have a lot of meetings, you yourself and other
13 members of the board with Mr. Fena in regard to these two tax
14 cases?

15 A Quite a few, yes; many meetings.

16 Q And are you otherwise familiar with the extent of work
17 Mr. Fena had in preparation and ultimate negotiation and
settlement with mining companies of these two cases?

A He kept us informed as to what was going on in this case.

Q And had it not been for his agreement to accept the case
on a contingent basis, you would not have been able to pursue
the case against the mining company at all, would you?

A I doubt if we would have, because we just couldn't afford
t. We couldn't afford to lose that kind of money had we lost.

Q And the experience in the area was that other municipali-

1 ties and governmental units had been losing.

2 A Yes. At least the preceding one.

3 Q The Hibbing one?

4 A Yes.

5 Q Had you consulted with Mr. Fena about this case as far
6 back as 1965 before he had even been hired by the board?

7 A Yes, we talked about it.

8 Q And he gave some advice then, did he?

9 A Yes, he did; that is one of the reasons why we got him
10 on there the following year.

11 Q Do you feel he did a good job for your township?

12 A Absolutely.

13 Mr. Ryan: That is all.

14 CROSS EXAMINATION

15 By Mr. Simonett:

16 Q You became a member of the Town of Stuntz board in what
17 year, Mr. Chamernick?

18 A 1964.

19 Q Have been a member continuously since then?

20 A Yes.

21 Q Has Mr. Fena helped you on your campaigns for office?

22 A Yes, he has.

23 Q Do I understand when this tax case came up, this involved
24 valuations of ore in the township?

25 A It was a reclassification of ore.

1 Q Well, you understood that it might cost you thirty to
2 forty thousand dollars.

3 A I didn't say that.

4 Mr. Ryan: I believe he said fifteen or twenty, counsel.

5 Q (Mr. Simonett) I have down here he told you you didn't
6 want to dish out thirty or forty thousand dollars.

7 A I don't remember saying that, fifteen or twenty.

8 Q Fifteen to twenty thousand dollars?

9 A Yes.

10 Q What was that? You mean in expenses or what?

11 A Yes, in expenses for this case - these two cases rather
12 if we pursued it.

13 Q And that you didn't want to do and couldn't afford to do?

14 A Right. I don't know if we wouldn't have done it. We
15 never come to that point. We didn't think we were going to
16 because we couldn't afford it. Because of the county and
17 school not participating, we were real sceptical about going
18 alone.

19 Q Well, was partly this case is it that you retained
20 Mr. Fena then as the Town of Stuntz attorney?

A Because of this case?

Q Was that one of the reasons?

A No. Heck, I don't know. It could have been, but not
to my recollection. I never specifically recommended it.

Q Mr. Fena was in the State Legislature then?

1 A Yes.

2 Q It ended up then he took the fee on a contingency fee
3 basis.

4 A Yes, I think that is it.

5 Q And do you know the fee that was finally paid by the
6 township?

7 A Yes, seventy-five hundred.

8 Mr. Simonett: Seventy-five hundred. That is all I have.

9 REDIRECT EXAMINATION

10 By Mr. Ryan:

11 Q Seventy-five hundred covered both cases. Is that correct,
12 thirty-two hundred fifty dollars in each one?

13 A Right.

14 Q Or Thirty-seven fifty.

15 A Three thousand seven hundred fifty.

16 Q And when the case was finally compromised and settled
17 with the company, Mr. Fena's fee was reduced in fact from one-
18 third to one-fourth. Is that correct?

19 A Right.

20 Q And he, in fact, recovered thirty thousand dollars in
21 behalf of the Town of Stuntz?

22 A That is right.

Q And the cutting of his fee was voluntary on his part.
It was at his suggestion, not the suggestion of any member of
the board.

1 Mr. Simonett: I suppose you are leading, Mr. Ryan, but
2 go ahead.

3 Witness: That is right.

4 Q (Mr. Ryan) I neglected to ask you, do you own part of
5 the 513 acre farm near the airport with the other gentlemen we
6 have referred to?

7 A Yes, I do.

8 Q At the time you have owned it and prior to the time it
9 was purchased by you, tell us whether there was any discussion
10 with regard to the expressway.

11 A We never talked about that.

12 Q Or any other highway.

13 A No. We never talked about highways when we bought the
14 farm.

15 Mr. Ryan: Okay. That is all.

RE-CROSS EXAMINATION

By Mr. Simonett:

Q Is that true the case was settled?

A As far as I know, it was. We got the money.

Q Well, did you go to court?

A I don't know what - no, I don't think we - we went to
the Appeal Tax Court - State Tax Court.

Q Did you appear in court?

A No.

Q Tax court or other court?

1 A No, I didn't appear.

2 Q This was something you were told was settled.

3 A Yes.

4 Q Well, then did the township receive out of these cases
5 a check for thirty thousand dollars?

6 A Yes.

7 Q You got a check for that?

8 A Yes.

9 Mr. Simonett: All right.

10 (Witness excused)

11 HAZEL RICKE

12 Called as a witness, having been first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Ryan:

16 Q Where do you live, Mrs. Ricke?

17 A You mean now?

18 Q Yes.

19 A I live north of the Diamond Dairy on the Hughes Road.

20 Q Is that in the Hibbing area?

21 A Yes, just east and north of the airport.

22 Q All right. How long have you lived in the Hibbing area?

23 A Since I was four years old.

24 Q Can I ask how old you are?

25 A 57.

1 Q Did you own a farm of approximately five hundred some
2 acres near the airport?

3 A Yes, I did.

4 Q And you subsequently sold this to Mr. Pena and others?

5 A Yes.

6 Q When did Mr. Pena first contact you to discuss the
7 purchase of your farm? What year?

8 A Well, around 1960 as near as I remember.

9 Q During the course of his conversation with you regarding
10 the farm, did he ever mention anything at all to you about
11 highways?

12 A No.

13 Q Did he talk about cattle?

14 A Yes. He seemed real interested in cattle.

15 Q Talked about kids and cows together?

16 A His wife thought she could milk cows.

17 Q This was going to be a milking operation?

18 A Well, when he first talked of it, he wanted to live out
there and wanted a place where he could hunt and have a place
to retreat to, I think.

19 Q Did his wife accompany him out to visit with you at any
time?

20 A Yes, she was out there several times.

21 Q And did this occur back as far as 1960 or when?

22 A Yes, she came out with Mr. Pena the first time they came

1 to look at the buildings and farm.

2 Q How often did Mr. Pena come out to see you?

3 A Quite often.

4 Mr. Ryan: That is all.

5 CROSS EXAMINATION

6 By Mr. Simonett:

7 Q Well, you sold to a group of men, is that right,
8 Mrs. Ricke?

9 A Yes, but I transacted business through Mr. Pena, most
10 of it.

11 Q Yes. And in his original discussions with you, he had
12 talked in terms of buying for his own personal use, is that it?

13 A Yes.

14 Q Is your property near the airport?

15 A Well, from the west line, it is two forties - half a mile
to your east line.

Mr. Simonett: Thank you.

(Witness excused)

JACK PENA

Called as a witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Mr. Ryan:

Q Mr. Pena, where do you live?

A Hibbing.

1 Q And how long have you lived here?

2 A I was born in Hibbing.

3 Q How old are you?

4 A 44.

5 Q You have a family?

6 A Yes.

7 Q How many children?

8 A Ten.

9 Q Have you been actively engaged in politics in the
10 Hibbing area for a number of years?

11 A I have been a member of the legislature since - I was
12 elected in 1958 election and have been ever since a member of
13 the legislature.

14 Q Were you a candidate for the office of State Representa-
15 tive for Legislative District 63 in the 1968 election?

16 A Yes.

17 Q Referring to the campaign for these two seats in the
18 63rd District, Mr. Fena, when did you first become aware or
19 first have knowledge of Mr. Bischoff's ad and radio address
20 which we referred to here as Contestant's Exhibits G and H?

A Exhibit G, the ad in the Shopper, I noticed right after
lunch on Sunday, November 3rd. The radio broadcast, I did not
personally hear myself at the time it was given. I understand
that radio broadcast was similar - that would be Exhibit H.
It was similar to Exhibit G. I understand that was given

1 Friday, October 31st. Is this the one you referred to, the
2 broadcast?

3 Q Yes.

4 A And I think that I heard about that -

5 Q Did you say Friday or Thursday, the 31st?

6 A Well, whenever the 31st was. Was that on Thursday? I
7 believe it was.

8 Q I believe it was Thursday.

9 A Okay. Whenever it was, I heard about it the next day
10 in the evening, I believe - Friday evening. I believe that is
11 when I first heard of it.

12 Q What efforts did you make, if any, to answer the ad
13 and the broadcast?

14 A When I saw the ad Sunday afternoon, I then believe I
15 became informed that the radio talk and the ad were the same,
16 although I might have been told about this radio talk on
17 Saturday; but I don't rightfully recollect, but I saw this ad
18 on Sunday. I read it about half-way through and I picked up
19 the phone and called Mr. Bert Ackerson, and he is the boss up
20 at the Hibbing Daily Tribune, and I told him that there was an
21 ad in the Shopper. I told him that I was rerunning an ad that
22 I had in the Hibbing Tribune a week before. I told him that I
23 would like to take the material out of the ad that I was
24 rerunning and write a new ad, or in the alternative I would
25 like to purchase more space in the Hibbing Tribune so I could

1 answer this ad. He told me at that time that we have deadlines.
2 You know what they are. He told me he didn't know if anything
3 could be done. He told me he would try to check with his
4 boss, who is James Hitchcock, whom I tried to contact after I
5 finished the conversation with Mr. Ackerson, but whom I was
6 unable to get hold of. Mr. Ackerson then told me I should
7 call back, I believe. From home, I went to the radio station
8 in Hibbing. I got out there probably about two, maybe two-
9 fifteen. They only had young - they had student announcers
10 out there on days and Sundays. They play recorded spots and
11 read spot announcements and they play records for the listening
12 public, and they have to be inside their announcing room most
13 of the time. So I got the manager of the station, Mr. Rutstein,
14 at home - this is on Sunday - and I asked him if he could please
15 come out so that I could cut a tape, and he was kind enough to
16 do it. Now, I believe on a Friday I cut a tape. I cut a five
minute tape on Sunday. The preceding Friday I cut a ten minute
tape and sent it over to WEVE.

Q Where is that?

A That is in Eveleth. Mr. Bloomquist is the manager, or
rather owner, who testified here this morning. -- In an
attempt to answer Mr. Bischoff's talk of the 31st. I cut that
either on Thursday - I cut that either on Friday or Saturday,
but I think it was Friday. I didnot know the entire content
at the time I cut that ten minute tape of his ad, because this

1 happened very fast. At any rate, I did call Mr. Ackerson back
2 later in the afternoon, asking if I could please change my ad
3 or buy suitable space to attempt somehow to counteract what I
4 knew then and claim now are false - lies. Mr. Ackerson then
5 told me to call back again. I called him for the third time.
6 I believe it was somewhere around eight o'clock, or seven or
7 eight o'clock Sunday night and said there was nothing that could
8 be done, there was no way I could change. He said for sure I
9 couldn't add anything, no way I could change the copy or material
10 in the ad that was set to go Monday; so I cut a tape - five
11 minute tape. I think you have a copy of it. This is what I
12 ran in Hibbing and I ran it in Virginia and I ran it in
13 Eveleth. I think half a dozen times on each station on Monday,
14 November 4th, and I may have run it two or three times -

15 Q Do you want to look at these announcing programs?

16 A That would help me.

17 Q Showing you Contestant's Exhibit E - correction -
18 Contestant's Exhibit F, which is the WEVE program time. Do you
19 know whether those spots were made - strike that.

20 A Well, let's see. I see on November 1st, 1968, I had a
ten minute talk on WEVE.

Mr. Simonett: What station is that?

Witness: WEVE.

Mr. Simonett: Eveleth?

Witness: Eveleth. That was a ten minute talk. I either

1 out that the morning of November 1st - that is my recollection
2 that that is when I cut that tape.

3 Q (Mr. Ryan) What day?

4 A November 1st. I believe I made the tape - I may have
5 made it the night before, but I don't think so. That played
6 one time on November 1st. I think the ten minute talk played
7 just one time on WVEB, and whether it played at the Virginia
8 station, I don't know. I really can't recollect.

9 (Political Programming of Station WMFG marked Contestant's
10 Exhibit J for identification.)

11 Mr. Ryan: I am offering Contestant's Exhibit J, which
12 is the political announcements and programs of Mr. Fena and
13 Mr. Bischoff beginning October 30, 1968, through November 4,
14 1968, which broadcasts were made over WMFG in Hibbing.

15 Mr. Simonett: There is no objection. The record might
16 show that this is the list we requested from the radio manager
17 this morning, which he has now furnished us.

18 Q (Mr. Ryan) Would you refer, Mr. Fena, to this last
19 Exhibit J and check those programming hours as to when you might
20 have had this ad over this station.

21 A That ten minute tape, I do not believe was ever used
22 over WMFG. On November 3, 1968, in the evening, I made three
23 answers by playing a five minute tape; once at 7:05, once at
24 8:05 and once at 10:15. I believe all of these times were
25 after sundown. The next day, which was Monday, November 4, I

1 ran the five minute tape at one o'clock. I ran it at 3:25. I
2 ran it at 5:30, and I believe the one o'clock and 3:25 times
3 were what they call prime time or heavy signal. The 5:30 one
4 was when they had reduced power, and also the same for 6:50,
5 7:55, 8:20 and 9:00 o'clock, so I had five so-called evening
6 answers and two so-called daytime answers.

7 Q These were the five minute tape?

8 A Yes, sir.

9 Q The ten minute tape to your best recollection never went
10 on WMFG?

11 A No, it never went on WMFG.

12 (Thereupon an adjournment was had until nine-thirty
13 o'clock A.M., Tuesday, December 10, 1968, at which time pro-
14 ceedings were had as follows:)

15 Mr. Ryan: The contestant will call Mr. Durfee, your
16 Honor. Mr. Fena was on the stand yesterday and we have two
17 witnesses we would like to get on the stand and get them out
of here.

Mr. Simonett: It is perfectly all right with contestee.

JOHN DURFEE

Called as a witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Mr. Ryan:

Q Mr. Durfee, where do you live?

1 A Duluth, Minnesota.

2 Q And what is your occupation?

3 A I am a practicing lawyer and public defender for the
4 Sixth Judicial District.

5 Q The district public defender for the entire district?

6 A Right.

7 Q And how long have you been public defender?

8 A Since January 1st, 1966.

9 Q And how were you appointed to that job?

10 A By recommendation of and unanimous vote of the judges of
11 the Sixth Judicial District and by appointment of the Judicial
12 Council of Minnesota.

13 Q Do you have assistant public defenders working under you?

14 A I do.

15 Q And where are they located?

16 A One is in Carlton County, three are in Duluth, one in
17 Hibbing and one is in Virginia.

18 Q Now, with respect to the Hibbing assistant defender
19 position, who held that post in 1967, do you recall?

20 A I believe Peter Mulvahill resigned in December of '66,
21 and Robert Mathias was appointed, I believe, in January, 1967,
22 if my memory serves me correct.

23 Q In connection with the appointment of Mr. Mathias, had
24 you received any recommendations prior to the time of the
25 appointment?

1 A Yes, I did.

2 Q By whom?

3 A By Judge Chanak.

4 Q Was it the practice of the judges to make recommendations
5 to you?

6 A From the Range, it was, yes.

7 Q I gather that you made the appointment of Mr. Mathias.

8 A Correct. The recommendation was made to me, but in the
9 last analysis it was my appointment.

10 Q Now, prior to the time that the appointment was made of
11 Mr. Mathias, did Mr. Jack Fene contact you at any time to
12 request or recommend appointment of Mr. Mathias?

13 A Never.

14 Q Did he talk to you at any time about the appointment?

15 A Never.

16 Q In connection with Mr. Mathias' appointment to that job?

17 A Never.

18 Q In connection with the 1968 appointment, to whom was
19 that made?

20 A 1968?

21 Q Following Mr. Mathias.

22 A Oh, the recommendation came from Chanak again and the
23 appointment was made by me.

Q There were other recommendations?

A Correct.

1 Q Made at the time by Judge Chanak?

2 A Yes. That was the first time I interviewed prospective
3 candidates for the job.

4 Q How many did you interview?

5 A Three.

6 Q Do you recall who they were?

7 A Thomas Wangersteen, Barney Bischoff and Jim Randall.
8 Mr. Kne was also recommended, but at that time he was in
9 California on vacation and it was imperative the appointment
10 be made forthwith, so I didn't wait to interview him.

11 Q All right. Prior to the making that appointment of
12 Mr. Randall, did Mr. Fena contact you at any time in connection
13 with the making of that appointment?

14 A Never.

15 Q What contact have you had with Mr. Fena?

16 A I think I have met him twice, and I think both times were
17 in the Duluth Coffee Shop in the courthouse, and for a very,
18 very limited period I think at most. The first time, he
19 introduced himself; and I think the second time he said hello,
20 and I don't think the second time I realized who he was.

21 Q No one else contacted you in behalf of Mr. Fena, did they?

22 A No.

23 Mr. Ryan: That is all.

CROSS EXAMINATION

By Mr. Simonett:

1 Q Mr. Durfee, do you recall the date of the appointment
2 of Mr. Randall as assistant public defender?

3 A I am sorry I do not. I know it was in the wintertime,
4 because I drove up here and the roads were bad. I can recall
5 that.

6 Q Of 1968?

7 A It could have been December of 1967 that I had the
8 interviews and in the early part of January, 1968, that the
9 appointment was made. That is my recollection.

10 (Copy of letter marked Contestee's Exhibit 2 for
11 identification.)

12 Q Did you bring any of your file with you here today?

13 A I did not.

14 Q Showing you what had been marked Contestee's Exhibit 2,
15 which appears to be a carbon copy of a letter from you to
16 Judge Chanak relating to the assistant public defender, Ribbing
17 area. Do you recall if you wrote such a letter, and is that
18 your signature?

19 A It is, and that is my letter, yes.

20 Q I think it was referred to in testimony yesterday. I
21 notice it is dated January 4, 1967. I wonder if that would be
22 a typographical error.

23 A I think it would have to be.

24 Q It should be 1968.

25 A Yes.

1 Mr. Simonett: We will offer Exhibit 2.

2 Mr. Ryan: We have no objection, your Honor, with the
3 understanding the date should be January 4, 1968.

4 The Court: Received.

5 Q (Mr. Simonett) Do you know what the present salary
6 arrangement for the assistant public defender's office in the
7 Hibbing area is, Mr. Durfee?

8 A Yes, I do.

9 Q What is it?

10 A Fifty-five hundred dollars a year.

11 Q You mentioned that in the filling of such appointment that
12 the practice was for recommendations from the judges, that is
13 from the Range.

14 A Correct.

15 Q I gather there is a different practice at Duluth.

16 A Correct.

17 Q And in Duluth, how is it handled?

18 A I select them myself.

19 Mr. Simonett: That is all I have.

20 (Witness excused)

21 PETER J. MULVANHILL

22 Called as a witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

By Mr. Ryan:

1 Q Your full name.

2 A Peter J. Mulvahill.

3 Q Where do you live, Mr. Mulvahill?

4 A Hibbing.

5 Q What is your occupation?

6 A I am an attorney.

7 Q How old are you?

8 A 34.

9 Q How long have you been practicing in Hibbing?

10 A Since 1959.

11 Q During that time have you held any public office?

12 A Yes, I have.

13 Q And what was that?

14 A One of them was the assistant public defender for the
15 Sixth Judicial District.

16 Q When did you hold that job?

17 A I believe it was in 1956.

18 Q And how did you leave the job?

19 A I resigned.

20 Q Prior to the time that you resigned or at the time you
resigned, did you make any recommendations either to the public
defender or to the resident district judge in Hibbing as to
your preference for the next assistant public defender?

21 A Yes, I did.

22 Q And who did you recommend?

1 A Robert Mathias.

2 Q Prior to the time that you made the recommendation, did
3 Jack Fena at any time contact you and ask you to make the
4 recommendation of Mr. Mathias?

5 A No.

6 Mr. Ryan: That is all.

7 CROSS EXAMINATION

8 By Mr. Simonett:

9 Q Since your resignation as assistant public defender in
10 1966, Mr. Mulvanhill, you continued to practice your profession
11 here in the Hibbing community?

12 A Yes, I have.

13 Mr. Simonett: Thank you. That is all I have.

14 (Witness excused)

15 JACK FENA

16 Recalled as a witness, having been previously sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Ryan:

20 Q I believe when we recessed yesterday afternoon, Mr. Fena,
I had asked you what efforts you had made to respond to the
broadcasts of Mr. Bischoff and to his newspaper - or to his ad
in the Manney Shopper. There was some confusion in my mind as
to what date you either heard or first became aware of the
broadcast which is in transcript form and identified as

1 Contestant's Exhibit H. Would you tell us that again please.
2 Do you recall just when you either heard the broadcast or heard
3 of it?

4 A Whatever the date was that I made a ten minute tape that
5 played in Eveleth, and I believe it must have been the day
6 after he made the broadcast.

7 Q So you cut that tape probably on Friday, November 1st.

8 A Probably, or it could have been the night before, but
9 I don't recall. I couldn't be positive, but it had to be the
10 evening of the day he made the broadcast or the next morning.

11 Q And then what efforts did you make with regard to the
12 newspaper?

13 A To answer the ad, you mean?

14 Q Yes.

15 A Well, I attempted to buy more space or change the ad that
16 I already had submitted. The ad that I had submitted was a re-
17 run and which a discount of, I believe - I am not sure about
18 this either, but I think fifty percent. I think you get it for
19 half price if you run the same ad, and I wanted to change that
20 or else get some space.

21 Q In what newspaper?

22 A Hibbing Tribune.

23 Q Was there anything that you could do to answer Mr.
24 Bischoff's ad in the Shopper?

25 A Nothing at all, because the deadline there is Thursday,

1 and you have to have your ad in Thursday at five o'clock.

2 Q And your first knowledge of Mr. Bischoff's ad in the
3 Shopper was when?

4 A Well, Sunday at probably about one o'clock - two o'clock
5 maybe.

6 Q In Mr. Bischoff's ad, Exhibit G, paragraph 2, the
7 establishment, I quote: "I challenge Mr. Fena to cite one
8 instance of a political appointment made for my benefit. But
9 what about his own record?" Now, do you have any knowledge,
10 Mr. Fena, of any appointments that might have been made in
11 which Mr. Bischoff would benefit therefrom?

12 A Yes.

13 Q And what are they?

14 A His law firm - his senior partner was Assistant State
15 Attorney General. His law firm received fees from the State
16 of Minnesota during the period that he was State Assistant
17 Attorney General. The figures that I have been able to compile
18 show that there were some - over twenty thousand dollars in
19 legal fees that the Nickoloff & Bischoff firm received since
20 about 1962. Although he didn't start until '63, I understand,
21 all of this certainly inured to his benefit. Also there were
22 travel expense vouchers from the State of Minnesota payable
23 to his partner, but this employment certainly does benefit the
24 law firm, I think.

25 Q In Mr. Bischoff's ad he also refers to appointments that

1 were made. I quote from Exhibit G, paragraph 2,: "Appointments.
2 The last time there was an opening on the municipal bench in
3 Hibbing, the appointment went to a member of Mr. Fena's firm."
4 Would you state for the record what, if anything, you had to do
5 in connection with the appointment that was made to fill that
6 municipal judgeship, who the party was that got it and any
7 connection you had with it.

8 A I had an associate who was employed by me, a lawyer
9 named Arvid Nasi, who wanted to be a municipal judge.

10 Q How long had he been your associate?

11 A What year was that appointment made?

12 Q I don't know.

13 A Well, he came with me, I think, in 1956 or '57.

14 Q The ad doesn't state when it was made.

15 A He had probably been with me at least eight - perhaps
16 nine years, and he wanted to be municipal judge. The governor
17 makes that appointment. At that time it was Governor Rolvaag,
18 and I did back Arvid Nasi to be municipal judge. I did, and
19 so did a number of other lawyers.

20 Q From the Hibbing area?

21 A From Hibbing, and for all I know, maybe even Mr. Bischoff
22 did, but I am not sure. But I know other lawyers did. As a
23 matter of fact, there was a district judgeship that was also
24 going to be filled in this judicial district, and it was a
25 Range judge, I believe. It was understood anyway the appointment

1 would come from up here, and there were lawyers who were backing
2 several people who were interested in that job; but this is the
3 practice in the bar.

4 Q In any district?

5 A I believe it is. I have seen it happen around here many
6 times.

7 Q Well, in connection with the appointment of Mr. Nasi as
8 municipal judge, what became of his relationship with you as
9 an associate prior to the time he was appointed?

10 A We had to discontinue practicing together. Actually,
11 it was not a benefit to me.

12 Q What was the result as far as your office is concerned?

13 A Well, I lost a man who gained all his experience in my
14 office.

15 Q So upon the appointment of Mr. Nasi to the municipal court,
16 your relationship with him was terminated.

17 A As of the date of his appointment, and as a matter of
18 fact he deferred accepting it, as I recall, because we were
19 weighing this thing; and finally he did. If this is what he
20 wanted, I was happy to help him, and I did help him secure that
21 appointment, I think, along with others from this area - other
22 attorneys, and even many other laymen. I believe he was
23 endorsed by many DFL'ers to receive this appointment, but as
far as getting any benefit from it, that ad could imply that I
received monetary benefit from it.

1 Q Have you benefited at all from that appointment?

2 A No, sir. It cost me someone that I had to try and
3 replace and get experienced personnel.

4 Q All right. In connection with the portions of the ad,
5 Exhibit G, which discuss the appointments of assistant public
6 defender in the Hibbing area, did you at any time contact
7 Judge Chanak here in connection with either of the two
8 appointments that were made?

9 A No.

10 Q Did you contact the public defender in connection with
11 either of those appointments?

12 A No, I did not.

13 Q Do you have any recollection of contacting any other
14 judge?

15 A No, I did not.

16 Q In Exhibit G, the ad, as in the broadcast, Exhibit H,
17 the statement is made that, and I quote: "Is it mere coin-
18 cidence that he, Pena, served on the Judiciary Committee which
19 considers salary and raises for the district judges and public
20 defenders. I hardly think so." Are you a member or have you
21 been a member of the House Judiciary Committee?

22 A Yes, I am.

23 Q You are now?

24 A I am right now until the first of the year.

25 Q Well, tell us what salary setting that committee does,

1 either with respect to the public defender or assistant.

2 A Well, to my knowledge, we do not set any salaries for
3 the public defenders. As far as district judge's salaries are
4 concerned, this bill is initiated in the Judiciary Committee -
5 rather it is introduced and the speaker refers this bill to the
6 Judiciary Committee. At least I know of one instance where he
7 did. The committee then re-refers the bill to the Appropriations
8 Committee, and they are the ones who really decide it, as I
9 understand.

10 Q Do you recall, Mr. Fena, how many weeks or months prior
11 to the time of Mr. Mathias's appointment that he was hired by
12 you?

13 A He came with me in the fall.

14 Q Of '66?

15 A '66.

16 Q Do you know when he was appointed?

17 A It was after the first of the year in '67, as I understand
18 it.

19 Q How about Mr. Randall?

20 A Mr. Mathias resigned from my office and he was either
21 going to go to Duluth or practice in Hibbing, and he did stay
22 in Hibbing for a while while he held the post of public defender -
23 assistant public defender rather; and I believe he practiced
24 out of his home. He had some files from my office. I needed a
25 man and someone gave me Mr. Randall's name, and I called him up

1 on the telephone. At that time he was clerking for the
2 Hennepin County District Judges as a law clerk. I talked to
3 him on the telephone and he and his wife drove up here. That
4 was in - oh, I don't know - October maybe or November. He made,
5 I think, more than one trip up here. I took him deer hunting
6 one time. At any rate, he came up here and started to practice
7 with me, I think, the first of December of '67.

8 Q '67?

9 A '67. I never thought about the public defender's job or
10 anything of the sort.

11 Q In connection with the cross-range expressway, references
12 were made in Exhibit C and H. When did you first initiate
13 purchase discussion with the owner of the farm land located on
14 Highway 37?

15 A I started talking to her - to the Rickes back in 1959
16 or 1960, and we were at that time accumulating a number of
17 children and it had been my idea that I might want to live on
18 a farm. When I went to law school, my wife and I lived on a
19 farm for about a year and a half. We kind of liked it, and I
20 would just go in there and nose around once in a while and talk
21 to her, and I had taken my wife out there, my kids, but then we
22 just kind of changed our mind; but I kept stopping there
23 because I always liked it. About, oh, three or four years
24 before that I tried to buy a farm in Clinton, and when the lady
25 told me what she wanted for the purchase of the farm, I said okay.

1 I agreed to pay her, and then she changed her mind for some
2 reason. I suppose she thought something was going to happen
3 and she'd better hang on to it. Nothing ever did happen. I
4 have just always been interested in owning a farm. I own land.
5 I have for many years owned land in Balkan, which is a township
6 up north of Chisholm, and I have several forties up there. I
7 have land. I don't know. I own property. I have owned
8 buildings. I bought and sold real estate all my life - all my
9 life. In fact, I even bought property before I was 21 years
10 old and sold it. I at one time bought about half a block of
11 property on the main street of Chisholm right after I got out
12 of service. This has been part of my business. I bought
13 property at Swan Lake. I bought property at Beatrice Lake. I
14 dickered around. Well, I bought and sold property in Hibbing
15 on the main street. I own a building on the main street of
16 Hibbing. I lease it to Sears Roebuck. I had another building
17 up until the first of the year - the first week in January -
18 and that is the building I am in. We leased to S & H Green
19 Stamps and also to another lawyer, and I got this building -
20 I loaned a fellow some money, a friend, a number of years back
21 and I was in business with him. We had a hearing aid business
22 in San Diego and Elkhorn, California. The business was fine,
but the people that had gotten into it fouled it all up, and
anyway I ended up with this fellow owing me forty-five hundred
dollars, and I put a lien on the building, and, unfortunately,

1 he and his wife got into a divorce contest and neither of them
2 would make payments to the bank, the First National Bank, and
3 they foreclosed and I either had to redeem or lose my forty-five
4 hundred dollars, so the last day, one year later - the last day
5 for redemption - I went out and I laid out thirty-three
6 thousand dollars in cash and bought the building and sold it.
7

8 Q Do you do a lot of buying and selling of real estate?

9 A Yes, I do. You bet I do.

10 Q Prior to the time that you became a member of the
11 legislature?

12 A Oh, yes. I had urged a businessman in town who was
13 next to the building to buy this building, and he wanted to and
14 then he hesitated, and we have been childhood friends and I
15 promised him, I said, "Well, if you ever want it, let me know
16 and you can have it for what I paid for it". About last fall,
17 he said, "I am in position now where I can swing to buy that
18 building. Will you sell it to me?". I said sure, even though
19 property had appreciated a great deal in Hibbing since 1962 or
20 '63 when I bought that building - maybe even '61 - and I sold
21 it to him in January. It is not uncommon for me to own property.
22 I am property poor sometime, I think.

23 Q In connection with the farm purchase out near the airport,
24 we had testimony yesterday from other members of the people of
25 the community who are owners of that farm with you.

26 A Yes.

1 Q At the time you purchased the farm, would you tell us
2 what, if any, plans you had for it either from the standpoint of
3 highway development or anything. Did you have any plans for it?
4

5 A No. We just bought this on a lark.

6 Q Was there any discussion about a cross-range expressway?
7

8 A Never. That is the last place that they would ever put
9 a expressway in my opinion. We have to get these towns
10 connected.
11

12 Q What towns?
13

14 A Chisholm, Buhl, Mountain Iron.
15

16 Q What did you do, if anything, as far as trying to
17 influence the location of the expressway?
18

19 A The highway department said that the expressway should
20 leave Hibbing and go north, and when it got to the Spudville
21 Road, take off east. The Spudville Road is probably four or
22 five miles north of Highway 37 where the farm is. Chisholm is,
23 in turn, north of the Spudville Road; and I took the position
24 that I wanted this highway to come to the towns and go even
25 further north than where they designated it, and I expressed
myself to the highway department, Mr. Miller, and I said that I
don't think that we have any chance to get any cooperation from
the local communities if you are going to have the highway
several miles away from them. I think we should try to get it
as close as possible to the towns. This would even put that
expressway further away from that farm, if that means anything,

1 which I don't think it does. But as far as the ad implies and
2 it has been in the newspapers - a columnist wrote about that ad
3 and said that I was criticized for buying a farm and trying to
4 sell it to the state for a freeway. This was written by
5 Mr. Einar Karlstrand.

6 Mr. Simonett: Just a minute. I am going to object to
7 that. That is not the best evidence.

8 The Court: I suppose that is right.

9 Witness: I am sorry. I should have known better. At
10 any rate, the ad implies I did buy this farm with the idea I
11 was going to sell it to the state. Now, I have been very care-
12 ful during my legislative career, and, in fact, either the first
13 or second term - I believe it was the first - my family owned
14 some property - my father owned some property next to McCarthy
15 Beach State Park.

16 Q (Mr. Ryan) Where is that?

17 A It is up north of Hibbing here at Sturgeon Lake. He had
18 either ten or twenty acres, all trees. You can't tell where
19 the park ends and my pa's property began. The State Department
20 of Parks draft bills down there for purchasing property, and
21 they drafted a bill and had it introduced setting up the purchase
22 of that property; and I went to my state senator - then
23 State Senator Elmer Peterson - and asked him to take that
24 property out, because I thought I would be severely criticized
25 being a member of the legislature to have property owned by my

1 father or my family and purchased by the state, and they begged
2 me to buy that property and they were offering a lot more money
3 than anyone else would ever pay for that land. We have had that
4 land now with a local real estate dealer in town. The best
5 offer he could get, I believe, is twenty-five hundred dollars,
6 and this is ten years ago they would have paid a great deal
7 more money than that; and that has been how careful I have
8 guarded against anything that would appear to be like I was
9 charged with.

10 Q Was this your freshman term as a legislator?

11 A I think it was.

12 Q Exhibits G and H makes reference to some legal work you
13 did in behalf of the Town of Stuntz. In Exhibit G, it is para-
14 graph 4. "How much is it costing us?". And then under the
15 heading "Town of Stuntz", I quote: "During 1967 alone he
16 received seventy-five hundred dollars extra for handling a single
17 case which never went to court and which required very little
18 effort on his part." Would you tell us what kind of cases these
19 were, what the work was that you did on them, and elucidate a
20 little on that, would you please.

21 A Well, through the years different protests, as I under-
22 stand it, were made when the State Commissioner of Taxation
23 would reclassify iron ore bodies and lower their value, which
24 would in turn lower the taxes that the mining company was billed
25 to the various municipal subdivisions here; and I was approached

1 sometime during the fall of 1965 - there wasn't too much talked
2 about then, but one of the supervisors did talk to me several
3 times. I was appointed Town of Stuntz attorney. The county
4 had filed an appeal from the commissioner's order and the
5 township joined in in 1966. They filed another protest and
6 appeal the following year. There were two cases. The seventy-
7 five hundred dollar bill was for two cases. Anyway, without
8 going into a lot of detail, the cases were settled. I was asked
9 to take the case on a contingency. I was first asked to find
10 out how much it would cost for fees, and I went to one of the
11 local lawyers in town here who had had some experience in these
12 cases, and after consulting with him, I believe I reported
13 back to the board it might cost somewhere around fifteen thousand
14 dollars. They took the position they didn't really want to
15 spend any money, because it was rather - it was common knowledge
16 the Village of Hibbing had had a mineral case that had gone to
17 the Supreme Court and with thousands of dollars spent in attorney
18 fees, and the township just wasn't in this position. I wrote a
19 letter to the Hibbing School District, who had the biggest stake
20 in this valuation, asking them if they would care to participate
21 to help fight this case. I had no written response, but I did
22 receive a telephone call from the chairman of the board that said
23 no, they did not want to become involved; and so the township
24 and county pursued it. After a while, the county decided it
25 just wasn't worth while. I received correspondence from them

1 recommending the case be dropped. In spite of this - well, in
2 the face of all this, I got a settlement. I negotiated a
3 settlement for a long period of time with Mr. Manthey, who is
4 attorney for the Pickands-Mather Co. and Mahoning Ore & Steel Co.;
5 and I went back to the board and informed them of the situation,
6 recommended the settlement, and told them even though the
7 contingency normally is one-third, that in view of the settlement
8 I would charge one-fourth. I don't know if I told them I was
9 going to pay out any legal consulting fees at that time, but I
10 did pay out five hundred dollars to a lawyer that I met with
11 about this case; and I feel my client, the town board, was
12 satisfied with my fee. I feel it was a reasonable fee. It is
13 common for attorneys to charge a third or a fourth for the
14 recovery of money; and it is in the nature of the law business
15 that some cases are easy and some are hard. I wouldn't call
16 this one an easy case.

17 Q What has been the experience of the Village of Hibbing in
18 their case of a similar nature?

19 A I understood they spent forty-eight thousand dollars and
20 didn't get a dime. Now, I have never verified that, but this
21 is just what I have been told.

22 Q In the course of your practice of law in the Village of
23 Hibbing and in this area, have you done any other governmental
24 work, Mr. Fena, for which you have received no compensation?

25 A Well, I could almost say the legislature doesn't pay very

1 much, but I was appointed to be United States Government Appeal
2 Agent.

3 Q And by whom were you appointed?

4 A That appointment was made by President Eisenhower, but
5 I believe the local congressmen recommends or suggests, and this
6 job is to represent and advise youngsters in any problems or
7 controversies they have with the Selective Service, and there
8 is no compensation, no expense.

9 Q How long have you had that job?

10 A I gues about twelve years.

11 Q How extensive is your work in that field?

12 A Well, I represented a lot of kids. Many, many come to
13 my office and I advise them. I have taken appeals and filed
14 dozens of appeals of wrong classifications. I have had many,
15 many conferences with the personnel at the draft board. I have
16 had long distance telephone calls to the state director in
17 behalf of these youngsters. I believe I want to set the record
18 straight. I believe in getting paid when I work, but this just
19 happens to be one of those non-paying jobs.

20 Mr. Ryan: That is all.

21 (Canvas for primary election marked Contestee's Exhibit
22 3, canvas for general election marked Contestee's Exhibit 4,
23 copy of sheet 14 of primary canvas marked Contestee's Exhibit 5.
24 and copy of sheet #21 of general election canvas marked Con-
25 testee's Exhibit 6 for identification.)

1 Mr. Simonett: We will offer in evidence the following
2 exhibits: First, Contestee's Exhibit 3, official canvas of
3 the St. Louis County Canvas Board for the primary election of
4 November 6, 1968; Exhibit 4, official canvas of the St. Louis
5 County Canvas Board of the general election of November 5;
6 Exhibit 5, which is a photocopy of sheet #14 of the primary
7 canvas; and Exhibit 6, which is a photocopy of sheet #21 out
8 of the official canvas for the general election. Putting in the
9 two copies is simply for convenience in referring to that
10 pertinent portion of the official canvas we are interested in.

11 Mr. Ryan: No objection.

12 The Court: Received.

13 CROSS EXAMINATION

14 By Mr. Simonett:

15 Q I take it, Mr. Fena, you do not contest in this action
16 the count arrived at by the canvassing board of St. Louis County.
17 In other words, you are not here asking for a recount of the
18 votes, but rather -

19 A I wouldn't mind having one.

20 Q Well, perhaps so, but is that what your lawsuit is about?

21 A If there is a possible way in the pleadings I could have
22 that, I would like it.

23 Q Well, are you disputing that the vote count in the general
24 election as arrived at by the canvassing board was 10,412 total
25 votes for Mr. Bischoff and 8,503 votes for you?

1 A Well, since then I have received a report verbally, and
2 I have not had an opportunity to check it out, that in two
3 different precincts there were more votes than registered voters.
4

5 Q This is something you heard. You say you haven't checked
6 it out?

7 A That is right, sir.

8 Q Well, my point at this time though is do you agree what
9 the canvassing board found is that you were 1,809 votes behind
10 Mr. Bischoff?

11 A Not in view of the information I received, I couldn't
12 agree to that.

13 Q All right. Excuse me. My subtraction is in error. I
14 guess it is 1,909 votes.

15 A Either figure.

16 Q Now, you recall the vote in the primary election, Mr. Fena?

17 A No, I don't, sir. I think I got 4,478.

18 Q Yes. Well, whatever it is.

19 A Mr. Spanish got 5,200 and I got 4,400.

20 Q Whatever it is, are you disputing here now the vote count
21 in the primary?

22 A The information that I have referred to the general
23 election, so I suppose in the primary that this could be checked
24 out; and until I check it out - I received this from a very,
25 very reliable person - and until I check it out, I do not concede
that this is correct.

1 Q All right. Right now though in talking about the results
2 of the primary election, and that was held on September what,
3 the 9th?

4 A I don't recall.

5 Q In the 63rd Legislative District, there are two legis-
6 lative seats for state representative to be filled. Is that
7 correct?

8 A Right, sir.

9 Q So in the primary there were five candidates?

10 A Right.

11 Q What were their names?

12 A Myself, Jack Fena; Loren Rutter.

13 Q You two were the incumbents?

14 A Yes, sir. Barney Bischoff, John Spanish, Gordon Noyes.

15 Q And I suppose that you were interested in the results
16 of the primary to give you some indication of how voter opinion
17 was going?

18 A Oh, I never put too much stock in primary elections; not
19 in an at-large race like this. You have to read them a little
20 differently than if it were just two people.

21 Q Is it true that in the primary your vote count in the
22 Township of Stuntz was less than that of Mr. Bischoff?

23 A I believe it was.

24 Q And was it less than Mr. Bischoff's in your own precinct?

25 A I don't know.

1 Q I suppose the record would show that.

2 A If it is an accurate record.

3 Q And what is your home precinct?

4 A I don't know.

5 Q Pardon?

6 A I don't know the number right off-hand.

7 Q You are in what township or -

8 A Well, I am in Hibbing. I vote at the Co-Operative. I
9 must be in - frankly, I don't know my number. I think it is 5.

10 Q I don't think I know mine back home, but after the
11 primary, didn't your opponent publicize from time to time that
12 the results were that you did run behind in your home district?
13 In fact, in the twenty-five precincts in your home area in the
14 Town of Stuntz.

15 A I can't recall what he published.

16 Q That wasn't something that you felt if he did say to the
17 voters that you needed to check one way or another?

18 A I don't recollect that he said that.

19 Q Well, do you recall making any analysis of the primary
20 vote so that you could plan your campaign for the general
21 election?

22 A No, not really.

23 Q Now, in your campaign, I suppose you had some of the
24 usual posters, cards.

25 A Yes.

1 Q Would you attend various meetings, talk to parents,
2 rallies?

3 A I have attended meetings, yes.

4 Q This would be a word of mouth campaign as well as
5 campaigning that would appear in the newspapers or over the
6 radio.

7 A I suppose you might call it that.

8 Q There would be press releases that you would issue.

9 A Yes.

10 Q And, of course, the customary ad.

11 (Political ad marked Contestee's Exhibit 7 for identifica-
12 tion.)

13 Q Showing you what has been marked Contestee's Exhibit 7,
14 can you identify it for us.

15 A Well, it is a political ad.

16 Q It is a full page ad and I think in this case it was in
17 the Hibbing Daily Tribune.

18 A Yes. May I see it.

19 Q Oh, sure. All I am asking at this point is if this is
20 one of the ads.

21 A It appears to be.

22 Q Do you have any doubt?

23 A Do I have what?

24 Q Do you have any doubt about it. You say it appears to be.

25 A It appears to be what you describe as a full page

1 political ad.

2 Mr. Simonett: We will offer Exhibit 7 in evidence.

3 Mr. Ryan: No objection.

4 The Court: Received.

5 Q (Mr. Simonett) Do you know whether you published that
6 particular full page ad more than once?

7 A No, I don't.

8 Q You might have. You might not.

9 A I don't think I did.

10 Q Did you have other ads like half page ads or quarter page
11 ads?

12 A I don't recall.

13 Q And did you also promote your campaign on the various
14 radio stations?

15 A Yes, sir.

16 Q Now, I think on the large ad, Exhibit 7 which is in
17 evidence, there is mention of your membership on the Judiciary
18 Sub-Committee on the Obscenity Bill. Do you see that there?

19 A No, I can't find it. I don't see that here.

20 Q Right here.

21 A Yes.

22 Q And in some of your press releases when you announced that
you were going to run for the sixth term, did you refer to your
various committee assignments that you had in the house?

A I believe I did once.

1 Q And do you know or can you recall if you referred
2 specifically to your membership on the Judiciary Committee at
3 that time?

4 A I probably did, but I don't recall.

5 Q I gather from what you told us a little earlier that the
6 Judiciary Committee would not be the committee that would
7 finally pass on any appropriation bill.

8 A Well, your appropriation committee is the one that - it
9 is no hurdle for any judge's bill to get through the Judiciary
10 Committee, as your partner, Senator Rosenmeier will well tell
11 you, being chairman of the Senate Judiciary Committee.

12 Q My point is are the appropriation bills in the house
13 routed through the Judiciary Committee, the appropriation bills?

14 A Oh, no.

15 Q Or bills that might deal with salary?

16 A Which salary?

17 Q Well, judges, district defenders, public defenders.

18 A Public defender's salaries are not set by the Judiciary
19 Committee that I know of.

20 Q No, but the funds for it -

21 A Unless it was some day when I was absent.

22 Q Now, if you look at the ad, Exhibit 7, again, it refers,
23 does it not, to your endorsement by the DFL House Caucus.

24 A I don't see that on here. That is a different ad, isn't
25 it?

1 Q It might be. I don't see it there either. Did you ever
2 in your campaign advertizing though mention your endorsement by
3 the House DFL Caucus?

4 A Yes.

5 Q What group is that, Mr. Fena?

6 A That is the DFL legislator in the house.

7 Q In the house?

8 A Yes.

9 Q Well, is that a group that has formal meetings of some
10 sort at which they handle matters like endorsements?

11 A I don't know if they have a formal meeting or not.

12 Q Well, can you tell me the particular meeting at which
13 you received this endorsement?

14 A No, I cannot.

15 Q Or where the meeting took place?

16 A No, I cannot.

17 Q Do you know if there was such a meeting?

18 A Yes.

19 Q You were in attendance at it?

20 A No.

21 Q Do they keep minutes of these caucus meetings?

22 A I don't know, probably.

23 Q Do you know if the minutes would show that?

24 A I don't know.

(Political ad marked Contestee's Exhibit 8 for

1 identification.)

2 Q Showing you what has been marked Contestee's Exhibit 8,
3 is that another one of the newspaper ads that you used during
4 the campaign, a smaller one?

5 A Yes.

6 Mr. Simonett: We will offer Exhibit 8.

7 Mr. Ryan: No objection.

8 The Court: Received.

9 Q (Mr. Simonett) 8 is one of the ads in which you do
10 mention your DFL House Caucus endorsement.

11 A Yes.

12 Q Well, in your file, do you have any letters from the
13 caucus reporting that the meeting at which you did not attend
14 you had been endorsed by them?

15 A No, but I received verbal notification from Mr. Fred Cina,
16 and then I received the money that our group, the DFL House
17 Caucus, raises for campaigns and I got my share.

18 Q Is the DFL House Caucus a party organization?

19 A Well, in the legislature in Minnesota, we are non-partisan;
20 and one of the things that they do in the house when you first
21 get there is they have caucuses. One is the DFL House Caucus and
22 the other is the Conservative House Caucus, and then each one
23 of these caucuses nominates someone to be speaker, someone to be
24 majority leader. So, of course, the one with the least number
25 of votes nominates a minority leader. Now, these are really not

1 party organizations. Although in the main the Conservatives
2 align themselves with the Republican Party, but not always -
3 I mean the individuals there rather - and the DFL members would
4 be Democratic Farmer-Labor Party. They are not in that sense a
5 true party organization, but probably quasi.

6 Q Well, it is what it says it is, I suppose, a caucus to
7 help organize.

8 A This is the purpose.

9 Q Well, did you consider that getting a phone call, that
10 this amounted to an endorsement by the party, the DFL Party?

11 A A phone call?

12 Q Well, you said from the House Minority Leader.

13 A I was verbally notified. If I said phone call -

14 Q I am sorry. I think you did say verbally.

15 A It wasn't a phone call.

16 Q Well, it wasn't the 63rd District DFL Party endorsement
17 either, was it?

18 A No, sir. I never claimed it was either, did I?

19 Q Did you also handle the legislation to give the attorney
20 general power to act in consumer fraud cases?

21 A I don't recall, no, specifically.

22 Q Well, I think I was referring to 7 again, your ad, the
full page ad, in which you mentioned the attorney general was
given power to act in cases of unlawful trade practices which
amount to consumer fraud.

1 A I don't know exactly without checking the house journal.
2 Sitting here right now, I couldn't tell you.

3 Q All right. Well, does the ad, which I suppose you
4 prepared, give the impression that you did handle the legislation
5 for that?

6 A I don't know.

7 Q I suppose the ad speaks for itself.

8 A I guess so. I don't even know if I wrote this.

9 Q Well, whether you wrote it or not, was it published with
10 your consent and approval?

11 A Probably.

12 Q Did you head the legislation dealing with widows pensions
13 and public employees?

14 A On a local bill, I did, yes - local legislation.

15 The Court: I think we better have a recess.

16 AFTER RECESS

17 Mr. Ryan: Mr. Simonett has agreed that I may call on
18 behalf of the contestant another witness out of order, your
19 Honor.

20 ELMER PETERSON

1 Called as a witness, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Ryan:

5 Q Your full name please.

1 A Elmer Peterson.

2 Q Where do you live, Mr. Peterson?

3 A 3124 Third Avenue West, Hibbing, Minnesota.

4 Q And how long have you lived in Hibbing?

5 A Since 1914.

6 Q In your lifetime have you held political office?

7 A Yes, sir.

8 Q And what office?

9 A I held the office of State Representative and State
10 Senator between the years 1941 and the 1961 session.

11 Q And you were the state senator in the '61 session from
12 the -

13 A From the 60th District.

14 Q 1961, was that or 1959?

15 A 1961 session.

16 Q I see. Now, as state senator from this area, did you
17 sponsor a parks bill that would include property near what is
18 McCarthy Park.

19 A McCarthy Beach Park.

20 Q That was a department bill, was it?

21 A Yes, sir.

22 Mr. Simonett: If I may interrupt here a moment. It
seems to me the matter we are going into is irrelevant to the
issues. However, so the house may have any and all information
that may be available to it, we will make no objection.

1 Q (Mr. Ryan) Mr. Peterson, at the time the park bill was
2 proposed, did Mr. Pena contact you at any time involving that
3 proposal?

4 A I would have to answer it in this way, that Mr. Pena
5 approached me when the bill was in the finance committee of
6 the senate. Your Honor, if I might, I would like to explain
7 that a departmental bill is brought over to the senate and
8 that a prospective senator is asked to sponsor it, which I did
9 in this case. It then goes to the public domain committee, and
10 there it is referred to the finance committee, either with
11 recommendation or no recommendation. It was while it was in
12 the senate finance committee that I was contacted by
13 Representative Pena at that time in regards to the bill.

14 Q All right. And what did Mr. Pena discuss with you at
15 the time?

16 A At the time Mr. Pena came over, he discussed a portion
17 of the bill which had to do with the entrance to McCarthy Beach
18 which he advised me was in the family name, and told me at the
19 time that he would want that stricken because he was fearful
20 of what it might do to his name at the time, Pena being a
21 freshman in politics.

22 Q Did you take that portion of the property that was
owned by the Pena family out of the bill?

23 A At the time I advised Mr. Pena that he would have to
contact Mr. Heldt, the director of parks, and that he was the

1 person who would take it out; that I, of course, as a member
2 of the committee, moved that such a thing be done.

3 Q Was that done?

4 A Yes, sir.

5 Mr. Ryan: That is all.

6 CROSS EXAMINATION

7 By Mr. Simonett:

8 Q I gather, Senator, that Mr. Fena was aware then of
9 what public opinion might be or questions that might be raised
10 by the public by reason of the fact he was then a state
11 representative and his own land might have been involved or
12 conceivably could have been understood to have been involved.

13 A I don't know about Mr. Fena. I do know he came over to
14 me and asked that it be stricken from the bill, and I might say
15 at that time I didn't even know the parties concerned in the
16 bill itself. I know a bill was brought to us and it just gives
17 boundaries and such, not owners or anything, and that is the way
18 the bill is introduced; and I did not know who was interested
19 or the parties concerned in the bill at the time; and so when
20 he came over to me, I was against, as you well know, and said this
21 is a matter that the parks department and director would have
22 to iron out, and that we did.

Mr. Simonett: Thank you.

(Witness excused)

The Court: I see it is twelve o'clock. We will recess

1 then until one-thirty and start right then.

2 (Thereupon an adjournment was had until one-thirty
3 o'clock P.M., Tuesday, December 10, 1968, at which time pro-
4 ceedings were had as follows:)

5 JACK FENA

6 Recalled as a witness, having been previously sworn,
7 testified as follows:

8 CROSS EXAMINATION

9 By Mr. Simonett:

10 Q Mr. Fena, as the campaign for the general election
11 reached about the last two weeks, I take it you were continuing
12 to publish your newspaper ads.

13 A I don't understand what you mean, continuing.

14 Q The type of ads like 7 and 8 that are in evidence here.

15 A I think that that smaller ad that you showed me was in
16 the last issue of the Shopper, wasn't it?

17 Q I don't know. You did put an ad in the Shopper as well?

18 A Could I look at one of those copies of the Shopper?

19 Q The only point I was interested in was did you have any
20 newspaper advertising for your campaign in any of the papers
21 within the district within the last two weeks.

22 A Oh, yes.

23 Q That is all I had in mind.

24 A Exactly when this Exhibit 8 went in, I don't know; but
I think it was in the last November 3rd and 4th issue of the

1 Shopper.

2 Q And did you make any statements to any groups or to any
3 people you met on the street or otherwise mentioning Mr. Bischoff's
4 association with the Savings & Loan Association of Hibbing?

5 A I might have.

6 Q And also the matter of the Mortgage Redemption Law?

7 A Yes.

8 Q --legislation, that sort of thing.

9 A Yes.

10 Q And was it some time in October also that you asked for
11 a debate with the other candidates?

12 A I can't remember the date, if it was in September or
13 October; but I wrote a letter to all the candidates after the
14 primary and asked to debate - for a debate, and I asked - I had
15 written to, I think, the Hibbing Chamber of Commerce, the
16 Hibbing Junior Chamber of Commerce and the Chisholm Chamber of
17 Commerce asking them as a public service to arrange for a
18 debate.

19 Q And Mr. Bischoff rejected the idea of the debate.

20 A Yes.

21 Q The idea for the debate initiated from you, the
22 incumbent.

23 A I was asked by people - it was suggested to me by people,
24 by friends, to get a debate. The idea really didn't in that
25 sense --

1 Q I meant it in this sense, was the idea of the debate
2 suggested by Mr. Spanish, Mr. Rutter, or Mr. Bischoff.

3 A I believe that Mr. Rutter said that he would debate.

4 Q Well, was that after you brought up the subject?

5 A I believe so. We may have discussed it before that, but
6 I couldn't swear to it.

7 Q Okay. Now, you have been a representative from this
8 area for five terms, haven't you?

9 A Yes.

10 Q And that would be since 1958?

11 A That is right.

12 Q And was it during this time of your service in the
13 legislature that you did practice law with Mr. Nasi?

14 A Yes, sir.

15 Q I think that you pointed out in your direct examination
16 he was then appointed municipal judge.

17 A Yes, but he came with my office before I was elected.

18 Q Yes, and was with you after you were elected as well.

19 A Right.

20 Q Is the municipal judge's position in Hibbing a part-time
21 job?

22 A Yes, sir.

23 Q It is not full-time?

24 A That is correct.

25 Q However, he chose not to remain with your firm after he

1 was elected.

2 A It was mutual. We discussed it and we both felt that
3 because of the fact that I do make appearances from time to
4 time in municipal court that I wouldn't be able to if he was
5 in my office.

6 Q The only point was he did leave the firm after he was
7 appointed.

8 A That is right.

9 Q I think I said after he was elected. It was an
10 appointment.

11 A Well, he was elected too.

12 Q But originally it was appointment.

13 A Yes, sir.

14 Q After he left the firm, were you then alone or did you
15 have someone with you?

16 A Well, I was alone for a while.

17 Q And the next person to come into your firm was who?

18 A Mr. Robert Mathias.

19 Q And you recall about when that was?

20 A It was around November.

21 Q Of what year?

22 A 1966, I think. It is difficult to remember these dates.

23 Q I understand. Well, we are right on the year, are we,
24 in the late fall most likely?

25 A I am pretty sure, yes.

1 Q Then I think as the record shows he was appointed then
2 assistant public defender in the Hibbing area some months after
3 that.

4 A It was after he came to my office, yes.

5 Q Some months after?

6 A He was appointed around the first of 1967, so whatever
7 it was - how long it was after he came to my office, it could
8 be a month or month and a half or two or two and a half months.
9 I didn't check that. As I sit right here right now, I can't
10 say.

11 Q That is good enough. In your Notice of Contest, you
12 point out that this position is not that of public defender
13 but of assistant public defender. Is that true?

14 A Right.

15 Q You consider that discrepancy to be a serious one?

16 A No.

17 Q Now, the salary that Mr. Mathias received, did that go
18 into the firm or was that kept separate?

19 A That went into the firm.

20 Q Here again that was a part-time position, the public
21 defender job.

22 A Yes, I would say part-time.

23 Q Then Mr. Mathias resigned, if my notes are correct, about
24 the end of the year in which he was appointed, probably late
25 fall or December of 1967.

1 A I don't know. I heard that testified to, and I don't
2 dispute that, whatever it was. Whoever it was testified said
3 that, but when he left my office, he was still the assistant
4 public defender.

5 Q He still remained in this area for a little while on
6 some occasion?

7 A He didn't know whether to take an offer he had in
8 Duluth or go on his own here or maybe with somebody here. I
9 didn't ask him too much about it.

10 Q Now, at this time that he left, did you have a third
11 member of your firm then, Mrs. Gail Murray?

12 A At the time that he left?

13 Q Maybe I should put it this way, is there a Mrs. Gail
14 Murray that is a member of your firm?

15 A Yes.

16 Q She is a lawyer?

17 A She works part-time.

18 Q Part-time for you?

19 A Yes.

20 Q Or with you?

21 A For me.

22 Q Do you know when she joined your firm?

23 A I could check that for you. It may seem odd that I
24 don't remember it, but I don't. I do not think she was there
25 when Mr. Mathias left, but I may be wrong. She worked two days

1 a week for me, and once in a while - she sat in on one trial -
2 one two-week trial - with me here in Hibbing last June. That
3 is the longest she worked. We tried that case, I think, ten
4 days, but she was in on that case; but otherwise she just
5 worked one or two days a week - mostly two days a week.

6 Q Well, do you recall any discussion with her about the
7 possibility of she being appointed as the assistant public
8 defender?

9 A No, sir.

10 Q Then Mr. Randall joined your firm when?

11 A It seems to me toward the end of November of '67. She
12 was there before him, wasn't she?

13 Q I see Mr. Randall isn't here so we can't confirm that.
14 All right. The point is Mr. Randall joined your firm in, I
15 think you told us this morning -

16 A I thought it was November or December. He came up here
17 during deer season. That would have to be in November. I
18 didn't hire him then. I think he came back another time and
19 then I agreed - or we got together, you know.

20 Q Well, my notes indicate that you testified this morning
21 that Mr. Randall started practicing law with your firm on
22 December 1st, 1967.

23 A That would be about it. It could be a few days before
24 or a few days after.

25 Q And then when he joined the firm, did you have any

1 discussion with him about applying for the job of assistant
2 public defender, which was now vacant because Mr. Mathias had
3 left?

4 A No. There wasn't a vacancy as far as I knew.

5 Q Mr. Mathias was still the public defender at that time?

6 A I believe he was. To my best knowledge, he was still
7 in Hibbing then, I think.

8 Q Well, then when Mr. Mathias left, did you have any
9 discussion with Mr. Randall about applying for that position?

10 A I don't believe I did.

11 Q So far as you know this was something that - well, did
12 you know he was going to apply?

13 A I don't know if he told me before or after.

14 Q Do you know if he did apply?

15 A Yes, he did apply.

16 Q Have you ever seen any letter of application?

17 A No, I don't think I did. I don't recall seeing any
18 letter of application.

19 Q Do you know to whom he would have made the application?

20 A No, I don't.

21 Q So you are not sure whether or not you learned about
22 Mr. Randall's appointment or - strike that. You are not sure
23 whether or not you knew Mr. Randall, an associate in your office,
24 had made application for the assistant public defender's job
25 before or after he had done so?

1 A I am guessing now, but he probably told me before.

2 Q And you do not know how he made his interest in the job
3 known to either the public defender or the local judge?

4 A I don't recollect.

5 Q And at the time Mr. Randall joined you, he came from
6 clerking down at Hennepin County. Is that right?

7 A Yes.

8 Q And about how much trial experience had he had then
9 before he got this experience?

10 A None that I know. He had just gotten out of law
11 school, I think, not too long before. I think Mr. Mathias
12 had just graduated from law school too.

13 Q Pardon?

14 A I think Mr. Mathias had just graduated from law school
15 the summer before.

16 Q When Mr. Mathias was appointed assistant public defender,
17 do you know whether or not he made application for that job?

18 A I didn't find out until this election contest started
19 that Pete Mulvahill had recommended him.

20 Q Do you have any recollection of giving any assistance
21 to Mr. Mathias in applying for the job of assistant public
22 defender?

23 A No, I don't really recall.

24 Q His case would be much similar then to Mr. Randall's,
25 where apparently he just did it on his own.

1 A I don't know what they did, except that they were
2 appointed. How they applied, I didn't pay that much attention
3 to it.

4 Q All right. Now, referring to the Shopper ad, the last
5 time there was an opening on the municipal bench in Hibbing,
6 the appointment went to a member of Mr. Fena's firm. That is
7 essentially a true statement.

8 A No. We had parted company. He was appointed, I think,
9 after the first of the year, and we had parted company the last
10 of the year. I suppose you might say in essence that is
11 technically - it may not be correct, but it is true in a sense
12 he was with my firm when it was indicated he would be appointed,
13 but he was actually not sworn in until after he left the firm,
14 if you know what I mean.

15 Q The next sentence in the Shopper ad, "More recently,
16 on both of the last two occasions that the public defender job
17 in Hibbing was open, it was awarded to Mr. Fena's firm." Is
18 that essentially a true statement?

19 A No.

20 Q Why isn't it?

21 A I don't think it was awarded to the firm. It was awarded
22 to the individual; and like when Mr. Mathias left, he still
23 continued to be public defender.

24 Q It would be more correct then you would say if it was
25 rather than awarded to Mr. Fena's firm, the appointment was made

1 to an associate who was a member of your firm.

2 A A member of the firm, yes. That would be more correct.

3 Q I take it Mr. Randall's salary as assistant public
4 defender is also part of the firm income.

5 A Yes.

6 Q Now, do you recall when you were appointed as attorney
7 for the Town of Stuntz?

8 A I think it was January 1st, or the first meeting in
9 January, which might have been the 2nd or 3rd, or whatever it
10 is, of 1966 - maybe '65.

11 Q Is the Hibbing-Chisholm airport within the Township of
12 Stuntz or not?

13 A Yes.

14 Q And does the airport -

15 A I believe it is. I believe it is, but I will check a
16 map after, and if I am wrong, I will tell you.

17 Q I wonder if the map in evidence would do it.

18 A Yes.

19 Q Mr. Bischoff says he doesn't think it is within the
20 Town of Stuntz.

21 A It is something we ought to know, but frankly - I think
22 it is, but yet there is something that makes me think it isn't,
23 and I don't know what it is. It must be in the Town of Stuntz.
24 It has to be, but you can't tell from with this map. I am sure
25 it is in the Town of Stuntz.

1 Q Okay. How far is the airport from the municipal limits
2 of Hibbing approximately?

3 A A mile or two. I don't know.

4 Q Pardon?

5 A A mile or two.

6 Q And is that on Highway 37?

7 A The airport?

8 Q Yes.

9 A Yes, sir.

10 Q Highway 37 then leads from Hibbing and goes where?

11 A Goes over and hits #53, and then you can either go north
12 to Virginia or south to Duluth and areas that way.

13 Q But to drive from Hibbing, it is a mile or two out to
14 the airport and you take Highway 37 most likely.

15 A The airport is more than a mile or two. Well, from
16 downtown it is several miles.

17 Q All right. Now, it is true, I take it, that in July,
18 1965, you together with three other gentlemen purchased these
19 13 forties of land.

20 A Yes.

21 Q That is land I think about which you have already
22 testified to. Your partners in that venture were Mr. Williams
23 and Mr. Reed and Mr. Chamernick.

24 A Yes, sir.

25 Q All of whom testified. And Mr. Reed, is he a member of

1 the Housing and Redevelopment Authority?

2 A No. He works for them.

3 Q He works for them and you are counsel for that Authority?

4 A Yes.

5 Q Has that been newly created or recently created?

6 A No.

7 Q That has been in existence about how long?

8 A Ever since I can remember after the war. I think Hibbing
9 started back about maybe 1944 or '45.

10 Q You have been attorney for that Authority how long?

11 A Five or six years. I can't remember.

12 Q And the other participant in the purchase of the property
13 was Mr. Chamernick, who is a member of the Town Board of Stuntz.

14 A Yes, sir.

15 Q I think Mr. Williams referred to that purchase as it
16 might be used to make a deal. I forget what the testimony was -
17 some sort of business deal later on.

18 A I don't recall him saying that.

19 Q My recollection isn't too clear either. You referred to
20 it this morning as you bought it for a sort of lark.

21 A Maybe that was a poor choice of words, but I can't - why
22 do you buy anything. There was no definite purpose in mind
23 except hoping it could be developed maybe - a hedge against
24 inflation or what, and I own land. I like land.

25 Q All right. The north line of the tract which you

1 purchased, does that border Highway 37?

2 A It is part of 2 forties that border Highway 37.

3 Q Actually wouldn't it be 2 forties less only about 125 feet

4 A No. I think there is 100 some feet off the west edge of
5 the 1 forty, and then there is a piece off the east edge of the
6 other forty. I don't know how big that is.

7 Q Now, also, I think you have been active in the develop-
8 ment and expansion of that airport which is near your property.

9 A In what way?

10 Q Well, I am not sure. I think your ad mentions - your one
11 ad that is in evidence mentions among your accomplishments some
12 legislation for airport expansion.

13 A Yes.

14 Q And the airport has been expanded.

15 A A runway has. It has been expanding ever since it
16 started. You are talking about the last couple of years.

17 Q The last couple of years.

18 A Right. The runway was extended.

19 Q More land purchased in order to do that?

20 A I think they did, yes.

21 Q And you also, I believe, have had an ownership interest
22 in the Range Flying Service which operates out of the Hibbing
23 Airport.

24 A I did.

25 Q Was there also talk too of getting a liquor license for

1 the airport?

2 A We were asked to introduce legislation by the Airport
3 Commission.

4 Q That would require legislation under the state legislature?

5 A Right. And there was a resolution passed - must have
6 been a resolution passed because they have to have one for every
7 local bill, and I think the Hibbing-Chisholm Joint Airport
8 Commission - again I am not positive - but I think they would
9 be the licensing authority, and that was about - I forget what
10 session - '65.

11 Q In your Notice of Contest, Mr. Fena.

12 A Could I have a copy of that?

13 Q Yes. Page 5, top paragraph, B, you state there, do you
14 not, "That the airport highway was never considered by either
15 Jack Fena or the highway department, nor by anyone else to the
16 knowledge of Mr. Fena, to be the route of the cross-range
17 expressway".

18 A You are just reading half the sentence now.

19 Q First of all, that is what it says thus far, is it not?

20 A Yes.

21 Q "Nor did Mr. Fena actually become involved in any project
22 to place the cross-range expressway upon, at, or anywhere near
23 the property above referred to".

24 A Yes, sir.

25 Q Well now, the Shopper ad that you are contesting here

1 does not mention the highway department, does it?

2 A By implication, it certainly does.

3 Q Does it mention that expressly, Mr. Fena?

4 A The way I read it, this ad says that. There is only
5 one agency that builds highways. For the range expressway,
6 that would be the highway department.

7 Q All right. Does the Shopper ad expressly mention the
8 highway department?

9 A Are you asking my opinion?

10 Q No. I am asking you what the ad expressly states.

11 A Well, I interpret it that way, and that is the reason
12 for the answer on page 5 that you read - paragraph B which
13 you read.

14 Q I suppose the ad speaks for itself, but does the ad
15 expressly use the words that it was a highway department that
16 was considering -

17 A No.

18 Q --the airport highway as a possible alternative route
19 for the expressway?

20 A By implication, yes.

21 Q All right. By implication. Does it do it expressly?

22 A If you read the ad from its four corners, I would say yes.

23 Q But expressly, I mean does the word "highway department"
24 appear in the ad?

25 A The word highway does, so I am half right. Maybe the

1 word "department" doesn't, but it does imply.

2 Q All right. Now, you say in your Notice of Contest you
3 never considered the airport highway for the cross-range
4 expressway nor the highway department, and you also say nor
5 anyone else to your knowledge. Do I take it from that you
6 never knew anyone else who was interested in Highway 37 as a
7 possible route for the expressway?

8 A Not that I ever recall.

9 Q Now, much of the consideration for the expressway came
10 to the surface, did it not, in early '65?

11 A Much of the public discussion about it.

12 Q Yes.

13 A Yes.

14 Q I think Mr. Miller from the Duluth Highway Department
15 mentioned that in his testimony yesterday. The legislature
16 was in session at that time, was it not?

17 A Yes, it must have been.

18 Q And I suppose it wasn't until you returned from the
19 legislature and in July that you purchased the 13 forties of
20 land.

21 A That is when I closed the deal, after I got out of the
22 legislature, I am sure.

23 Q Had you been dickering on it for some months prior to
24 that time?

25 A Well, I had been horsing around toying with the idea of

1 buying the place since about 1959 or '60.

2 Q Yes, but the serious discussions toward actually closing
3 the purchase, when did that occur?

4 A Actually, I made a deal with Mrs. Ricke maybe a couple
5 of years before that. Part of the consideration was to trade
6 two houses I owned in Buhl as part of the deal, and then I
7 don't know why at this moment we never did go through with it,
8 and then there was a problem with the title on that property,
9 as I recollect, and I think there still is a problem with the
10 title; but the purchase was completed at or about the date of
11 the deed, April, '65.

12 Q It was closed?

13 A Yes.

14 Q Well, showing you Contestee's Exhibit 1, which is a
15 certified copy of the resolution of the town board of Fayal
16 Township adopted on the 16th of March, 1965, were you aware of
17 that action taken by the town board?

18 A Not that I ever recollect. This township is not in the
19 district. I don't have a recollection of seeing this.

20 Q Okay. During this period of time and during early 1965,
21 would it be fair to say there was much public discussion about
22 the route of the highway, this expressway?

23 A There was, but I stayed aloof of the route. In fact,
24 there were two very large meetings in Hibbing about that route,
or rather, one in Hibbing and one in Chisholm one week later.

1 Q Did you go to either one?

2 A No, I did not; because it was my position that the
3 highway department is the agency which picks the route, not a
4 legislator, and I figured if we could get our bills through and
5 get the money, it was time enough to worry about the route then.

6 Q The Fayal Township Resolution states that copies are to
7 be sent to all school districts situated between Eveleth and
8 Hibbing and all municipalities affected by this proposed change,
9 our local state legislators as well as State Highway Commissioner
10 Marshall. Do you know if a copy was sent to you?

11 A I do not. I don't recollect ever seeing this.

12 Q But I suppose, nevertheless, as a representative here of
13 the 63rd District, you would have been much interested and
14 aware of public sentiment of where that route was going to be
15 located.

16 A Public sentiment was to put it in Chisholm and Buhl.

17 Q I take it by your answer then you were aware of public
18 opinion on the route and its location.

19 A Well, you don't have to have a picture painted for you
20 that the town doesn't want to lose their highway. I have been
21 around here long enough to know that Chisholm did not want to
22 lose their highway and nobody had to come and tell me that. I
23 openly urged at the proper times that these towns not be left
24 out.

25 Q Results of these various public discussions would be

1 summed up from time to time, would they not, and be printed in
2 the papers, newspapers of the area?

3 A I don't recollect any definitely right now. Probably
4 there were.

5 Q Do you follow newspapers, see what the people in your
6 area generally were thinking?

7 A No, not for that purpose. I knew what the people in
8 my area were thinking, or hoped I did, without reading it in the
9 newspaper.

10 Q So it never came to your attention that any group was
11 considering Highway 37 as a possible alternate route?

12 A I don't recollect any. I do know this, that the area
13 over there, as Mr. Miller stated, were really not interested in
14 that expressway because they already had theirs built, more or
15 less, plus the fact that they were going to miss Eveleth. This
16 is what I kind of recollect, so I paid no attention. If I saw
17 this, I paid no attention to it. I had made my deal to buy this
18 farm before this date anyway.

19 Q I understand. Did anyone come to you during early 1965
20 asking you to take a position relative to the location of the
21 route of the expressway?

22 A Yes. Yes, Buhl - individuals from Buhl.

23 (Certified copy of Resolution marked Contestee's Exhibit 9
24 for identification.)

25 Mr. Simonett: We will offer in evidence Contestee's

1 Exhibit 9, a certified copy of Resolution #2282 of the Council
2 for the City of Eveleth passed April 6, 1965, and titled
3 Resolution Opposing Construction of a New Inter-range Highway.

4 Mr. Ryan: No objection.

5 The Court: Received.

6 Q (Mr. Simonett) Were you aware at all, Mr. Fena, in
7 early 1965 of Eveleth urging that State Highway #37 be built
8 into an expressway?

9 A No. Eveleth again, like this township here, is not in
10 the district; and I was in favor of my towns being included,
11 Chisholm, Buhl, Kinney, Mountain Iron. I did not want the
12 highway to miss those towns.

13 Q I understand. My question is more that your best
14 recollection is that you do not recall the council in Hibbing
15 urging 37 as an alternate route for the expressway.

16 Mr. Ryan: Council in Hibbing?

17 Q (Mr. Simonett) Excuse me, council in Eveleth.

18 A May I see the resolution? I don't recall looking at it.
19 Of course, this was during the legislative session again. We
20 get hundreds of resolutions down there. I may have gotten a
21 copy of this. I don't know. I don't recall it. I just knew
22 that that highway would never go there.

23 Q As attorney for the Town of Stuntz, is that a retainer
24 position?

25 A Yes.

1 Q And am I correct that that retainer is \$350.00 per month?

2 A Yes.

3 Q Are there in addition some fringe benefits?

4 A Yes, sir.

5 Q During the course of the campaign this fall, was there
6 also another issue raised about the inspection trip that you
7 had taken to South America?

8 A Right.

9 Q Was that taken about last January?

10 A Yes.

11 Q You, of course, defended that trip as a proper and
12 legitimate enterprise.

13 A I don't know what you mean by saying defended the trip.

14 Q Well, it was made an issue.

15 A Pardon me?

16 Q It was made an issue in the campaign. Some were urging
17 that the trip was a junket, a needless expense. You, on the
18 other hand, were taking the position that it was a proper trip,
19 the expense paid by the state was proper and you gained useful
20 information from it.

21 A Probably.

22 Q Pardon?

23 A Probably.

24 Q Well, in any event, it was in issue.

25 A It was raised.

1 Q And one that you might expect to be raised.

2 A You don't know what to expect in a campaign.

3 Q But there is no claim on your part, I take it, that
4 raising that issue was a corrupt election practice?

5 A In one sense, if you take the whole election as a whole,
6 and you don't call the law the Corrupt Practices Act anymore.
7 It is the Unfair Campaign Practices Act. If you take the
8 whole campaign as a whole where there was all this chatter by
9 Mr. Bischoff about the trip and his refusal to debate, and then
10 the insertion of the ad and radio talk at the last eleventh
11 hour, where I had no opportunity to counteract it, then I can't
12 quite agree with your statement. From my eyes, I would call it
13 unfair.

14 Q From your side, you would consider it -

15 A Maybe not unfair in the sense that it violated the Unfair
16 Campaign Practices Act.

17 Q Well, put it this way -

18 A Although I would leave that up to the members who will
19 finally decide this.

20 Q Is it one of the issues you raised in your Notice of
21 Contest?

22 A I don't know if that is in there or not.

23 Q I see.

24 A It is in there in the sense that I believe there is a
25 part here that said that I had no opportunity to answer his last

1 minute attack. He does mention the trip to South America. He
2 does say trips to South America, and I only went on one trip to
3 South America. The legislative committee went previously to
4 South America. I did not attend that trip. I wasn't a member
5 of the legislature.

6 Q Well, isn't it true that the advisability of your trip
7 to South America in January, 1968, was raised as an issue in
8 the campaign long before the Manney Shopper ad and Eveleth
9 radio talk came out?

10 A Yes, sir.

11 Q You had ample opportunity to answer that in whatever
12 fashion you wished, and did so.

13 A Yes, I thought I answered it.

14 Q Now, just a comment or two on the tax valuation case
15 for the township. Do I understand there were two cases?

16 A Yes.

17 Q Were they consolidated?

18 A Two appeals. No, they were separate.

19 Q And do you have your file here?

20 A No, I haven't.

21 Q It is back in your office. You keep time records, Mr.
22 Fena?

23 A No. Sometimes I do.

24 Q Okay. And in this case, do you have time records?

25 A No, because it was on a contingency.

1 Q No way of determining the actual number of hours you put
2 in on the case?

3 A I don't know if I could or not. It was quite some time
4 ago.

5 Q And you were then successful in negotiating a settlement
6 with the mining company?

7 A Yes.

8 Q And they paid over then thirty thousand dollars. Is
9 that right?

10 A Right.

11 Q Ordinarily your fees would be one-third. In this case,
12 instead of ten thousand, you took seventy-five hundred. Well,
13 I shouldn't say take.

14 A My fee was on a contingency. The normal bar rates in
15 our area on contingencies is a third. Because I settled, I
16 took a fourth, and I have done that with clients before on
17 occasion.

18 Q Now, that takes us through what I wish to cover about
19 the Shopper ad; and as I understand it, you first learned or
20 heard about the radio talk which you question here in court and
21 which was given on Thursday, October 31st on the Eveleth station--
22 you first learned of that talk either sometime Thursday evening
23 or more likely sometime the following day, Friday, November 1st.

24 A I will tell you I am just guessing about that. To swear
25 to it, I don't know when I really heard it. I tried to answer

1 that - I am sure I answered it the next day.

2 Mr. Ryan: You are speaking about the radio broadcast.

3 Witness: Yes.

4 Q (Mr. Simonett) Well, did the answer the next day - when
5 you speak of an answer, was that that ten minute talk that you
6 brought here on tape and that we had the court reporter trans-
7 scribe yesterday?

8 A Yes. I answered part of it the next day.

9 Q It wasn't the five minute political tape that you gave?

10 A No. I think what happened -

11 Q Well, hold up.

12 (Transcript of talk marked Contestee's Exhibit 10 for
13 identification.)

14 Q Showing you what has been marked Contestee's Exhibit 10,
15 it is a transcript of a five minute radio talk apparently
16 delivered over the Hibbing station. Do you recognize that as
17 one of the talks you gave?

18 A Right.

19 Mr. Simonett: For the record, we will offer in evidence
20 Exhibit 10.

21 Witness: There are some typographical errors in here,
22 as we mentioned before.

23 Mr. Simonett: I understand. Subject to rather obvious
24 typographical errors, we agree that is the substance of the
25 radio talk.

1 Mr. Ryan: I have no objection.

2 The Court: Received.

3 Q (Mr. Simonett) Is that what you had in mind as your
4 answer, or one of your answers, to the Eveleth talk of
5 Mr. Bischoff?

6 A I think this was an answer to the Hibbing - may I see
7 that log?

8 Q I was looking for it too. Maybe you can refresh your
9 memory by looking at Contestant's Exhibit J.

10 A Contestee's Exhibit 10 was taped on Sunday afternoon,
11 November 3rd, 1968, and it was played on November 3rd and
12 November 4th.

13 Q On November 3rd, would it have been played on the 4 five-
14 minute talks shown on the radio log on Exhibit J?

15 A I don't think so. I don't think so.

16 Q Some of those times?

17 A Yes. And on November 4, there are some five-minutes
18 spots and I don't know how many of them utilized Exhibit 10.

19 Mr. Simonett: Now, I should like the record to show at
20 this point that counsel had agreed prior to trial that we would
21 each obtain our client's own radio talks, transcripts thereof,
22 and exchange them with the other side. This we have done. There
23 was one ten-minute tape of a talk given by Mr. Fena which he
24 did not have time to have transcribed so as to furnish us with
25 a copy or the court; and yesterday during the noon hour, the

1 tape was played. Mr. Fena brought it to court and the tape was
2 played and the court reporter then took it down on his notes
3 from the tape. I assume what should be done is that should be
4 typed up and a separate exhibit and somehow identified and
5 offered in evidence. I don't know any other way to get it in
6 the record; and if it is agreeable with counsel, I wonder,
7 Mr. Peterson, if we could assign a number to that transcript as
8 an exhibit.

9 The Court Reporter: That would be Contestee's Exhibit 11.

10 Mr. Simonett: For the record then, may we offer
11 Contestee's Exhibit 11, which will be the notes as transcribed
12 by the court reporter from the ten-minute tape.

13 Mr. Ryan: It is all right with the contestant.

14 The Court: All right. Received.

15 Q (Mr. Simonett) Now then, the ten-minute tape which we
16 will call here Exhibit 11, that was another answer of yours to
17 Mr. Bischoff's radio talk.

18 A It answered part of it.

19 Q Yes. Well, what prompted it was Mr. Bischoff's talk.

20 A Yes.

21 Q And you think you cut that tape - made that tape on
22 Friday, November 1st. I think what might help you - you brought
23 the tape here in court. Mr. Fena, when you came to court yester-
24 day with that ten-minute tape, you brought a box along; and on
25 the box - I don't know whose writing it is - but there is some

1 writing there which says Friday, November 1, doesn't it, and
2 Monday, November 4?

3 A Yes.

4 Q Is that your writing?

5 A No. Let's see. Part of it is and part of it isn't.

6 Q Now, when you look at the radio log for the Eveleth
7 radio station, Exhibit F, it shows, does it not, that on
8 November 1st, 1968, from 3:45 to 3:55 P.M. you gave a ten
9 minute talk?

10 A A ten-minute tape of my talk was played.

11 Q Yes, and would that tape have been the one which is
12 transcribed as Exhibit 11?

13 A If that is the number, yes. That was over Station WEVE.

14 Q Right. Now, when you made that tape, did you make that
15 in your office in Hibbing or did you go over to the Eveleth
16 station?

17 A I made that in the office at the radio station in
18 Hibbing.

19 Q At Hibbing?

20 A Yes, sir.

21 Q And then had someone deliver it over to Eveleth?

22 A Either that or I took it there myself. I was over there.
23 I think I took it there myself, because I remember being over
24 there and being upstairs in that station.

25 Q And did you while you were over there at Eveleth - that

1 would have had to have been some time on Friday before late
2 afternoon.

3 A Friday before what?

4 Q Friday before late afternoon.

5 A If I went over there - if that was the day that I was
6 there.

7 Q Here again you are not sure?

8 A It is hard to remember.

9 Q We know the ten-minute talk answering Mr. Bischoff's
10 talk was played over the Eveleth station beginning at 3:45 P.M.
11 on Friday, November 1.

12 A That I am sure of.

13 Q That we are sure of, but we are not quite sure how the
14 tape got over there, whether you took it over or somebody else.

15 A I might have taken it over.

16 Q Well, do you have any recollection of having him play
17 Mr. Bischoff's tape at the Eveleth station for you?

18 A No, that never was done.

19 Q Where did you gain your information of the contents of
20 Mr. Bischoff's talk?

21 A I believe a recording or partial recording of it was
22 made.

23 Q Taken off the radio, I suppose?

24 A Yes. On an office dictating machine, but you couldn't
25 really hear it right.

1 Q Was that in your office?

2 A Yes. I didn't do it, but my secretary, I believe, did,
3 or maybe Mr. Randall; but I tried to listen to it and I
4 couldn't make much out of it because it didn't come over very
5 well.

6 Q Well, did you gather the main points, however, of
7 Mr. Bischoff's talk, the public defender appointments, Town of
8 Stuntz matter, highway and land?

9 A No. The main thing I thought - the main thing I was
10 told about was the Town of Stuntz.

11 Q Well, evidently your office secretary heard it come
12 over the radio station.

13 A She might have.

14 Q Well, didn't she operate the office recorder?

15 A I don't know if she did or Mr. Randall tried to. It
16 didn't really turn out.

17 Q Someone in your office took it down.

18 A Not really took it down.

19 Q Well, took it down with a machine that operated ineffi-
20 ciently.

21 A Well, the main thing that I - I didn't hear the radio
22 talk myself, but the main thing I got out of it was talk about
23 this criticizing I was told a lawsuit, a tax case.

24 Q Yes, and it was your impression that was all there was to
25 Mr. Bischoff's talk.

1 A It was my impression this was the main thrust.

2 Q And no one else in your office advised you differently?

3 A This is probably a conclusion I came to myself.

4 Q And that would have been then sometime on - am I correct -
5 Thursday afternoon?

6 A No, I believe it was on Friday.

7 Q On Friday that they told you about it?

8 A I believe.

9 Q Okay. You played back any record on your office machine
10 as best you could.

11 A No. Mr. Randall put it on.

12 Q You mean operated the machine?

13 A I think so.

14 Q And you sat there and listened while he played the
15 machine.

16 A I listened to the parts you could hear.

17 Q And you couldn't make it all out?

18 A Not really.

19 Q Did you make out the part about the Town of Stuntz tax
20 case?

21 A I think so.

22 Q But none of the other parts?

23 A The other parts, frankly, if I heard them at that time,
24 seemed so utterly ridiculous to me that I didn't pay any
25 attention to it until I saw this thing in this ad, the Shopper.

1 That is where it hit like a ton of bricks.

2 Q So what you got out of listening to the replay of the
3 radio talk, except for the matter about the Town of Stuntz tax
4 case, most of it was too silly to even require to answer.

5 A No. I don't think I would interpret my answer that way.

6 Q Well, you were concerned enough with what you heard,
7 however, to decide that you wanted to prepare a tape of your own
8 to be played over the Eveleth station?

9 A Yes.

10 Q And this was to be not a one-minute, not a five-minute,
11 but a ten-minute tape?

12 A About four or five minutes of which were devoted to, as
13 I recall, education. You heard the tape.

14 Q I did, and you only devoted about five minutes to this.

15 A I don't know how much. Part of it was devoted toward
16 things that Mr. Bischoff hadn't talked about.

17 Q Well, would it be fair to say that on that ten-minute
18 tape not over half, and maybe less than half, of that ten-minute
19 tape were devoted to answering the questions raised by
20 Mr. Bischoff?

21 A I can't tell you. I didn't hear it all this morning.
22 The reporter was trying to take it down, and he couldn't keep
23 up with the rapid talking I was doing, and after he stopped it
24 about four times, I kind of got bored and left.

25 Q But you had about ten minutes of radio time to put on

1 that tape, all of which you could have devoted to answering
2 Mr. Bischoff if you had chosen to do so.

3 A Not exactly.

4 Q Not exactly?

5 A No, sir.

6 Q Can we agree that not all of the ten minutes was used in
7 answering the questions raised by Mr. Bischoff?

8 A Yes, sir. Political campaigns and political ads aren't
9 done the way you seem to imply they could be done.

10 Q I am just trying to get at the facts.

11 A I am trying to give them to you the best I could. Your
12 implication was that I had all the time in the world and all the
13 knowledge in the world about this, and I am trying to tell you I
14 didn't, and you don't in a political campaign.

15 Q Now, yesterday in the other room -

16 A What other room?

17 Q The conference room here.

18 A All right.

19 Q You and Mr. Bischoff and Mr. Ryan and myself listened to
20 the playing of that tape, did we not?

21 A The ten-minute tape?

22 Q The ten-minute tape.

23 A I heard part of it.

24 Q Didn't you sit through it the first time?

25 A No.

1 Q Okay. Mr. Ryan did. You wouldn't know.

2 A No. I hope he did. I sympathize with all of them who
3 had to sit through it, but go ahead.

4 Q We listened to the tape once and then called in the
5 court reporter and had him transcribe it the second time.

6 A Yes.

7 Q And do you have generally in mind, Mr. Pena, what you
8 said in the first part of that ten-minute tape? Well, maybe
9 that isn't too fair. I made some notes, so let's see if this
10 would coincide with your recollection. We don't have a trans-
11 cript of it. Essentially, you started out by saying something
12 about yesterday Mr. Bischoff made a sustained personal attack on
13 me, words to that affect, and in view of the nature of the
14 unfounded charges, I should comment on some of them. Now, did
15 you say that?

16 A I don't remember.

17 Q It was just played yesterday.

18 A I don't recall. I won't argue with you. If you say that
19 this is what it says, I would agree with you. I just didn't pay
20 that much attention to it. Mr. Ryan was trying to get me to
21 listen to it, and I don't know what else I had in mind, but I
22 was doing some other things and I just didn't - I am sure you are
23 not mis-quoting, Mr. Simonett. If you say that is what I said,
24 I will agree with you; and if I didn't, well, it will be on
25 the record.

1 Q Fair enough. Well, then you recall that you discussed
2 the Town of Stuntz case and that was against a mining company
3 and then you remember saying, "Why does Barney Bischoff worry
4 about me suing the mining companies?"

5 A Yes.

6 Q And then you said, and here again I am paraphrasing too,
7 I think I have the sense of it. Must he have some connection
8 with these mining companies.

9 A I don't know how it was said.

10 Q Well, is it fair to say that you were trying to give the
11 impression the way you talked that Mr. Bischoff, your opponent,
12 was connected with the mining company and was favoring it?

13 A Not really.

14 Q Did you then have or do you have now evidence Mr. Bischoff
15 is tied up with the mining companies?

16 A What do you mean by tied up?

17 Q Well, I have in mind what you said, I guess, in your
18 radio talk. You say Barney Bischoff is worried about me suing
19 the mining companies. He must have some connection with them.
20 My question is were you trying to suggest to the voters that
21 Barney Bischoff was connected with the mining companies in some
22 way?

23 A No, I don't think I was.

24 Q Or did you have any evidence that he was connected with
25 them in any way?

1 A I was just trying to answer his statement, which was
2 false.

3 Q By statement suggesting that he was connected with the
4 mining companies?

5 A No, by the entire matter or wording or talk that I
6 directed toward that one point. If you take it all together -
7 which I think should be done, just like this ad should be
8 read in its entirety - then I think my talk was in answer to
9 his false - or my claim of a false charge.

10 Q You thought raising the question of the mining company
11 was fair political comment?

12 A It was a reaction on my part.

13 Q Well, you mean by that it was unfair political comment?

14 A No, it was a provoked comment.

15 Q All right. And fair?

16 A It was a provoked comment.

17 Q And fair?

18 A And fair. I don't know if it was fair or not.

19 Q All right. Then you went on -

20 A It was provoked. I was angry with his statement.

21 Q Then you went on in your talk and said who would Barney
22 Bischoff represent in the legislature. Would he represent the
23 insurance company, and you said he is connected with - here
24 again I wish I had a transcript - connected with one of the
25 biggest insurance agencies in the area. Did you say essentially

1 that?

2 A Probably, if you remember it that way. I think that is
3 right.

4 Q In fact, you were making those sort of comments even
5 prior to Friday, November 1st; not in radio talks or newspaper
6 ads, but on the street.

7 A I don't recollect. I don't deny it. I don't know.

8 Q Well, you were trying to suggest though in this ten-
9 minute radio talk, Exhibit 11, your answer to the Bischoff talk,
10 that Barney Bischoff would represent the insurance company
11 interests in the legislature.

12 A I was provoked at this statment. I wasn't trying to do
13 anything except to deny the false charges that he made. That
14 was the only purpose of the statement that I made.

15 Q Well, this is a new charge of your own here, isn't it?

16 A What is a new charge?

17 Q Barney Bischoff would represent the insurance companies
18 in the legislature.

19 A A new charge of my own?

20 Q Well, is it one that is raised by Mr. Bischoff's radio
21 talk or the Shopper ad.

22 Mr. Ryan: You can't refer to the Shopper ad, at any
23 rate, as that didn't come out until Sunday.

24 Q (Mr. Simonett) What I am getting at is you felt raising
25 the question in the minds of the voters that Barney Bischoff

1 would represent the insurance agencies in the legislature was
2 fair political comment.

3 A No. All I was trying to do was answer Mr. Bischoff's
4 charges. There was no intention in my mind except to do that.
5 This had to be done.

6 Q I recognize that.

7 A This was in the closing hours of the campaign, a very
8 hectic time. Radio time was pretty well taken up, and I chose
9 this manner in which to answer these false statements that he
10 made about me.

11 Q You went on then in your radio talk and you said, did you
12 not, will Barney Bischoff represent the money lenders?

13 A Yes, I think so.

14 Q That was a question you were asking the voters to
15 consider.

16 A Again it was part of my answer.

17 Q Well, I know; but this was an answer that was being
18 broadcast to the voters, wasn't it, so they could hear. Right?

19 A Yes.

20 Q And you were asking them to consider whether or not
21 Mr. Bischoff would be representing the money lenders if he were
22 elected to the legislature.

23 A I was answering his ad. The words speak for themselves.

24 Q All right. And the words that you used - you went on to
25 say he was connected then with, I think, Savings & Loan

1 Association in town.

2 A He is one of their attorneys.

3 Q So here again on the face of it you felt in this kind of
4 association it was fair political comment to raise questions to
5 the voters whether or not Barney Bischoff would represent the
6 money lenders in St. Paul.

7 A I thought it was an answer, a partial answer; but that
8 ad and that radio talk could not be answered by anyone.

9 Q Well, at this point I am just talking about the charges
10 and questions you raise in your own radio talk. You also
11 mentioned in your radio talk a circular of the Minnesota
12 Mortgage Brokers Assn. asking for big money to campaign against
13 a certain mortgage redemption bill.

14 A Right.

15 Q Did you intend to infer in there or raise the question
16 to the voters that Mr. Bischoff would accept big money to take
17 a position opposite to you in that bill?

18 A Mr. Bischoff had told me two years previously how he
19 felt about that bill, and it was opposite of the way I felt
20 about it.

21 Q Well, here again, do I understand then you did not want
22 the voters to infer Mr. Bischoff would take big money from some
23 association?

24 A I wanted this to be an answer. That is what I wanted.

25 Q I don't understand.

1 A I wanted this to be an answer to Mr. Bischoff's false
2 charges. I answered it the best way I knew how.

3 Q I understand. What I am discussing is your answer in
4 which you raise these other questions, don't you?

5 A I think I would categorize part of that radio talk, if
6 you want my opinion, as an answer, something like self-defense.
7 This was not something that I used to protect Mr. Bischoff with.
8 It was something I used to defend myself with. There is a
9 difference if you take a gun and go after someone with it than
10 if you take one to defend yourself with, and that is the way I
11 look at that little ten-minute - part of that ten-minute talk.

12 Q I understand, but even this business of the money lenders,
13 that was an issue you yourself had raised a couple of weeks
14 before almost.

15 A I may have raised it, yes.

16 Q Then you went on in your radio talk -

17 A I talked about the equity of redemption being cut. I
18 never talked about money lenders. Not in that sense.

19 The Court: Mr. Simonett, we will recess for about ten
20 minutes.

21 AFTER RECESS

22 Q (Mr. Simonett) Well, did you know, Mr. Fena, if there
23 was time available to you on the Hibbing radio station on
24 Sunday and Monday that you could have used if you wished to -
25 here again to answer Mr. Bischoff's talk?

1 A I did use time Sunday and Monday at Hibbing, but I couldn't
2 get prime time. I think one five-minute talk on Monday,
3 November 4th, was when the station was on full power; that
4 would be from 3:25 to 3:30 P.M.

5 Mr. Ryan: Excuse me. Was that five minutes?

6 Witness: Yes, sir, five minute. I couldn't get any
7 time for the ten-minute tape. I couldn't get ten minutes, I
8 know that, even though I made the tape there.

9 Q (Mr. Simonett) You are aware, I suppose, that
10 Mr. Spanish's vote was 10,910, Mr. Bischoff, 10,412. They
11 shared about - I don't know - eighty percent of the vote in
12 the general election.

13 A Nobody can analyze an at-large vote. It is very difficult
14 to do.

15 Q But I gather your action here, you are not making any
16 claim that Mr. Spanish's seat is being challenged.

17 A No, I am not contesting his election.

18 Mr. Simonett: I believe that is all.

19 REDIRECT EXAMINATION

20 By Mr. Ryan:

21 Q Mr. Fena, what was your reaction when you first heard
22 Mr. Bischoff's tape, which I believe is Exhibit H - what parts
23 of it that you could hear? What was your reaction upon hearing
24 what was in that broadcast?

25 A Well, I became upset - angry.

1 Q Quite angry?

2 A Yes, I was very angry. I didn't really hear it until -
3 I didn't really realize what was in there until I saw it in the
4 Shopper.

5 Q And that was on what day?

6 A Sunday.

7 Q And what was your reaction then?

8 A Well, I was just very upset and very angry.

9 Q In comparison to the day or two days before that when
10 you heard a portion of the speech, how did your reactions of
11 those two days compare?

12 A I was upset both times, but when I saw this ad in the
13 Shopper, I really was very upset and very angry, and I called -
14 well, it would just be repetitious. I called the Tribune, I
15 pleaded with them to let me change my Monday ad or to sell me
16 some space Monday so I could attempt to put in an answer, part
17 of which would have been to answer his challenge where he
18 challenged me in that ad to name one - it says here, "I challenge
19 Mr. Pena to cite one instance of a political appointment made
20 for my benefit". If I may, I would like to say that one of the
21 reasons that I asked for a debate was that I knew - and I
22 couldn't put my finger on it - that things other than legitimate
23 issues were being used and I thought it would only be fair to
24 the public that they would have a debate - an open debate
25 based on issues; and I made that request in a sincere way.

1 Mr. Bischoff called me up on the phone and said, "So you want a
2 debate?". I said yes. I was talking to the secretary when I
3 picked up the phone and said a word or two to her, and he hung
4 up. He got angry and hung up because I wanted a debate.

5 Mr. Ryan: That is all.

6 Mr. Simonett: That is all.

7 (Witness excused)

8 Mr. Ryan: Contestant rests, your Honor.

9 ELIZABETH KENNEDY

10 Called as a witness, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Simonett:

14 Q Will you state your name please for the record.

15 A Elizabeth Kennedy.

16 Q It is Mrs.?

17 A Mrs.

18 Q And you are here, Mrs. Kennedy, pursuant to a subpoena
19 that we had served upon you?

20 A That is right.

21 Q And you hold a position with the Town of Stuntz, do you?

22 A Yes, I am clerk.

23 Q You are clerk, and we asked you to bring with you the
24 town records.

25 A That is right.

1 Q Mrs. Kennedy, do you recall while this representative
2 election campaign was going on this past fall whether or not
3 Mr. Edward Matonich, a lawyer from Mr. Bischoff's office, came
4 to your office?

5 A Yes, he did.

6 Q Was that for the purpose of inspecting the records?

7 A Yes, sir.

8 Q You have with you the annual financial reports for 1966-
9 1967?

10 A Yes, I do.

11 Q 1968?

12 A No, not 1968. I have 1966 and 1967.

13 Q All right. May I see those. Now, does the annual report
14 of either year, 1966 to 1967, reflect legal fees of seventy-five
15 hundred dollars to Mr. Pena?

16 A Yes, it does.

17 Q Can you show us that?

18 A Here.

19 Q Is that under legal expense?

20 A No.

21 Q Under legal expense appears attorney's salary and travel
22 expense and then litigation expense.

23 A That is right.

24 Q Would that be it?

25 A Yes, that is one of them. That is in this one here.

1 Q All right. And then one in the other year?

2 A I am sure it is in here.

3 Mr. Ryan: Is there anything, counsel, we might assist
4 you with by stipulation?

5 Mr. Simonett: There may be.

6 Witness: I just don't seem to find it. This is what you
7 are talking about.

8 Q (Mr. Simonett) I see. This is the annual report for
9 the year ending December 31, 1967.

10 A That is right.

11 Q Seventy-five hundred dollars is shown under special
12 equipment fund for special equipment purchases.

13 A That is right.

14 Q That was the attorney fees.

15 A Yes, it was. It was because he did all this work
16 cleaning up the Mahoning ore situation.

17 Q And then we asked you to bring the minutes showing -

18 A These are all the minutes for 1966.

19 Q I thought you had it open to a special one.

20 A No, there is no special meeting in the minutes that I
21 know of that would have anything to do with this case.

22 Q Well, the township attorney received a retainer, is it,
23 of three hundred fifty dollars a month?

24 A That is right.

25 Q And then plus additional fees for extra work or litigation.

1 A Yes, for litigation. That shows in the reorganization
2 meeting that he is allowed his salary and litigation fees.

3 Mr. Simonett: Fine. That is all I have.

4 CROSS EXAMINATION

5 By Mr. Ryan:

6 Q Mrs. Kennedy, are you the only Irish woman on the Range?

7 A No, I don't believe I am.

8 Q It is nice to have another Irishman in the courtroom.
9 I believe counsel made reference to a special equipment fund.
10 Is that the journal entry or bookkeeping heading that all of
11 this money went into?

12 A Yes.

13 Q --That was received in the settlement?

14 A That is right.

15 Q And that is what the money was earmarked for, purchase
16 of equipment.

17 A Yes.

18 Q So that upon receiving the money from the mining company,
19 it was earmarked for that purpose and the payment of Mr. Fena's
20 fee out of that account was a result of putting all the money
21 into that account for use in purchasing equipment.

22 A Yes.

23 Mr. Ryan: Okay. That is all.

24 (Witness excused)

25 ROBERT MATHIAS

1 Called as a witness, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Simonett:

5 Q Your name is Robert Mathias?

6 A That is correct.

7 Q Your age?

8 A 30.

9 Q And your present address?

10 A Office or home or either, 1000 Alworth Building, Duluth.

11 Q You are a lawyer, Mr. Mathias?

12 A That is correct.

13 Q And you were admitted to the bar when?

14 A In October, 1966.

15 Q And your first appointment after that?

16 A Well, I came from Northwestern Bank in Minneapolis to
17 Hibbing and began to practice with Jack Fena.

18 Q And do you recall when you were appointed as the
19 assistant public defender?

20 A Well, the actual date I am not sure about. I do know
21 that when I found out it was finalized, it was somewhere around
22 Christmas of 1966.

23 Q You had then been with Mr. Fena's firm for two months
24 or so?

25 A Yes, that is approximately correct.

1 Q Now, did you make application for the position of
2 assistant public defender?

3 A Do you mean in terms of a written application?

4 Q Yes.

5 A No, I never made any written application.

6 Q Was that vacancy created because Mr. Mulvahill had
7 resigned?

8 A That is correct.

9 Q In what way did you make application, if it wasn't in
10 writing?

11 A I don't know that I ever really made any formal applica-
12 tion for the job, as I recall it. You want me to tell what I
13 recall about that?

14 Q Would you please.

15 A Sure. The first word that I had that the public defender's
16 job was going to be open was that either Peter Mulvahill or
17 Judge Chanak said something to the effect that the job was going
18 to be open because Pete Mulvahill was going to associate with
19 Dave Naughtin, who is county attorney, and obviously they
20 couldn't be together. At that time, I believe, as I recall it -
21 I think Judge Chanak said to me, "Gee", he said, "The job is
22 going to be open, but I don't think that they can consider you
23 because you haven't had enough experience", something to that
24 effect. After that I didn't do anything about it except the
25 next thing I heard about it was that Pete Mulvahill indicated to

1 me that he was going to recommend me for the job. I think after
2 that - I am sure that he sent a letter to Judge Chanak, and I
3 think I got a carbon copy of it, I think, and in that letter he
4 indicated to Judge Chanak as far as he was concerned I would be
5 adequate for the job. Shortly after that I talked to Howard
6 Seigel, who was and still is the assistant public defender over
7 in Eveleth, about the job and I think the next thing we did was
8 that Mr. Pena and myself went to Duluth one day in the afternoon
9 for the purpose of seeing some of the district judges. We
10 wanted to see Mark Nolan, because I think we called him first
11 and we had arranged to see Mark Nolan - Judge Nolan. When we
12 got down there, Judge Nolan was gone from the chambers and so we
13 were unable to see him. As a matter of fact, I never did see
14 Judge Nolan before he died even. In any event, we did see
15 Judge Underhill in his chambers, which was the only time I had
16 met Judge Underhill and still is. After that, we tried to find
17 Mark Nolan. We couldn't get hold of him. After that we went
18 over to Judge Odden's home, which was the first time I met
19 Judge Odden. After that, nothing further was done as far as I
20 can say except that when I was home, I think it was during
21 right around Christmas - I know I was in Austin, and I got a
22 call from Mr. Pena and he told me that from what he knew the
23 job was mine. Shortly after that - well, I can't really say
24 that. Shortly after that, I was supposed to be formally
25 appointed by the State Judicial Committee or some such group,

1 and as a matter of fact I never did get a certificate saying I
2 was public defender; but, in any event, I undertook the duties
3 some time the latter part of December of 1966.

4 Q At the time you were appointed or assumed these duties,
5 what trial experience had you had?

6 A When I started the job as such?

7 Q Yes.

8 A Well, I had actually tried one civil case in Grand Rapids,
9 and that was all. I had never tried anything of a criminal
10 nature at all.

11 Q Then right after the first of the year - that would have
12 been 1967.

13 A That is correct.

14 Q I suppose Mr. Fena then went down to St. Paul for the
15 legislative session.

16 A Yes, he did. I don't remember just exactly when he went,
17 although I think it was sometime in January, if I remember
18 correctly.

19 Q Mr. Mathias, during the past summer or so, has Mr. Edward
20 Matonich of the Bischoff firm talked to you about this Town of
21 Stuntz case?

22 A Has he ever talked to me about the Town of Stuntz case,
23 yes. Yes, he has. I can't remember exactly where it was or
24 when it was or what it was in reference to. I do recall talking
25 to him about it.

1 Q Do you recall any of that conversation?

2 A It seems to me, as I recall - this may not be absolutely
3 accurate - but it seems to me the question was put to me,
4 something to the effect of what do you know about the Town of
5 Stuntz case, and I think I replied to him that I didn't know
6 much about it; and I think I told him that I didn't do any
7 work on it, and I think that is really basically all I can
8 recall telling him.

9 Q Had you seen any work done on it?

10 A Are you referring to the time I was with Mr. Fena?

11 Q Yes.

12 A Okay. The only thing that I know from my own personal
13 knowledge that was done on the case was one time I was sent to
14 St. Paul by Mr. Fena to attend a hearing of some kind, and I
15 think - I am not sure if it was before the tax court or not -
16 but I know my purpose in going to the cities was to request a
17 hearing - I believe on the Mahoning #2. I did attend a
18 meeting and when they brought up this particular case, I did
19 say that on behalf of the Town of Stuntz I did request a hearing,
20 and that was about all my involvement in it. Other than that
21 fact, I never personally worked on the case at all, and I didn't
22 do any research on it. As a matter of fact, I know nothing
23 about it.

24 Q It was not your file?

25 A It was not my file.

1 Q You are here because we subpoenaed you?

2 A That is correct.

3 Mr. Simonett: That is all I have.

4 CROSS EXAMINATION

5 By Mr. Ryan:

6 Q Mr. Mathias, will you tell us whether at any time that
7 you were with Mr. Fena in Duluth on that day with Judge Underhill
8 and again at Judge Odden's home whether or not Mr. Fena said
9 anything to either of those two judges about asking them to
10 see or do what they could to have you appointed as assistant
11 public defender?

12 A I can't recall. What I am trying to say is I couldn't
13 tell you now just exactly what was said, and I can't recall now
14 if anything was said. I can only assume - well, I can state it
15 better than that. I think what Mr. Fena did when we went done
16 there, if I recall correctly, was that we talked to Judge Under-
17 hill and it was made known to him I was interested in the
18 public defender's job, and as I recall, what Mr. Fena told him
19 was merely what my background was. Now, other than that, I
20 can't recall anything that was said.

21 Q As far as the mining case for the Town of Stuntz, there
22 were probably a lot of other files in the office that you didn't
23 know the course of work that was being done on them. Is that
24 fair to say?

25 A That is correct.

1 Q Is it fair to say this is true in any two-man law office
2 or any office where there are more than two men?

3 A I would say that is correct also.

4 Q You don't know the extent of work involved in the case
5 Mr. Fena happened to have with the Town of Stunta?

6 A I have never seen the file. No, I don't.

7 Q You never told anyone, did you, that there was not - or
8 that there was very little work involved in that case?

9 A If I didn't see the file, I couldn't say what work was
10 involved. I do remember saying, and I can say now, that I
11 didn't see any work done on the file from my own observation,
12 and that is what I was referring to.

13 Q And that could be true of many files within the office.

14 A That is right.

15 Mr. Ryan: That is all.

16 REDIRECT EXAMINATION

17 By Mr. Simonett:

18 Q Mr. Mathias, you held this position as assistant public
19 defender about a year.

20 A Yes, it was just roughly a year. That is correct.

21 Q And you left Hibbing for Duluth about what day?

22 A I started, I think, working in Duluth around the 11th of
23 December of 1967.

24 Q And at or about that time, did you give a letter of
25 recommendation as to possible successors or applicants who might

1 be interested in the post?

2 A Yes, I did.

3 Q I think there is a reference in the record already as to
4 such a letter you wrote and in your recommendations you
5 mentioned what names?

6 A Well, to give a little background here, when I made it
7 known to the senior judge here, who was Judge Chanak, that I
8 was going to leave, I was asked, as Pete Mulvahill had been, to
9 name a successor or at least recommend one; and I believe I
10 sent Judge Chanak a letter some time in December I believe it
11 was, and I think I told him something to the effect that I
12 hadn't really been here long enough to form any opinion strongly
13 one way or another, that on the basis of what I knew that I
14 would recommend either Barney Bischoff or Tom Wangenstein.

15 Q At that time did you know of Mr. Randall then being
16 with the Pena firm?

17 A I think I knew that Mr. Randall was with Mr. Pena's
18 firm. However, I did not know Mr. Randall personally at that
19 time.

20 Q Had Mr. Randall or anyone for him contacted you about
21 his applying for the job?

22 A No.

23 Q You weren't aware he might even be interested?

24 A No.

25 Mr. Simonett: Thank you. That is all I have.

1 (Witness excused)

2 EDWARD MATONICH

3 Called as a witness, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Simonett:

7 Q Mr. Matonich, you are a lawyer?

8 A Yes, sir.

9 Q And with the firm of which Mr. Bischoff is a partner?

10 A Yes, sir.

11 Q And practicing law in Hibbing since when?

12 A May of this year.

13 Q Now, during this summer, you were aware, I suppose, that
14 Mr. Bischoff was going to run for state representative?

15 A Yes, sir.

16 Q And you have listened here. Have you been here while
17 Mr. Mathias has testified?

18 A I have.

19 Q And did you have some talks with him as one young
20 lawyer to another young lawyer?

21 A Yes, sir.

22 Q Did you discuss such matters as the public examiner -
23 public defender position?

24 A Yes, we did.

25 Q All right. Later did Mr. Bischoff ask you to make any

1 investigation with relation to Mr. Fena's retainer by the Town
2 of Stuntz?

3 A He did.

4 Q And did you do that?

5 A Yes, I did. I might qualify that. I think at the outset
6 we had an understanding I was not to become involved, due to
7 the fact I was new in the area.

8 Mr. Ryan: This is objected to, your Honor, as immaterial.

9 Q (Mr. Simonett) Let me get this this way. When did he
10 first request that you do some of this checking?

11 A About a month before the election on November 5th.

12 Q All right. And your reaction then?

13 A Was sure I will do it. I don't particularly have the
14 time but I will be glad to go over and research it.

15 Q And I take it you are not the politician in your office?

16 A No, sir.

17 Q Then later did Mr. Bischoff make another request?

18 A Yes. At that time he asked me whether or not I had been
19 over to the Town of Stuntz, and I informed him I had; and he
20 said, "What did you learn?". I said I had learned that -

21 Q You said you had been?

22 A I had been and that I had learned that Mr. Fena was in
23 fact retained by the Town of Stuntz, and that at that time I
24 felt he was making three hundred fifty dollars a month and other
25 fringe benefits. He asked me if I had such notes or anything I

1 could document, and I said no; and he said, "Well, would you
2 mind going back and get this thing down on paper?", and I said
3 I would.

4 (Yellow legal sheet of paper marked Contestee's Exhibit
5 12 for identification.)

6 Q Then do I understand Mr. Bischoff asked you to double
7 check your findings?

8 A Right.

9 Q So you went back a second time?

10 A Right.

11 Q And you talked to Mrs. Kennedy?

12 A I did.

13 Q Checked the records and books?

14 A I did.

15 Q Did you also make some notes of your own?

16 A I did.

17 Q I am going to show you a yellow legal sheet marked
18 Contestee's Exhibit 12. Can you identify that?

19 A Yes. These are the notes I made after my visit at the
20 Town of Stuntz.

21 Q Would you be able to tell us about what day?

22 A This would have been about the 30th or 31st of November.

23 Q November?

24 A Excuse me. October.

25 Q October. Well, I should ask this, was it before or after

1 the radio talk?

2 A Just prior to that, two or three days.

3 Q Because I think that was given October 31st.

4 A This was either the day before or two days before.

5 Mr. Simonett: We will offer it in evidence.

6 Mr. Ryan: Your Honor, I object to Contestee's Exhibit 12
7 on the ground it is not the best evidence and it is obviously
8 self-serving.

9 Mr. Simonett: Well, I don't care.

10 Mr. Ryan: In that regard, may I ask one question for
11 purposes of maybe enlarging upon the objection?

12 The Court: Proceed.

13 Q (Mr. Ryan) Mr. Matonich, one statement in the exhibit -
14 first of all, let me ask you from whom did you get your
15 information?

16 A Mrs. Kennedy and the record.

17 Mr. Simonett: And the who?

18 Witness: The record at the Town of Stuntz, the minutes
19 and the annual reports for 1966 and 1967.

20 Q (Mr. Ryan) And you didn't bother to show on these notes
21 what any of these fees were for.

22 A They aren't listed as such.

23 Q No, but they were apparent from the records. Right?
24 You could have obtained the information as to what the fee was
25 for from the record.

1 A No.

2 Mr. Ryan: Your Honor, same objection. Obviously it is
3 self-serving document.

4 Mr. Simonett: May it please the court, we are offering
5 the exhibit, not for the truth of its contents, but as evidence
6 of the investigation made by this particular witness. I suppose
7 also to refresh his memory from it.

8 The Court: I suppose there is the charge that I gathered
9 from the testimony up to this point that Mr. Bischoff has made
10 statements without making some reasonable inquiry as to what
11 the facts were, and this would be one of the things he relied
12 on, so I suppose the legislature would say this is or is not
13 enough to conform to be relied upon, but that is at least some-
14 thing he used, whether this is the best evidence or not, so I
15 think it should be received, and it will be received.

16 Q (Mr. Simonett) Mr. Ryan asked you whether or not you
17 were able, as I understood his question, whether or not you
18 were able to ascertain the legal fees paid, and your answer
19 was no. Is that right?

20 A Yes.

21 Q Could you explain that answer?

22 A Yes. In the annual reports for 1966 to 1967, there are
23 catagories distinctly labeled attorney fees. Under this, it
24 says attorney's salary, and for the year '66, I believe it was
25 an amount equaling three hundred twenty or three hundred thirty

1 dollars per month. For the year 1967, it was in an amount
2 equaling, plus litigation fees; and for the next year, it was
3 three hundred fifty dollars per month plus litigation fees.
4 This was all there was. It wasn't broken down per case.

5 Q Well, had you reason to believe though, however, there
6 was an additional fee of seventy-five hundred dollars?

7 A Yes. Mr. Mathias had informed me that in 1967 the
8 Fena law firm had received seventy-five hundred dollars for one
9 case that it had.

10 Q All right. Now, have you since discovered why it was you
11 weren't able to find the fee? You know it was there and paid,
12 but what was the reason?

13 A Because it was not in the attorney and litigation fees
14 column, but rather in the equipment fund column; and I didn't
15 have any reason to check the equipment fund for the legal fee.

16 Q Okay. Did you check further then as to fees?

17 A Yes. I came back to the office and I told Barney that I
18 had been told that there was a seventy-five hundred dollar fee
19 paid in 1967 and that it did not appear in the annual report
20 under attorney fees or litigation fees; and he said, "Why don't
21 you check it out with the assessor and the board of supervisors
22 of the Town of Stuntz". I called the assessor, and he said he
23 was sure there was a large fee paid Mr. Fena during 1967. That
24 was as far as he would go. I then called Mr. Grekela, one of
25 the supervisors of the Town of Stuntz, and asked him if in fact

1 a fee of seventy-five hundred dollars had been paid to Mr. Fena
2 in the year 1967, at which time I was advised that such a fee
3 had been paid and that Mr. Grekela had issued the draft. He
4 told me he issued the draft to Mr. Fena when Mr. Fena informed
5 him that the case -

6 Mr. Ryan: This is objected to as hearsay, your Honor.

7 Mr. Simonett: It goes to the state of his knowledge,
8 not for the truth of it.

9 Mr. Ryan: I think we should produce Mr. Grekela. I
10 don't think it is proper for him to testify, your Honor, as to
11 conversation with someone who is not a party.

12 Mr. Simonett: It seems to be one of the issues here.
13 One of the issues here is the good faith of the contestee, and
14 what he was told and how he arrived and how he got at this
15 point, not the truth of it. If he sends out an investigator,
16 who in turn talks to a particular source, where it is relevant
17 at this point is bearing on the contestee's state of mind.

18 The Court: Who is Mr. Grekela?

19 Witness: Supervisor for the Town of Stuntz.

20 The Court: I suppose it helps to show what it was that
21 Mr. Bischoff relied upon, as whether it is hearsay or what it is,
22 that at least is it.

23 Mr. Ryan: Your Honor, I think Mr. Grekela has been here
24 under subpoena, but has not been called as a witness.

25 Mr. Simonett: The point is, Mr. Ryan, that what

1 Mr. Bischoff relied on was not what Mr. Grekela said, but on
2 what Mr. Matonich, his investigator, said that Mr. Grekela said.

3 Mr. Ryan: And that is hearsay, Mr. Simonett.

4 Mr. Simonett: It is an exception to the hearsay rule.

5 The Court: Well, it is an exception to the hearsay rule
6 in a sense, but what was relied upon was hearsay, and yet it
7 is what Mr. Bischoff did rely upon, or one of the factors that
8 were considered. I would think that whatever it was is some-
9 thing that the legislative body should be able to consider.

10 Mr. Ryan: Your Honor, I believe the contestee has had
11 Mr. Grekela under subpoena, and it seems to me that is the best
12 evidence.

13 The Court: Well, that may be, but I do think as far as
14 this testimony is concerned that I should overrule your objection.

15 Q (Mr. Simonett) Would you complete your answer please.

16 A Yes. Mr. Grekela informed me he had issued a check for
17 seventy-five hundred dollars. I asked him if there had been
18 some contingency arrangement or agreement between the parties,
19 Mr. Fena and the Town of Stuntz. He said he wasn't aware of
20 any. I asked him if it went to court, and he said to his
21 knowledge it hadn't, that it had been decided out of court
22 because of the county, which also had an issue and a claim
23 against the same mining company, decided to back out and not
24 pursue the matter. Mr. Fena had negotiated some sort of
25 settlement wherein the Town of Stuntz was to receive a grader.

1 or equivalent of the value of the grader, and this is what he
2 based his fee on. I think he told Mr. Grekela that he could have
3 charged ten thousand dollars, but he settled for seventy-five
4 hundred.

5 Q And did you relate this information then to Mr. Bischoff?

6 A I did.

7 Mr. Simonett: That is all I have.

8 CROSS EXAMINATION

9 By Mr. Ryan:

10 Q What records did you examine, Mr. Matonich?

11 A The minutes for 1966 and 1967 of the Town of Stuntz and
12 the annual records, the receipts and disbursements for those
13 years respectively.

14 Q Did you see Mrs. Kennedy on both occasions?

15 A Yes, sir.

16 Q Where was this, at her home?

17 A At the clerk's office in the Town of Stuntz hall.

18 Q How long did you spend with her the first time you were
19 there?

20 A Well, I came in, introduced myself and asked to see the
21 minutes and the annual report. She in turn handed these over to
22 me. I took them into the adjoining room, perused them, and
23 brought them back to her and left.

24 Q About how much time?

25 A Oh, it is quite impossible for me to guess within

1 fifteen minutes, but I would say anywhere from forty-five
2 minutes to an hour.

3 Q Then you went back again?

4 A Yes.

5 Q And how long were you there then?

6 A An hour - two - hour and a half. I might point out that -

7 Q There is no question pending, Mr. Matonich.

8 Mr. Simonett: Can he answer?

9 Mr. Ryan: I believe he answered the question.

10 Q (Mr. Ryan) You have been in this law firm since May.

11 A Yes, sir.

12 Q And I believe you testified that since the first of what,
13 October, you have spent a considerable amount of time assisting
14 Mr. Bischoff in his campaign and making investigations in
15 connection therewith.

16 A If three or four hours is a considerable amount of time,
17 then I have.

18 Q Is that all of the time that you have spent in behalf
19 of Mr. Bischoff?

20 A As far as investigation is concerned?

21 Q Yes.

22 A Yes.

23 Q All right. Now, what was it, three hours or four hours?

24 A In between. As I pointed out, it would be difficult to
25 ascertain the exact amount of time.

1 Q Well, closer to three or closer to four?

2 A Well, let's call it three and a half'.

3 Mr. Simonett: I will settle for that.

4 Q (Mr. Ryan) What all did your investigation entail
5 besides your two trips to the Town of Stuntz?

6 A I don't think - I know I called the Housing Development
7 and asked whether or not Mr. Fena had been retained by them
8 during 1966 or 1967.

9 Q And to whom did you talk there?

10 A I don't remember.

11 Q How long did you talk to them?

12 A Just a few minutes.

13 Q Fifteen minutes?

14 A Approximately.

15 Q And you talked to Mr. Mathias?

16 A This was in a purely social light.

17 Q How many lawyers are in your office, Mr. Matonich?

18 A Three.

19 Q It is fair to say, isn't it, if Mr. Bischoff is seated
20 in the house that you stand as the third man in that office to
21 directly benefit by it?

22 A After all -

23 Mr. Simonett: Hold it.

24 Mr. Ryan: I think it is a fair question.

25 The Court: I think it is a fair question.

1 Mr. Simonett: I was going to say I don't think it is
2 a fair question, but I am not going to object.

3 Witness: No.

4 Q (Mr. Ryan) You don't stand to benefit by it?

5 A I don't think so.

6 Mr. Ryan: Okay. That is all.

7 REDIRECT EXAMINATION

8 By Mr. Simonett:

9 Q Why not?

10 A I beg your pardon?

11 Q Why not?

12 A Well, I might have been facetious, but I am going to be
13 carrying a bigger load of the office. Did you mean benefit
14 directly?

15 Q I am not sure in what sense the question was asked.

16 Mr. Ryan: The question that is pending is from
17 Mr. Simonett, not me.

18 Q (Mr. Simonett) Were you going to clarify a point
19 during Mr. Ryan's cross examination and did not have an
20 opportunity to do so?

21 A Yes, but I don't think it was significant enough to
22 bring up.

23 Mr. Simonett: Thank you. That is all I have.

24 (Witness excused)

25 BERNARD J. BISCHOFF

1 Recalled as a witness, having been previously sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Simonett:

5 Q Mr. Bischoff, you have already been on the witness
6 stand and have been asked parts of your story, and only parts
7 and perhaps not in the order we would like to present it. First
8 of all, just to recapitulate, was this your first try at
9 political office running for Representative of the 63rd District
10 this fall?

11 A Yes, it is.

12 Q Had you run for any other kind of political office
13 before that?

14 A Outside of party office, no.

15 Q Your political background, I think you told us, you had
16 been active in the DFL Party here in the Hibbing community.

17 A Yes, I am.

18 Q That was since you returned here in 1961.

19 A 1963.

20 Q 1963, and you are married and have children?

21 A Yes, I am.

22 Q How many?

23 A Seven.

24 Q In the 63rd District, there are two seats to be filled.

25 A Yes, there are.

1 Q And in the primary, how many candidates were there?

2 A There were a total of five candidates.

3 Q The two incumbents?

4 A John Spanish, Gordy Noyes and myself.

5 Q Now, who had the DFL Party endorsement?

6 A I was endorsed. I and Loren Rutter were both endorsed
7 by the DFL.

8 Q Now, we already have a map of the district in evidence,
9 St. Louis County, and then outlining the 63rd District.

10 (Map of St. Louis County marked Contestee's Exhibit 13
11 for identification.)

12 Q Showing you Contestee's Exhibit 13, is that also a
13 St. Louis County map in which you have drawn out the outlines
14 of the district?

15 A Yes. Actually the outlines of the precincts within
16 the district.

17 Q All right. Showing you a map which has been marked
18 Contestee's Exhibit 13, you outlined in blue the various
19 precincts in the district.

20 A Yes, I did.

21 Q And what have you done there in red - numbers within
22 red circles?

23 A The red was the total vote cast in that particular
24 precinct in the 1964 election, which was the last presidential
25 year election prior to 1968.

1 Q I see, and in some of these precincts you have other
2 numbers in blue.

3 A Some of the unorganized townships, I just have a section
4 and range number.

5 Q And when had you made this outline of the map?

6 A I believe I made this shortly before the primary in
7 connection with a vote analysis I did on the primary.

8 Mr. Simonett: We will offer Exhibit 13.

9 Mr. Ryan: No objection.

10 The Court: Received.

11 Q (Mr. Simonett) Now, I wonder if you could very briefly
12 summarize just what your campaign strategy was for the primary,
13 first in relation to the kind of district you have here.

14 A Yes. If I could explain briefly, the 63rd is an
15 extremely long distance north and south, runs from the Canadian
16 border down to the Carlton County line. Because of this,
17 especially a candidate running the first time, you have an
18 extreme name identification problem. Now, what I tried to do
19 prior to the primary is neutralize the population area, which
20 is the area across the Iron Range and more or less the center
21 of the district, and I more or less let the outlying areas go,
22 with the exception of a couple days spent up at Cook and at
23 Crane Lake and at Floodwood, but basically I let that area go.
24 I ran practically no newspaper or radio campaign. I will
25 explain that a little further. But I concentrated primarily

1 on a door-to-door campaign right from Hibbing to the outskirts
2 of Virginia; and I covered roughly ninety percent of the
3 houses in that area.

4 Q You mean door-to-door?

5 A Going door-to-door; and in connection with that campaign,
6 I had a car-top sign, oh, about two feet by six feet long, and
7 I also had played on the Barney B name to help the name
8 identification problem. I had Barney B for R E P bumper stickers
9 and on the car-top sign we had Barney B in blue and the rest
10 of the sign in red, and then we tried to tie it together right
11 at the end of the primary with the only radio spot we ran was
12 a thirty second song, Barney B for R E P - it was a kind of silly
13 ditty - to try to help this name identification problem; but
14 basically the campaign was, I would say, a ninety percent name
15 identification campaign through the - or ninety percent personal
16 contact campaign door-to-door through the Range area.

17 Q When did you start that campaign of yours for the primary?

18 A I started that campaign immediately after making my
19 announcement, which I recall was on June 19th of this year, and
20 which was also the date I was endorsed by the DFL Party. I
21 went on television that day.

22 Q The primary then was on September 10, 1968, and I
23 believe the canvassing results are in evidence.

24 A Yes.

25 Q And what was your evaluation then of your campaign at

1 that point from the primary results?

2 A Well, first of all, in the Town of Stuntz, John Spanish
3 and myself - well, John had about 87 votes more than me, but we
4 were both roughly around 2800. He had 2870 and I had 2780,
5 roughly. Jack Fena and Loren Rutter, the two incumbents, were
6 at 2040 and 1900 some. In other words, both of us were
7 approximately 750 votes ahead of the incumbents, with a spread
8 of less than 100 votes between Spanish and myself and just over
9 100 between the two incumbents.

10 Q All right. Then following the primary, your campaign
11 then through September and October up to election day, was there
12 any change?

13 A Well, yes. After that phase, - if I may interject. You
14 asked me for the total vote. I was just talking about Stuntz.
15 In the other towns on the Range, although some I ran fourth, I
16 was quite close. Like in Chisholm, I was 100 votes behind
17 Jack Fena; and Mountain Iron and Nichols Township, roughly,
18 well, less than 100 votes in each, so although I lost some
19 ground in these towns, I still had a plurality of four or five
20 hundred votes over Mr. Fena in the area that I had gone door-to-
21 door; but in the outlying area I had not covered, except to
22 Cook and Floodwood - well, even Floodwood I got hammered - but
23 most of the outlying areas I was beat very badly, but, see,
24 this is a much smaller percent of the total population and that
25 is why I concentrated so hard on the Range area here in the

1 primary. Now, after, I went, well, to a multi-phase campaign
2 in the outlying area. I started using - well, posting signs.
3 We posted a sixteen inch sign, about fifteen hundred of them, to
4 help with the name identification problem. We also put together
5 about eighty 2 x 4 signs, red, white and blue, with just a big
6 red check and Barney Bischoff name and we posted them mostly
7 along the roads and also some in the population areas, and then
8 in addition to that I started developing a newspaper ad campaign,
9 mostly small spots, two column by two inch. In fact, with the
10 exception of two ads run during the campaign, none of the ads
11 contracted for were over twelve column inches, which would be
12 3 x 4, but I was playing basically on three or four main issues;
13 one, the South American trip; another one was the legislative
14 salary entrenching bill which had been passed; and another one
15 was the fact that I had the DFL endorsement and calling on -
16 focusing on the fact the party had denied the endorsement to
17 Mr. Fena; and the next, and this is one of the issues I hit
18 the hardest, was that neither of the incumbents carried their
19 home territory, and this is part of the psychology of the thing,
20 trying to sell the people in the outlying area, well, if a guy
21 can't carry his own territory, there must be something wrong,
22 see, and this is what you are playing on.

23 Q Did you find any confusion among the voters as to the
24 DFL House Caucus endorsement; that you had the DFL Party
25 endorsement?

1 A Yes, several people asked me how come Mr. Fena put in
2 about the party endorsement when he wasn't endorsed.

3 Q Now, there was also the issue of debate raised. Is that
4 right?

5 A Yes, this was raised.

6 Q And who was it that requested the debate?

7 A Well, Mr. Fena requested it, and I answered and this was
8 part of the same campaign. I said, - well, I came back with the
9 answer, in effect, that what is there to debate. We are all
10 DFLers. The only issue in the campaign is your record, and the
11 voters rejected it, but I used it to tie in with my issues
12 campaign.

13 Q Now, during all this, I guess you had an addition to the
14 family.

15 A Yes. We had our second son in October after five girls.

16 Q Did you become ill about this time?

17 A Shortly after, right, I had a strep throat. Well, I
18 was sick - very sick.

19 Q The doctor suggest you go to the hospital?

20 A Yes, he did.

21 Q Did you?

22 A Did I go?

23 Q Yes.

24 A No.

25 Q This leads us up to, I suppose, about the last ten days

1 or so of the campaign.

2 The Court: Before we get to that, I see it is closing
3 time. We will recess until nine-thirty tomorrow morning.

4 (Thereupon an adjournment was had until nine-thirty A.M.,
5 Wednesday, December 11, 1968, at which time proceedings were
6 had as follows:)

7 Q (Mr. Simonett) My recollection, Mr. Bischoff, is that
8 when we recessed yesterday afternoon, you had just completed
9 telling us about your strep throat infection and your illness
10 in early October. Did that have any effect on the timing of
11 your campaign?

12 A Yes. The campaign already scheduled, I laid out, I fell
13 behind on somewhat.

14 Q In the primary - I don't believe I asked you this - how
15 did your total vote relate to Mr. Fena's total vote?

16 A Well, actually there were four of them. John Spanish
17 was about - could I have the sheets please? There were five
18 candidates actually, but John Spanish had 5,370, and then
19 Loren Rutter was second with 4,774, Jack was third with 4,748,
20 and I was fourth with 4,591. In other words, the three of us
21 were bunched within 180 votes of each other.

22 Q Now, you had the district DFL Party endorsement. The
23 campaign itself - that is your campaign committee, consisted
24 generally of what kind of group?

25 A Well, mostly personal friends and acquaintances. It was

1 not a party group, if that is what you mean.

2 (Letter marked Contestee's Exhibit 14 for identification.)

3 Q Showing you what has been marked Contestee's Exhibit 14,
4 can you identify that for us?

5 A Yes, I can.

6 Q What is it?

7 A This is a letter - well, a mass mailing I sent to a list
8 of some twelve or thirteen hundred acquaintances and friends
9 and people that I knew or had met or thought might be interested
10 in supporting me in the campaign. I should explain the back-
11 ground on this. I was told by the party that I would not
12 receive any financial support or otherwise, so briefly, this is
13 a request for support and financial help.

14 Mr. Simonett: We will offer Exhibit 14.

15 Witness: This letter incidentally was mailed shortly
16 after I filed, and I had a tremendous response to it.

17 Mr. Ryan: No objection.

18 The Court: Received.

19 (Map of the Town of Stuntz marked Contestee's Exhibit 15
20 for identification.)

21 Q (Mr. Simonett) Mr. Bischoff, the Town of Stuntz has
22 been mentioned here quite often by both you and Mr. Fena, and
23 showing you Contestee's Exhibit 15, can you identify that for us.

24 A Yes, I can. This is a map showing the geographical
25 area of the Town of Stuntz. I should explain that the Village of

1 Hibbing is included in the Town of Stuntz. It consists of about
2 sixteen or eighteen voting precincts. There are a total of 25
3 Stuntz precincts in all. In other words, we have the Hibbing
4 Stuntz and the outlying Stuntz. This map here is part of the
5 vote analysis I did immediately after the primary campaign.

6 Q The map again shows circles with numbers in them written
7 in red pencil. Was that done by you?

8 A No. This numbering on this one was done by my secretary.
9 I gave her the figures though.

10 Q And what is the significance of those figures?

11 A These figures again are the 1964 total vote cast in each
12 of these precincts.

13 Q And as far as these 24 precincts shown -

14 A 25.

15 Q Excuse me. -- in the Town of Stuntz as shown in Exhibit
16 15, in the primary how did your vote compare with that of
17 Mr. Fena's?

18 A In this area, I was approximately 750 votes - I can give
19 it more accurately if you want. 741 votes ahead of Mr. Fena.

20 Mr. Simonett: We will offer Exhibit 15.

21 Mr. Ryan: What is in the red circles, Mr. Bischoff?

22 Witness: Those are the total votes cast in that precinct
23 in the 1964 election. What I was doing was using that as a yard
24 stick to determine my further efforts in the campaign really to
25 project the anticipated vote.

1 Mr. Ryan: No objection.

2 The Court: Received.

3 Q (Mr. Simonett) When you were on the stand before you
4 mentioned, I believe, that you were going to have a series of
5 radio talks. Do you recall that testimony?

6 A Yes.

7 Q Was that to be in the last week prior to the election?

8 A Well, if I might backtrack, I could outline this
9 campaign as I laid it out at that stage.

10 Q All right. Right at that stage.

11 A What I did, as I explained, I analyzed the vote in all
12 the precincts in the district. I took my percent of the total
13 vote cast for the four that had made the primary election and
14 projected an anticipated vote in each one of these precincts,
15 and then I decided to concentrate my campaign in the areas I
16 hadn't worked before and was behind in, so I had a multi-phase
17 campaign in the last weeks there, particularly, for example, in
18 Balkan Township, Britt Township and Nichols. I went back and
19 completed my door-to-door campaign in these areas that I had not,
20 because they are fairly concentrated areas, I had missed. I
21 ran out of time before the primary. So I spent, oh, probably
22 two weeks going back and digging out these areas. Then I
23 developed this name identification campaign I started to talk
24 about in the outlying areas, particularly with the signs, and
25 again using the total votes in these precincts. I set up one

1 number for how many signs to put up in each precinct and also
2 tried to figure - I knew I couldn't possibly stop at every farm,
3 so I set up a formula in the outlying areas and tried to hit
4 one out of every five people and tried to get them talking; and
5 now during this phase, I wasn't really concentrating on the
6 issues as much. It was personal contact type of campaign that
7 I am talking about. I think you can get a rough idea of what
8 type of campaign, I passed out fifteen thousand cards in the
9 primary stage and about four thousand five hundred after the
10 primary, so I was concluding the door-to-door type of campaign.
11 Then we went in the same identification. Besides the signs,
12 we went to small ads in the newspapers and worked on the several
13 issues I told you about yesterday. Then our issues campaign was
14 outlined primarily in the last two weeks. What I intended to do -
15 the way we outlined it is to handle the issues in a brochure
16 and also in a series of radio talks on the Eveleth station. Now,
17 this was, as I explained, I got sick there. I had a bad strep
18 throat and was - well, I would say the first three weeks in
19 October I was very sick, but I did outline my talks during this
20 period and also the brochure; but as it happened, the brochure
21 was supposed to come out one - not the weekend before the
22 election, but the preceding weekend. Well, I didn't get it to
23 the printer until about Wednesday of that week and she couldn't
24 possibly get it out for that weekend and get it all mailed and
25 everything, so we ended up not getting that out until the end

1 of the following week. In the same way, the radio talks were
2 supposed to run from Monday through Friday. The subjects had
3 been picked and everything. We didn't get to the radio station
4 until either Friday or Saturday, which would be one full week
5 before the election, and at that time we reserved the time and
6 set up the promotes and also the schedule of the campaign talks.

7 Q Now, was it in this series of radio talks you just
8 described that appeared the talk which Mr. Pena contests?

9 A Yes.

10 (Five transcripts of radio talks marked Contestee's
11 Exhibits 16 through 20 respectively for identification.)

12 Q Now, showing you five transcripts, the first one is
13 marked Exhibit 16, Barney Bischoff - Talk #1, "Background
14 Information - Why I am Running"; Exhibit 17, Talk #2, "The
15 No. 1 Problem in State Government"; Exhibit 18, Talk #3, "The
16 Record of Mr. Jack Pena"; Exhibit 19, Talk #4, "On Gun Control
17 and Bounty Bill"; Contestee's Exhibit 20, Talk #5, "The
18 Voyageurs Park Issue". Have I identified those exhibits
19 correctly?

20 A Yes, that is fine.

21 Q And these are transcribed from your radio tapes?

22 A Yes.

23 Q Are these five minute talks?

24 A Actuslly, I think they were supposed to be five minutes.
25 Some of them ran a minute over.

1 Mr. Simonett: We will offer Exhibits 16 through 20.

2 Mr. Ryan: No objection.

3 The Court: Received.

4 Q (Mr. Simonett) Just so it is clear, did I understand you
5 had planned to start Talk #1 on Monday of the week preceding the
6 election?

7 A That is true.

8 Q And then following each day with one of the succeeding
9 numbered talks.

10 A Yes.

11 Q Instead, what happened?

12 A Well, I didn't begin until - or didn't make the arrange-
13 ments until Friday, and we had an agreement that if I couldn't
14 have a talk ready on Monday, we would start on Tuesday, and that
15 is the way it worked out. We were behind. See, I was still
16 working on getting the brochure out and everything.

17 Q Well, we will be coming back to that. So that the result
18 was Exhibit 18, the talk on Mr. Fena's record which was given
19 on Thursday, October 31, had originally been planned to have
20 been given on Wednesday, October 30.

21 A That is correct.

22 Q And these talks were to be given and were given on what
23 radio station?

24 A The entire series was only given on Eveleth.

25 Q And any particular reason for picking the Eveleth station?

1 A Well, yes; because it is much cheaper; and secondly, I
2 didn't feel - well, I didn't feel I needed any real radio
3 campaign in the Hibbing area because we had built up that type
4 of lead. This thing was directed more towards the other end of
5 the district and trying to get the name out as many times as we
6 could.

7 Q What do you mean, the other end of the district?

8 A Well, I am talking - the population area in the 63rd
9 runs from Hibbing to the outskirts of Virginia, which is right
10 near Eveleth, and that is where I was concentrating on, but the
11 rate is much cheaper on the Eveleth station.

12 Q In your experience, as far as getting people to listen
13 to the radio - those living in Hibbing - which would be better,
14 to give your campaign talk on the Hibbing radio station or
15 Eveleth?

16 A For Hibbing?

17 Q Yes.

18 A Oh, the Hibbing station. I might explain one reason what
19 I was doing with this radio thing is I wanted to handle these
20 issues that had been raised the most often during my campaign.

21 Q These were issues which had been called to your attention
22 by the voters in your door-to-door campaign?

23 A Yes, particularly the Voyageurs Park and Bounty Bill and
24 gun control. These, by no stretch of the imagination, are the
25 most important issues in the state government, but they are the

1 issues people were talking about.

2 Q Now, when did you write Talk #1, the background talk?

3 A That was written Tuesday morning, the day that it was
4 given.

5 Q And Talk #2?

6 A This was the case with each talk.

7 Q So, in other words, Talk 3, the one on Mr. Pena's record,
8 you actually sat down and started to write it out when?

9 A Well, I probably started it - well, I started to outline
10 these way back, but the actual writing, putting the talk
11 together, was done - I would start it the night before, finish
12 up that morning, and cut the tape around noon - between noon
13 and - between twelve and one o'clock, and then run it over to
14 get it there by two.

15 Q And it would then be broadcast on the Eveleth station at
16 what time?

17 A At 3:15 I believe was the time.

18 Q Did you have the same time each day for this series of
19 five talks?

20 A This was the idea, to start promoting it as a series and
21 keep the same time.

22 Q Did you use any method of alerting the radio audience
23 for the Eveleth station that this talk or these talks would be
24 coming on about 3:30?

25 A Yes. I bought a package from the radio station,

1 including seventy-five one minute talks so I allocated approxi-
2 mately ten of them to promoting each of these longer talks, and
3 those promotes are just a short announcement of the material we
4 intend to cover that day. Now, I had the song that I referred
5 to yesterday. Well, every other promo approximately would be
6 thirty seconds of song, thirty seconds of talk, and the next
7 one would be a full minute promo of talking.

8 Q Well then, for the talk given on Thursday, October 31st,
9 earlier during the day of Thursday, prior to 3:30 when it came
10 on, there would be from time to time a short announcement that
11 a talk would be given at 3:30.

12 A Well, the promo for that date would start Wednesday
13 after Wednesday's talk, so there would be several spots. Any
14 of the promos on Tuesday afternoon and Wednesday morning would
15 be for the Wednesday talk.

16 Q Would the promo call attention to what the subject matter
17 of the talk was going to be?

18 A Right.

19 Q So in this case, beginning on Wednesday afternoon after
20 Wednesday's talk, the radio began to announce you would be
21 talking on Mr. Pena's record at 3:30 on Thursday, the next day.

22 A That is true.

23 Q Now, do you remember, Mr. Bischoff, on Thursday after
24 you prepared Talk #3, how it got over to the Eveleth station?

25 A I am trying to remember which one of my uncle's - I

1 believe this was taken by my Uncle John.

2 Q He drove over to the station?

3 A That is right, in his truck.

4 Q Now, was it also on Thursday that you prepared that same
5 radio talk with slight modifications to appear in a newspaper ad?

6 A Yes, I did.

7 Q And when did you start working on that?

8 A Well, right after I sent the tape over. In fact, that is
9 why I didn't take the tape over myself.

10 Q This is an ad that you planned to put in what publication?

11 A Originally I had considered - now, I had no definite plan
12 to put that in, but I had considered the possibility of running
13 that ad a week earlier in the Manney Shopper, but I didn't have
14 the material.

15 Q But this is the ad then that again is in dispute on
16 Mr. Fena's record and the one that appeared in the Manney Shopper?

17 A Yes.

18 Q Was there any reason for picking the Manney Shopper other
19 than, say, other newspapers in the area?

20 A There are a couple of reasons. Again, it is cheaper.
21 The Hibbing paper is slightly more expensive, and then I probably
22 get a few more places with the Manney Shopper. It is just a
23 matter of economics.

24 Q And did this series of radio talks, including #3, tie
25 in any with the context of the debate issue Mr. Fena had been

1 raising for some weeks?

2 A Yes. Jack and I had a pretty interesting exchange,
3 actually. He called for a debate, and I answered in the way I
4 explained yesterday. Then he called for a debate again, and I
5 issued another press release or answer; and there was some
6 question whether or not it was going to be published, and
7 finally the only way it was agreed to publish it is if both my
8 answer and another release by Mr. Fena were printed together,
9 so I said fine. This was more or less the sixth step in an
10 exchange on the debate issue.

11 Q All right. Now, I think it appears that the radio talk -
12 we will call it Talk #3 - you also played it over some other
13 station.

14 A Yes, I did.

15 Q And when was that decision made?

16 A Well, actually I replayed two talks over - both Talk #2,
17 which is the biggest problem in state government, the conflict
18 of interest problem, and #3, the talk about Mr. Fena's record.
19 Both of those were played over. Talk #2 was played on Sunday
20 on both Hibbing and Eveleth and #3 was played on Monday on both
21 Hibbing and Eveleth.

22 Q Now, when your talk appeared on Thursday on the Eveleth
23 station, did you subsequently learn that Mr. Fena intended to
24 answer?

25 A Yes, I did.

1 Q And how did that come to your attention?

2 A At noon on Friday, I was at the Howard having lunch and
3 several people came up to me and told me that Mr. Fena is going
4 to answer you on the radio, and one fellow mentioned Eveleth
5 and another fellow mentioned it is going to be on Virginia.

6 Q The Howard is a cafe in Hibbing?

7 A That is where both of us eat lunch.

8 Q Then did you listen on Friday to his answer?

9 A I believe I listened to the Eveleth talk, and I believe
10 it was at 3:45. I haven't checked, but that is pretty close.

11 Q And do you know whether or not it also appeared on the
12 Virginia radio station?

13 A I know definitely the promos did. I don't believe I
14 heard the Virginia talk itself.

15 Q What do you mean by promos?

16 A Well, Jack on his talk had the same type of announcement
17 that he would be talking. This is how we learned of it in the
18 first place.

19 Q In other words, he was advertising on the radio he would
20 be answering your talk of the previous day.

21 A That is correct.

22 Q On Friday afternoon?

23 Mr. Ryan: Counsel, a couple of days ago you reminded me
24 quite politely that I might be leading. May I suggest the same
25 to you.

1 Mr. Simonett: All right.

2 Q (Mr. Simonett) I think I am going to go back to this
3 point, Mr. Bischoff, to Thursday morning, October 31st, when you
4 were sitting down to write your Talk #3. So I don't lead you,
5 where were you sitting?

6 A Where was I sitting? I believe I wrote it at my desk at
7 the office.

8 Q In your office. All right. And this was to be a talk
9 about Mr. Fena's record?

10 A Yes, it was.

11 Q And in which you raised various questions.

12 A Yes, I did.

13 Q And where generally had you obtained the information
14 along the lines developed in that talk?

15 A Again, let me by way of background - I had been organ-
16 izing my campaign for a period of a couple of years. I almost
17 ran against Mr. Fena in 1966.

18 Mr. Ryan: Your Honor, I object. The witness is going
19 beyond the question that was asked. This has been done
20 frequently.

21 The Court: Read the question again.

22 Q (Mr. Simonett) Well, let's not bother. What was your
23 background preparation for the talk?

24 A I had been gathering information over a period of a
25 couple of years.

1 Q Now, when you sat down to write Talk #3, one of the
2 subjects you dealt with was the public defender appointments.

3 A Yes, it is.

4 Q You had some general information on that, did you,
5 because you yourself had been an applicant?

6 A Right.

7 Q Showing you Contestee's Exhibit 2 which is in evidence -
8 it is a copy of a letter from Mr. Durfee to Judge Chanak dated
9 January 4, 1968, had you received a copy of that?

10 A Yes, I did.

11 Q And that copy was in your file Thursday morning when you
12 were writing your talk?

13 A Yes. Isn't that my copy?

14 Q I bet it is. We offered it. This would be your copy.

15 A I believe so.

16 Q Had you prior to that Thursday morning also talked to
17 Mr. Mathias?

18 A Correct. You mean about the public defender?

19 Q Yes.

20 A Yes, I did.

21 Q And Mr. Matonich of your office, your associate, also
22 talked with him.

23 A Yes.

24 Q You discussed this with your associate?

25 A Yes.

1 Q Did your file also mention an interview he had with you?

2 A Yes.

3 Q Prior to January 4, 1968, when he came to Hibbing to
4 interview the different candidates?

5 A Right.

6 Q Did you have that event in mind too when you wrote?

7 A Yes.

8 Q Was there anything about that event that you thought was
9 pertinent?

0 A Right. I had an appointment with Mr. Durfee. I don't
1 remember the exact time. I believe it was ten o'clock in the
2 morning. I got to the office - I had to stop some place and I
3 came to the office about a quarter to ten, and he had been there
4 already and he had gone over - he left word he had gone over to
5 Mr. Fena's office to talk to Jim Randall. He came back, not at
6 ten, but approximately - this again I am guessing - but it would
7 be approximately eleven o'clock or quarter to eleven. He talked
8 to me for about five minutes, and it was a very short interview.
9 The gist of it was he was sorry he couldn't hire both of us.

0 Q As of January, 1968, how many years had you been a
1 practicing lawyer?

2 A Well, I was admitted in 1959, but actually practicing law -
3 general practice only from 1963.

4 Q Then you sat down Thursday morning and you also wrote a
5 paragraph about the highway.

1 A Yes, sir.

2 Q Here again you stated in your talk and in your ad that
3 Mr. Pena and three colleagues were the owners of 13 forties near
4 the airport and Highway 37. Had you made an investigation to
5 determine the ownership of that property before you wrote that?

6 A Yes. Originally I checked this out in 1966 prior to the
7 time when I was thinking of running for office in 1966. This
8 was the first time I checked it out.

9 Q Did you obtain at that time a photocopy of the deed?

10 A No, I didn't; shortly thereafter though.

11 (Copy of Warranty Deed marked Contestee's Exhibit 21 for
12 identification.)

13 Q Showing you what has been marked Contestee's Exhibit 21,
14 can you identify that?

15 A Yes. This is a copy of a deed from Horace C. Rieke to
16 Walter J. Williams, Howard A. Reed, Joseph Chamernick and Jack
17 Pena.

18 Q Dated 7 July, 1965?

19 A Dated July 7, 1965, and filed in August of 1965.

20 Q And is that the land that you had in mind in the article
21 you wrote?

22 A Yes, it is.

23 Q And did you have this deed, Exhibit 21, in your possession
24 and in your office that Thursday when you wrote the article?

25 A Yes, for over a few years.

1 Mr. Simonett: We will offer Exhibit 21.

2 Mr. Ryan: No objection.

3 The Court: Received.

4 Q (Mr. Simonett) You had had the copy of this deed for
5 quite some time, Mr. Bischoff, showing Mr. Pena's ownership in
6 this land and for quite some time prior to when you sat down to
7 write this ad on October 31. Did you make any further check
8 before you wrote that ad to ascertain if the title still
9 remained as it had then?

10 A Yes. I don't remember the exact date, but there is
11 correspondence on it. I wrote to Consolidated Abstract Co.
12 shortly before I got to this stage of the campaign and asked
13 them to verify the fact that it is still owned by Mr. Pena and
14 the other three gentlemen, and I also called them the following
15 day, as I recall, and requested an immediate letter verifying
16 this information.

17 (Letter from Consolidated Abstract Co. marked Contestee's
18 Exhibit 22 for identification.)

19 Q Showing you what has been marked Contestee's Exhibit 22,
20 can you identify it for us.

21 A Yes. This is a letter I received from Consolidated
22 Abstract Co. confirming the telephone conversation, and it doesn't
23 mention the letter, but there is also a letter in the file.

24 Q All right. It is dated October 24, 1968.

25 A Yes, it is.

1 Q And it does mention it is confirming a phone conversation
2 of that same day you had with the company.

3 A Yes.

4 Mr. Simonett: We will offer Exhibit 22.

5 Mr. Ryan: No objection.

6 The Court: Received.

7 Q (Mr. Simonett) Well, is it based on that information
8 you then wrote in the ad, "Back in July 1965 Mr. Fena and three
9 of his friends purchased a total of 13 forties of land, about
10 520 acres, just south of the highway near the Chisholm-Hibbing
11 airport."?

12 A That is true.

13 Q Then you wrote, "It is interesting to note that at the
14 time the airport highway was being considered as a possible route
15 for the cross-range expressway, and Mr. Fena was then actually
16 involved in the project". What did you base that statement on?

17 A Again, I will have to outline this thing as best I can.
18 Back after the period of the taconite amendment, there was
19 considerable talk around about a cross-range expressway. Now,
20 at a meeting early in '65, - I don't recall the exact date -
21 but it was in Hibbing, the Spudville cutoff was proposed as a
22 possible route. Now, if you look, the main thing about the
23 cross-range expressway was it was supposed to be a quick, four-
24 lane quick to move traffic swiftly. Well, there was some
25 proposals even then to route the highway along 169, but if you

1 look at a map, this thing is not anything near a straight line.
2 This thing goes up north by Chisholm and then swings along the
3 Iron Range towns, so there was some thought they should do
4 something to have a straighter route. Well, as I recall, I
5 attended a number of highway meetings. I was on the Chamber of
6 Commerce and still am. I was not active on the highway committee,
7 but the Spudville route, because of the fact it would run south
8 of Chisholm, there was tremendous resistance in that particular
9 area. A route to the south would be more beneficial to Hibbing.
10 This is the general feeling the merchants had. There was con-
11 siderable discussion about the problem in getting the Spudville
12 route approved because of the constitutional limitation on high-
13 ways and that it is hard to add a new highway to the system;
14 so my understanding and what I heard many times is that the two
15 real choices would be between 37 and 169, one route or the other.
16 Again, now Mr. Fena has testified that he has supported Highway
17 169 right along. This is not my recollection. I can't swear to
18 it, but I will say this, that at any of the meetings I was at
19 during the period I do not recall Mr. Fena ever pushing Highway
20 169. I would also say that there was considerable talk around
21 town during this period about the farm and the fact it was on
22 this highway, and I don't -

23 Mr. Ryan: Excuse me. Just a minute, Mr. Bischoff.

24 Mr. Reporter, how difficult would it be to read the question
25 again?

1 (The last question was then read by the reporter.)

2 Mr. Simonett: I think the answer is still responsive,
3 but maybe we ought to start out with a new question, Mr. Bischoff.

4 Q (Mr. Simonett) And was this the state of your information
5 what was in your mind when you wrote this on Thursday?

6 A This was part of it.

7 Q Was there much discussion also in the newspapers in the
8 area, Hibbing, Chisholm as well as elsewhere in early 1965
9 about the various routes?

10 A Yes.

11 Q And were you aware at all that at that time in early 1965
12 some groups at least were pushing or interested in Highway 37
13 as the route?

14 A Yes, I was.

15 (Newspaper clippings marked Contestee's Exhibit 23 for
16 identification.)

17 Q Mr. Bischoff, I show you twelve sheets of paper which are
18 attached together and on which appear on each of the sheets
19 newspaper clippings and which have been marked for identification
20 as Contestee's Exhibit 23 and which appear to be clippings from
21 either the Chisholm or Hibbing newspaper, and I will ask if you
22 made these available to me?

23 A Yes.

24 Q And you obtained Exhibit 23 from where?

25 A From the file of the Hibbing Chamber of Commerce.

1 Q In most of the cases here the clippings do not show the
2 date of the publication, but there does appear on the sheets a
3 penciled date.

4 A Yes.

5 Q Who wrote that on there?

6 A I don't know who wrote that. These dates were on there,
7 but I have gone through the papers at the library and verified
8 them. These are the dates.

9 Q That would be the date the paper came out that contained
10 the clippings on the sheet?

11 A I didn't do all that myself. I had Don Drolson help me.

12 Mr. Simonett: We will offer Exhibit 23.

13 Mr. Ryan: Did you, Mr. Bischoff, personally examine the
14 newspapers in their total content from which these articles
15 were removed?

16 Witness: Do you mean at this stage now have I gone back
17 and looked through the complete newspapers?

18 Mr. Ryan: Yes.

19 Witness: No, I really haven't, not through the -

20 Mr. Ryan: Then you are not able to say, are you, whether
21 the packet of ads or newspaper clippings that are Contestee's
22 Exhibit 23, whether these constitute all of the articles having
23 to do with the Range highway?

24 Witness: I am sure they don't really. I am sure there
25 must be more.

1 Mr. Ryan: Are there some that were left out?

2 Witness: I left out none intentionally that would have a
3 bearing. There are others.

4 Mr. Simonett: You mean left out by us from the Chamber
5 file?

6 Mr. Ryan: Yes.

7 Witness: No. I went through the Chamber file and took
8 any of those that had any remote bearing on this.

9 Mr. Ryan: You personally selected the ones?

10 Witness: Out of the Chamber file, yes, I did.

11 Mr. Ryan: Somebody from the Chamber didn't pick out -

12 Witness: No, they didn't.

13 Mr. Ryan: --the articles that dealt with the highway.
14 You did this yourself?

15 Witness: No. Mr. Zeitler brought these over to me,
16 and actually, I didn't go through the complete file on theirs;
17 but then I had Mr. Drolson checking over the Tribune papers and
18 then he got some others and I went through them to see if there
19 was anything relating - in other words, this is what they had
20 in their file right here.

21 Mr. Ryan: Who is Mr. Drolson?

22 Witness: He was my campaign manager on the volunteer
23 committee.

24 Mr. Ryan: So either you or Mr. Drolson made some method
25 of selection. Is that fair to say?

1 Witness: Yes.

2 Mr. Ryan: Okay. With that in mind, we have no objection,
3 your Honor.

4 The Court: Received.

5 Q (Mr. Simonett) In addition to going through the Chamber
6 clippings, did you or did you have someone also check the
7 records of the Hibbing Daily Tribune?

8 A Well, these are the Hibbing Daily Tribune, but they are
9 on microfilm and at the library.

10 (Photocopies of three sheets of Hibbing Daily Tribune
11 marked Contestee's Exhibit 24 for identification.)

12 Q For the record, Contestee's Exhibit 24, marked for
13 identification as such, consists of three sheets of photocopies
14 of certain pages of the Hibbing Daily Tribune; the first sheet
15 for April 28, 1965; the second for July 21, 1965; and the
16 third for May 19, 1965. Have I identified the exhibit correctly,
17 Mr. Bischoff?

18 A You have.

19 Q And are these photocopies you obtained?

20 A Yes.

21 Mr. Simonett: We will offer in evidence Exhibit 24.

22 Witness: I am sorry for the quality of the print. They
23 hadn't used the machine before.

24 Mr. Ryan: I wonder if I might ask a question of the
25 witness. Referring to Contestee's Exhibit 24, page 2, an

article in the Hibbing Daily Tribune of July 21, 1965, can you tell us, Mr. Bischoff, if this article - tell us what the improvement is between Hibbing and what city in the first paragraph.

Witness: Keewatin. I admit it doesn't show up very good, but it is Keewatin.

Mr. Ryan: That is Keewatin?

Witness: Yes.

Mr. Ryan: We have no objection.

The Court: Received.

Q (Mr. Simonett) Another thing you wrote about in your ad and in your radio talk #3 was Mr. Pena's association with the Town of Stuntz. What investigation did you make in that regard before you sat down to write that talk on Thursday morning, October 31?

A Well, number one, my partner Ed Matonich, I requested him to do this initially. He checked with Bob Mathias, Art Grekela, Ralph Deger, and came back to me. I had him re-check and then I called Ralph Deger myself.

Q You yourself placed a phone call?

A Yes, I did.

Q Who is Mr. Deger?

A He is Town of Stuntz Assessor.

Q And what did Mr. Deger tell you in that conversation?

A I called him and told him I just wanted to confirm some

1 facts with him and to the amount of the check, and to the fact
2 it didn't go to court; and then he told me that he had put the
3 figures altogether and turned them over to Mr. Pena, and he just
4 put in the final phase of it.

5 Q Now, you also mentioned that one reason you were delayed
6 in starting your series of radio talks so that you were unable
7 to start on Monday and had to start instead on Tuesday was a
8 brochure.

9 A Right.

10 (Brochure marked Exhibit 25 for identification.)

11 Q Showing you what has been marked Contestee's Exhibit 25,
12 is that the brochure?

13 A That is my brochure, yes.

14 Mr. Simonett: We will offer Exhibit 25.

15 Mr. Ryan: No objection.

16 The Court: All right. The brochure will be received.

17 Q (Mr. Simonett) How important was this brochure as part of
18 your campaign?

19 A Well, this was the very important wind-up to my campaign,
20 because this is the thing that was intended to tie this multi-
21 phase thing together. It is very important. We had a district-
22 wide distribution on this, with the exception of some places.

23 Q Now, did you get that mailed out and distributed when you
24 had planned to do so, the original plan?

25 A It was originally supposed to go out the weekend before,

1 not the weekend immediately before the election, but the preceding
2 weekend.

3 Q And instead -

4 A Instead, the mailing got to the postoffice on Friday
5 before the election and the door-to-door distribution which we
6 used in Chisholm and Hibbing town areas went out on Saturday and
7 Sunday and a few on Monday, so they were received in the mail
8 on Monday, a good part of them. Some were received on Saturday.

9 Q Were there any, Mr. Bischoff, that didn't even arrive to
10 the voters' residence until after the election, or did they all
11 get out by Tuesday?

12 A I think most of them. I don't know of any that didn't
13 get out except in breakdowns - internal breakdowns at the post-
14 office.

15 (List of postoffices marked Contestee's Exhibit 26 for
16 identification.)

17 Q Showing you what has been marked Exhibit 26, can you
18 identify that?

19 A Yes. This is a list of the different postoffices that
20 we mailed the brochure to, including rural routes and star
21 routes and boxes.

22 Mr. Ryan: No objection.

23 The Court: Received.

24 Q (Mr. Simonett) From the vote distribution in the general
25 election, are you able to make any analysis of the effectiveness

1 of that brochure?

2 A Yes, I can do it. I can make a fairly accurate comparison,
3 because there were several precincts that we didn't get the
4 brochure to, that I didn't realize weren't included in this list
5 of names. Now, if you had the big map, I could point out some
6 of the areas that didn't get the brochure.

7 Q Do you want to point that out then on Exhibit 13?

8 A Now, the Toivola area, the Lavell area, the Kelsey area
9 and Elmer area, none of these received the brochure. Elmer
10 has its own postoffice. I didn't realize it. I thought it
11 would be included in the mailing and it wasn't. Now, the area
12 further south, Fine Lakes, Prairie Lake, Van Buren was serviced
13 out of the Floodwood postoffice, so they were covered and the
14 areas that the brochure didn't get to, I was beat. Well, if
15 you want me to go over the figures -

16 Q Take two of them.

17 A Well, Kelsey, I was beaten 18 to 51. In other words,
18 Mr. Fena had 51 votes and I had 18. Lavell, Mr. Fena had 71
19 and I had 45. Toivola, Mr. Fena had 71 and I had 20. Now,
20 there was not a corresponding vote in any relative area the
21 brochure went to.

22 Q But in those three townships that you just mentioned,
23 where Mr. Fena got the deciding vote, would they have been
24 reached by the Manney Shopper or by the Eveleth and Hibbing
25 radio station?

1 A I don't believe the Manney Shopper would hit this area
2 either, for this reason, that they went out of the same star
3 route and rural route I did out of Hibbing, so they wouldn't
4 be covered; but the area to the south, which would be further
5 from the radio station, but which I did get, and this is part of
6 that comparison I was telling you about - for example, the
7 Prairie Lake, Fine Lake, Van Buren and these towns, although I
8 was beaten very bad in the primary, I came back and neutralized
9 the areas completely with this brochure and other parts of the
10 campaign; but everything else in the campaign was relatively
11 the same in these two areas, and the area the brochure did not
12 get into, I got hammered.

13 Q Now, in giving this radio talk and the Shopper ad, was
14 it your intention to raise then the questions that you do raise?

15 A Oh, yes.

16 Q Did you or did you not do so in good faith, Mr. Bischoff?

17 A I am sorry, I didn't hear the question.

18 Q Did you or did you not do so in good faith?

19 A I did so in good faith, yes.

20 Q And after first making investigations and based upon the
21 information you told us about in your testimony here?

22 A Yes, sir.

23 Mr. Simonett: That is all.

24 The Court: We will recess about ten minutes.

25 AFTER RECESS

1 Mr. Simonett: May it please the court and Mr. Ryan, may
2 I put in one other exhibit.

3 (Manney's Shopper marked Contestee's Exhibit 27 for
4 identification.)

5 Mr. Simonett: We will offer Contestee's Exhibit 27,
6 which is a complete copy of the Manney Shopper for the issue
7 dated November 4, 1968, and which contained the Bischoff ad.

8 Mr. Ryan: No objection.

9 The Court: Received.

10 Mr. Simonett: That is all I have.

11 CROSS EXAMINATION

12 By Mr. Ryan:

13 Q Mr. Bischoff, you recall on Monday during the course of
14 your cross examination by me the following question, and I am
15 reading from a partial transcript of that cross examination.

16 Mr. Simonett: Do you have a copy for Mr. Bischoff to
17 follow?

18 Mr. Ryan: I don't. I only have one copy.

19 Q (Mr. Ryan) Question: "Can you tell us, Mr. Bischoff,
20 one instance that you know of where Mr. Fena attempted to influ-
21 ence a judge or judges of the district in order to obtain the
22 assistant public defender post for a member of his firm?"

23 Answer: "No, I can't". Do you recall that?

24 A I recall that question, yes.

25 Q That is still your testimony, is it not?

1 A That is my testimony, yes.

2 Q You recall also this question, Mr. Bischoff, "Were you an
3 applicant on both the last two occasions on which this job was
4 filled of assistant public defender?". Answer: "Was I
5 interested both times?". Question: "Yes". Answer: "Did I
6 formally make written application, only in the latter occasion,
7 but I did contact the judge on the first occasion too". Question:
8 "You sought the appointment?". Answer: "Yes, I did". Do you
9 recall that series of questions?

10 A Yes, I do.

11 Q Then it is the case, is it not, that only on the last
12 occasion did you formally apply for that position of assistant
13 public defender?

14 A If by formal application you mean a written one, that is
15 true.

16 Q Well, using your own phraseology, on Monday you said did I
17 formally make written application, only in the latter occasion,
18 but I did contact the judge on the first occasion too.

19 A Right.

20 Q I interpret that as meaning by formal application you
21 meant in writing.

22 A That is true.

23 Q All right. Now, there was some question yesterday by
24 Mr. Simonett of Mr. Mathias as to whether or not he applied for
25 the assistant public defender's post, and I believe his testimony

1 was that he did not formally apply, but that he had been in
2 contact with Mr. Mulvahill and that Mr. Mulvahill submitted a
3 written recommendation to the court in behalf of Mr. Mathias.
4 Is that your recollection?

5 A Yes.

6 Q So it is fair to say, isn't it, that Mr. Mathias did
7 make application at least through Mr. Mulvahill, who was then
8 the resigning assistant public defender?

9 A I would say that he made application, yes.

10 Q Okay. I believe one of the exhibits that was received
11 in evidence, one of your exhibits, was a letter. I don't recall
12 the exhibit number, but it was a letter that was addressed to
13 people in the district in which you solicited funds.

14 A Yes.

15 Q Did you have other letters of that nature also?

16 A You mean did I send out other similar ones or do I have
17 other copies?

18 Q No. Did you send out other letters of this nature?

19 A Oh, yes. I sent out thank you letters and -

20 Q Well, you mean after the election?

21 A No, I mean during - when people would support me or send
22 in a check or anything, I would send out a thank you letter.

23 Q Aside from the thank you letters, did you send out other
24 letters?

25 A Letters of soliciting?

1 Q Letters soliciting help and funds?

2 A No. I believe that is the only one that I recall.

3 Q You don't recall sending out one series of letters in
4 which you state that you were opposing Mr. Pena and then another
5 series of letters in which you state you are opposing Mr. Rutter?

6 A No, I don't remember anything like that.

7 Q Do you recall making a statement in a press release prior
8 to the closing of filings to the effect that you could hardly
9 wait for Mr. Pena to file?

10 A I don't remember the exact words. That I could hardly
11 wait for Mr. Pena to file?

12 Q Yes.

13 A I encouraged him to file, as I recall. I don't recall -
14 that is in the general thrust, yes.

15 Q That was the general tone of the thing. Is that correct?

16 A I think so, yes.

17 Q And you may or may not - you don't recall whether you
18 were directly quoted as saying that?

19 A I don't recall without seeing the press release, no.

20 Q I believe you stated earlier on direct examination the
21 issue portion of your campaign was saved for the last two weeks,
22 that was part of your campaign strategy.

23 A Right.

24 Q And Exhibit G and Exhibit H, the ad that appeared in the
25 Shopper on Thursday, October 31, WEVE broadcast, are representa-

1 tive of what you felt were material issues in the campaign.

2 A Yes.

3 Q And the same is true of the WMFG broadcast?

4 A That is true, the entire series.

5 Q During the direct examination, you made the comment in
6 one of your answers that there were certain areas in the district
7 in which you were hammered. What areas are those, Mr. Bischoff,
8 and can you refer to an exhibit?

9 A Yes, I can. You want me to explain what I meant by the
10 term?

11 Q Just a second. Referring you to Contestant's Exhibit 13,
12 are you able to point out on that exhibit which areas you -

13 A I can show you some, yes. I don't say that this is
14 complete.

15 Q Well, demonstrate to us.

16 A Well, this Lavell area here.

17 Q Lavell?

18 A Lavell.

19 Q What area is that near?

20 A It is outlying the Town of Stuntz.

21 Q Southeast of Stuntz Township?

22 A Yes. There was no door-to-door campaign in this area at
23 all. Toivola, the same way.

24 Q Toivola and Lavell. Any others?

25 A Kelsey. It is partially true of this area, but I did get

1 some brochures in there. The final day, we found out about this
2 over-sight and we got some of the boxes there.

3 Q Any others?

4 A I am sure there are, but I haven't -

5 Q How about north?

6 A I would think there were some of these areas I didn't get
7 the brochure to and some I did, and I haven't really done a
8 complete - I could go over the votes.

9 Q Would you consider these areas you pointed out to be the
10 chief areas?

11 A These areas here?

12 Q Yes.

13 A No.

14 Q You mean the major areas in which you felt you were
15 hammered?

16 A Oh, yes. I think that these are - as far as our checking,
17 these are some of the areas that I didn't get the brochure to
18 and was beaten.

19 Q Those were also the areas in which the Shopper was not
20 circulated. Is that not correct?

21 A That is right.

22 Q The Shopper that contained your blast ad?

23 A Right.

24 Q I believe you also stated the reason you used the Shopper
25 for your last ad - one of the major reasons was the coverage was

1 better.

2 A I said that, yes.

3 (Newspaper article marked Contestant's Exhibit K for
4 identification.)

5 Q Showing you what has been marked as Contestant's Exhibit K,
6 Mr. Bischoff, can you identify that please.

7 A That is a front-page article from the St. Paul Pioneer
8 Press City Life.

9 Q And did you see this article in the St. Paul paper?

10 A No, I have never seen it.

11 Q You have never seen it?

12 A I have never seen it.

13 Q Do you subscribe to the St. Paul paper?

14 A No, I don't.

15 Q Did you look at any Twin City newspapers following the
16 election?

17 A I occasionally look at the Minneapolis Star, but primarily
18 Jim Klobuchar. I don't get the Minneapolis Star either.

19 Q How about Dear Abby?

20 A I look at that one but that is in the local one.

21 Q Is it fair to say, Mr. Bischoff, that an experienced
22 reporter for the St. Paul Pioneer Press is capable of inter-
23 preting your ad that appeared in the Shopper or -

24 A I could make no judgment on that. I don't know the
25 gentleman and I am not familiar with what he said.

1 Q Do you know Einar Karlstrand of the Duluth News Tribune?

2 A I have heard the name. I don't know the gentleman. I
3 have seen the name on by-lines in the Duluth paper.

4 Q Have you ever talked to him?

5 A I believe I did, and I can't recall right now when.

6 Q Would you say it was before the election or after?

7 A I would be guessing. I would say probably after. I
8 don't recall the incident.

9 Q Do you read the Duluth papers?

10 A Yes, I do.

11 Q Frequently?

12 A Yes.

13 Q Daily?

14 A No, not daily.

15 Q Well, based upon what familiarity you have of Mr. Karl-
16 strand, would you say that an interpretation he might make of
17 your campaign material would be a reasonable one?

18 Mr. Simonett: What relevancy does that have here?
19 Assuming it had any, there is no foundation for it.

20 Mr. Ryan: Cross examination, your Honor. My understand-
21 ing is we enjoy extensive leeway on cross examination.

22 Mr. Simonett: Go ahead and answer.

23 Witness: Did you say go ahead and answer?

24 Mr. Simonett: Go ahead and answer.

25 Witness: I would have no way of knowing that unless I

1 knew the gentleman and also the source of his information. A
2 lot in interpretation depends on who feeds the material. Now,
3 for example, Mr. Pena might have talked to Mr. Karlstrand and fed
4 him his interpretation, and unless I know that I would not make
5 a judgment on his interpretation of any article.
6

7 Q (Mr. Ryan) Referring you to Contestant's Exhibit K, is
8 there also within that exhibit an article authored by Mr. Karl-
9 strand?

10 A Yes, there is.

11 Q And what is the date of this article?

12 A November 10, 1968.

13 Q It was written following the election?

14 A That is apparently true.

15 Mr. Ryan: Okay. We offer Contestant's Exhibit K.

16 Mr. Simonett: May it please the court, Exhibit K appears
17 to be a column of political interpretation by Mr. Karlstrand
18 of the St. Paul Pioneer Press written after the election on
19 November 10, 1968, and purporting to give his conclusions and
20 interpretations of some aspects of the election as well as
21 others unrelated to Mr. Bischoff's contest. We object on the
22 ground that it is irrelevant. It is hearsay, calls for a
23 conclusion which only the House committee is to reach, and
24 while I know there is a policy of liberality in the admission of
25 exhibits, I will tell counsel right now if this exhibit goes in
we are going to be here for another week, because it raises all

1 kinds of extraneous matters, new matters, completely outside the
2 issues of this case. If he wishes to put in a hearsay article,
3 one person's interpretation of this election, we want an
4 opportunity to call a dozen experts of our own to give their
5 interpretation. Now, that is where we are going to be, Mr. Ryan.
6 Perhaps the court wishes to see it.

7 The Court: I gather from what you have said, the general
8 picture, it isn't legally acceptable evidence as far as the
9 court is concerned. I suppose you are offering it to be made
10 part of the record, but the legislature could use whatever
11 discretion it wants to, but I don't think as a court I should
12 receive it in evidence.

13 Mr. Ryan: Is that the court's ruling?

14 The Court: It would be, yes.

15 Mr. Ryan: We will withdraw the exhibit then, your Honor.
16 I should state for the record that I really don't have any
17 objection to spending another week in Hibbing, if that is what
18 it would take.

19 The Court: I should add I wouldn't either.

20 Mr. Simonett: Nor would I, but I think there might be a
21 change of heart -

22 Mr. Ryan: I know Mr. Simonett has to be in the Supreme
23 Court tomorrow, and I would not want to be responsible for keeping
24 him from getting there.

25 Mr. Simonett: I appreciate that.

1 Mr. Fena: May the client's put in their oars and wish
2 you God-speed and bon voyage, both of you.

3 Mr. Simonett: Does that sound like you are through
4 questioning?

5 Mr. Ryan: No, I am not through.

6 Q (Mr. Ryan) Was Mr. Deger under subpoena by you,
7 Mr. Bischoff?

8 A Not by me, no.

9 Q Was he under subpoena by your lawyer?

10 Mr. Simonett: No, not that I know of.

11 Q (Mr. Ryan) Was he available to testify?

12 A I never checked.

13 Q You never talked to him about testifying?

14 A I told him that you might possibly call him, that I
15 wouldn't involve him unless you brought him in.

16 Q You didn't tell him you would have any use for him?

17 A No. I told him that if you called him, that would be all
18 right. I told him I wouldn't involve - well, this is the thing.
19 In a small town like this, you just don't involve a bunch of
20 people unless you have to, and I didn't.

21 Q It makes more sense to quote them instead?

22 Mr. Simonett: Well, don't answer that. I am sorry, your
23 Honor. I object to that as argumentative.

24 Q (Mr. Ryan) I think we ought to finish this case - or
25 maybe I am assuming Mr. Simonett has no more witnesses - but

1 finish the testimony at least as far as we are concerned on a
2 pleasant note. I noticed yesterday in the course of your direct
3 examination you made some reference to a campaign song.

4 A Oh, come on.

5 Q I was wondering - I thought perhaps it should be in the
6 record.

7 A If you will permit me a few minutes to go get my children,
8 I will bring all of them down here and have them sing.

9 Q Why not recite it for us? I won't embarrass you by
10 asking you to sing it, Barney, because you have a voice like
11 mine.

12 A It is to the tune of London Bridge is Falling Down, and
13 I really don't know all the words, but it is Barney B for R E P,
14 Barney B for R E P, Barney B for R E P, Vote for Barney Bischoff,
15 or words to that effect. He will do the job for you and me. I
16 don't remember all of it.

17 Mr. Simonett: There was another version also, Mr. Ryan,
18 and of course we do not attribute it to Mr. Fena. It was
19 Barney B takes L S D. That is all the questions I have.
20 Contestee rests.

21 The Court: Are you sure you want that in the record,
22 counsel?

23 Mr. Simonett: I suppose not.

24 Mr. Ryan: I am through with you, Mr. Bischoff.

25 (Witness excused)

1 Mr. Ryan: Your Honor, could we have a five minute
2 recess?

3 The Court: Sure.

4 AFTER RECESS

5 Mr. Ryan: Contestant has nothing further.

6 The Court: Then you rest too.

7 Mr. Ryan: We do rest.

8 The Court: Let me just make one remark before we close.
9 I am not saying this for undue flattery, but I think this thing
10 has been beautifully handled and in a ways maybe a proceeding
11 from time to time like this may be a wholesome thing. It clears
12 the air in the community, and I say that irrespective of what
13 the legislature may do. I am very pleased all through this
14 proceeding. That is my remark.

15 (Brochure marked Contestant's Exhibit L for identification.)

16 Mr. Ryan: Your Honor, I talked to counsel earlier about
17 one other exhibit. I would like to re-open our case, if I could,
18 just for the purpose of having this exhibit identified and
19 offered. It is Contestant's Exhibit L.

20 Mr. Simonett: There is no objection.

21 The Court: Received.

22 * * * * *

1 STATE OF MINNESOTA
2 COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

3 -----
4 In the Matter of the Election Contest
5 of Jack Fena, Contestant, against
6 Barney Bischoff, Contestee, for the
7 office of State Legislator of District
8 63, in the General Election of
9 November 5, 1968.
10 -----

REPORTER'S
CERTIFICATE

11 I, Robert F. Peterson, do hereby certify that I am one
12 of the official court reporters of the District Court of the
13 Sixth Judicial District of the State of Minnesota; that as such
14 reporter I reported in shorthand the testimony and proceedings
15 had on the trial of the above-entitled action; that I thereafter
16 caused the same to be transcribed into typewriting under my
17 supervision and control; that the foregoing 270 pages of type-
18 written matter constitute a full, true and correct transcription
19 of all testimony offered or received on said trial, and also all
20 objections, rulings, exceptions, orders and all other proceedings
21 of such trial, except that the exhibits are not copied herein,
22 said exhibits being on file in the office of the Clerk of this
23 Court at Hibbing, Minnesota.

24 Dated: January 7, 1969.

25 
Official Court Reporter