207 VA 885

Record No. 6362

In the Supreme Court of Appeals of Virginia at Richmond

HARRY SHAIA, ET AL.

v.

CITY OF RICHMOND

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6362

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 28th day of February, 1966.

HARRY SHAIA AND ZACKIA SHAIA,
Plaintiffs in Error,

against

CITY OF RICHMOND, Defendant in Error.

From the Hustings Court of the City of Richmond
W. Moscoe Huntley, Judge

Upon the petition of Harry Shaia and Zackia Shaia a writ of error is awarded them to a judgment rendered by the Hustings Court of the City of Richmond on the 20th day of September, 1965, in a certain proceeding then therein depending wherein the said petitioners were plaintiffs and the City of Richmond was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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Filed 6/10/64.

REQUEST FOR ADMISSIONS

The City of Richmond calls on the applicants, Harry Shaia and Zackia Shaia, to make the following admissions on or before June 30, 1964:

1. The property involved in this controversy has been leased by the applicants to Edward H. Shaia and Richard H. Shaia for the years 1961, 1962 and 1963.

2. The gross receipts from the restaurant business conducted on said property by said Edward and Richard Shaia during said years was as follows:

1961	$208,604
1962	$225,911
1963	$245,419

3. The building on the property which is involved in this controversy was constructed prior to 1961 at a cost of $127,-064.75.

4. The lease attached to the original application filed herein on January 10, 1962, is a true copy of the lease between the applicants and the Medical College of Virginia.

page 8 } 5. The Medical College of Virginia has not given to the applicants a notice of termination of said lease.

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ANSWERS TO INTERROGATORIES

The applicants answer the interrogatories of the defendant pursuant to order of this Court, as follows:

1. The premises at 400 North 12th Street were occupied by others on or about January 1, 1961.

2. No written lease or contract was executed.
3. The consideration for the occupancy is $12,000.00 annually, which is generally paid in monthly installments of $1,000.00 each.

HARRY SHAIA AND
ZACKIA SHAIA
By HARRY SHAIA, JR.
Counsel.

Filed July 23, 1964.

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ANSWERS TO REQUEST FOR ADMISSIONS

The applicants answer the request for admissions pursuant to order of this Court, as follows:

1. The applicants admit that the property involved in this controversy has been occupied by Edward H. Shaia and Richard H. Shaia for the years 1961 through 1963.
2. The applicants admit paragraph two of the request for admissions, except that the gross receipts for the year 1961 were $208,581.00.
3. The applicants admit the allegation in paragraph three of the request for admissions.
4. The applicants admit the allegation in paragraph four of the request for admissions.
5. The applicants admit the allegation in paragraph five of the request for admissions.

HARRY SHAIA AND
ZACKIA SHAIA
By HARRY SHAIA, JR.
Counsel.

* * * * *

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* * * * *

Filed July 30, 1964.

SECOND AMENDED APPLICATION FOR CORRECTION AND NULLIFICATION OF ERRONEOUS ASSESSMENT OF TAXES

To: The Honorable Judges of the Court aforesaid:

Harry Shaia and Zackia Shaia, his wife, respectfully represent that they are aggrieved by an erroneous assessment of taxes levied against certain property situate in the City of Richmond for the years 1961, 1962 and 1963, by reason of the following:

1. The applicants, Harry Shaia and Zackia Shaia, his wife, are residents of the City of Richmond, Virginia.

2. The real property situate at 400 North 12th Street in the City aforesaid is owned by the Medical College of Virginia, an arm of the Commonwealth of Virginia.

3. That on the 8th day of January, 1959, the Medical College of Virginia, acting by its President, entered into a contract with Harry Shaia and Zackia Shaia, his wife, whereby the aforesaid real property was demised to the said Shaias for a term of years for the purpose of constructing and operating thereon a restaurant. (A copy of such contract is attached to the original application previously filed herein and asked to be read as a part of this application).

4. That by virtue of the aforesaid contract the page 31 } Medical College of Virginia has permitted the said Harry and Zackia Shaia to make certain improvements upon the land owned by the Medical College of Virginia, on the condition that after reasonable notice, the Medical College of Virginia may take possession of the improvements and enjoy the occupancy and use.

5. That acting pursuant to the aforesaid contract, the said Harry and Zackia Shaia erected a building upon the land owned by the Medical College of Virginia at the cost of $127,064.75.

6. Following the completion of such construction the City of Richmond, through the office of the Assessor of Real Estate, assessed the aforementioned real estate and improvements for the purposes of taxation for the years 1961, 1962 and 1963 in the amount of $33,800.00 for land and $113,000.00 for buildings, a total of $146,800.00; and levied thereon a tax in the amount of $2,759.84 annually, for 1961, 1962 and 1963.

7. Applicants are advised, and so allege, that the aforesaid assessment was made pursuant to § 58-758, Code of Virginia (1950), as amended.

8. Applicants allege that the agreement between the Medical College of Virginia and applicants, dated January 8, 1958, is a contract and not a lease.

9. Applicants believe, and so aver, that § 58-758, Code of Virginia, (1950), as amended, does not apply to leasehold interests where the land is owned by the Common-
page 32 } wealth of Virginia, its agencies, departments or institutions, and if so applied, is an unconstitutional legislative enactment.

10. The assessment is void in that the City of Richmond assessed the applicants' interest in the property in the same manner it assesses a fee simple interest in real etate.

11. The assessment as made and the tax as levied by the defendant are discriminatory, not uniform and purely arbitrary.

12. The assessment as made and the tax as levied are violative of § 168 of the Constitution of Virginia and the 14th Amendment of the Constitution of the United States.

13. That the assessment, if valid, is excessive in light of the applicants' interest in said property.

WHEREFORE, it is respectfully suggested that the aforesaid assessment is void and of no effect in that:

1) The agreement between the Medical College of Virginia and the applicants is a contract and not a lease;

2) Properties owned by the Commonwealth of Virginia are exempt from taxation by force of § 183 of the Constitution of Virginia and remain exempt, even though such property be leased to individuals;

3) The tax assessment by the City of Richmond against the applicants' interest in the property situate at 400 North 12th Street is an assessment against property owned by the Commonwealth of Virginia, irrespective of the classification of such tax or the name against whom such assessment is made;

4) Any statute by which a tax, by whatever name called, is assessed against property owned by the Com-
page 33 } monwealth of Virginia is unconstitutional, and any assessment by virtue of such statute is of no legal effect;

5) The City of Richmond assessed the applicants' interest in the property in the same manner it assesses a fee simple interest in real estate;

6) The assessment as made and the tax as levied are discriminatory, not uniform and purely arbitrary;

7) The assessment as made and the tax as levied are violative of § 168 of the Constitution of Virginia and the 14th Amendment of the Constitution of the United States.

Accordingly, it is respectfully prayed that the assessment of taxes by the City of Richmond against the applicants' interest in the property situate at 400 North 12th Street be declared void and of no effect; and further, that the assessment, if valid, be declared excessive in light of the applicants' interest in said property and the applicants be awarded their costs in this action.

Respectfully,

HARRY SHAIA AND
ZACKIA SHAIA, HIS WIFE
By HARRY SHAIA, JR.
Counsel.

* * * * *

page 29a } THIS LEASE, made this 8th day of January, 1959, by and between THE MEDICAL COLLEGE OF VIRGINIA, a Virginia corporation, herein called "LANDLORD", party of the first part, and HARRY SHAIA and ZACKIA SHAIA, his wife, herein called "TENANTS", parties of the second part.

WITNESSETH:

That in consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenants and Tenants hereby rent from Landlord, premises located in the City of Richmond, Virginia, and more specifically described as follows:

Commencing at the point of intersection of the north line of East Marshall Street with the west line of North 12th Street, thence running northwardly along and fronting on the west line of North 12th Street 54 feet, thence running westwardly back from said front between the north line of

East Marshall Street and a line parallel thereto 106 feet to an alley in the rear.

1. Tenants agree to erect, or cause to be erected by not later than April 1, 1960, at their own cost and expense, upon the demised premises, a building containing not less than five thousand (5,000) square feet of floor area, suitable for use as a restaurant, in accordance with plans and specifications prepared and approved as hereinafter described in Paragraph 4-K.

2. The term of this lease shall be Two (2) Years, commencing on April 1, 1960 and expiring on March 31, 1962. A written notice of one (1) year shall be given by Tenants should Tenants desire to vacate the said premises at the termination of this lease and should Landlord desire possession a similar notice shall be given by Landlord to Tenants. It is further covenanted and agreed by and between the parties hereto that in the event that no such notice is given by either party, then this lease shall continue in force from year to year at the same rent and subject to all conditions and covenants herein contained, except that the lease will terminate WITHOUT NOTICE on March 31, 1990. It is understood, however, that Landlord will not terminate this lease for the purpose of using the demised premises for another food operation and in event this lease is terminated for any cause, Landlord will reimburse Tenants the unamortized portion of the building, the unamortized portion of the fixtures and equipment and the unusued portion of the rent as set forth in Paragraph 12 hereof. However, if Tenants elect to exercise their termination privilege as set forth in this paragraph, Landlord will not be required to reimburse for building, fixtures and equipment.

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3. Tenants covenant and agree in lieu of an annual rental of Three Thousand and No/100 ($3,000.00) Dollars, payable in advance at the beginning of each lease year, to convey to Landlord by General Warranty deed, free and clear of all objections, the following described real estate in the City of Richmond, Virginia:

Commencing at the point of intersection of the south line of Clay Street with the east line of 11th Street, thence extending eastwardly along and fronting on the south line of Clay Street 40.96 feet and running southwardly back from said front between the east line of North 11th Street and a line parallel thereto 106.33 feet, together with the improvements thereon known as 1101 East Clay Street, and appur-

tenances thereto belonging. This conveyance, however, shall not include items of personal property such as business fixtures installed in the store, but does include all lighting fixtures and all other items normally a part of the building.

The consideration of this conveyance if FORTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-THREE AND NO/100 ($43,773.00) DOLLARS, representing the present worth of the annual rental of $3,000.00, payable in advance, at the beginning of each lease year, for a period of thirty (30) years, discounted at 6% interest.

page 31a } Possession of 1101 East Clay Street, Richmond, Virginia, shall be given to Landlord on May 15, 1959. All fixtures and personal property shall be carefully removed by Tenants prior to the date of delivery and any unusual damage caused by such removal shall be repaired by Tenants at their own expense. The premises shall be delivered broom-clean. All taxes to be prorated as of March 1, 1959.

Settlement shall be made at the office of Harrison & Bates Incorporated, 2 South Fifth Street, Richmond, Virginia, on or before March 1, 1959.

4. Tenants covenant and agree as follows:

(a) That they will promptly deliver a deed with General Warranty of title and comply with all terms in connection with the conveyance of 1101 East Clay Street, Richmond, Virginia, as provided in Paragraph 3 hereof.

(b) That they will pay all bills for water at the demised premises (including sewer charges), gas, electricity and other utility bills as the same shall become due. If Landlord shall pay any moneys, or incur any expenses in correction of violation of Tenants' covenants herein set forth, the amounts so paid or incurred shall, at Landlord's option, and no notice to Tenants, be considered additional items of rent payable by Tenants upon Landlord's demand and may be collected or enforced as by law provided in respect to rentals.

(c) That they will reimburse the Landlord upon demand for any and all taxes assessed against the improvements to be erected on the demised premises, it being understood that Tenants will not be responsible for any taxes assessed against the land.

(d) That they will use the demised premises for the conduct and operation of a restaurant, lunch-room, soda fountain and the sale of sundries, beer and wines, and for no other purpose whatsoever.

(e) That they will keep the demised premises
page 32a } (land and building), exterior and interior, together with all electrical, plumbing, heating, air-conditioning and other mechanical installations therein in good order and condition and surrender same at the expiration of this term, or any extension thereof, in the same good order as at the commencement of the term, damage by reasonable wear and tear and acts of God excepted. Landlord shall be under no liability for repairs, maintenance, alteration or any other action with reference to the demised premises or any part thereof, or any plumbing, heating, electrical, air-conditioning or other mechanical installation therein.

(f) That they will maintain the demised premises in a clean, orderly, sanitary and safe condition and will not permit refuse to accumulate on the demised premises but will remove same at their own expense, and will conduct the business in the demised premises in a dignified manner and in accordance with good and reasonable business practices and due regard for the character of the neighborhood in which the demised premises are located.

(g) That all personal property in said premises shall be and remain at its sole risk, and Landlord shall not be liable for any damage to or loss of such personal property arising from acts of negligence of any other person, nor from the leakage of the roof, or from bursting, leaking or overflowing of water, sewer, or steam pipes, or from the heating or plumbing fixtures, or any cause whatsoever, nor shall Landlord be liable for any injury to the person of the Tenants or other persons in and about said premises and Tenants expressly agreeing to save Landlord harmless in all such cases. Landlord shall under no circumstances be liable to Tenants in damages or otherwise for any interruption in service of water, gas, electricity, caused by any unavoidable delay or by the making of any necessary repairs or improvements.

(h) That they will, at their own expense, promptly comply with all lawful statutes, ordinances, rules, orders, regulations, and requirements of the federal, state, county, or municipal governments now in force or hereafter
page 33a } enacted insofar as the conduct of their business in the demised premises shall pertain to the same with respect to the use and occupancy of the premises by Tenants.

(i) That they will not place, or suffer to be placed or maintained on the exterior of the premises any sign, advertising matter or other thing of any kind without first obtaining Landlord's written approval thereof, and Tenants further

agree to maintain such sign or advertising matter as may be approved, in good condition and repair at all times.

(j) That they will indemnify and save harmless the Landlord from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or personal property on the demised premises, or upon the adjoining sidewalks, which arise out of the act, failure to act, or negligence of Tenants, their agents or employees; that they will keep in force at their own expense at all times during the term of this lease in companies acceptable to Landlord with respect to the demised premises, insurance in form satisfactory to Landlord covering Landlord and Tenants and Landlord's agents as their respective interest may appear with minimum limits of $100,000 on account of bodily injuries to or death of one person and $300,000 on account of bodily injuries to or death of more than one person as the result of any one accident or disaster and property damage insurance with limits of $10,000/$20,000, and to deliver to the Landlord a certificate of insurance showing the same to be in force and effect. If Tenants shall not comply with their covenants to maintain insurance as provided herein, Landlord may, at its option, cause insurance as aforesaid to be issued, and in such event, Tenants agree to pay the premiums for such insurance promptly upon Landlord's demand.

(k) That they will immediately upon the execution of this lease employ a certified architect acceptable to Landlord for the purpose of designing the building to be erected on the demised premises, and shall cause complete plans and specifications to be prepared as speedily as possible.

page 34a } Three sets of the plans and specifications upon completion, bearing the signatures of Tenants for identification, shall be submitted to Landlord for its approval and the approval of the Art Commissions of the Commonwealth of Virginia. When the plans and specifications have been approved by Landlord and approval of the Art Commissions has been obtained by Landlord, Landlord will return one set of the plans and specifications to Tenants with written approval indicated thereon.

(L) That they will obtain bids for the constructions of the building from at least three responsible contractors, and submit the bids to Landlord. The lowest bid acceptable to Tenant and Landlord shall then be established as the cost basis of the building as referred to in Paragraph 12 hereof.

(m) That they will obtain bids for the installation of the business fixtures and equipment from responsible suppliers for all fixtures and equipment to be installed in the building

upon completion, including, but not limited to, soda fountains, stoves, refrigerators, booths, tables, chairs, and counters, but excluding utensils, dishes, glassware and the cash registers. The bids shall be submitted to Landlord and approved by Landlord and Tenants and the total thereof, less all discounts allowance to Tenants, shall then be established as the cost of fixtures and equipment as referred to in Paragraph 12 hereof.

(n) Landlord and Tenants agree to execute an agreement setting forth the cost of the building as determined under the provisions of Paragraph 4-L hereof and the cost of the fixtures and equipment as determined under the provisions of Paragraph 4-m hereof. This agreement shall then be attached to and become a part of this lease.

(o) That they, prior to the commencement of construction of any of the improvements, at their own cost and expense shall make application for and secure from the proper governmental authorities, all permits, licenses and

page 35a } other authorities as may be required; however, Landlord will permit such applications to be made in its name and agree to execute such applications as may be necessary.

(p) That they, if requested by Landlord, will furnish proper mechanics lien waivers executed by all the sub-contractors and materialmen which have completed their work and been paid in full at time of such request. If Tenants shall be notified of the filing of any claim for mechanics lien they will promptly arrange by means of a bond or otherwise to release the same and their failure so to do within thirty (30) days after such notice is received shall constitute a default by Tenants.

5. Landlord agrees that Tenants shall have the right to sublet the building to be erected thereon to Richard H. Shaia and Edward Shaia, trading as "Skull and Bones Restaurant". The Tenants agree, however, that such subletting will require that the subtenants will not sublease or assign their lease without the written consent of Landlord, which consent shall not be unreasonably withheld. Tenants agree, with the exception of the above-mentioned subletting, not to assign this lease or subrent the premises or any part thereof without the written consent of Landlord, which consent shall not be unreasonably withheld.

6. Tenants agree that upon the expiration of the term or termination of this lease, or upon the expiration of any renewal or extension thereof, the building to be constructed thereunder and all improvements affixed to the realty shall

become the property of the Landlord, provided, however, that if this lease is terminated by Landlord prior to March 31, 1990 for any cause, Landlord shall reimburse Tenants for the unamortized portion of their building cost as provided in Paragraph 12 hereof. It is further agreed that during the term of this lease and any extension or renewal thereof Tenants shall have the right to remodel or rearrange such improvements provided they shall receive from

page 36a } Landlord prior written approval to any change affecting the design and exterior improvements

and provided further that the fair market value of such improvements after such remodeling or rearrangement shall be no less than the value of the improvements immediately prior thereto. Landlord agrees that all fixtures and equipment shall remain the property of Tenants or their assignees or sublessees who shall have the right to remove the same at any time provided they are not in default under this lease. Any payment by Landlord under the provisions of Paragraph 12 hereof for the unamortized portion of the fixtures and equipment shall not be considered payment of moving cost to Tenants and shall not affect Tenants right to remove all fixtures and equipment as herein provided. Any damage caused to the demised premises by the installation or removal of any of the foregoing shall be repaired by Tenants.

7. Landlord hereby covenants and agrees that it has the right to lease the demised premises to Tenants as herein provided and that Tenants shall have quiet possession thereof. Landlord agrees thirty (30) days after possession is given Landlord by Tenants of 1101 East Clay Street, Richmond, Virginia, to commence the demolition of the improvements now on the herein demised property and to remove all material and debris from the premises, leaving the lot level; and to deliver possession of the demised premises to Tenants upon the completion of the demolition, which possession shall not be later than September 1, 1959. Tenants shall then enter upon and take possession of the demised premises for the purpose of erecting thereon the improvements set forth in the approved plans and specifications described in Paragraph 4-L prior to the commencing of the term of this lease.

8. Tenants agree that they will, during the term hereof and any extension or renewal, at their own cost

page 37a } and expense, keep the building or buildings, and all other improvements to be erected upon the

demised premises, insured against loss or damage by fire, windstorm, or other casualty, under a standard fire insur-

ance policy or policies, with extended coverage endorsement attached, in a company qualified to do business in Virginia, to the extent of the full insurable value of said building or buildings or other improvements, by policies which shall provide that the loss, if any, shall be payable to Landlord; and all such policies of insurance shall be delivered to and left in the possession of Landlord; and if, at any time or times, Tenants shall neglect to insure said premises as hereinbefore provided, Landlord may effect such insurance as the agent of Tenants by taking out policies for a term which shall not run beyond the end of the term hereof; and the amount of the premium paid for such insurance by Landlord shall be deemed additional rental and Tenants agree to pay the premium for such insurance promptly upon Landlord's demand. Said policies of insurance shall not contain any co-insurance clause or feature, but shall provide full coverage insurance.

If the said building or buildings shall be destroyed or damaged by fire or other casualty, Tenants shall immediately, at their own cost, rebuild and repair said building or buildings so as to replace the same in as good and as tenantable condition as they were before said fire or other casualty, and Tenants shall be entitled to have insurance moneys received by Landlord under the policies hereinbefore provided for applied toward discharging the cost of rebuilding or repairing said building and other improvements as herein provided (as reconstruction progresses); and if the proceeds of said insurance shall not be sufficient to defray the cost of such rebuilding and repairing, Tenants shall advance such amount as may be necesary over and above such insurance proceeds, to effect such rebuilding or repairing.

The said insurance moneys shall be paid by Landlord from time to time, as the rebuilding or repairing of the
page 38a } building or building progresses, on the estimates of a responsible architect having supervision thereof, certifying the amount of each estimate as being applied to the reasonable cost thereof. Any excess of money received from insurance after restoration or repair of such building or buildings shall be and become the property of Tenants. Tenants shall reconstruct or repair the said building or buildings with all reasonable speed and shall complete such reconstruction or repairs within a reasonable time from the happening of such injury. Tenants shall at all times keep Landlord and the demised premises free and discharged of all mechanics and contractor's liens resulting from or occasioned by such reconstruction or repair of the building or

buildings, provided the insurance funds received by Landlord are paid over promptly to Tenants in accordance with the terms hereof.

If the building or other improvements on said land and premises shall be damaged or destroyed by fire or other casualty, such condition shall not affect the provisions of this lease except as herein specifically provided for.

9. Tenants covenant and agree that they will perform all agreements herein expressed on their part to be performed, and that they will promptly upon receipt of written notice specifying the nature of the default, cure said default, and further, that if Tenants shall not promptly comply with such notice to the satisfaction of Landlord, then Landlord may, at its option, enter upon the premises and do the things specified in said notice, and Landlord shall have no liability to Tenants for any loss or damage resulting in any way from such action by Landlord.

10. If Tenants, or one of said Tenants, shall be adjudicated a bankrupt or insolvent, and such adjudication is not vacated within ten days, or if a receiver or trustee shall be appointed for its business or property and such appointment shall not be vacated within ten days, or if an arrangement with Tenants' creditors shall be approved by a court under the Federal Bankruptcy Act, Landlord may at Landlord's option reenter the premises and declare this lease terminated.

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11. No mention in this lease of any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity; and the failure of Landlord to insist in any one or more instances upon a strict performance of any covenant of this lease or to exercise any option or right herein contained shall not be construed as a waiver or reliquishment for the future of such covenant, right, or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by Landlord.

12. As provided in Paragraph 2 hereof, Landlord may terminate this lease at the end of term or at the end of any year's renewal or extension thereafter by giving to Tenants One (1) year's prior written notice provided the termination is not for the purpose of using the demised premises for another food operation.

Paragraph 4-L provides for the establishment of the cost of the building to be erected on the demised premises by

Tenants. This cost, so established, shall be amortized over a thirty (30) year period, commencing on April 1, 1960.

Paragraph 4-m provides for the establishment of the cost of fixtures and equipment to be installed by Tenants in the building to be erected on the premises. This cost, so established, shall be amortized over a ten (10) year period, commencing on April 1, 1960.

The value of the unexpended rent paid in advance when computed at six (6%) percent interest compounded annually is indicated each year of said term in the following schedule; (The amount designated for the second year is the amount which would be paid if lease is terminated at the end of the second year of term and prior to the payment of rent due for third year of said term):

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If terminated at end of:	2nd Year	$42,630.
	3rd Year	42,009.
	4th Year	41,349.
	5th Year	40,650.
	6th Year	39,909.
	7th Year	39,126.
	8th Year	38,292.
	9th Year	37,410.
	10th Year	36,474.
	11th Year	35,484.
	12th Year	34,431.
	13th Year	33,318.
	14th Year	32,136.
	15th Year	30,885.
	16th Year	29,559.
	17th Year	28,152.
	18th Year	26,661.
	19th Year	25,080.
	20th Year	23,406.
	21st Year	21,630.
	22nd Year	19,746.
	23rd Year	17,751.
	24th Year	15,636.
	25th Year	13,395.
	26th Year	11,019.
	27th Year	8,499.
	28th Year	5,829.
	29th Year	3,000.
	30th Year	—0—

page 41a } Landlord hereby covenants that if this lease is terminated by Landlord prior to March 31, 1990, that it will reimburse Tenants for the unamortized portion of the building, plus the unamortized portion of the fixtures and equipment, if any, plus the value of the unexpended rent as indicated for the year of the term in which termination takes place as indicated in the schedule above.

13. All notices from Tenants to Landlord required or permitted by any provision of this lease shall be in writing and sent by registered mail or certified mail and directed to Landlord at the office of its Comptroller, at 301 North Twelfth Street, Richmond, Virginia. All notices from Landlord to Tenants so required or permitted shall be in writing and sent by registered mail and directed to Tenants at 400 North Twelfth Street, Richmond, Virginia. Either party may, at any time or from time to time designate in writing a substitute address for that above set forth, and thereafter notices shall be directed to such substitute address.

14. The parties hereto further agree that in the event the Tenants are unable to secure building materials and equipment for its proposed building and restaurant, or to secure from appropriate governmental authorities all proper licenses and permits for the construction and operation of the proposed restaurant through no fault of Tenants by May 15, 1959, then either party shall have the right to terminate this lease without further responsibility, except that the advance payment of rent made by the conveyance of 1101 East Clay Street, Richmond, Virginia by Tenants to Landlord shall be restored to Tenants by the reconveyance of said property by Landlord to Tenants and the cost incurred by such conveyance shall be borne by Tenants.

15. This agreement and the covenants and conditions herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

16. This lease sets forth all the promises, agreements, conditions and understandings between Landlord and page 42a } Tenants relative to the demised premises, and there are no promises, agreements, conditions, understandings, either oral or written, expressed or implied, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alterations, amendment, change, or additions to this lease shall be binding upon Landlord or Tenants unless reduced to writing and signed by them.

All headings in the margin of this lease or preceding the text of the several paragraphs and subparagraphs are in-

serted solely for convenience of reference and none of them shall constitute a part of this lease or affect its meaning, construction or effect.

17. Landlord agrees to furnish to Tenants steam for the heating of the building provided Tenants (a) reimburse the Landlord for the expense which it may incur in connecting into the existing steam line and bringing a steam line into the demised premises; (b) installs a meter at Tenants' own expense capable of measuring the Tenants' consumption of steam and (c) pay Landlord promptly when billed for all steam used at the rate being charged to other users.

IN WITNESS WHEREOF, on the day and year first hereinbefore written, the party of the first part has caused its name to be signed hereto by its President and its seal to be hereunto affixed by its Secretary, both being hereunto duly authorized, and the parties of the second part have signed their name hereto and affixed their seal.

THE MEDICAL COLLEGE OF VIRGINIA

By .....
President.

ATTEST:

.....
Secretary.

HARRY SHAIA (Seal)
ZACKIA SHAIA (Seal)

* * * * *

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INTERROGATORIES

The applicants call upon the City of Richmond to file written answers to the following interrogatories on or before August 17, 1964:

1. Under what terms and conditions and to whom has the

City of Richmond leased all or portions of the following properties during the years 1961, 1962 and 1963:

a. The Mosque
b. Byrd Park
c. The Arena
d. Parker Field

2. What other properties of the City of Richmond within the City of Richmond has the City of Richmond leased; to whom and under what terms and conditions during the years 1961, 1962 and 1963.

3. Has the City of Richmond taxed the leasehold interest of any other party or parties for the years 1961, 1962 and 1963.

Filed 8/6/64.

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page 36 }

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REQUEST FOR ADMISSIONS

The applicants call upon the defendant, the City of Richmond, to make the following admissions on or before August 17, 1964:

Filed 8/6/64.

* * * * *

page 37 }

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8. The City of Richmond owned the following lands and improvements thereon in the City of Richmond, Virginia during the years 1961, 1962 and 1963:

a. Three parcels of land with the improvements thereon on the east line of Belvidere Street between Franklin and Main Streets in the City of Richmond, Virginia, and shown as Lots 1 and 2 on Department of Public Works Drawing No.

S-13408 and a parcel on Department of Public Works Drawing No. S-13021.

b. A parcel of land with improvements thereon on the east side of Main Street north of Lewis Street and opposite the City's intermediate terminal on the James River.

c. The intermediate water terminal

d. The Mosque

e. The First Market

f. The Safety-Health-Welfare Building

g. Sixth Street Market

h. Byrd Park

page 38 } i. Block bound by Clay, Leigh, 8th and 9th Streets

j. Parker Field

k. The Arena

l. 400 North Tenth Street

m. 1001 East Marshall Street

n. 908, 910, 912 and 914 East Marshall Street, 909 and 907 East Clay Street and 412 North Tenth Street

o. 313 North Tenth Street

9. The City of Richmond leased three parcels of land with the improvements thereon on the east line of Belvidere Street between Franklin and Main Streets and shown as Lots 1 and 2 on Department of Public Works Drawing No. S-13408 and a parcel on Department of Public Works Drawing No. S-13021 during the years 1961, 1962 and 1963 to Belvidere Corporation and the City of Richmond has never assessed or taxed the leasehold interest of Belvidere Corporation in and to the said property.

10. The City of Richmond leased a parcel of land with the improvements thereon on the east side of Main Street north of Lewis Street and opposite the City's intermediate terminal on the James River during the years 1961, 1962 and 1963 to Crown Central Petroleum Corporation and the City of Richmond has never assessed or taxed the leasehold interest of Crown Central Petroleum Corporation in and to the said property.

11. The City of Richmond leased portions of the Intermediate Water Terminal during the years 1961, 1962 and 1963 to Hershey Sugar Sales Corporation and the City of Richmond has never assessed or taxed the lease-
page 39 } hold interest of Hershey Sugar Sales Corporation in and to the said property.

12. The City of Richmond leased 313 North Tenth Street during the years 1961, 1962 and 1963 to Carlisle Bannister

for the operation of a restaurant and the City of Richmond has never assessed or taxed the leasehold interest of Carlisle Bannister in and to the said property.

13. The City of Richmond leased 400 North Tenth Street during the years 1961, 1962 and 1963 to Johnny Funai for the operation of a restaurant and the City of Richmond has never assessed or taxed the leasehold interest of Johnny Funai in and to the said property.

14. The City of Richmond leased 1001 East Marshall Street during the years 1961, 1962 and 1963 to E. W. Cross and the City of Richmond has never assessed or taxed the leasehold interest of E. W. Cross in and to the said property.

15. The City of Richmond leased 908, 910, 912 and 914 East Marshall Street, 909 and 907 East Clay Street and 412 North Tenth Street during the years 1961, 1962 and 1963 to Albert and Ralph A. Palmieri and the City of Richmond has never assessed or taxed the leasehold interest of Albert and Ralph A. Palmieri in and to the said property.

16. The City of Richmond leased the block bound by Clay, Leigh, 8th and 9th Streets during the years 1961, 1962 and 1963 to National Garages and the City of Richmond has never assessed or taxed the leasehold interest of National Garages in and to the said property.

17. The City of Richmond has leased portions of the Mosque, the First Market, Byrd Park, Parker
page 40 } Field and the Arena during the years 1961, 1962 and 1963 to various parties and the City of Richmond has never assessed or taxed the leasehold interest of the said parties in and to the said properties.

18. The City of Richmond has leased or is now negotiating for a lease of Sixth Street Market to Richmond Parking Corporation and portions of the Safety-Health-Welfare Building for a food operation and the City of Richmond does not plan to assess or tax the leasehold interest of Richmond Parking Corporation or the leaseholder of the food operation in the Safety-Health-Welfare Building.

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page 43 }

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Filed August 25, 1964.

OBJECTIONS TO REQUEST FOR ADMISSIONS

The City of Richmond makes the following objections to the request for admissions filed August 6, 1964, the time for responding thereto having been extended to this date by agreement of counsel:

1. Whether or not the City of Richmond has taxed the leasehold interest of any person other than the applicants for the years 1961, 1962 and 1963, or any year, is not relevant to the question of whether or not the assessments complained of in this proceeding are erroneous or invalid.

2. This proceeding involves only taxation, pursuant to Section 58-758 of the Code of Virginia, of a leasehold interest in land and improvements exempt from assessment for taxation to the owner, the owner of the land and improvements being the Commonwealth of Virginia, which is exempt from taxation under Section 183 of the Constitution whether or not such real estate is leased or otherwise a source of revenue or profit. Land and improvements owned by any own-
page 44 } er other than Commonwealth are not exempt from taxation if leased or otherwise a source of revenue or profit, even though the owner thereof be a City or other political subdivision of the Commonwealth. *Newport News* v. *Warwick County,* 159 Va. 571; Constitution, §183; Code of Virginia, §58-14. Therefore, paragraphs 8 to 18, inclusive, of said request for admissions, concerning land and buildings owned by the City of Richmond, are irrelevant to any issue presented in this proceeding within the meaning of Section 8-111.1 of the Code of Virginia.

* * * * *

MOTION TO QUASH INTERROGATORIES

The City of Richmond respectfully moves the Court to quash the interrogatories filed August 6, 1964, upon the grounds that the matter sought is irrelevant, in that:

1. Whether or not the City of Richmond has taxed the leasehold interest of any person other than the applicants for the years 1961, 1962 and 1963, or any year, is not relevant to the question of whether or not the assessments complained of in this proceeding are erroneous or invalid.

2. Leases of any property owned by the City of Richmond,

and the terms and conditions thereof, are not relevant or material to any issue presented in this proceeding, for the reason that Section 58-758 of the Code of Virginia page 45 } does not authorize the taxing of any leasehold interest in such property because municipally owned property, if leased or otherwise a source of revenue or profit, is not exempt from taxation under Section 183 of the Constitution and §58-14 of the Code of Virginia.

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page 72 }

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Filed August 26, 1964.

ANSWERS TO REQUEST FOR ADMISSIONS

Without waiving its objections thereto, and expressly denying the relevancy or admissibility thereof, the City of Richmond makes the following answers to the request for admissions served August 6, 1964:

1. The facts alleged in paragraph 1 of the request for admissions are believed to be true.
2. The right of W. D. Crenshaw to operate a sandwich shop in the State Office Building is not believed to be an assessable leasehold interest owned by said Crenshaw, and said building is believed outside the taxing jurisdiction of the City of Richmond. Therefore no assessment has been made against said Crenshaw because of his occupancy of part of said building.
3. No leasehold interest in any part of the Blanton Building is owned by A. G. Pratali, Jr. Therefore no real estate assessment has been made against him in connection with his occupancy of part of said building.
4. The right of Mrs. J. F. Frick to operate a sandwich shop in the Capitol Building is not believed to be an assessable leasehold interest owned by said Mrs. Frick, and said building is believed outside the taxing jurisdiction of page 73 } the City of Richmond. Therefore no assessment has been made against said Mrs. Frick because of her occupancy of part of said building.
5. According to a document delivered to the Assessor of real estate by the State Division of the Budget on August 25,

1964, a taxable leasehold interest appears to be owned by the Southern Planter Publishing Company in the property known as 203 Governor Street. This interest will be assessed for taxation for the tax years 1961, 1962, 1963 and 1964, and subsequent tax years, as soon as the value of said leasehold can be determined.

6. According to a document delivered to the Assessor of real estate by the State Division of the Budget on August 25, 1964, a taxable leasehold interest appears to be owned by Richard C. Clagett in the property known as 1412 East Franklin Street. This interest will be assessed for taxation for the tax years 1961, 1962, 1963 and 1964, and subsequent tax years, as soon as the value of said leasehold can be determined.

7. According to a document delivered to the Assessor of real estate by the State Division of the Budget on August 25, 1964, a taxable leasehold interest appears to be owned by Claude Harrison, Jr. and E. P. Webb, partners, trading as Virginia Engraving Company in the property known as 1412 East Franklin Street. This interest will be assessed for taxation for the tax years 1961, 1962, 1963 and 1964, and subsequent tax years, as soon as the value of said leasehold can be determined.

page 74 } 19. The facts stated in paragraph 19 of the Request for Admissions are believed to be true.

20. The facts stated in paragraph 20 of the Request for Admissions are believed to be true.

21. No leasehold interest is known to be owned by any doctor in any portion of the hospital building at 1200 East Broad Street. The right of Irvin Milkin to operate a beauty salon in said building is not believed to be a taxable leasehold interest owned by said Milkin. Therefore no assessment has been made against said Milkin or any doctor because of their occupancy of parts of said building.

22. The right of Albert N. Fadool to operate a snack bar facility in a portion of the hospital building at 1300 East Marshall Street is not *belived* to be a taxable leasehold interest owned by said Fadool. Therefore no assessment has been made against him because of his occupancy of part of said building.

23. The right of W. Cabell Haskins to operate a restaurant concession in a portion of the student activities building at 1110 East Broad Street is not believed to be a taxable leasehold interest owned by said Haskins. Therefore no assessment has been made against him because of his occupancy of part of said building.

24. The right of the Bank of Virginia to operate a banking facility in a portion of said student activities building is not believed to be a taxable leasehold interest owned by the Bank of Virginia. Therefore no assessment has been
page 75 } made against said bank because of its occupancy of part of said building.

25. As of January 1, 1964, it is believed that a taxable leasehold interest was owned by Edward B. McLane in a portion of the building at 1200 East Marshall Street, according to an agreement dated October 14, 1963, given to the Assessor of Real Estate by the Assistant President of the Medical College of Virginia on August 18, 1964. No assessment has yet been made against said McLane because of his occupancy of said space, but a 1964 assessment will be made as soon as the value of said property has been determined.

26. The right of Joseph G. Beddingfield to operate a snack bar facility in a portion of the dormitories on the north side of Leigh Street between Ninth and Tenth Streets is not believed to be a taxable leasehold interest owned by said Beddingfield. Therefore no assessment has been made against him because of his occupancy of part of said buildings.

27. The facts stated in paragraph 27 of the Request for Admissions are believed to be true.

28. The facts stated in paragraph 28 of the Request for Admissions are believed to be true.

29. No leasehold interest is owned by Automatic Retailers of America, Incorporated, in any portion of the building known as 827 West Franklin Street, according to information received from E. V. Woodall, bursar of Richmond Professional Institute. Therefore no assessment has
page 76 } been made against said corporation because of its occupancy of part of said building.

30. No leasehold interest is owned by any person in parking areas at 313, 315 or 317 North Harrison Street, according to information provided by said E. V. Woodall. Therefore no assessment has been made against any persons because of their use of such parking areas.

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page 77 }.

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Filed August 26, 1964.

ANSWER TO INTERROGATORIES

Without waiving its motion to quash the interrogatories served August 6, 1964, and expressly denying the relevancy thereof, the City of Richmond makes the following answer to interrogatory 3:

INTERROGATORY: Has the City of Richmond taxed the leasehold interest of any other party or parties for the years 1961, 1962 and 1963?

ANSWER: As of this date, the City of Richmond has not assessed any leasehold interest of any party other than the applicants in land or improvements exempt from taxation to the owner for the tax years 1961, 1962 or 1963, because of lack of knowledge of the existence of such interests. It is believed that assessable leasehold interests exist in (a) certain real etate conveyed in 1964 by Sheltering Arms Hospital to the Medical College of Virginia, used by Life Insurance Company of Virginia for parking purposes. Investigation of this matter is not yet complete, and if it is determined that Life Insurance Company of Virginia owns a leasehold interest in said land, the Company will be assessed therefor for the tax year 1964 and succeeding tax years.

(b) Part of the Medical College of Virginia Hospital building at 1200 East Marshall Street leased in
page 78 } 1963 to Edward B. McLane. This lease was made available to the Assessor on August 18, 1964. The Assessor intends, as soon as the value of this leasehold is determined, to access it for taxation for the tax year 1964.

(c) The property known as rear of 203 Governor Street, leased by the Commonwealth of Virginia to the Southern Planter Publishing Company. This lease was made available to the Assessor on August 25, 1964. The Assessor intends, as soon as the value of this leasehold is determined, to assess it for taxation for the tax years 1961, 1962, 1963 and 1964, and succeeding tax years.

(d) The first floor of the property known as 1412 East Franklin Street, leased by the Commonwealth of Virginia to Richard G. Clagett. This lease was made available to the Assessor on August 25, 1964. The Assessor intends, as soon as the value of this leasehold is determined, to assess it for taxation for the tax years 1961, 1962, 1963 and 1964, and succeeding tax years.

(e) The second floor of the property known as 1412 East Franklin Street, leased by the Commonwealth of Virginia to

Claude Harrison, Jr., and E. P. Webb. This lease was made available to the Assessor on August 25, 1964. The Assessor intends, as soon as the value of this leasehold is determined, to assess it for taxation for the tax years 1961, 1962, 1963 and 1964, and succeeding tax years.

No other taxable leasehold interests in the City of Richmond are known to the Assessor.

Other taxable leaseholds will be assessed for taxation when they come to the attention of the Assessor.

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October 7, 1964

Re: Harry Shaia, et al *v.* City of Richmond

Gentlemen:

The Medical College of Virginia is the fee simple owner of certain real estate located in the City of Richmond which is leased to Harry and Zackia Shaia, trading and doing business as Skull and Bones Restaurant. Among other things, the lessees agreed, at their cost, to erect certain improvements on said real estate in the amount stipulated in the lease. Said lease further provides that in the event the same is terminated by the Medical College of Virginia, it will reimburse the lessees for said improvements in accordance with a scale set forth therein.

This is an entirely different situation from that raised by the applicants in their request for admissions and interrogatories. The Court is of the opinion that the City of Richmond has fully answered all pertinent questions requested by the applicants in these proceedings therefore, the City of Richmond will not be required to respond further to the applicants request for admissions and interrogatories.

The motion of the City of Richmond to quash those portions of the applicants request for admissions and interrogatories not previously answered, is sustained.

Very truly yours,

W. Moscoe Huntley

WMH/np

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Filed October 12, 1964.

MOTION FOR SUMMARY JUDGMENT

The applicants respectfully move the Court for Summary Judgment on the following grounds:

1. The applicants in their Second Amended Application for Correction and Nullification of Erroneous Assessment of Taxes ordered filed herein on July 30, 1964. in paragraphs 11 and 12 alleged that "the assessment as made and the tax as levied by the defendant are discriminatory, not uniform and purely arbitrary, and ". . . are violative of §168 of the Constitution of Virginia and the 14th Amendment of the Constitution of the United States;" and, for these reasons, among others, the assessment in question is void and of no effect.

2. The applicants filed Interrogatories herein on August 6, 1964, which were duly served upon the defendant, and paragraph No. 3 thereof was "Has the City of Richmond taxed the leasehold interest of any other party or parties for the years 1961, 1962 and 1963."

3. The defendant filed an answer to the Interrogatories on August 27, 1964, and therein answered "As of this date, *the City of Richmond has not assessed any leasehold* page 95 } *interest of any party other than the applicants* in land or improvements exempt from taxation to the owner for the tax years 1961, 1962 or 1963, because of lack of knowledge of the existence of such interests. . . ."(Italics provided).

4. The defendant's answer also said that assessable leasehold interests exist in the property at the rear of 203 Governor Street, leased by the Commonwealth of Virginia to the Southern Planter Publishing Company; the first floor of the property known as 1412 East Franklin Street, leased by the Commonwealth of Virginia to Richard G. Clagett; and the second floor of the property known as 1412 East Franklin Street, leased by the Commonwealth of Virginia to Claude Harrison, Jr. and E. P. Webb.

5. The applicants and the lessees, Southern Planter Publishing Company, Richard G. Clagett, and Claude Harrison, Jr. and E. P. Webb, are in the same class of subjects in that they are all lessees from the Commonwealth of Virginia and

all hold a leasehold interest in land and improvements which are exempt from assessment for taxation to the owner. Likewise, they are all statutory execeptions to the general rule that a leasehold interest is a chattel real. The estates created are identical in character and nature. The value of the leasehold interests must of necessity vary because of differing terms, conditions, quantity of space, location, improvements and innumerable other factors; however, none of these go to the nature of the estate created. Nor is the character or nature of the estate created altered by a lessee page 96 } making improvements to the leased premises. The fact remains that a *leasehold interest* is being taxed. It is well established that a building erected by a lessee on the leased premises, pursuant to a covenant in the lease, becomes a part of the realty and is not removable. The improvement so constructed is merely an item of rent.

6. The defendant by its answers to the Interrogatories and by its answers to Request for Admissions, also filed herein on August 27, 1964, admitted that while other leasehold interests existed, the leasehold interest of the applicants was the only one taxed during the years in question, indisputably in violation of §168 of the Constitution of Virginia which provides ". . . all taxes, whether state, local or municipal, shall be uniform upon the same class of subjects . . ."

7. The assessment made and the tax levied against the aplicants for the years 1961, 1962 and 1963 *were not uniform at the time made* and cannot now be made uniform for the years in question by the defendant now taxing those leasehold interests which were not previously taxed because of the following reasons, among others:

a. The City of Richmond has charged the applicants a penalty and interest continues to accrue on the unpaid tax for each of the tax years in question.

b. The Statute of Limitations for the applicants for the years in question would differ from that of the other said lessees.

c. The applicants would not have the opportunity to compare the assessment of the other lessees with their page 97 } own for uniformity and discrimination.

8. That the defendant for the years in question taxed only the applicants' leasehold interest while failing to tax the leasehold interest of all others because of lack of knowledge of the existence of such interests does not make it any less discriminatory, but clearly makes the assessment not uniform in its application in violation of §58-1145 Code

of Virginia which says in part that "the burden of proof shall be upon the taxpayer to show . . . that the assessment is not uniform in its application, but it shall not be necessary for the taxpayer to show that intentional, systematic and wilful discrimination has been made."

WHEREFORE, the applicants pray that the assessments made and taxes levied against them for the years 1961, 1962 and 1963 be declared null and void in that they are not uniform in their application and were discriminatory when made; and, that they be awarded their costs incurred in this matter.

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Filed 10/12/64.

REPLY TO MOTION FOR SUMMARY JUDGMENT

The motion for summary judgment should be denied because:

1. Section 58-1149 of the Code of Virginia provides that no order exonerating the applicant from taxation shall have any validity unless the court shall certify the facts proven, after examination of the officer making the assessment.

2. The answers to interrogatories and answers to request for admissions filed herein by the City of Richmond August 27, 1964, which are referred to in the applicant's motion for summary judgment, show on their face that the existence of leasehold interests referred to therein were first made known to the Assessor in August, 1964, and that the Assessor intends to assess said leaseholds on which their value can be determined.

3. Assessment of penalty and interest against the applicants results in no discrimination against the applicants, since other leasehold interests existing during the tax years 1961, 1962, 1963 and 1964 assessed for taxation page 100 } must also be assessed for penalty and interest thereon dating back to the years in which said taxes should have been paid pursuant to Section 58-1164 of the Code of Virginia, Section 8.07 (b) of the Richmond Char-

ter (Acts 1948, pp. 220-221) and Section 35-34 of the Richmond City Code of 1963.

4. No plea of the statute of limitations is available against the applicants for any of the years for which their leasehold interest has been taxed.

5. The applicants will have ample opportunity to compare the assessments against such other lessees as soon as they have been made.

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ORDER OVERRULING MOTION FOR SUMMARY JUDGMENT

This matter came on again to be heard on the motion for summary judgment filed by the applicants and the reply thereto filed by the City of Richmond, and was argued by counsel.

On Consideration Whereof, it is ordered that said motion for summary judgment is overruled, to which action the applicants, by counsel, objected and excepted upon the grounds stated in said motion.

I ask for this:

JAMES A. EICHNER
Counsel for City of Richmond.

I object to this:

HARRY SHAIA, JR.
Counsel for Applicants.

Enter 10/22/64.

W. M. H.

Spread
10/22/64.

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ORDER OVERRULING AND SUSTAINING OBJECTIONS TO REQUEST FOR ADMISSIONS AND MOTION TO QUASH INTERROGATORIES

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In consideration whereof it is ordered:

1. That the City of Richmond's motion to
page 108 } quash interrogatories is granted as to paragraphs 1 and 2 thereof.

* * * * *

3. That said objections to admissions are sustained as to paragraphs 8 to 18, inclusive, of said request.

4. That said objections are overruled as to paragraphs 1 to 7, inclusive, and 19 to 30, inclusive, of said request.

The City of Richmond, by counsel, objected and excepted to the action of the Court with respect to paragraphs 1(a), 2 and 4 of the request for admissions upon the ground that Capitol Square is, as a matter of law, not part of the City of Richmond and that therefore the matter called for in said paragraphs is not relevant and material herein. The applicants, by counsel, objected and excepted to the action of the Court insofar as it sustained the City's motion to quash and objections, upon the ground that all of the matters sought in their request for admissions and interrogatories are relevant and material herein.

Enter 10/23/64.

W. M. H.

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Filed Oct., 26. 1964.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND REQUEST FOR ADMISSIONS

The City of Richmond files the following supplemental answers to paragraph 3 of the interrogatories filed August 6, 1964, and to paragraphs 5, 6, 7 and 25 of the request for admissions filed August 6, 1964:

1. On October 22, 1964, the Assessor of Real Estate made assessments against the persons listed below based on leasehold interests owned by them as of January 1 of each tax year listed below. The amounts of said assessments, and penalty and interest thereon, are as listed below:

(a) Parking lot at northwest corner of Clay and 11th Streets owned by the Medical College of Virginia and leased to Life Insurance Company of Virginia:

Tax Year	*Assessment*	*Tax*
1964	$2,800	$52.64

page 110 } (b) Barber shop in Hunton Hall, 1200 East Marshall Street owned by the Medical College of Virginia and leased to Edward B. McLane:

Tax Year	*Assessment*	*Tax*
1964	$150	$ 2.82

(c) Property known as 1412 East Franklin Street owned by Commonwealth of Virginia and leased to Richard G. Clagett:

Tax Year	*Assessment*	*Tax*	*Penalty*	*Interest to 10/1/64*	*Total*
1961	$ 16,100	$ 302.68	$15.13	$ 52.44	$ 370.25
1962	13,400	251.92	12.60	27.77	292.29
1963	10,500	197.40	9.87	9.33	216.60
1964	7,400	139.12			139.12

(d) Property known as 1412 East Franklin Street (or 103 North 14th Street) owned by Commonwealth of Virginia and leased to Virginia Engraving Company (E. P. Webb, President.):

Tax Year	*Assessment*	*Tax*	*Penalty*	*Interest to 10/1/64*	*Total*
1961	$ 16,100	$ 302.68	$15.13	$ 52.44	$ 370.25
1962	13,400	251.92	12.60	27.77	292.29
1963	12,600	236.88	11.84	11.19	259.91
1964	8,900	167.32			167.32

(e) Property known as rear of 203 Governor Street (or rear of 1312-14 East Grace Street) owned by Commonwealth of Virginia and leased to Southern Planter Publishing Company:

Tax Year	*Assessment*	*Tax*	*Penalty*	*Interest to 10/1/64*	*Total*
1961	$ 2,200	$ 41.36	$ 2.07	$ 7.17	$ 50.60
1962	2,200	41.36	2.07	4.56	47.99

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1963	2,200	41.36	2.07	1.95	45.38
1964	2,200	41.36			41.36

2. The Assessor's office is unaware of any taxable leasehold interests in real estate in the City of Richmond which have not been assessed for taxation for said years.

The above information is true to the best of my knowledge and belief.

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July 13, 1965

Re: Harry Shaia, et als *v.* City of Richmond

Gentlemen:

The Court is of the opinion that the contracts or agreements entered into by the State of Virginia relative to the occupation of State owned property by Hillquist in the Blanton Building and others similarly situated are not pertinent

to the case before the Court and should be excluded from the evidence.

The Court is of the further opinion that the lease hold interest of Harry and Zachia Shaia trading and doing business as Skull and Bones Restaurant, is taxable under Section 58-758 of the Code of Virginia and that the assessment made by the City of Richmond is based upon fair market value.

Very truly yours,

W. MOSCOE HUNTLEY

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FINAL ORDER

This matter came on to be heard upon (a) the application for correction and nullification of erroneous assessment of taxes for the years 1961 and 1962, and exhibit attached thereto, filed on January 10, 1963; (b) the order entered October 18, 1963, dismissing the Medical College of Virginia as a party to the application and granting leave to file an amended application; (c) the order of the Supreme Court of Appeals entered January 17, 1964, rejecting the petition of the Medical College of Virginia for writ of error to the order of October 18, 1963, the effect of which was to affirm the order of October 18, 1963; (d) the amended application for correction and nullification of erroneous assessment of taxes for the years 1961, 1962 and 1963 filed December 31, 1963; (e) the answers to interrogatories and request for admissions filed by the applicants on July 23, 1964; (f) the second amended application for correction and nullifications of erroneous assessment of taxes for the years 1961, 1962 and 1963 filed July 30, 1964; (g) the answers to interrogatories and requests for admissions filed by the defendants on August 26, 1964; (h) the order overruling the motion of the applicants for summary judgment entered October 22, 1964; (i) the order entered October 23, 1964, overruling and sustaining objections to requests for admissions and to quash interrogatories filed by the applicants; (j) the answers to interrogatories and requests for admissions filed

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by the defendant on October 26, 1964; (k) the evidence heard *ore tenus*; and (1) the arguments of counsel.

ON CONSIDERATION WHEREOF, pursuant to its memorandum of July 13, 1965, filed herewith, the Court is of the opinion (a) that the contracts or agreements entered into by the State of Virginia allowing State owned property to be used for private purposes is not pertinent to the matters before the Court and is hereby excluded from the evidence; (b) that the leasehold interest of the applicants is taxable real estate under §58-758 of the Code of Virginia; and (c) that the assessment of the leasehold interest for each of the years 1961, 1962 and 1963 is not erroneous, and is the fair market value of the leasehold interest for each of such years.

page 243 } WHEREFORE, it is adjudged, ordered and decreed that the application for the correction of the assessments for the years 1961, 1962 and 1963 is hereby dismissed.

I ask for this:

J. E. DRINARD
City Attorney.

Seen and objection and exception is taken to all of the foregoing action of the Court:

HARRY SHAIA, JR.
Counsel for Harry Shaia
and Zackia Shaia.

Enter 9/20/65.

W. M. H.

* * * * *

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Received and filed Nov. 18, 1965.
Hustings Court Clerk's Office.

....., Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Pursuant to 5:1, §4, of the Rules of Court the applicants, Harry Shaia and Zackia Shaia, hereby give notice to the defendant, the City of Richmond, that they appeal from the judgment of the Court entered against them in this proceeding on September 20, 1965.

ASSIGNMENTS OF ERROR

The applicants, Harry Shaia and Zackia Shaia, make the following assignments of error to the judgment entered on September 20, 1965:

1. The Court erred in failing to find that the contract between the Medical College of Virginia and the applicants is not a lease.
2. The Court erred in failing to find that Section 58-758, Code of Virginia, 1950, as amended, does not apply to applicants' interest in the property owned by the Commonwealth; and, if the said Section does so apply it is unconstitutional by force of Section 183 of the Constitution of Virginia.
3. The Court erred in finding that the contracts entered into by the State of Virginia, applicants' Exhibits No. 2 through No. 10, allowing State owned property page 245 } to be used for private purposes were not pertinent to the matters before the Court, and the Court erred in excluding the said contracts from the evidence.
4. The Court erred in its order of October 23, 1964, by sustaining defendant's objections to applicants' request for admissions, paragraphs 8 to 18, inclusive, and by sustaining the defendant's motion to quash interrogatories, paragraphs 1 and 2.
5. The Court erred in failing to find that the assessment as made and the tax as levied are not uniform and discriminatory in violation of Section 168 of the Constitution of Virginia and the 14th Amendment to the United States Constitution.
6. That the Court erred in overruling applicants' motion for summary judgment.
7. The Court erred in finding that the assessment of the applicants' interest in 400 North 12th Street for the years

Richard Harry Shaia.

1961, 1962 and 1963 was not excessive, made properly and based upon the fair market value of their interest.

HARRY SHAIA AND
ZACKIA SHAIA

* * * * *

page 10 } RICHARD HARRY SHAIA,
having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. Please state your name and your address?

A. Richard Harry Shaia, 7703 Dartmoor Road.

Q. And your age and occupation?

A. Thirty-nine. Self-employed in the restaurant business.

Q. Do you own and operate the Skull and Bones Restaurant?

A. Yes, sir, I do.

Q. Does anyone else have an interest in that business?

A. My brother Edward has a partnership with me.

Q. Who arranged for the installation of the business fixtures and equipment in your new location at 400 North 12th Street?

A. My brother Edward and I.

Q. Who paid for these fixtures and equipment,
page 11 } A. My brother and myself.

Q. Does Harry Shaia have any interest in the fixtures and equipment whatever?

A. No, he does not.

* * * * *

Q. What is the understanding for the use of that building?

A. That we are to use the building for a restaurant and to pay him rent on it.

* * * * *

Richard Harry Shaia.

By Mr. Shaia:

Q. How much rent are you to pay?

page 12 } A. $1,000 a month.

* * * * *

Q. May either of you, either you or your brother, who are the operators of the business, or Harry Shaia terminate the agreement at will or any time you wish?

A. Yes, they can.

* * * * *

By Mr. Shaia:

Q. Did yau pay any tax to the City of Richmond on the business fixtures and equipment used in the business known as Skull and Bones Restaurant for the years 1961, 1962 and 1963?

A. Yes, we did.

Q. What kind of tax did you pay?

A. Paid personal property on fixtures.

Q. And equipment?

page 13 } A. Yes, and equipment.

Q. Did the business pay any other taxes to the City of Richmond during those years?

A. It paid retail merchant's license.

Q. Is there any tax imposed by the Commonwealth of Virginia or the City of Richmond which other restaurant operators are compelled to pay which you do not have to pay?

A. No, not that I know of.

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page 15 }

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CROSS EXAMINATION

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page 17 }

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Richard Harry Shaia.

By Mr. Eichner:

Q. Now, gross receipts from the restaurant business—well, let me ask you this, first: What date did you first occupy the premises?

A. I believe in January of 1961.

* * * * *

page 18 } Q. And you have operated a restaurant, therefore, for the entire calendar years 1961, 1962 and 1963?

A. Yes.

Q. And continuously to date, of course, haven't you?

A. That is correct.

Q. Do you know what the gross receipts were for each of those years?

A. Do I know? Yes, sir.

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page 19 }

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Q. Yes, sir. Now, how about sales for the calendar year 1961?

A. For 1961 I imagine it would be the 1962 bill, which is $208,604.

Q. And for the calendar year 1962?

A. It would be $225,911.

Q. And how about the calendar year 1963, gross receipts?

A. I don't have that, sir.

Q. It has been said and answered in the request for admissions that it is $245,419. Does that sound right to you?

A. Yes, sir.

Q. Do you know what the gross receipts are so far in 1964?

A. No, sir.

page 20 }

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By Mr. Eichner:

Q. Gross receipts haven't fallen off as compared to last year, have they?

Richard Harry Shaia.

A. No, sir. About the same.

* * * * *

Q. And no particular term is specified in the lease? It is at will, is it not?

A. We have no lease.

page 21 } Q. So, in other words—

A. It is strictly a verbal agreement with my father, my brother and I.

Q. So, you can leave tomorrow, or, say, in a month or so; isn't that right?

A. That is correct.

Q. Similarly, Harry Shaia could ask you to vacate in another month, couldn't he?

A. That is correct.

Q. And you will not be bound to continuing paying rent?

A. That is correct.

Q. Harry Shaia is your father, is he?

A. That is correct.

Q. Was he formerly a partner of yours in this business?

A. No, sir.

Q. What was the $12,000 a year based on? How did you arrive at that figure?

A. I don't remember how we arrived at the figure.

Q. Who pays for heat and water and electricity and other utilities?

A. My brother and myself.

page 22 } Q. About how much a year do you pay for heat?

A. I don't have any idea.

Q. You get heat from the State, don't you, from their central heating plant?

A. We purchase it from the State.

Q. Yes. You pay the State?

A. That is correct.

Q. What agreement was made between you and your brother and Harry Shaia for payment of any real estate taxes?

A. We never made any agreement.

Q. No agreement on it?

A. No agreement. Because we never anticipated it.

Q. You never discussed who would have to pay them?

A. No, because we didn't feel there would be any.

Harry Shaia, Sr.

* * * * *

page 23 } By Mr. Eichner:

Q. Are the profits of the business shared in any way with Harry and Zachia Shaia?

A. No, sir.

Q. You and your brother are the only partners; is that right?

A. That is right.

* * * * *

page 24 } HARRY SHAIA, SR.,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Shaia:

Q. State your name and address, please?

A. Harry Shaia. 4601 Fitzhugh Avenue.

Q. What is your age?

A. 66.

Q. Your occupation?

A. Retired.

Q. Are you one of the applicants in this case?

A. Yes, sir.

Q. What was your occupation before you retired?

A. In the restaurant business.

Q. From what locations did you operate?

A. Tenth and Clay. Eleventh and Clay. And Twelfth Street.

Q. And who were your principal customers?

A. Doctors and nurses.

Q. Are all of these locations within the Medical College area?

page 25 } A. Yes, sir.

Q. How long have you been associated with the operation of a restaurant in the Medical College of Virginia area?

A. I have been there forty years, your Honor—forty years.

Q. What type of relationship have you had with the Medical College of Virginia?

A. Get along fine with them all the time.

Q. What disposition did you make of your business?

Harry Shaia, Sr.

A. I donate to my children, Edward H. Shaia and Richard Shaia.

Q. How long ago do you think that was?

A. Oh, around twenty years ago.

Q. Have they continuously maintained a restaurant business in that area since that time?

A. Yes, sir.

Q. Now, you executed an agreement with the Medical College of Virginia which is dated January 1959. And that agreement provides that you were to build a building at 400 North Twelfth Street.

A. Yes, sir.

Q. And the agreement further provides that
page 26 } certain business fixtures and equipment were to be installed and a restaurant operated. Did you arrange for such a building to be built?

A. Yes, sir.

Q. What was the approximate cost of that building?

A. $127,000.

Q. Who paid for the building?

A. I had to pay for the building.

Q. Have you ever used the building yourself for any reason?

A. No.

Q. Who has use of the building?

A. My children, Edward and Richard Shaia.

Q. Is there any written agreement between you?

A. No. Just in the family.

Q. Is there any understanding between you and your children as to how much consideration is to be paid for the use of the building, how much rent is to be paid?

A. Yes, sir. $1,000 a month they are supposed to pay rent.

Q. Is that based on gross sales?

A. No.

Q. Is it just a fixed amount or is it based on
page 27 } anything else?

A. No. Just straight rent.

Q. Is there any understanding between you as to what use they are to make of the property?

A. Yes. Restaurant business.

Q. Is there any other understanding between you about the use of that property?

A. No.

Harry Shaia, Sr.

Q. May either you or your children, Richard and Edward, end that agreement any time you wish?
A. Yes, sir.
Q. Did you have any interest in the business known as Skull and Bones Restaurant during the years 1959 through 1963?
A. No.
Q. Did you arrange for the installation of the business fixtures and equipment?
A. No.
Q. Did you pay any part of the cost of the business fixtures and equipment?
A. No.
Q. Have you ever had any interest in those business fixtures and equipment?
A. No.
page 28 } Q. If Richard and Edward Shaia were to terminate the understanding with you, is there anything that would stop them from taking out those business fixtures and equipment?
A. No.
Q. Now, you testified that you received $12,000 annually as income from the property at 400 North 12th Street. How do you report that for income tax purposes?
A. $3,000 payment at 1101 East Clay Street, and $9,000 my income.
Q. From what property?
A. From 400 North 12th Street.

Mr. Shaia: Answer Mr. Eichner's questions.

CROSS EXAMINATION

By Mr. Eichner:

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page 29 }

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Q. How did you happen to reach agreement on $1,000?
A. A family way, me and my children.

Harry Shaia, Sr.

Q. Did you both agree that that was a fair rental of this building?

A. I was satisfied with it, yes, sir.

Q. And they were satisfied also, weren't they?

A. Yes, sir.

Q. And, of course, both of you have been in the restaurant business in this area for a long time?

A. Yes.

Q. You both, I guess, have pretty good knowledge of what rental ought to be on such property, don't you?

A. Well, I couldn't tell you that. I can't answer that.

Q. But you consider this to be the fair rental value of the property, didn't you?

A. I was satisfied with the rent.

Q. Your sons figures it was a fair rental value too, didn't they?

A. Yes, sir.

* * * * *

page 31 }

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Q. Were you formerly a partner of your sons, Richard and Edward?

A. I was a partner?

No, sir, I have never been a partner.

Q. You never have?

A. No.

page 32 } Q. Now, under the lease, I believe, as Mr. Shaia, Jr. said in this argument, there is a right to terminate this lease that is reserved. And you are familiar with it, aren't you?

A. Between us and the Medical College, yes, sir.

Q. Yes. Either one of you can give one year's written notice one year in advance?

A. Yes, sir.

Q. As of the end of any year; isn't that right?

A. Right.

Q. Has any notice of termination been given?

A. Not that I know of, no.

* * * * *

Louis George Hillquist.

Q. Now, in the sub-lease here between you and Richard and Edward, the $12,000 a year is rent for occupying
page 33 } the space with the understanding that they will take care of all utilities; isn't that correct?

A. Right.

Q. And the understanding, of course, that they will provide all the fixtures, which belong to them, as I understand it?

A. That is right.

Q. And how about maintenance, what is the agreement as to maintenance between you and your two sons?

A. What does maintenance mean?

Q. Maintenance of the building—any repairs or maintenance that has to be done to it.

A. They are supposed to keep it up.

Q. So, you don't have any expense in connection with it?

A. No.

Q. It is entirely up to your two sons?

A. That is correct.

Q. And have you ever discussed with them who should pay real estate taxes—you or your sons?

A. We are supposed to get it free.

Q. You haven't discussed that with them at all?

A. No.

Q. Even after the tax assessments were made?
page 34 } A. No.

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page 35 }

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LOUIS GEORGE HILLQUIST,
having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. Mr. Hillquist, state your name and address, please.

A. Louis George Hillquist. 10101 Providence Road.

Q. Your age and occupation?

A. Forty-seven. I am Capital Outlay Assistant to the State Budget Director.

Q. Do the duties of your office include handling leases in which the Commonwealth of Virginia becomes involved?

Louis George Hillquist.

A. They do.

Q. Are you in the Division of the Budget office?

page 36 } A. Yes, I am.

Q. Does that Division lease to individuals any properties owned by the Commonwealth in the City of Richmond?

A. It does.

Q. Is 1412 East Franklin one of these properties?

A. It is.

Q. How many tenants are in that building?

A. Two.

Q. Is it a two-story structure?

A. It is.

Q. Who is the tenant on the first level?

A. Richard G. Claggett.

Q. Is there a written lease?

A. Yes, there is.

Q. What is the date of that lease?

A. October 15, 1960.

Q. Who are the parties named on the lease?

A. The Commonwealth of Virginia, Division of the Budget, and Richard G. Claggett.

Q. What is the term of the lease, please?

A. Sixty-four and a half months starting October 15, 1960 and expiring February 28, 1966. This lease has

page 37 } been terminated, though, by mutual agreement. It was terminated on October 7, 1964.

Q. 1964?

A. Yes.

Q. Well, we are principally concerned here with the years 1961 through 1963. So, that wouldn't affect this.

What is the square footage involved in the lease on the first floor?

A. Approximately 2,149 square feet.

Q. What is the rent that is paid?

A. $300 per month.

Q. Could you describe to the Court the type of building that this is?

A. It is a two-story brick industrial building of modern construction.

Q. Does that tenant, Mr. Claggett, have an enntrance to the first floor himself?

A. Entrance to the first floor?

Q. Yes.

Louis George Hillquist.

A. Yes.

Q. And is that entrance designated in any way? Are there any signs upon the door?

A. Yes, there is a sign upon the door with the name of his firm, Graphico, Incorporated.

page 38 } Q. So, anyone going by that building could identify it as he being the occupant of the building?

A. Yes, they could.

Q. Now, as to the second floor, is there is there a written agreement on that space?

A. Yes, there is.

Q. And what is the date of that agreement?

A. August 23, 1960.

Q. Who are the parties there?

A. Commonwealth of Virginia, Division of the Budget, and Claude Harrison, Jr. and E. P. Webb, trading as Virginia Engraving Company.

Q. What is the term of that lease?

A. Sixty months beginning March 1, 1961 and expiring February 28, 1966.

Q. And the square footage involved?

A. The original lease involved approximately 4,980 square feet. This was extended to approximately 5,994 square feet by a letter of agreement dated March 1, 1963.

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page 40 }

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Mr. Shaia: Very well.

I ask that this be marked Applicant's Exhibit Number 2.

The Court: All right.

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By Mr. Shaia:

Q. Is 203 Governor Street, which is a part of State Office Building No. 8, another one of those properties so

page 41 } leased?

A. Yes, it is.

Q. What is the date of that lease?

Louis George Hillquist.

A. The date of that lease is May 7, 1919.

Q. Has it just been extended? Has it been extended from year to year? Or what is the present term of the agreement?

A. The original term of the lease was five years renewable for five-year periods. It was modified by an extension memorandum dated November 28, 1961 so as to be renewable on a yearly basis, terminable upon 90 days written notice.

Q. Who are the parties there?

A. The parties for the original lease were G. G. Worsham and C. Z. Zinke and the Southern Planter Publishing Company. The present parties are the Commonwealth of Virginia, Division of the Budget and the Southern Planter Publishing Company.

Q. All right, sir. Do you know the square footage involved in that lease?

A. Approximately 4,700 square feet.

Q. And what is the type of building that is involved? It is a brick structure?

A. It is an old brick structure.

Q. How many stories is it?

page 42 } A. The portion occupied by the tenants is two stories.

Q. Do you have a copy of that lease with you?

A. Yes, sir, I do. This is the lease and the lease extension memorandum.

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Mr. Shaia: I would like to introduce this as Applicant's Exhibit No. 3.

* * * * *

By Mr. Shaia:

Q. Does your office have control over the Blanton Building which is owned by the Commonwealth of Virginia?

A. It does.

Q. It is owned by the Commonwealth, is it not?

A. Yes, it is.

Q. Is it located in the City of Richmond?

A. Yes, it is.

page 43 } Q. What is the location? On what street does it front?

Louis George Hillquist.

A. It fronts to the north. It doesn't front on a street. It fronts on a walk that extends from the Capitol Square. The rear of the building is on Bank Street.

Q. And the side of the building?

A. The side of the building is on Governor Street.

Q. Is there any portion of the Blanton Building leased to an individual?

A. We have an agreement with an individual.

Q. Do you have a copy of that agreement?

A. Yes.

Q. What is the date of that agreement?

A. July 7, 1958.

Q. Who are the parties to the agreement?

A. The Commonwealth of Virginia, Division of the Budget and W. H. Kappes and A. G. Pratali.

Mr. Shaia: I would like to have this marked Applicant's Exhibit Number 4.

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page 44 } The Witness: Mr. Kappes has since withdrawn from this agreement. We have his approval of his withdrawing from the partnership.

By Mr. Shaia:

Q. So that the party other than the Commonwealth is now Mr. A. G. Pratali, Jr.?

A. That is correct.

Q. What is the term of that agreement?

A. One year. It renews automatically unless terminated by a written notice of at least two months by either party.

Q. And do you know what the square footage involved is?

A. Approximately 1,496 square feet.

Q. What is the amount of rent?

A. The State receives 6 per cent of the gross receipts.

Q. What does the State provide for that consideration?

A. The State provides the space and certain equipment, the heat, air conditioning, water, electricity and other utilities.

Q. So that that 6 per cent is based on all of the utilities being provided as well as the fixtures and equip-
page 45 } ment and the air conditioning and heating; is that correct?

Louis George Hillquist.

A. That is right.

Q. Who is to bear the expense of making repairs and maintenance of the equipment?

A. The operator.

Q. And who is to bear the expense of janitorial and cleaning services?

A. The operator.

Q. Is the use specified?

A. It is.

Q. What is that use?

A. It is to be used only for the restaurant business.

Q. Do you all exercise any control over the menu or prices?

A. For practical purposes we do not.

Q. Is there a designated amount of space partitioned and reserved for the exclusive use of the lessee?

A. Yes.

Q. Does he have exclusive control over that portion of the property?

A. No.

Q. Does he have the only key?

A. No.

page 46 } Q. Who else has a key?

A. Our maintenance personnel.

Q. For what purpose?

A. For access to service other portions of the building they pass through this area, and for any emergency needs that might arise.

Q. Does your maintenance man have the key for any other purpose?

A. No. He has a key for no other purpose but for maintenance of the building.

Q. Does anyone else have a key?

A. Not to my knowledge.

Q. Does your office have control over the state office building which is located in the Capitol Square?

A. Yes.

Q. And, of course, that is owned by the Commonwealth of Virginia?

A. Yes.

Q. Is any portion of that State office building leased to an individual?

Mr. Eichner: We are just going to state the objection we

stated before about anything on Capitol Square. We think it is not part of the tax jurisdiction of the City.

page 47 } The Court: Yes.

Mr. Shaia: Is the Court of the opinion that the Capitol Square is not in the City?

The Court: The Capitol Square is in the State of Virginia just like the Henrico Circuit Court is in Henrico County.

Mr. Shaia: And this line of questioning would not be relevant, then?

Mr. Eichner: Your Honor, I don't mind him putting it into the record. I just wanted to maintain my objection on going into Capitol Square.

The Court: Yes.

Mr. Shaia: If your Honor please, the reason I was pursuing this question was because I thought in the order that was entered overruling and sustaining objections to requests for admissions and motion to quash interrogatories, the copy I received back indicates that they take an exception to the fact that the Capitol Square was held in the City. I may be misconstruing this.

Mr. Eichner: That is right. The Court did require us to answer interrogatories about Capitol Square. And we did object to it.

Mr. Shaia: Is this line of questioning, then, relevant?

The Court: I beg your pardon?

page 48 } Mr. Shaia: Is the line of questioning relevant? Or is the Court ruling that this is irrelevant.

The Court: No, I am not so ruling.

Mr. Eichner: We respectfully except on the grounds stated.

By Mr. Shaia:

Q. Is any portion of the State office building leased to an individual?

A. We have an agreement with an individual.

Q. What is the date of that agreement?

A. The exact date I do not know. It was by means of a letter from Governor Trinkle to the operator.

Q. And when was Trinkle governor?

A. From 1922 through 1926.

Q. Who were the parties to the agreement?

A. The Commonwealth of Virginia and Mr. W. D. Crenshaw.

Louis George Hillquist.

Q. Does he continue to occupy the space?
A. Yes, he does.
Q. Is any term specified?
A. It is at the pleasure of the Governor.
Q. Is the use for the premises indicated?

page 49 } A. I do not have a copy of the agreement. The only information I have is in the form of a memorandum written by the former Director of Grounds and Buildings of the Commonwealth of Virginia to the Budget Director at that time. This is dated 1948. He refers to the letter from Governor Trinkle. But we have not been able to locate it in our files.

Q. All right, sir.

If an agreement exists, you don't know where it is—a written agreement?

A. No, I don't.
Q. What is the square footage involved, approximately?
A. 260 square feet approximately.
Q. And the amount of rent that is paid?
A. $500 per year.
Q. Do you have any control over the menu or the prices charged?
A. Not to my knowledge.
Q. Who is to bear the expense of making repairs and maintenance of the equipment?
A. The repairs to the equipment are to be made by the operator, as indicated by this memorandum. However, as I say, we do not have the original letter. And I do not know what the agreement was in this letter.

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page 50 }

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Q. In practice who is making the repairs to the equipment?
A. The Commonwealth makes the repairs at the expense of the operator.
Q. Thank you. Who is to bear the expense of janitorial and cleaning services?
A. The operator.
Q. Is there a designated amount of space partitioned and

Louis George Hillquist.

reserved for the exclusive use of the lessee or of the operator?

A. There is.

Q. Is he the only one that has a key?

A. No.

Q. Who else has a key?

A. Our maintenance personnel for maintenance of the building.

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page 51 }

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CROSS EXAMINATION.

By Mr. Eichner:

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page 54 }

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Q. I ask you to look at paragraph 4. And it refers to the State approval of the type of equipment that the operator installs, does it not?

A. That is correct.

Q. I refer you to paragraph 8. It gives the State access to the books and accounts of the operator, Pratali?

A. That is correct.

Q. Paragraph 7, would you read that, if you don't mind?

A. The lunchroom facility shall be operated primarily for the benefit of personnel employed by the Commonwealth and no patronage other than State employed personnel shall be solicited by the operator."

Q. Paragraph 10. Again I won't ask you to read it, Mr. Hillquist. But paragraph 10 gives the State power to make rules and regulations concerning the operation of the lunchroom facility, does it not?

A. That is correct, sir.

Louis George Hillquist.

Q. And paragraph 15 gives the State power to terminate if any of its regulations are not observed, does
page 55 } it not?

A. That is correct.

Q. And paragraph 16 prohibits assignment of this agreement, doesn't it?

A. Yes.

Q. And paragraph 17 gives a right of termination on two months' notice?

A. Yes.

Q. Paragraph 3, Mr. Hillquist, referred to an appendix listing prices of food. Do you have an appendix on the original?

A. Yes, I do.

Q. It does state the prices for the various items of food?

A. Yes.

Q. Now, going back to the 203 South Governor Street, the Southern Planter lease; that originally, I think, was renewable for successive five-year periods, I believe you told us?

A. Yes, sir.

Q. And the amendment to it, which was November 1961, inserts a ninety-day termination clause?

A. That is correct, sir.

Q. Either party could terminate with ninety days notice?

A. Right, sir.

page 56 } Q. And on termination there is no provision in either the original lease or this 1961 lease extension memorandum which gives the lessee any right to recover any sum of money because of termination, is there?

A. No, sir, not to my knowledge there isn't.

Q. And the same is true, is it not, Mr. Hillquist, as far as no damages for termination? The same is true of Exhibits 1 and 2, the two leases for 1412 East Franklin?

A. That is correct. No damages for termination.

Q. And in the Claggett lease for 1412, Exhibit No. 1, Applicant's Exhibit No. 1, I just refer you to the final paragraph, Mr. Hillquist, paragraph number 12, that has a fixed termination date of February 28, 1966 except that it may be terminated on ninety days notice if the property is needed for construction of new State buildings; isn't that correct? Isn't that it?

A. That is correct.

Louis George Hillquist.

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page 60 }

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RE-DIRECT EXAMINATION.

By Mr. Shaia:

Q. Mr. Hillquist, do you have a copy of the agreement between the Commonwealth and the operator for the food servicing facility in the Blanton Building?

A. I do.

Q. May I have a copy of that?

A. The only copy I have with me is our official copy which I am not free to surrender. I have already surrendered one copy of this document.

Mr. Shaia: Mr. Eichner, would you want yours introduced as an exhibit—your copy?

Mr. Eichner: Perhaps the Clerk might be able to make a copy. We don't object to it, to start with.

Mr. Shaia: Would you arrange for a copy to be made and delivered to the Court?

The Witness: Yes, I will.

page 61 } Mr. Shaia: Is that acceptable to the Court?

The Court: Yes. That will be Applicant's Exhibit Number 5.

Mr. Eichner: Without taking up the Court's time too much right now, we are going to object to the introduction of this contract for the Blanton Building on the ground that it shows on its face it is not a lease. I realize the Court cannot finally rule without studying the thing. But our position is going to be that no agreement other than one creating a true leasehold interest has any relevancy.

A ruling from the Court would be helpful at the proper time, because then the Assessor will know whether he has made a mistake in not assessing it or not. That is why I make such an extended objection to it, if your Honor please.

The Court: I will rule on those questions later.

Mr. Eichner: Yes, sir. Thank you.

By Mr. Shaia:

Q. I think you testified that you have the right to exercise

control over the menu and the prices charged; is that correct?

A. This is stipulated in the lease, yes—in the contract.

Q. As a practical matter, has that right ever been exercised?

page 62 } A. It was exercised at the inception of the contract. But to my knowledge, there has been no reason to exercise this right since then.

Q. As to patronage, could anyone walk in off the street and be served in that operation?

A. Yes.

Q. No one is there to question where they are coming from or what right they have in the place?

A. No.

Q. Or anything such as this?

A. No.

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page 63 } LOUIS DANIEL CROOKS,
having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. State your name and address, please.

A. Louis Daniel Crooks.

Q. Your age and occupation?

A. Age 47. Occupation, Comptroller. My address is 2133 New Berne Road.

Q. What are the duties of your office?

A. The duties of the Comptroller is the chief financial officer of the institution and business manager of finances.

Q. Were you employed by the Medical College of Virginia in 1959?

A. I have been with them, yes, sir, since 1947.

Q. In what capacity were you serving the Medical College when this lease was negotiated in 1958 and 1959?

A. Treasurer.

Q. Are you familiar with the agreement between the Medical College of Virginia and Harry and Zachia

page 64 } Shaia dated January 8, 1959?

A. Yes.

Louis Daniel Crooks.

Q. Would you develop the background which led the Medical College into making this agreement?

A. The Medical College itself has very limited eating facilities on our own campus. And we have need of various ones to take care of our four thousand employees, our faculty and visitors to the institution.

At the time, we needed the property at 310-312 North Twelfth Street to construct our new medical education building. And MCV entered into a contract with the Shaias in order that we would have another eating facility for the displaced facility at North Twelfth Street—310 North Twelfth Street—plus we entered into an agreement to take over or purchase 1101 East Clay Street, which was also a restaurant.

It was agreed that we would be paying $3,000 per year—

Mr. Eichner: If your Honor please, I think the lease speaks for itself as to what its terms are.

The Court: The lease is the best evidence. It is already introduced.

Mr. Shaia: Yes, sir.

By Mr. Shaia:

page 65 } Q. Just if you will restrict yourself to the background that led up to the execution of the agreement.

A. Well, the background, of course, is that we needed the property at both locations, 1101 East Clay and 310-312 North Twelfth Street.

Q. The new Medical Education Building was constructed on the southwest corner; is that correct, of Twelfth and Marshall?

A. It runs from Eleventh to Twelfth on Marshall.

Q. How many food servicing facilities did that building displace?

A. It displaced three; one on the corner and two in the middle.

Q. And was there a food servicing facility at 1101 East Clay prior to the Medical College acquiring it?

A. Yes.

Q. Before the agreement was executed do you know what the preliminary term of the agreement was that was considered by the parties?

Louis Daniel Crooks.

Mr. Eichner: That is objected to again, if your Honor please. We have the lease before us. What was thought about before I submit is not relevant.

page 66 } Mr. Shaia: I think it is relevant, if your Honor please, because we are trying to show that these parties were attempting to make one type of agreement first. They found they weren't able to make it. We are trying to introduce evidence to show they weren't able to make it. And it resulted in this agreement.

We are trying to show that it is relevant to help determine whether it is a lease or contract and how the negotiations developed and why this is the ultimate contract and how we arrived at it.

Mr. Eichner: I think the lease shows on its face that it is exactly what it says it is, if you Honor please. And it also says in paragraph 16 that this contains the entire agreement between the parties. All promises, conditions, agreements and understandings between landlord and tenant. And it is the usual inclusive merger clause there. I submit there is nothing outside of it.

The Court: I don't think this has any bearing on it.

Mr. Shaia: All right.

By Mr. Shaia:

Q. Did the Medical College of Virginia believe that Harry Shaia was going to operate a restaurant in the new premises?

A. No.

page 67 } Q. Who did they believe was going to operate the restaurant?

A. The same operators of Skull and Bones, which was Richard and Edward.

Q. The *least* provides that a rental for the use of the land of $3,000 is to be paid to the Medical College. Does the Medical College consider that a fair rental for the land?

A. Yes.

Q. There weren't any concessions made in establishing the rent for the land?

A. Not to my knowledge.

Q. Does the Medical College of Virginia have any agreement with any other individuals for the operation of food servicing facilities?

A. Yes, we do. We have Mr. Beddingfield; we have Mr. Fadool; and Mr. Haskins.

Louis Daniel Crooks.

Q. Mr. Crooks, I hand you a copy of an agreement between the Medical College of Virginia and W. C. Haskins and Hazel M. Haskins. Do you recognize that as a copy of the agreement that existed during the years 1961 through 1963?

A. Yes.

Q. There are some holes in some of the pages. Could you develop those blanks for us? I think the vacancy

page 68 } there is the percentage of the rent.

A. The rent is 4 per cent of gross sales. And the others are that he was supposed to pay us a utility of $2,600 a year.

Q. All right, sir. Is space specifically assigned to the Haskins for their operation?

A. Yes.

Q. What is the name of their operation? Do they use a trade name?

A. It is The Campus Room.

Q. Do they have exclusive control over that space?

A. Yes. For the operation of the restaurant. We do have a key for emergencies and safeguarding against fire.

Q. There is a fixed compensation to be paid for the space at 6 per cent of gross sales; is that correct?

A. It is 4 per cent of the gross sales.

Q. Four per cent. Excuse me.

A. Yes. Plus utilities.

Q. Plus utilities?

A. $2,600.

Q. What is the square footage involved there?

A. I really don't know.

Q. Have you ever been in the Skull and Bones

page 69 } Restaurant?

A. Yes, sir.

Q. Have you ever been in the Campus Room?

A. Yes.

Q. Would you say they are comparable amounts of space involved?

A. Yes.

Q. Would you say that The Campus Room and the Skull and Bones Restaurant are comparable operations?

A. Yes, I should think so.

Q. Who owns the equipment in the Campus Room?

A. The initial inventory is owned by the Medical College of Virginia.

Louis Daniel Crooks.

Q. Is Mr. Haskins required to carry Workmen's Compensation insurance?
A. Yes.
Q. Is he required to carry liability insurance?
A. Yes.
Q. Products liability insurance?
A. Yes.
Q. Is he required to pay all local State and Federal taxes?
A. Yes.
Q. Who is responsible for janitorial and clean-
page 70 } ing service?
A. Mr. Haskins.
Q. Is he restricted to a particular use for the premises?
A. Yes.
Q. What is that use?
A. Restaurant.
Q. All right, sir. Would you read the concluding paragraph of that instrument.
A. "IN WITNESS WHEREOF the parties hereto have respectively executed this lease as of the day and year first above written."
Q. Thank you.

Mr. Shaia: I would like to introduce that as Applicant's Exhibit No. 6.
Mr. Eichner: That is objected to on the same ground that the other agreement was objected to.

* * * * *

By Mr. Shaia:
Q. Did you all have a similar arrangement with
page 71 } Ruth T. Fadool and Albert Fadool?
A. Yes.
Q. Is this a copy of that agreement? Is that a true copy of the Fadool agreement?
A. Yes.
Q. What are the provisions of this agreement?
A. Six per cent of gross sales, and we furnish the utilities.
Q. Is any specific space assigned to them?
A. Yes.
Q. For their operation?
A. Yes. Down in the Ennion G. Williams Hospital.

Louis Daniel Crooks.

Q. Do they have exclusive control over that space?

A. Yes. With the provision that we have a key for emergencies.

Q. Do you have any control over the menu and foods served by them—the type of food served?

A. Not as such. But we expect them to stay within a reasonable amount, or I am sure we would make recommendations.

Q. Is there any indication in the agreement as to the types of food to be served or the menu used?

page 72 } A. No.

Q. As to prices to be charged?

A. No.

Q. Is the same thing true as to the Haskins agreement?

A. Yes.

Q. Is the operator under the Fadool agreement required to carry Workmen's Compensation insurance?

A. Yes.

Q. Liability insurance?

A. Yes.

Q. Products liability?

A. Yes.

Q. Do they have to pay all local state and federal taxes?

A. Yes.

Q. And are they restricted as to use of the property?

A. Yes.

Q. What do they have to use it for?

A. Restaurant. Kind of a snack bar.

Q. Are they responsible for their own janitorial services?

A. Yes.

page 73 } Q. All right, sir. Do you have the agreement with Mr. Beddingfield before you?

A. Yes.

Q. Is that a true copy of the agreement with Joseph Beddingfield?

A. This is not signed.

Q. Not signed by him?

A. It is not executed.

Q. By either party?

A. No, sir.

Q. Is that a true copy?

A. Yes.

Q. Do you have the executed copy with you?

Louis Daniel Crooks.

A. Yes.

Note: The witness compared the two documents.

A. Yes, it is.
Q. Thank you. Is a specific space assigned to Mr. Beddingfield for his use?
A. Yes.
Q. And does he have exclusive control over the space?
A. Yes. With the exception of the key for emergency.
Q. For emergency purposes?
page 74 } A. Yes.
Q. Is there a fixed compensation for the use of that space?
A. It is based on 6 per cent of gross sales. And we furnish utilities.
Q. Do you have any control over the menu there?
A. No.
Q. The food served?
A. No.
Q. Or the prices?
A. No.
Q. Is the operator required to carry Workmen's Compensation?
A. Yes.
Q. Liability insurance?
A. Yes.
Q. And products liability?
A. Yes.
Q. Is he required to pay all local state and federal taxes?
A. Yes.
Q. Is he responsible for janitorial services?
A. He is, yes.
page 75 } Q. Does he have to use it exclusively for a restaurant?
A. Yes.

Mr. Shaia: I would like to introduce those as Applicant's exhibits.
Mr. Eichner: The same objection to these, your Honor, on the ground they are not leases.

Note: Applicant's Exhibits No. 7 and 8 were marked for identification and received in evidence.

Louis Daniel Crooks.

By Mr. Shaia:

Q. Does the Medical College of Virginia have an agreement with Mr. E. B. McLean?

A. Yes.

Q. Is that a copy of that agreement?

A. Yes.

Q. What are the provisions of that agreement?

A. This is to run—

Q. Excuse me. I am talking about the agreement as to the barber shop.

A. I am sorry.

Yes, this is to run a barber shop located in Hun-
page 76 } ton Hall basement.

Q. Is that a building owned by the Commonwealth and occupied by the Medical College of Virginia?

A. Yes.

Q. Is he assigned specific space?

A. Yes.

Q. And has exclusive control?

A. Yes.

Q. What compensation does he pay for the space?

A. He pays us $352.80 for the area.

Q. Is that a year?

A. Yes.

Q. Who owns that equipment that is in there, in the *carber* shop?

A. We own the major equipment. He owns the barber tools and instruments.

Q. Is he responsible for janitorial and cleaning service?

A. Yes.

Q. And is it used exclusively for a barber shop?

A. Yes.

Q. Now, does the Medical College have an agreement with Irving Milkin?

A. Yes.

page 77 } Q. Is that a true copy of that agreement?

A. Yes, it is.

Q. Is he assigned specific space to operate in?

A. Yes, he is.

Q. Where is that space located?

A. It is up on the seventeenth floor north wing, as a beauty salon.

Q. What is the compensation he pays for the space?

Louis Daniel Crooks.

A. It is a commission on sales. But I don't see the percentage here.

Q. Is it based on percentage of sales?

A. Yes.

Q. Does that include utilities?

A. Yes.

Q. Does the McLean lease include utilities compensation there?

A. Yes, it does.

Q. Who owns the beauty shop equipment?

A. It is owned by the operator.

Q. Who is responsible for janitorial and cleaning provisions?

A. He is—the operator.

page 78 } Q. Is he restricted as to use?

A. Yes.

Mr. Shaia: Answer Mr. Eichner's questions, please.

CROSS EXAMINATION.

By Mr. Eichner:

Q. In the case of Milkin Beauty Shop, Mr. Crooks, would you read paragraph 13 of that agreement?

A. It is further covenanted and agreed that said party of the second part shall receive his customers on a priority basis, namely as follows: patients at Medical College of Virginia Hosiptal, employees of the Medical College of Virginia Hospital, general public."

Q. Paragraph 11, I believe, sets a termination provision; it may be terminated on four months notice; isn't that correct?

A. Yes.

Q. And this agreement is of indefinite duration, is it not?

A. Yes.

Q. The McLean Barber Shop lease expires next

page 79 } month, does it not?

A. Yes.

Q. Now, getting back to the Beddingfield agreement, I would like to refer you to paragraph 7. I am not going to ask you to read any more than I have to here, Mr. Crooks, because of your condition.

It says there that the operator, meaning Beddingfield, and

Louis Daniel Crooks.

the owner, meaning Medical College, jointly agree on dates, hours, menus, type and scope of services?

A. Yes, sir.

Q. So, in other words, the Medical College has power to tell him what kind of food he may sell, does it not?

A. Well, I don't believe we could actually tell him what food to sell. I think we are stipulating that the menu—you might say it is agreed jointly that we agree on a menu.

Q. Now, as far as the compensation is concerned, you said it is 6 per cent of total gross sales?

A. Yes.

Q. I refer you now to paragraph 2. There is additional compensation provided for also, isn't there, namely, 50 per cent of all revenue from vending machines?

A. In that building, yes.

Q. In that building?

page 80 } A. Yes, sir.

Q. That is part of the compensation of this agreement also, isn't it?

A. That is right. These are coke machines.

Q. And I believe that in one of these paragraphs, paragraph 11, the Medical College reserves power to promulgate rules and regulations. And whatever the Medical College adopts is binding upon Mr. Beddingfield, is it not?

A. Yes.

Q. And hours of operation also are subject to regulation?

A. Yes.

Q. The date of the Beddingfield agreement, is that September 23, 1958? Is that the date?

A. September 23, 1958, yes, sir.

Q. What is the termination date?

A. It has a written notice of six months prior to the end of said term.

Q. Well, paragraph 19, Mr. Crooks. It is one year?

A. One year, with a six months written notice.

Q. It continues from year to year unless there is six months notice?

A. Yes.

page 81 } Q. There is no provision made for paying Mr. Beddingfield in case the Medical College should terminate it, is there?

A. Paying for what?

Q. Sir?

Louis Daniel Crooks.

A. Did you say pay him?

Q. In the event of termination, there is no provision for paying Mr. Beddingfield, is there?

A. No.

Q. Looking back at the very beginning of the Beddingfield agreement, it says "Contract for the operation of a snack bar facility in the student dorm project, Medical College of Virginia, Richmond, Virginia." And throughout, the Medical College is referred to as owner and Beddingfield as operator.

A. Yes.

Q. Now, there is really no difference at all, is there, except the location between the Beddingfield agreement and the Fadool agreement?

Well, I won't pin you down. They are substantially the same in form, aren't they?

A. Yes.

Q. And as far as the Fadool agreement is concerned, paragraph 6—there, as in the Beddingfield case, the

page 82 } Medical College and Mr. Fadool shall jointly agree on days and hours that it stays open?

A. Yes.

Q. And the menu and the type and scope of service?

A. Yes.

Q. And, again, in paragraph 9, I believe, the Medical College similarly has power to make whatever rules it finds necessary, doesn't it, for the regulation?

A. Yes, sir.

Q. And paragraph 15, I believe, states that this agreement may not be assignable by Mr. Fadool?

A. Correct.

Q. And a similar provision is in paragraph 17 of the Beddingfield agreement; is that not so?

A. Yes.

Q. Now, getting back to the Haskins contract, what was the date of the contract that you described with Mr. Haskins?

A. One is dated January 8, 1959.

Q. That is no longer in effect, is it?

A. No.

Q. What is the date of the current lease?

A. The current lease—

page 83 } Q. The current agreement.

A. —is the 2nd day of June 1964.

Louis Daniel Crooks.

Q. The final paragraph of that agreement just before the signatures, would you mind reading that?
A. The 1959 or the 1964?
Q. 1964.
A. "This agreement shall continue on an annual self-renewal basis from the date of June 2, 1964 and written notice of six months shall be necessary to terminate this agreement."
Q. And the following unnumbered paragraph.

The Court: It will just speak for itself. What is the purpose of this examination?
Mr. Eichner: Well, Mr. Shaia wanted to read from a former paper. At the very end it says "lease."
The Court: Well, the whole lease has been introduced into the record. I see no reason for reading it.
Mr. Eichner: Not this one, your Honor.
It says "In witness whereof the parties hereto have respectively executed this agreement as of the date above written."

By Mr. Eichner:
Q. Now, as far as the compensation is con-
page 84 } cerned, there is no place in either the 1964 agreement or in the—

Mr. Shaia: If your Honor please, I think he ought to restrict himself to the agreement that is before the Court.
Mr. Eichner: If I can complete my question.
Mr. Shaia: You are speaking about the 1964 agreement.

By Mr. Eichner:
Q. There is no place in either one of those two agreements, is there, Mr. Crooks, where the word "rent" is used, is there?
A. No.
Q. And the compensation is not limited to percentage of gross receipts. Also in paragraph 2, I believe, there is equal division of vending machine compensation, is there not?
A. Yes.
Q. The Haskins agreements, both the current one and the one formerly in effect—neither one was assignable to anyone else by Mr. Haskins?
A. That is correct.

Louis Daniel Crooks.

The Court: The agreements speak for themselves.
Mr. Eichner: All right, sir.

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Mr. Shaia: Mr. Crooks, I want to introduce the agreement between the Medical College and Mr. Milkin and the Medical College and Mr. McLean as exhibits.
The Court: They will be 9 and 10.

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Mr. Eichner: We except to the Milkin one on the same grounds, that it is not a lease and, therefore, not relevant.

RE-DIRECT EXAMINATION

By Mr. Shaia:
Q. You stated the McLean agreement is to ex-
page 89 } pire next month?
A. Yes, sir.
Q. Does that mean he is going to vacate the premises?
A. No.
Q. Is it going to be renewed?
A. Yes.
Q. The agreement with McLean's Barber Shop?
A. Yes.
Q. There has been some testimony about promulgation of rules and regulations. Has the Medical College ever promulgated any such rules or regulations as to food served, hours of operation, *et cetera,* to any of these operations?
A. No, sir.
Q. Your answer is no?
A. No, that is correct.

* * * * *

page 90 } Mr. Shaia: I call Richard Chandler.
If your Honor please, Mr. Chandler is the City Assessor. I am calling him as an adverse witness.

Richard A. Chandler.

The Court: Very well.

Mr. Eichner: I submit he cannot be questioned as adverse until he proves to be, if your Honor please.

RICHARD A. CHANDLER,
having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. Mr. Chandler, would you state your name and your age, please.

A. Richard A. Chandler. Age 38.

Q. What is your occupation?

A. Assessor of Real Estate for the City of Richmond.

Q. You are employed by the City?

A. Yes, I am.

Q. Are you paid by the City?

A. Yes.

page 91 } Q. Did you make the assessment in this case?

A. Yes, I made the assessment, not the appraisal. As the City Assessor, of course, I made the assessment.

Q. Of course, we are questioning that assessment; so I take it you are adverse. Are you a member of the American Institute of Real Estate Appraisers?

A. Yes, I am.

Q. Would you say that that is the leading organization for appraisers in the United States?

A. I would.

Q. Very definitely?

A. Yes, very definitely.

Q. Are you familiar with 400 North 12th Street, the property in question in this case?

A. Yes, I am.

Q. Now, you say that you made the assessment but not the appraisal. Are you using technical terms here by saying you are responsible for the appraisal but didn't actually make it?

A. That is correct. I have a staff of appraisers.

Q. Yes, sir.

Richard A. Chandler.

A. Who actually make the appraisal. Those are turned in to me, and with my signature on the land books it
page 92 } converts those appraisals into assessments.

Q. All right. Did you make the actual appraisal for any of the years in question, 1961 through 1963?

A. I did not make the actual appraisal. However, I did review the original appraisal when Mr. Bates brought it to my office to discuss it.

We sent Harry Shaia a notice in January saying that we were assessing this property as a leasehold interest. Shortly thereafter, I believe Mr. Jack Bates came to my office to discuss with me the validity of that assessment from several points, whether it could be assessed at all, particularly whether the land could not be assessed, and to inform us that the building was not built according to the plans, and that he considered the cost to be excessive.

With that, we initiated a review at Mr. Bates' request at that time. And I sent members of my appraisal staff into the field to re-examine the Shaia property. And they turned in a recommendation to me, which I reviewed and okayed.

Q. All right. You say that you in effect in 1961 did make the actual appraisal—or you made an appraisal of the property?

A. No. No. But I did review the appraisal.

Q. Is that customary for every appraisal made?

A. No. Well, it is customary for every review
page 93 } of assessment. You understand there are sixty thousand parcels of real estate.

Q. Yes, I understand.

A. And I have a staff of twelve to make the actual appraisals. Now, we adopt these appraisals as assessments. If an assessment is contested or questioned in January or February of each year, then we initiate—or the individuals initiate reviews, formal applications for reviews, and the members of the appraisal staff are again sent into the field to re-evaluate the property. These forms, these application forms, are turned in to the office and are examined by byself, the Deputy Assessor, or the senior appraiser. You might call it reviewing recommendations submitted to us by the appraisal staff.

In reviewing them, we either resubmit them for more work or we okay them.

Q. What I am trying to establish is that you are more familiar with the 1961 appraisal of this property than you are

with the usual assessment of property in the City of Richmond, because you were the reviewer?

A. Yes, that would be fair to say.

Q. You are in a position to discuss the appraisal?

A. Yes, I think so.

Q. Now, how many in your office went out and

page 94 } actually made an appraisal of this?

A. Do you want to specify years, sir?

Q. Well, let's talk about 1961. That is the big year in question when the assessment was first made.

A. Yes, sir.

Q. You can refer to your notes if you wish.

A. No, that is all right.

This property was actually appraised in January 1961. My recollection is we had one appraiser do this job.

Q. Who was that?

A. Mr. Sealey.

Q. What is his first name?

A. Woodrow. W. D. Sealey.

Q. Is he still with the City Assessor's Office?

A. Yes, he is.

Q. Who else in your office made an appraisal of that property?

A. Mr. W. Oakley Roach.

Q. All right. Was there anyone else?

A. No, not during the years in question at any rate.

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Q. All right. Now, do you have the findings of Mr. Sealey in his appraisal?

A. Yes.

Q. What were those findings?

A. Of the current—

Q. The 1961.

A. Yes.

The total was $146,800, I believe.

Q. All right.

A. That was their estimate of the value of the leasehold interest.

Richard A. Chandler.

Q. Now, is it the same finding for 1962?
A. Yes, sir. That assessment was adopted for 1962.
Q. And 1963?
A. And 1963.
Q. How about Mr. Roach's findings, what were they?
A. For the year 1964—
page 96 } Q. 1961 if you will.
A. Mr. Roach did not appraise it in 1961.
Q. When did he become an appraiser with the City?
A. He has been with my office for several years. He was just not assigned to this particular area in 1961 or 1962.
Q. I understand he is going to testify in this case. Did he make the assessment in 1963?
A. Well, that was under his responsibility. The area was under his responsibility for the year 1963 and 1964.
Q. Did he make the appraisal both years?
A. He may not have re-appraised it for 1963. He did for 1964.
Q. What was the appraisal for 1964?
A. $139,000.
Q. How is that broken down?
A. The leasehold interest in the land, $41,000; leasehold interest in the improvements, $98,000.
Actually, we determined the leasehold interest to be a total of $139,000. And then by statute we are required to list that total value separately, divided between land and improvements. So, we went back and redetermined the
page 97 } interest in both land and improvements.
Q. Now, who made the appraisal for 1963, then?
A. It would have been under Mr. Roach's responsibility. But he may have just adopted the previous appraisal or assessment as to be carried forward. "No change" we call it.
Q. Is that likely what happened?
A. More than likely I would suspect.
Q. Now, outside of yourself and Mr. Sealey and Mr. Roach, no one else participated in this assessment or appraisal?
A. Not to my recollection.
Q. Now, when was it first appraised?
A. In December 1960.
Q. Do you have the date, sir?
A. I know that the information—the original appraisal was submitted to my office, to the clerical staff, on December 21, 1960. The precise date as of which the appraisal of the leasehold interest was made I do not know. It was obviously

Richard A. Chandler.

several days prior to that.

Q. What is the amount of that first assessment—appraisal?

A. The first appraisal—the leasehold interest in the land, which consisted of only 27 feet at that time, was page 98 } $20,920. The leasehold interest in the improvements was valued at $120,000.

We did not at that time, December 1960, have available the lease. So, we did not know how much of the land went with the improvements. The lease showed us, of course, there was 54 feet of the land that MCV owned that went with the improvements. So that was another correction we had to make when Mr. Bates asked us to review this property.

Q. Are you saying, then, that—well, wasn't the building almost completed on that date?

A. Yes. But, you see, the records in Chancery Court showed that had not been changed. MCV, when it bought all the property that was conveyed to them, there was only a 27-foot strip of land on the corner which was called 400 North 12th Street; and we only changed our records when we are notified by Chancery Court there has been a change in the property description.

Of course, when we got the lease and saw that the Shaias had been leased by MCV 54 feet of land, we then realized we had to determine a leasehold interest in the land for 54 feet instead of 27 feet.

Q. Well, a physical examination of the property would have shown that the building rests on over 50 feet?

A. That is right. But we did not know that the page 99 } Shaias had leased any more than the 27 feet of land at that time.

Q. But, nonetheless, a physical examination of the property in December 1960 would have shown the present building resting on some 54 feet?

A. Yes, sir. But here again we couldn't, without more knowledge, charge the Shaias a leasehold interest in more land than we knew the lease called for. And the lease was not made available to us until January or February of 1961.

Q. Did you ever ask for a copy of the lease?

A. I personally did not. I don't know if anyone else on my staff did.

Q. To your knowledge, did anyone on your staff request a copy of the lease?

A. Not to my personal knowledge, no. Many times we do

Richard A. Chandler.

call upon the MCV officials to give us as much information as they can. Of course, they are oftentimes reluctant to give us copies of their agreements with individuals.

Q. To your knowledge, no one in your office contacted the applicants in this case and requested a copy of the lease before they voluntarily gave it to you?

A. I do not know.

Q. All right. When did the Medical College acquire the parcel just north of the corner of 400 North 12th

page 100 } Street?

I mean are you saying that your records indicated that they didn't own that parcel at that time?

A. No. No. Would you hand me that block of cards?

Note: The cards were handed to the witness.

A. Medical College owned the land north of this 27 feet for some time prior to the time that it acquired the 27 feet on the corner.

Q. When did they acquire the 27 feet?

A. April 1958.

Q. I am having difficulty understanding why the Assessor's Office didn't—if it acquired in 1958 the 27 feet and had the other footage before that time, why they didn't know they had 54 feet in December 1960, two years later?

A. A deed was put to record in April 1958 conveying 27 feet by 106 feet of land from Louis J. Elmore to the Medical College. That is the way it was recorded in Chancery Court. That is the way it was recorded in my office.

Q. All right.

A. So, MCV owned one parcel consisting of 27 feet at the northwest corner of 12th and Marshall, and owned in addition thereto abutting it just north of it another

page 101 } 69 by 106 feet.

Q. That answers my question.

A. Right. But the property lines were set by the deeds recorded in Chancery Court.

And in December the appraiser could not determine—obviously he could see the building covered 54 feet of ground. But we did not know how much land MCV had leased to the Shaias. We could have made an assumption obviously of at least 54 feet; but they could very likely have leased them 100 feet.

Q. That is correct. Certainly it was more than 27?

Richard A. Chandler.

A. Obviously. But we don't like to make an assumption that is disadvantageous to the taxpayer.

Q. Thank you.

I hand you a copy of the first notice of assessment and a letter from one of your deputies. What is the amount of that assessment?

A. From the notice, Mr. Shaia?

Q. Yes.

A. $140,920 for the year 1961.

Q. Is there any indication on there that that is a leasehold assessment?

A. Not on this notice.

Q. All right.

page 102 } Mr. Shaia: I would like to introduce that as Applicant's Exhibit Number 11.

The Court: All right.

The Witness: Just the notice, Mr. Shaia?

Mr. Shaia: I would like to introduce both of them.

The Witness: The letter does show it was a leasehold interest.

Note: Applicant's Exhibit Number 11 was marked for identification and received in evidence.

By Mr. Shaia:

Q. I hand you a letter dated April 6, 1961 which I believe is signed by you. Do you recognize that as some of your correspondence?

A. Yes, sir. This thermofax copy does not show my signature, but it is my letter.

Q. All right, sir. And is there indication on there of what you assessed the land and what you assessed the building at?

A. Yes, sir. This was our findings after Mr. Bates asked us to review the property.

Q. Would you read to the Court the first two
page 103 } paragraphs?

A. "The assessment on this property has been adjusted to $146,800. This assessment is divided between land and improvements as follows: Land $33,800; Buildings $113,000."

Mr. Shaia: Thank you. I would like to introduce that as Exhibit Number 12 for the Applicants.

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Note: Applicant's Exhibit Number 12 was marked for identification and received in evidence.

By Mr. Shaia:

Q. Do you know the method which was used by your office in determining the amount of the fair market value of this leasehold interest?

A. For the year 1961?

Q. Yes.

A. I have gone through the files. It would be a little difficult to determine the exact technique the appraiser used at that time. However, from an examination of the review, there was a determination that he felt that the leasehold interest in the land was $33,800 and the value of the leasehold interest in the improvements was $113,000. The precise technique he used does not reflect itself.

page 104 } However, during that time I made a determination, after examining the lease, that probably the actual leasehold interest in the land, or the value of the leasehold interest in the land was in excess of $42,630. In questioning the appraiser, I discovered that he did not feel he should place a value of $42,630, or in excess thereof, as the value of the leasehold interest primarily because it would have made the value of the leasehold interest on that particular parcel higher than surrounding land. So, he reduced—

Q. Do you mean the fee on surrounding land?

A. The fee, right.

So, he felt that by assessing the value of the leasehold interest at, say, something in excess of $42,000 would have made it an equitable assessment in comparison with the fee value surrounding that. So, he recommended a leasehold value of $33,800.00 on the land, which would make it equitable even with the feet of the surrounding land, knowing that we were very soon going to go back into that area and revalue the interest in the land, and that at that time we could adjust the leasehold interest, the value of the leasehold interest in the land to its true value as we saw it.

So, what he did, in effect, was recommend a lower figure than probably the full leasehold interest in order to make it equitable or—well, make it equitable with other

page 105 } land so the taxpayer would not be paying more than his share. If he had gone with the full value of the leasehold interest, we felt it would have been an unjust assessment.

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Q. He felt that?

A. He and I felt that, yes.

Q. Exactly what method did you use in determining that value of $33,800?

A. I cannot find enough notes to determine exactly how the $33,800 was arrived at.

Q. Would Mr. Sealey know how he arrived at that figure?

A. I have discussed it with him. And he can't find his notes on it either. That is why I don't know. If he had found his notes, he would have given them to me, and I could tell you.

Q. All right. Could you tell us this, then: If there was some indication that the leasehold interest in the land would be worth $42,630, where did you obtain that figure from?

A. At that time, very frankly, I went to page 12 of the lease between MCV and the Shaias and saw this Schedule for $42,630. It appears to be the leasehold interest the Shaias have at the end of the second year of the lease.

page 106 } A. I did not at that time compute what the value of the leasehold interest was at the end of the first year, which this was—or the beginning of it. I have since then computed the leasehold interest. Instead of being $42,630, it probably should have been $43,218. However, I just made a little note on the review that the true value of the leasehold interest in the land should have been no less than $42,630. But due to equalization with the fee values of other property, it would be best to leave it at this $33,800 which seemed to be predicated upon not making it unequitable with what the other land was assessed for in fee.

Q. May I ask you this, Mr. Chandler: Does the American Institute of Real Estate Appraisers indicate what the definition of the value of a leasehold interest is?

A. Yes.

Q. Do you have an authority to rely on there?

A. Do I what, sir?

Q. Don't they give you a definition of what the value of a leasehold interest is?

A. There are several definitions of a leasehold interest, yes.

Q. Isn't the one given by the American Institute of Real Estate Appraisers to the effect that the value of leasehold in-

terest is that amount which the lessee can profit from the sale of the lease? In other words, the difference
page 107 } between what a fair rental is and the rent that has to actually pay?

A. That is their definition on the value of a leasehold estate, which is a value above and beyond the value of the leasehold interest or the right to use and accupy.

Q. I am talking about the land owner.

A. Right, the land owner.

In normal appraisal practice, you do make a determination on the difference between the contract rent and the economic rent that is paid for land, for example. We have a technique in which to develop this in the value for the period the term of the lease runs. This is a profit, so to speak—an excess value above and beyond the value of the right to use and occupy.

The reason we do not make a determination of the value of the right to use and occupy is because that will run with whoever is the sublessee. He buys that when he purchases the value of the leasehold estate. So, there are two things that in this statute 58-758—the statute says that the leasehold interest must be assessed as taxable real estate. Now, this present a problem to the assessor, because it doesn't make a determination of the value of the leasehold estate. It says "make a determination of the value of the leasehold interest." Which means to make a determination of
page 108 } the value of the right to use and occupy the property.

Under the Institute we use their techniques. But in this instance it appears—well, it is very definite that this statute wants the value of the right to use and occupy to be determined. And if there is any excess value, that that be determined too.

Q. Do you have any authority for that opinion? Or is that just your personal opinion?

A. It happens to be my personal opinion. There is some—the Supreme Court, I think, of California follows this general line of thinking too.

Q. But the California case doesn't cite the Virginia statute, does it?

A. No. But, like I say, I made a study of this when we were presented with this 758. And this is a solution—or this is, as I see it, the method by which an assessor—not necessarily an appraiser, but an assessor—must do under the dic-

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tates of the law, of this particular statute. It presents a problem, because I don't think it presents a normal appraisal problem, wherein the leasehold estate or the value of the leasehold estate is estimated by the present worth of the difference in the economic and contract rent. There is no normal appraisal practice. But the answer would represent the value above and beyond the value of the use and oc-
page 109 } cupancy of the property.

So, in analyzing this thing—and I did discuss it with several MAI's as to what would be the best way to interpret or to determine or estimate the value of the interest —and it seemed that the best way to value the tenant's right to use and occupy is to capitalize the rent he pays. And the reason I say that is obviously if a tenant is willing to pay a stated amount for a stated period of time, this represents what he thinks the right to use and occupy—this represents what he thinks that value is.

Certainly the two parties, the lessor and the lessee, have agreed that this amount of money is the true worth of the property for the period of the lease. And you can capitalize this into value.

For example, if I agree to pay $100 a month for a piece of property and the landlord agrees to take it, we have agreed what the value of my right to use and occupy is. Consequently, it is my conclusion in administering this statute and interpreting this statute that we must estimate the value of the leasehold interest by capitalizing the contract rent paid for the period of time the lease runs; add to it any difference between economic and contract rent; and add to it, of course, any improvements that the lessee may put on it.

Q. Let me ask you this: Doesn't the City As-
page 110 } sessor's Office approach properties as to their fair market value and appraise them in that fashion?

A. Yes.

Q. Now, if you are going into the contract between the applicants and the Medical College of Virginia and using the figures that they have in their own individual agreement, does that reflect market value? Is that what a stranger would pay for the interest?

A. We would make a determination as to the fair rental value in our approach to this problem. I mean obviously we would be engaged or guided by the contract rent, because that is part of measuring this leasehold interest. It is only in this

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area where the economic rent, the rental value of the property, may exceed the contract rent.

Now, when you add all of that together, we hope we have arrived at an estimate of the market value of the leasehold interest. I make a distinction between the leasehold interest and the leasehold estate. The leasehold interest includes the right to use and occupy as well as whatever value of his estate may be there by virtue of the fact that the rental value exceeds the contract rent.

Now, we must realize that a lessee, if the economic rent exceeds the contract rent, he does have a value above and beyond the use of the property. He can sell this.

page 111 } When he does sell it, he is also selling the right to use and occupy. No money changes hands, because the sublessee is buying an obligation to pay this money too. So, this is part of the purchase price or the contract price when he takes over the lease. But he pays, in addition thereto, more rent, which is worth something to the sandwich lessee, the middleman.

Q. Which is the applicant in this case?

A. It would be the applicants in this case.

Q. To go back a minute: When the initial assessment was made, you all didn't have a copy of the lease?

A. No, sir, not in December 1960 we did not.

Q. Right. You assessed the property at $14,950?

A. Yes, sir. That was based on only 27 feet of land.

Q. Well, on 27 feet of land was it based on the fee simple value of the land and that building at that time?

A. No. It was supposed to be based on the leasehold interest; but we made one assumption: that the Shaias had only a leasehold interest in 27 feet of land and in the total improvement.

Q. Why did you assume that? Well, first—

A. Because we didn't know.

Q. That is right; you didn't know.

page 112 } A. We didn't know that they had more than 27 feet of land.

Q. Why did you assume they had an interest in the building?

A. Well, for one thing, there was a building permit taken out in their name to erect this structure.

Q. Not in the name of Medical College?

A. Not in the name—well, I can check it. And the appraiser in the field also, I believe, after that time knew what

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the building was. And he was told it was the Shaia Building. It always carried the name of Skull and Bones, which is the same name that Richard and Edward Shaia ran just previous to that.

Q. Is it possible that that assessment was made on the value of the land and the building fee simple interest? Is that possible?

A. It may have paralleled it. The intention was not to assess the fee simple value. The intention was to assess the leasehold interest. Now, if the two figures paralleled, it perhaps could be coincidental. They would normally do that at the beginning of a long-term lease anyway. But it wasn't our intention to assess the fee simple value to the Shaias. We were aiming directly for leasehold interest.

page 113 } Q. You are talking about what your office's intention was. You are not talking about what Mr. Sealey actually did, are you? Because you can't say what he did.

A. I can't say what he did, but he certainly knew we were aiming at a leasehold interest value, because this was clear by the statute. In other words, everybody knew that the land was owned by MCV. If it was not for this particular statute, there would be no assessment at all. So, when he was instructed to go out and assess this property, he obviously was told we have to make this assessment against the tenant, because we can't assess the Commonwealth of Virginia, and we need to know the value of the leasehold interest.

Q. Do you remember telling him that?

A. They were the general instructions, yes. This thing came up in 1959, you see. The State statute was 1954 or 1955. The City ordinance did not permit us to assess a leasehold interest until after 1957. In 1958, we discussed it; and in 1959, I passed a memo around to all the staff that we now have to watch out for leasehold interest in those instances in which the owner was exempt from taxation under any circumstances which we interpreted to mean the U. S. Government and the State of Virginia. And I again passed around another memo on this same subject somewhat recently.

page 114 } Q. Now, still looking at the land, if you withdraw the provision—are you familiar with the agreement between the Medical College and the Shaias?

A. Yes, sir.

Q. Have you read the agreement?

A. The agreement is what I am calling the lease?

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Q. Right.

A. Yes, sir.

Q. Now, are you familiar with what the Shaias received under that agreement in the event of a cancellation?

A. Yes, sir. In the event the lease is cancelled by MCV—

Q. By the Shaias, please?

A. Oh, you mean what they receive if the lease is cancelled by the Shaias?

They only receive the value of their leasehold interest in the land, which is spelled out on page 12 of the lease.

Q. They don't receive any consideration for the building?

A. Not if the Shaias cancel it. Only if MCV does.

Q. And they don't receive any consideration for the fixtures and equipment?

A. No, sir.

page 115 } Q. The only time the Shaias—the only thing that they receive is the unpaid purchase price on 1101 East Clay, isn't that correct?

A. Yes, that would be one way.

Q. What I am trying to say is you made the assessment, and I want to know what your understanding is.

A. Yes. Well, further, of course, the entire lease as we read it is that in the event MCV cancels, the Shaias are made whole for the unexpended portion of the rent, as you call it, or their leasehold interest in the land, and the unamortized portion of the improvement. We didn't worry too much about the equipment and fixtures because that is not real estate. Or it couldn't be considered real estate.

Q. That is not included in this assessment?

A. No, it is not.

Q. All right, sir.

A. We also knew that if the Shaias cancelled, they would not receive back the unamortized portion of improvements or the business fixtures and equipment.

And in analyzing the lease, obviously it would have been foolish for the Shaias to cancel any time before 1990, because they would lose the building.

Q. Of course, there could be some unforeseen developments?

page 116 } A. True. But I mean in a practical matter, the Shaias would not be prudent to cancel before the end of the lease. And MCV obviously wouldn't want to cancel, we don't believe, because they would have had to pay out

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all this money. But in the event they did, the Shaias would get back everything except what they had used up.

Q. Now, the Shaias are obliged to pay the Medical College $3,000 annual rent for the use of that property?

A. Use of the land, yes, sir.

Q. Use of the land?

A. Yes, sir.

Q. Now, aside from the other provisions of the lease which provide that the MCV is to pay the prepaid rent item, as you call it—let's take that out—what is the value of the leasehold then for 1961?

A. If I extract—if I forget the land altogether?

Q. No. What is the value of the leasehold interest in the land if rent had not been, as you call it, prepaid?

A. If the rent had not been prepaid? Under the terms of the lease, you are paying $3,000 a year in advance for thirty years. It wouldn't be any different.

Q. There would be no leasehold interest in the
page 117 } land, would there?

A. Oh, yes, there would be.

Q. It would be the same thing?

A. I believe so.

Q. Are you saying, then, that—

A. I am saying that under the terms of the lease wherein the lease runs for thirty years and the agreement is to pay $3,000 a year in advance for thirty years, you would simply find the present worth of $3,000 for 29 years. And that would come out to a figure. And you would add $3,000 to it, because $3,000 is paid in advance. And that would equal the present worth of that lease, which in our language is the value of the right to use and occupy the property.

Q. Is that how you computed this appraisal and assessment?

A. That would be how I would do it. I did not, but that is how I would.

Q. In other words, you are saying the fact that the agreement provides that the rent is not to be paid, that it is already prepaid, that has no—

A. Oh, I think in this particular case it does, because under any circumstances—page 12—in the case of the Shaias, they have a very positive leasehold interest in the land to the tune of all their prepaid rent. But, nevertheless, un-
page 118 } der any lease arrangement — under any lease where a tenant has a right to use and occupy, a

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leasehold is created. And the statute says that I have got to determine what the value of that right to use and occupy is, the value of this leasehold interest. And the way to do it is, as I said—my theory of the way to do is to find the present worth of the contract rent for the term of the lease, whether it is paid in advance or whether—what I mean by "paid in advance" is whether it is completely prepaid or whether it is paid in monthly or yearly installments.

Q. Do you understand why this is prepaid? Do you realize that this is an installment payment on the sale of 1101 East Clay?

A. I heard it testified to today.

Q. You weren't aware of it before this time?

A. No. It wouldn't have made any difference.

Q. It would not have made any difference?

A. No.

Q. Isn't that in the nature of a promissory note that the Medical College has exceuted where they agree to pay for 1101 East Clay $3,000 a year?

A. That could be.

Q. Of course, you all don't assess anything but real estate? You don't assess intangibles?

page 119 } A. No, sir.

If I can clear it up: The leasehold interest, your Honor, the value of the leasehold interest would be the same whether the rent was completely prepaid or paid in installments throughout the term of the lease for thirty years. Your calculation would be the same.

Q. Let's take that as a premise. What do you take the fee value of this land to be in 1961?

A. Well, I didn't attempt to appraise the fee value of land in 1961. But judging by the terms of the lease, I would say somebody estimated the land was worth in the vicinity of $45,000 to $50,000.

Q. Well, assuming a value of $50,000, what would be a fair rental on that land unimproved, just as it is, per year?

A. Net?

Q. Yes. Would 6 per cent be a fair rental?

A. I would think so.

Q. So that $3,000 is a fair rental on the land?

A. Yes.

Q. And $3,000 is the rental provided in this agreement?

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A. Yes.

page 120 } Q. If $3,000 is the fair rental of the land, and they are paying $3,000, then how can you say that there is a leasehold interest in the land of any value?

A. All right, sir.

There is no excess value; there is no value of the leasehold estate. The leasehold estate has no value, because the contract rent and economic rent are the same. But you can't say that the right to use and occupy that property is *valuless.* That is the leasehold interest. The Shaias have a leasehold interest in that land. It can't be *valuless,* or they wouldn't be paying $3,000 a year for it.

Q. Certainly it has a value.

A. If we adopted this premise that it is *valuless*, then why are they paying $3,000 a year for the right to use and occupy?

The way I see this statute, the statute tells me to make an estimate of value of the right to use and occupy. MCV and the Shaias have agreed that the value of this right to use and occupy this particular site of land is worth $3,000 a year for the next thirty years. The present worth of that comes out to the same thing as page 12 comes out to of the lease.

There is no value of the leasehold estate in this instance if we assume the contract rent and economic

page 121 } rent are the same. The leasehold estate has no value as we understand it in the American Institute under a normal appraisal of a leasehold estate. But as I have said, this does not appear to me as the way the statute is drawn that it is a normal problem in that we are only trying to determine this excess value—the value above and beyond the right to use and occupy, which is normal appraisal practice.

I am directed, as I understand the statute, to make a determination of the right to use and occupy. And the right to use and occupy in this instance can be measured by the contract rent. If the economic rent or the rental value was more than $3,000, the Shaias' leasehold interest would be greater than it is under the present circumstances.

Q. You are saying that the value, then—if I understand you correctly, you are saying that the value of the leasehold estate in 1961 was zero?

A. Under normal appraisal practice where you only estimate the value of the—the rental value minus the contract rent—

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Q. Right.

A. —if we said that was the only value there, then in any instance where the federal government or the State leased land to an individual at economic rent, there would be a zero value—completely zero. And you can't say some-
page 122 } thing is worth nothing when the man is occupying it and using it and is paying money for it. It is bound to be worth something.

Q. Well, if he is paying the same amount for it that it is worth, then his contract interest is not of any value, is it?

The Court: Can't we shorten this testimony some?

* * * * *

By Mr. Shaia:

Q. You are making a distinction between a leasehold interest and a leasehold estate?

page 123 } A. I am, yes.

Q. The distinction is in one case it would be worth zero and in the other case what you are making it worth in this case here?

A. No. I am saying the value for a leasehold estate is created only in those instances where the property can be rented for more than the contract rent.

Q. That is fine. Now, you—

A. Don't misunderstand me. I still think there is a value there, because the guy is sitting there, and he is doing something with it.

Q. Now, you capitalized this rent over thirty years; is that correct?

A. Yes, sir.

Q. Now, can't either party under the agreement terminate after two years by giving one year's notice?

A. Yes, sir.

Q. Then, is it proper to calculate this over a thirty-year period rather than one year?

A. Well, we thought so. We thought as a practical matter this lease would run for thirty years.

Q. All right, sir.

A. And if it does not—this is a peculiar circumstance—if it does not and MCV cancels the contract, the
page 124 } man gets back his entire leasehold interest. He has lost nothing if MCV cancels. If the Shaias cancel—

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Q. If MCV cancels?
A. If MCV cancels, yes.
Q. What did you determine the value of the building to be?
A. For the year 1961?
Q. Yes, sir.
A. After the review, I believe it was—the leasehold interest in the building?
Q. No. The fee interest in the building?

The Court: It was $113,000.
The Witness: That was the leasehold interest. We determined $113,000 was the value of the leasehold interest, your Honor.
The Witness: One estimate of cost, of course, was the cost of building, $137,000. That was the cost. I don't know if anybody adopted that as the market value of the improvements or not. But we had that in mind—$127,000 and some odd dollars that it cost to build the improvements. I don't know that anybody actually made a valuation of the improvements in fee simple. It was reported to me that, of course, the improvements did cost in excess of $127,000.
page 125 } Consequently, when I saw a leasehold interest value of $113,000, it assured me that we were not assessing the leasehold interest above what the fee value could be.
Q. Well, is the fee value determined by the cost of the building or the fair market value of the building?
A. No. The cost is not the sole determinant of the market value of the improvement, that is quite true.
Q. Now, this is a building of about 5,200 square feet on the surface level?
A. On the main floor I think we calculated it to be 5,354 square feet.
Q. All right, sir. The basement level?
A. About 1,000 square feet.

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Q. Was the fee value of the land and building for the year 1961 determined?
A. For the year 1960 and 1961?

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Q. No. 1961.

A. Not that I saw it.

Q. Do you think perhaps someone else in your office determined that value?

A. They could have. I am not sure. I know our aim was to establish the leasehold interest value as a rough guide. Of course, they did obviously know how much the building cost. And they were by no stretch of the imagination going to exceed that as the leasehold interest. The value of the land was estimated in varying amounts from $40,000 to $50,000. If you add those together, you get a total investment, you might say, of one hundred and seventy thousand odd dollars. But whether that was adopted as a fee

page 127 } value estimate, market value estimate, I am unprepared to say.

I know in my review I simply made an effort that the leasehold interest did not exceed the cost of the building or the market value of the land.

Q. Well, is the cost of the building a proper factor, though? Isn't it the fair market value of that building?

A. Well. I could have called for a free appraisal at that time, I suppose, through some technique or other to find out if the building was worth less than $127,000. I did not do it at that time. I have done it subsequently for the years 1964 and on. But I did not do it in 1961. And I don't want to tell you that we estimated the market value of the building in 1961 just because we have estimated it now.

Q. What was the market value of the building for the latest date that you have it?

A. One of the estimates that the appraisers turned in to me that the market value of improvements was $104,000 for the year 1964. And the leasethold interest in the building for the year 1964 is $98,000.

Here again I had that estimate made to make sure their estimate of the value of the leasehold interest did not equal or exceed the market value of the improvement or the land.

Q. Well, what did you determine the—

page 128 } A. I have had varying estimates of the market value of these improvements, incidentally.

Q. You mean the $104,000 figure may be incorrect?

A. It is the lowest estimate I have had.

Q. What was the value of the reversionary interest of the Medical College in the year 1961?

A. The reversionary interest of the Medical College?

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Q. Yes.

A. I would have to compute it, sir.

The reversionary interest of the Medical College would be in the year 1961 would be getting their land back at the end of the lease thirty years from then and getting whatever remained of the building back.

Q. Well, wouldn't it be a fair statement to say that the value of the leasehold interest could be the fee simple value less the reversionary value?

A. That would be the value of the leasehold estate.

Q. Right.

A. Not interest. Because that does not measure the right to use and occupy.

Q. But in 1961 through 1963 you all did not
page 129 } appraise the fee interest or the fee value of the land or buildings?

A. Not to my recollection, no, sir.

You are asking me if it is a correct technique to make a fee value estimate?

Q. I am just making a question of fact now. Did you all appraise the fee value of the land or buildings for the years 1961 through 1963?

A. Not to my knowledge, sir. The values reported to me were supposed to be leasehold interest value.

Q. And to determine that, you all did not determine what the fee value was?

A. I am in an awkward position in really not being able to answer. The appraiser may have done this. It simply was not reported to me at that time.

Q. All right, sir.

Do you know the elements that went into the make-up of determining what the leasehold value is? In other words, for example, was vacancy allowance given or management allowance and that type of thing?

A. No. In our estimate of the leasehold interest, we established an economic net rental.

Q. And you did not approach it from an income—

A. Yes. We just took a net income, not a
page 130 } gross income.

Q. All right. What did you determine the gross income to be?

A. I personally didn't determine it. The appraiser did. That testimony will be put forward too.

Q. All right, sir.

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A. You are talking about 1961. I simply—the appraiser cannot find his records on that. We do have other estimates of value of later leasehold interest.

Q. You don't have 1962 either, do you?

A. No. Because 1962 and 1963 are identical to 1961.

Q. So, the only ones you have the figures for are 1964; is that correct?

A. That is right. We have some figures, but they don't have his estimate of how—

Q. Of how he reached the value?

A. Yes.

Q. As I understand it, the value of the leasehold interest in 1964, which is the only year you have it available for, was approached on the income method?

A. Yes.

The Court: It is now 1:00 o'clock. We will resume this hearing at 2:00 o'clock on November 2nd.

The Court recessed at 1:00 o'clock P. M.

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RICHARD A. CHANDLER,

resumes the witness stand, and continues his testimony on behalf of the plaintiff, as follows:

DIRECT EXAMINATION.

By Mr. Shaia: (Continued)

Q. Would you give us your name, Mr. Chandler?

A. Richard.

Q. Mr. Chandler, can you tell us what the per cent of gross sales a restaurant operation of the type of Skull and Bones can pay in rent?

A. I can give you a generalization. Nationwide, it would vary anywhere from four to eight per cent. Locally, we have found it varies between five and six per cent.

Q. Would you—

page 134 } A. Depending on who pays — who has the equipment. It could run up to eight. It could

also run to eight per cent, but in those cases, I believe the landlord is furnishing the equipment.

Q. Then, on average sales of about $225,000,00, would $12,000.00 annual rent be a fair rental?

A. Twelve thousand sounds like a fair rental on the lease to me, sir. Just a minute. Two hundred twenty-five thousand, Mr. Shaia?

Q. Yes. Based on average sales in this case.

A. On the basis of $225,000.00, if six per cent were the basis, the projected rent would be thirteen thousand five hundred; and, based on five per cent, it would be$12,250.00.

Q. The question is: Would twelve thousand be considered a fair rental; would you consider that a fair rental on that type of sale, that amount of sales for the year?

A. It would be within reason.

Q. Was there any other leasehold interest taxed within the City of Richmond during the years '61 through '63, during those years?

A. No, sir, I don't believe so. We have some that are now taxed, but in 1961, the only one that I am aware of was the Skull and Bones.

Q. And, the same is true for '62?

A. Yes, sir.

page 135 } Q. And '63?

A. Yes, sir. You mean at that time?

Q. Yes, sir.

A. Yes, sir.

Q. To your knowledge, was any other leasehold interest in the State of Virginia taxed, during—

A. I understand there were, yes, sir.

Q. —during those years in question?

A. I really couldn't say. I made some inquiry. I have made some investigation, and I understand there are other leasehold interests that have been taxed, and I assume for those years.

Q. Were any of these you found land owned by the Commonwealth?

A. I understand it was. I made this inquiry, investigation in 1961, and this investigation did indicate—

Q. Do you recall any of them?

A. The general areas, yes, sir, I recall the general areas.

Q. You don't recall any specific cases?

A. No, I was not told of specific properties by name. I was

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just told that there were leaseholds assessed and taxed in the State of Virginia in 1961.

Q. Where the land was owned by the Commonwealth?

A. I understood that to be the case.

page 136 } Q. In your letter, which has been filed as an exhibit in this case, you made reference to having discussed it with other taxing authorities. I am curious as to whether or not you know of any specific instance. That is all. That is what I made it in reference to.

Now, there were some leaseholds taxed by the City of Richmond in 1964, that's correct, isn't it?

A. Yes, sir. Retroactive to '61, in some instances.

Q. In some instances. Now, they were all leasehold interests that were taxed this year that had not been taxed before?

A. Had not previously been taxed.

Q. Now, when were these interests taxed?

A. Well, in some cases, the assessments and the tax were retroactive to January 1, '61.

Q. What I am trying to get, Mr. Chandler, is when the tax was levied. Was it October 22?

A. Well—

Q. Was it October 22?

A. Yes, yes. What I am trying to say is I don't know the full legal implications of it. I assume when the tax bills were mailed to individuals for years '61 '62, and '63 and '64, the tax started from that date back to January 1, '61. We notified these individuals of this in October.

Q. Of this year?

page 137 } A. Of this year.

Q. That is the first time it has been carried on land back as such, isn't it?

A. That's right.

Q. As of this year?

A. Yes, sir.

Q. And leasehold interests. Now, when were you first informed about the leasehold interests that were taxed this year?

A. Well, one we have been investigating since December 1963. That was the Life of Virginia. The others actually were brought to our attention by Mr. Shaia.

Q. When was that, sir?

A. August, I believe.

Q. Of which year?

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A. This year.

Q. And, then, the bills were not mailed out until October, is that correct, sir?

A. That's correct.

Q. Did you find in each—how many instances did I bring to your attention?

A. I would have to count them. You brought ten, and we investigated them all; and, out of this number you gave us, we only covered four, I believe.

page 138 } Q. Did they all involve the use of land and improvements, or just for land?

A. No, I believe in each case—each case you brought to our attention was land and improvements.

Q. They all involved leasehold interests?

A. Yes. You gave us quite a list.

Q. Well, the ones you taxed?

A. Yes, sir.

Q. You taxed leasehold interests, and it was four leasehold interests that I brought to your attention.

A. Yes, sir.

Q. They were all taxed under 58-758 of the Code?

A. Yes, sir.

Q. Was this an attempt to make them uniform with the assessment you made against the Shaias for the same year?

A. That was not the direct reason for it. We simply didn't know these existed, and as soon as they were brought to our attention, it was my duty to assess them.

Q. You attempted to make the assessment in a fashion that would make them uniform?

A. The way we appraised the leasehold interest was uniform, the same way we appraised the Shaias. That technique was used for them.

Q. Right, the technique was uniform?

A. Yes, sir.

page 139 } Q. In other words, you used the same technique on the Shaias' property as you did for these four properties that were brought to your attention?

A. Yes, sir, principle was identical.

Q. What were those four properties, please? Or, perhaps, I could help you. Was 1412 East Franklin Street?

A. Yes, sir. 1412 East Franklin Street, there were two leasehold interests, and, also, the Life Insurance Company of Virginia. That is at the northwest corner.

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Q. You restricted yourself to just the ones I brought to your attention?

A. 1412 East Franklin Street.

Q. First and second floor?

A. First and second floor.

Q. The other, 203 Governor Street, was it?

A. Well, I have one that we called rear 1312 East Grace Street. I believe that has also been known—

Q. Who is at the present time there?

A. Southern Planter Publishing Company.

Q. That is what I am getting at.

A. The one space was occupied by a barber shop at Hunton Hall, at 1200 East Marshall Street.

Q. Now, you are familiar with the tenant in the Blanton Building; you are familiar with the arrangement with that tenant in Blanton, A. G. Patali, Jr.

A. I have read the lease.

page 140 } Q. And was that—was his interest in that agreement taxed?

A. No, sir.

Q. How do you distinguish that agreement from the one you taxed of the Shaias.

A. Well, we went through all of these agreements and tried to make a decision as to which constituted leases and which did not. We went over this with the Law Department. Basically, we made our decision upon what clearly appeared to be a lease.

Also, we took into consideration the control of the property by the occupant in the station between the one you referred to and the Skull and Bones, and distinction was made that this tenant, or this occupant, did not have exclusive control of the property he was occupying. MCV exercised some control over his operations which they do not over Skull and Bones.

Q. Was there any particular feature of the control that influenced?

A. I could list several if you would like for me to. First of all, the document was not worded like a lease, so a layman could understand it. I mean, that was—they simply granted Mr. Patali permission to establish and operate a lunch room. MCV provides the heat and utilities and controls the days and hours of operation. They can control prices charged. They can control the type of services; and, they can control the scope of the services; and, they, also,

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page 141 } can control the number of personnel employees and qualifications of employees by this occupant.

Q. Excuse me, Mr. Chandler. We are talking about the Blanton Building. I think you made reference to MCV.

A. I beg your pardon, Blanton. Well, the Budget Office in this case would exercise control. Wherever I said MCV in relation to Mr. Patali, should be substituted for Budget Office.

I assume it would be Mr. Kuhn, because this is who executed the lease, as I recall. Or, agreement, rather.

By The Court:

Q. State Budget Office?

A. State Budget Office, yes, sir.

By Mr. Shaia: (Continued)

Q. Are you familiar with Mrs. Frick's operation in the Capitol Building commonly known as Chickens?

A. Yes, sir.

Q. You all didn't assess that as a leasehold or agreement?

A. No, sir. There is no agreement to begin with. The Budget Office informed us that Mrs. Frick is not covered by a lease. No rent is involved, and she serves—she operates under legislative authority and is under the jurisdiction of the clerk of the House of Delegates, and there is no rent, no written agreement involved at all.

page 142 } Q. Now, you gave some reasoning, which you say are some factors of control which determine that you should not assess the agreement of Patali in the Blanton Building.

Does that same reasoning apply to the Campus Room, that Mr. Haskins operates in the Campus Room at the Medical College?

A. To some extent, I understand so. Also, he is termed as a concessionaire.

Q. In the agreement?

A. In the agreement.

Q. How about Mr. Fadool's agreement?

A. Mr. Fadool and Mr. Haskins' agreements seem to be basically the same. In the case of Mr. Haskins, he is described as a concessionaire, and, here, again, is granted only the rights and privileges to operate a restaurant or concession.

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Q. You were making reference to an instrument. What is the date of that instrument?

A. I was making reference to notes I have here.

Q. Excuse me. I thought you were making reference to it. Have you seen the agreement between Medical College and Haskins from the years '61 through '63?

A. No, sir. The one Col. Heil sent us. Assistant to the President or Assistant President for Medical College of Virginia, I believe, the one he sent us is dated 1964.

page 143 } In our correspondence with him, we asked him to send us any existing leases or prior leases back to the year 1961.

Q. Well, my question was—

Mr. Eichner: Let him finish his answer.

(Continued):

A. I say, we requested every instrument that the Medical College might have executed with the Campus Room, and the ones he sent us are the only ones I have, and that was dated 1964. I assume it was the same agreement then as existed in previous years.

Q. That is just an assumption on your part, is that correct?

A. Yes, sir. That's only an assumption based on what Col. Heil sent us and told us that this was it.

Q. Let me ask you, then, don't these fixtures you have mentioned go more to the value of the contract rather than to the nature of the contract?

Mr. Eichner: If Your Honor please, I think he is asking Mr. Chandler for legal opinions on these. It is a question for the Court.

Mr. Shaia: If Your Honor please, I think the witness is an expert in real estate.

The Court: Still, he isn't an attorney.

Mr. Shaia: No. sir. I withdraw the question.

(Continued):

Q. Mr. Chandler, if a tax is imposed on this leasehold interest, how will that affect the value to the Com-

page 144 } monwealth of the property; will it increase the value to the Commonwealth or would it decrease it in future negotiations?

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A. I haven't actually considered that before, Mr. Shaia. You mean if localities can, as I assume they can, assess leasehold interests, I assume they have been doing it, I don't know what effect it would have. It is my understanding other localities have been doing just this. I don't know.

Q. Let me ask you this: If the Commonwealth of Virginia, in the future, leases a parcel of its property to an individual, and that individual has to pay taxes, will not the value to the Commonwealth be decreased in direct relation to the amount of taxes?

Mr. Eichner: If Your Honor please, I object to that. It is going far afield from what we are considering here.

The Court: I don't see how it is possible for him to answer that question. You are asking a hypothetical question, and—

Mr. Shaia: I think we are discussing values, and—all right.

Q. Do you agree that the leasehold interest of the Shaias is declining in value from year to year?

A. Yes, sir. This is part of my job is to see that the assessment will decline from year to year as the end of the lease approaches.

page 145 } Q. And, how, then, do you account for a constant assessment in the amount for the years 1961, '62 and '63?

A. I have been trying to analyze that myself. At the time, January '61, the land was assessed for $33,800.00, I remember at that time, we knew that the leasehold interest was great and it would take some eleven years, I believe, for the value of the leasehold interest, as we computed it, to approach the level of $33,800.00.

We also felt, at that time, that it would take the same number of—not the same number of years, but several years, a short span of time, for the value of the leasehold interest and the improvements to decline to the amount we had assessed the leasehold interest for. Recently, I have had the whole theory computed, and we should have had one or two thousand dollars lesser on the 1963 assessment than we did have.

Q. That was computed in 1964?

A. We computed it sometime in '63.

Q. For the '64 assessment?

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A. I asked for a re-examination of the leasehold interests in the Shaias' case, and we assigned them to a new field man, and he ran it back to '62, I believe.

Q. I think he is going to probably testify, Mr. Chandler, isn't he?

A. Just trying to answer you. It was sometime in the early part or either latter part of—I guess the early
page 146 } part of 1964, that I saw some recent figures that we possibly should have assessed the leasehold interest of the Shaias at $142,000.00 for 1963, and I saw figures in the early part of 1964, indicating we have estimated the leasehold interest of the Shaias for $142,000.00 in 1963, instead of 1964.

Q. Are you familiar with the work "Appraisal Terminology and Handbook", which is published by the American Institute of Real Estate Appraisers?

A. Yes, sir. I don't know if I am famiilar with that particular edition or not, but I am aware they do publish a terminology and—

Q. Do you use it in your work?

A. We have copies in our office.

Q. Is it considered a standard in your field?

A. Yes, sir. We have several terminology books, some published by real estate appraisers, some published by the American Institute of Real Estate Appraisers, some published by the Encyclopedia. We use them all.

Q. Will you turn to page 162—I believe I have it marked —and give us the technique in determining a leasehold value as recited in that work? Would you read what it says there?

A. Out loud, sir?

Q. Yes, sir.

A. (Reading from book) The value of a leasehold interest, that is, right to the use, enjoyment, and profit
page 147 } existing by virtue of the rights granted under a lease instrument. The value of a leasehold interest is the present parenthesis discounted parenthesis worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If land is improved by the lessee, then the value of the leasehold interest is the present value of the saving ground rent, if any, in addition to the value, not cost, of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, then the present worth of the difference is subtracted from the value of the improvements.

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Q. Now, would you turn to the earlier marking there and read what is said about determining the lessee's interest?

A. (Reading from book) Lessee's interest is the market value of the property less the value of the lessor's interest.

Q. And lessor's interest, please, just below that.

A. Lessor's interest is the present parenthesis discounted parenthesis value of the contract parenthesis lease parenthesis rents in addition to the present parenthesis discounted parenthesis value of the reversion.

Mr. Shaia: Will you answer Mr. Eichner's questions.

CROSS EXAMINATION.

page 148 } By Mr. Eichner:

Q. What is the edition of that book you have been reading from?

A. Appraisal Terminology and Handbook, 1954 Edition, published by American Institute of Real Estate Appraisers.

Q. Is that a third edition?

A. No, sir. Apparently, it is the first, because this calls it the 1954 edition.

Q. They have just a definition of a simple word leasehold by itself in there. Can you find it.

A. Yes, sir, they have a definition of leasehold.

Q. What is that?

A. (Reading from book) Leasehold: A property held under tenure of lease. A property consisting of the right of use and occupancy of real property by virtue of lease agreement. The right of a lessee to use and enjoy real estate for a stated term and upon certain conditions, such as the payment of rent.

Q. That last definition you have read, is that consistent with your approach to the evaluation of leasehold interests?

A. Well, we certainly consider leasehold to be the right to use and occupy lease premises.

Q. That is defined as leasehold in the book that Mr. Shaia gave you?

A. We just call it leasehold.

page 149 } Q. You consider that to be synonymous with leasehold interest?

A. Well, I have defined leasehold interest as the right to use and occupy premises. That's what I feel we went by.

Q. Now, Mr. Shaia also asked you to read something about

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the technique for evaluating property in this book. Is that the accepted and best way to evaluate a leasehold estate, to subtract the value of the reversion from the improvements; is that considered the most scientific way to go about it; do you have an opinion on that?

A. Yes, sir. Well, under normal appraisal practices where you are simply trying to estimate the value of a leasehold estate or that value in excess of right to use and occupy, there are several approaches. One is, of course, to find the present worth. The difference between the economic rent and contract rent. There is another simplified way that can be used, I suppose. That is to subtract the value of the lessor's interest from the value of the fee, which would automatically give you the value of the lessee's or leaseholder's state. If that is what you are asking.

But, it is preferred to go ahead and work out, do the calculations to determine the present worth of the difference between the contract rent and the economic rent and then come out with the rent for the term of the lease.

page 150 } Q. Getting back, now, to the various occupancies in the state-owned Medical College buildings. You state that you asked Col. Heil, vice-president of MCV, to send you copies of all agreements that he had with Mr. Haskins, and he sent you only the 1964 one.

When did you first start talking to Col. Heil about investigating the MCV property, sir?

. Well, I believe sometime in 1959 or 1960, we actually made an investigation of the Campus Room to determine if there was a leasehold. We understood, at that time, in conversation with Mr. Haskins, and, also, with the MCV officials, that it was a concessionaire.

Again, in certainly recently, in July, this year, July '64, I went over and talked with Col. Heil and attempted to find out some more, and not only about the Campus Room, but also the upper parking deck, which had an operator, and also any other information, like the Bank of Virginia. That was in July of '64. Col. Heil, only thing he would tell me then was he knew of no leasehold interest that any of his tenants had.

Q. Other than the Shaias?

A. Other than the Skull and Bones.

Q. Did you ask him for documents and agreements?

A. Yes, sir, I did. I asked him would he produce the written

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agreements, or whatever he wanted to call them, for me to examine or make reproductions.

Q. Did he refuse?

page 151 } A. Yes, sir, he did.

Q. Then, what was your next contact with him after that, roughly?

Mr. Shaia: If Your Honor please, I don't see the relevancy of his contacts with Col. Heil of Medical College with reference to another operation.

Mr. Eichner: You opened it up.

The Court: You opened the situation.

Mr. Shaia: Yes, sir. I agree to that. I think we have the agreement before the Court for the years in question. Whatever refusal the City may have made other than that, I don't think is material.

The Court: I think you opened up that question.

Q. I would like for you to take a look here as to Exhibit—agreement with Mr. Haskins in the Campus Room, dated —Exhibit No. 6, dated May 1958, and memorandum dated December 30, 1959. That is substantially the same as the one Col. Heil sent you in 1964, the 1964 one. You referred to some matters dealing with the right to set prices and—

A. Yes, sir.

Q. Will you find those in Exhibit 5, as well as the one you examined which Col. Heil sent you.

A. Yes, sir, they appear to be pretty much the same along those lines.

Q. You mean the—

page 152 } A. As a matter of fact, the only difference, they seem to use the word operator in one instance and concessionaire in the other.

Q. They used that in which one?

A. May 1958 document.

Q. Called him lessee?

A. No, sir, they called him operator.

Q. Now, you say you made some assessment in 1964, this last month, rather, of certain state-owned property of the leaseholders in them.

Do you know whether the tax bill includes penalty and interest on those?

A. Yes, sir, they do.

Q. Some, you say, are retroactive to 1961. Are there any

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which were not? You may refer to what notes you have got or—you have already mentioned two of them—1412 East Franklin.

A. Yes, sir. 1412 East Franklin. Both leasehold interests there were retroactive to 1961.

Q. How about 203 Governor Street or 1312 East Grace?

A. Yes, sir, that was retroactive to 1961. The barber shop was not. It was simply for this year, because the only contract we had was executed in November of '63. We created a leasehold interest for use in January '64.

Q. Did you try to find out if there were a previous lease to the barber shop?

page 153 } A. Yes, sir.

Q. What was the answer?

A. Not with this tenant, this occupant.

Q. Col. Heil told you that?

A. Well, Col. Heil, of course, told me there wasn't any leasehold interest at all. I sent one of the field men to inquire as to this particular operation.

Q. You mentioned Life Insurance Company of Virginia. That hasn't been touched on here before. What kind of property is that?

A. Well, it is a parking lot that the Life Insurance Company of Virginia leases. They were leasing it from Sheltering Arms. They couldn't carry their property tax to Sheltering Arms during the term of the lease; however, in July '63, this property was purchased by the Medical College of Virginia, which created a leasehold interest to the Life of Virginia, and, after January 1, 1964, we picked up that leasehold interest, as of January 1964.

Q. You have here the date of conveyance was 1964.

A. That was a typographical error. Should be 1963.

Q. Do you know of any leasehold interest existing in any property owned by the Commonwealth or the federal government in the City of Richmond during the years 1961 to date which has not been assessed for taxes?

A. No, sir, I don't know of any others. I be-

page 154 } lieve we have them all.

Q. In event you should be mistaken, and others should come to your attention, what action do you propose to take?

A. We'll have t find them for the current last three years, as the statute provides for. We will assess them.

Q. Have you made a decision what to do if the Court

should rule in the Haskins agreement, or some of the others that have been described, that they are leases, you contemplate what action?

A. Do the same thing, sir. We will find them for the current last three years. The law doesn't give me any discretion in this matter.

* * * * *

Q. You have mentioned other communities in Virginia assessing leasehold land owned by the Commonwealth and federal government.

Could you identify any of those communities?

A. The general area is primarily Northern
page 155 } Virginia and the Tidewater area.

Q. Do you know how assessing officers in other communities were evaluating such leaseholds at that time?

A. They were simply taking the fee value and placing it back in the lessee's name at that amount.

Q. In other words, treating the leasehold the same as fee simple ownership, as far as valuations are concerned?

A. As far as that technique was concerned, yes.

Q. Why didn't you adopt this course of action in Richmond?

A. Well, frankly, I think it is incorrect. It would immediately impose a higher assessment, thereby higher taxes, than I think the lessee is supposed to pay.

* * * * *

Mr. Shaia: We will stipulate the assessor is an expert in his field.

* * * * *

page 157 } JOHN W. BATES, JR.,
first being duly sworn, testified on behalf of the plaintiff, as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. Will you state your name and age?

John W. Bates, Jr.

A. John W. Bates, Jr. Fifty-one.
Q. Occupation.
A. Realtor.

Mr. Shaia: If Your Honor please, I believe the City Attorney and I have agreed to stipulate that Mr. Bates is an expert. I will not get into that testimony.
The Court: Very well.

Q. Have you made an examination of the property involved in this action?
A. Yes, sir, I have.
Q. Would you say that you are generally or extraordinarily familiar with the area surrounding the property?
A. I would say extraordinarily, since I have acquired for the Medical College most of the property which they have acquired in the last fifteen years in that area.
Q. Did you represent the Medical College of Virginia in its negotiations with the Shaias, which resulted in the agreement dated January 8, 1959?
page 158 } A. Yes, sir.
Q. Can you tell the Court what were the important factors which motivated the Medical College of Virginia in entering into this contract with the Shaias?

Mr. Eichner: If Your Honor please, I am going to object to that. First, I don't think it is relevant. Second, we have MCV officials who could testify better on motivation.
Mr. Shaia: Mr. Bates testified he was agent for Medical College in these negotiations, and I think that we are entitled to hear from him as to what motivated Medical College; what the purpose was for entering into the contract.
The Court: Objection overruled.

A. I was employed in 1958, by the Medical College of Virginia to acquire all of the land which they did not own between 11th, 12th, Broad and Marshall Streets for the future erection of the education building. Among these properties was 310-12, North—310 North 12th Street, which was then owned by Harry Shaia and occupied by his sons, under the name Skull and Bones.
When I approached Mr. Shaia about the acquisition of the property, advising him that this was an acquisition under

John W. Bates, Jr.

the threat of eminent domain, he was quite unwilling to sell, because he had been in the area forty years and
page 159 } had two sons that he desired to have the same privileges of dealing in that area as he had had and enjoy the same pleasant relationships which he had enjoyed, and he questioned if it wasn't some way the Medical College could sell him property on which he would operate a restaurant.

I inquired as to this possibility and had to advise him there was nothing available for sale.

We were unable to get an agreement for him to sell at what we considered a fair market value of the 12th Street property, and it looked as if we were going to have to go to condemnation, when one of his sons inquired as to availability of the lot in question here, the northwest corner of 12th and Marshall; and, I, in discussing this with the Medical College, Dr. Blackwell Smith, found it was not possible for them to lease this land for any long term from the funds which were available from Skull and Bones at 310-12th, but, if the property at 1101 East Clay could be acquired by the Medical College, that they would like to make a term sale so that the payment coming due representing interest and principal at the first of each year would pay for a ground lease on the land at 12th and Marshall.

It was determined by my evaluation at that time that the land was worth $50,000.00, and that a fair return to the Medical College of Virginia, under a ground lease, would be a six per cent return or a $3,000.00 rental.

It was also determined that a fair market
page 160 } value at 11th and Clay was approximately the same value as the present worth of $3,000.00 a year for thirty years, or, as was set out in the lease agreement $43,773.00; therefore, under this arrangement, under this premise, I prepared an instrument for a thirty-year lease, and submitted it to the Medical College for approval, who submitted it to the Attorney General's office and was advised that we could only make a lease for two years.

It was then agreed that that was satisfactory; and even provided the Medical College, under certain circumstances, had a right to terminate the lease, and, if so, they were to reimburse the Shaias for the unpaid purchase money one 11th and Marshall Streets.

In other words, if they terminated at the end of the second

year, after deducting the two payments that had been paid, the Medical College would owe the Shaias the unpaid purchase money of $42,630.00.

This wasn't the only condition that had to be met, as, under the lease, it was provided that they would reimburse them for the unamortized amount of the building improvements put on there by the Shaias, if amortized on a straight-line basis over a thirty-year period. They would also have to amortize—have to pay—reimburse the sub-tenants the cost of their fixtures, if amortized over a period of ten years.

On this basis, the agreement was entered into, and it was executed both by the Shaias and by the Medical
page 161 } College of Virginia with approval of the state, and the Commonwealth's Attorney — Attorney General.

Q. What was the anticipated cost of the new building?

A. At the time the lease was negotiated, it was thought the building would run between seventy and seventy-five thousand dollars.

Q. How do you account for the building having exceeded this expected cost to such an extent?

A. The lease provided that the building plans had to be approved by the Medical College of Virginia, and the Art Commission of the State of Virginia, and that the contractor had to be approved by the Medical College of Virginia; and, in meeting these specifications, the building far exceeded these requirements of the Medical College and Art Commission. The building costs far exceeded my expectations, and I think the expectations of the Medical College, and I am sure the Shaias.

Q. What do you understand the term fair market value to mean?

A. Fair market value is the price a well-informed seller with no compulsion is willing to sell the property and a well-informed *purchased* with no compusion is willing to pay for a piece of property.

Q. Have you at my request made an appraisal of the property in question for the years, '61 through '63?

A. I appraised the property, yes, sir, on Octo-
page 162 } ber 9, this year.

Q. What were your findings, please?

A. You want to know the fair market value on the business or the fair market value of the leasehold interest?

Q. Well, suppose we start out by saying what the fair mar-

ket value of the fee interest of the land in question is during the years, '61 through '63. That is fee interest of the land only.

A. Fair market value of the fee without consideration of the lease or encumbrances for the years, 1961, '62, '63, in each instance was, in my opinion, $110,000.00.

Q. Now, is that the land and building or—

A. Land and building.

Q. Could you tell us what your findings were for the land only?

A. The land only for the year 1961, was $50,000.00. The land for the year, 1962, was $54,350.00; and, the land for '53 was $57,250.00.

Mr. Eichner: '53 or '63?

The Witness: '63, excuse me.

Q. Based on that evaluation of the lands, would $3,000.00 be a fair annual rent for the land for the years '61 through '63?

A. It is, in my opinion, the fair value for the year 1961. '62 would demand a slightly higher rental, and page 163 } '63, slightly higher than that.

Q. Then, did Harry Shaia have a leasehold interest in the land of any value during the years in question?

A. He was paying, for the year 1961, the fair rent on the land based on evaluation of $50,000.00; therefore, he had no value to his lease, since the contract rent and the actual economic rent were the same, therefore, the leasehold on the land, itself, had no evaluation. He could not have sold his leasehold without the improvements to anyone for more than $3,000.00 a year, which had to be paid by anyone who occupied it.

Q. So, for the year '61, he had no leasehold interest in the land?

A. That's correct.

Q. For '62, would the same formula be applicable?

A. Well, in '62, there was some slight increase due to the fact we had an increase in land value at that time, and if it had been re-negotiated, the lease would have probably had $250.00 more rent in it at that time, which should—would produce some small increase in the value of the leasehold of the land alone.

Q. And, for '63.

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A. It would be a question of $435.00 increase in rent for the year for the land and would produce a maximum of $4,000.00.

page 164 } Q. Evaluation of leasehold interest?

A. Yes, sir, leasehold interest.

Q. You stated that the evaluation of land and building for '61 through '63 was $110.000.00.

A. Fee value.

Q. For land and building. Would you tell us how you reached that conclusion?

A. I obtained from the sub-tenants, Mr. Richard and Edward Shaia, the gross sales for the years 1961 and 1962, for the purpose of making comparable rental analyses with comparable restaurants throughout the city.

Our investigation of all the restaurant leases in our office indicated that, with one exception, all of them were at the rent of five per cent of gross sales, where there was a percentage lease.

There was one interest there that was six per cent, but in this instance, there was certain equipment furnished by—well, it had been a foreclosure, taken over the building, and the tenant leased it with the fixtures in it and got a higher percentage rental than is normal.

Based on the average rent for the period of '61 to '62, at $226,000.00, and assuming that at five per cent, which I consider to be the equitable percentage rental, it would produce for those years an average of $11,331.00.

page 165 } Now, normally, in restaurant operations, as well as in merchandising, the sales increase for the first three years. After that, they level out pretty much on an even scale, provided the office has maintained the same standards; or, for the year 1963, the rental of 245—I mean, the gross sales of $245,000.00, would indicate that $12,000.00, the contract rent, was proper rent even though, in this instance, it certainly was not an arms-length transaction, at least, between father and sons.

We were very careful in checking this, and, we, also, think that where the contract rent of $12,000.00, in checking it back against other leases, we found in every instance where the contract rent was on a five per cent gross sales basis, that the owner paid the taxes and the insurance, as far as fire insurance on the building is concerned. The public liability is carried by the tenant.

So, using this as a basis, as economic rent, $12,000.00, I

proceeded to deduct an allowance for vacancy. I think that we must recognize that with a lease situation on the land that if the owner or if this leasehold were sold to a prospective purchaser, he must consider that in later years, if he happened to get a vacancy, it would be virtually impossible for him to get a tenant who would go in there on so short a period.

Also, sub-tenants who are on an at-will lease or individuals and not someone like S. & W., or a large corporation, that the continuity of their occupancy could not be as-
page 166 } sured; therefore, I deducted a vacancy allowance, which I think any prudent investor would make, of five per cent, or $600.00, leaving an effective gross rent of $11,400.00.

In estimating the taxes, the only tax basis that we could come up with, was the basis of the leasehold evaluation, which had to be done by interpolation. The lease, itself, provided that taxes would be paid on the building by the Shaias, but that they would not be responsible for the taxes on the land.

So, assuming that they would be assessed from a leasehold standpoint, and leasehold interest in the land itself was negligible, I used the evaluation for tax purposes at $60,000.00, producing a tax of $1,128.00.

Actual fire insurance rates as recommended by the Virginia Insurance Rating Bureau, and the cost of the actual policy on the property when used are $400.00.

Now, in every instance where we checked leases to—comparable leases of comparable properties, we found that the owner was responsible for exterior walls and the roof. I felt, therefore, that it was necessary for a prudent investor to consider that during the term of the lease, the roof would wear out, and he may be called upon for other exterior improvements; so, I set up a reserve of $100.00 a year as being an adequate sum to take care of that.

Now, during the term of this lease, if we lost
page 167 } a tenant, it would certainly be necessary for the prudent investor to consider that he would have to employ a realtor to seek a new tenant for him, or if he went out and saw to it himself, he would certainly be entitled to a management fee; but, I didn't think he was entitled to set up over a term of a thirty-year lease the full six per cent, as normally charged on the market today, so we set up a management fee of four per cent.

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This gave us total estimated stablized expenses of $2,-084.00, or a net rent to Mr. Shaia, before ground rent, of $9,-316.00.

From this must be deducted the ground rent that is payable to Medical College, which is returned to him at the first of each year as a payment on principal and interest on the unpaid principal amount on the building at 11th and Clay Streets.

Now, this income to Mr. Shaia of $6,300.00, after paying the $3,000.00 ground rent, does not have the characteristics of an annuity. If his sub-tenant had been a Triple A national chain so that this lease was—had the character of an annuity, then we could value the income stream as an annuity, but I don't think we can. I think we have to value this as rent, and, therefore, in my opinion, it would take a seven per cent interest rate to attract capital into this type of investment, and, since the capital must be returned to the purchaser of the Shaias' interest over the length of the term of the lease

page 168 } and, as we started off with 1961, we have got twenty-nine years, I capitalized the income at ten point one zero 448, or ten forty-four one hundredths per cent, which returns the capital to the man, the purchaser, over the remaining term of the lease, and pays him seven per cent on his investment.

This would produce a valuation of the leasehold interest of Mr. Shaia of $60,450.00 for the year 1951.

Q. '61?

A. '61, excuse me.

By Mr. Eichner:

Q. What was that figure again?

A. $6,450.00. I prefer not to break that down between land and building, for if you reduce the income attributable to the land in the later years, you just reduce it from the value that it creates in the building, so it really isn't significant what is the value of the lease on the land without considering the leasehold in the building. Using a comparable approach.

By Mr. Shaia: (Continued)

Q. Wait a minute. Go back. I think you gave the figure for the Shaia interest. Did you say the Shaia interest was $60,450.00 or $6,000.00.

A. Sixty thousand, four.

Q. The leasehold interest was six—

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A. $60,450.00 in 1961.

Q. What is that?

page 169 } A. That represents the present fair market value of the leasehold interest of the sandwich man's interest. Interest of Mr. Shaia in the income that would be produced by a subtenant after deducting the payment of $3,000.00 to the Medical College as ground rent.

Q. Do you have that figure for '62?

A. Using a comparable approach for '62, valuation would be $59,750.00.

Q. And, '63, sir?

Mr. Eichner: I am sorry, I missed that.

Mr. Shaia: $59,750.00.

A. The value for 1963, is $59,000.00.

Q. Then, in this approach, would you reply as to valuations of the property, the fair market value of the land is not an important factor, it is not a factor at all, is it?

A. Fair market value of the land—

Q. The fee value, that is, excuse me.

A. The fair market value of the fee of the land is significant only in that income will be attributable to that or to the building improvement, one or the other, so if you reduce the amount of income that would be attributable to land, if the value went up then you would reduce the value of the income that would be attributable to the building by a comparable amount.

Q. Did you determine that this property is being put to its best use?

page 170 } A. Under the terms of the lease, the property must be used as a restaurant, and as the two operators have been raised up right in the Medical College area and operating, in my opinion, a first-class restaurant, I don't believe that a higher value could be produced by any other operation; therefore, I consider under the terms of the lease that the property is being used for its highest and best use.

Q. Did you use any other approach in trying to determine the value of the leasehold interest of the Shaias?

A. Yes, sir. I also determined the value of the lessor's interest, and as it is an axiom that the lessee's interest is equal to the value of the fee less the lessor's interest, we felt that the value of the lessor's interest was significant.

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Q. Are you speaking of lessor here as Medical College?

A. As the Medical College of Virginia.

Q. All right, sir.

A. Medical College is obtaining an income stream, for in the year 1961, it had twenty-nine years to run. They are also entitled to the value of the land under the reversion, which they won't get for twenty-nine years, plus the depreciated value of the building.

Normally, a restaurant building would have an economic life of forty years. It would be depreciated at the rate of two and a half per cent a year, therefore, at the page 171 } end of thirty years, when the building was thirty years old, and the Shaias would have no interest in it, it would revert to the Medical College, and be twenty-five per cent sound; so, the reversion of the land on the present day value, plus the twenty-five per cent of the building value, based on what the present worth the building and land is, which you won't get for twenty-nine years, produces a value of $12,440.00; and, the present worth of an income stream for twenty-nine years has a value of $40,773.00, or a combination value rounded out to the closest hundred of $53,200.00.

Now, $53,200.00 represents the worth of the fee under the lease that belongs to the Medical College of Virginia. If we deduct that from the value of the fee of $110,000.00, we come up with the lessee's interest, or Mr. Harry Shaia's interest, of $56,800.00. This is under the evaluation which I gave below, but, it is my opinion that the average purchaser of a leasehold interest is more concerned in what income can he reasonably expect and what security does he have in return of his capital, and would not necessarily put as much weight on this approach as he would on the true-income approach to the value of the leaseholder.

Therefore, I have used the income values as my opinion of the fair market value leasehold interest of the Shaias for those three years.

Q. Then, for the three years in question, in page 172 } your opinion, the value is for '61, $60,451.00?

A. $60,450.00.

Q. For the leasehold interest of the Shaias, is that correct, sir?

A. That's correct.

Q. And, for '62, you have valued the leasehold interest of the Shaias at $59,750.00?

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A. Thats correct.

Q. And for '63, $59,000.00?

A. That's correct.

Q. Were any peculiar factors to be considered in determining the value under your income approach, for example—

A. The most peculiar factor was the fact that you had this right of the Shaias to terminate and walk away from their improvements, or the right of the Medical College to terminate and pay to the Shaias the unamortized portion of their improvements.

Now, at the end of the second year, if we disregarded the unpaid purchase money on 11th and Clay Streets, which was still due Mr. Shaia, the Medical College would have had to pay $194,636.00 to terminate the lease. I don't think any normal purchaser would consider that the Medical College under those circumstances would have any idea of terminating the lease. If we go down to twenty years, under the original terms for the Medical College to terminate the lease, they would have had to pay $65,760.00, which is

page 173 } highly unlikely that that would occur; but, let's assume that the purchaser was willing to assume that the Medical College would. Twenty-one years of the term, or twenty years after they made their agreement to purchase in 1961—we are considering the evaluation as of '61—consider that, at that time, if the Medical College terminated the lease on the twenty-first year of their lease, or after twenty years of ownership, considering a value from the year 1961, the Medical College would have to reimburse the lessee $38,119.00 for the building. His amortized cost, if he amortized his capital over a straight-line basis, at that time, would be $20,844.00, or, he would be obtaining $17,274.00 more than he actually had in the building. But, what is the present worth? Even if he were guaranteed of getting it at twenty years, what is the present worth of $12,000.00 that you would not get for twenty years? If we discount it, it is worth only $4,450.00. So, if you added the $4,450.00 to the value of the leasehold, the lessor's interest under that approach, you still don't come up to the evaluation which I have given for Mr. Shaia's interest under the economic approach, and, even at that, I don't think any prudent purchaser would pay anything for the bonus that he might receive if the Medical College repossessed the property.

Q. Would you say that difficulty of financing would be a peculiar factor in the purchase of this property?

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A. I found in the initial interest, that at the
page 174 } request of Mr. Shaia, it was impossible to get a mortgage loan through my contacts. We were unable after considerable effort to produce a mortgage loan for Mr. Shaia on his interest.

Q. So, there, therefore, would be a limited market for this type of property, then?

A. I think it would be definitely a limited market for a purchaser of this leasehold interest.

Q. This would affect the value?

A. They reflect in my determination of that.

Q. Are you familiar with the assessments of this property for '61 through '63?

A. I heard Mr. Chandler testify as to them, and I have also been to the Assessor's office, and the book was out for the year 1962, and I didn't actually see it, but I did see the others.

Q. Well, the taxes—the assessments for the years '61 through '63, are in an identical amount. Is there any way you can account for the assessments being the same for the three years in question?

A. Well, I agree with Mr. Chandler that the leasehold interest depreciates as it approaches its expiration, therefore, it will have a decreasing value each year.

Q. Did you hear Mr. Chandler testify on Friday and today?

A. Yes, sir.

page 175 } Q. You heard his approach to evaluating this leasehold interest?

A. Yes, sir.

Q. Did you have any reaction or opinion as to that approach?

A. I have—I have a very high opinion of Mr. Chandler's integrity. I think, however, as I understand his approach, he was valuing the leasehold interest in the land by determination of the rent that was paid to the Medical College of Virginia. Well, Mr. Shaia, in paying to the Medical College of Virginia, was paying $3,000.00 rent, which represented the economic rent for the land; therefore, it couldn't be any value to the leasehold, because he was paying the economic rent.

If it were worth $33,000.00, as Mr. Chandler testified, I believe that would mean not only would Mr. Shaia be paying $3,000.00, he would also have to pay $2,415.00 on the $33,000.00. That would be the economic rent, and the land would

then have to be valued at $83,000.00, which is $15.00 per square foot, half again more than any sale that has ever been made in that area; so, I don't believe there could be any assessment on the land if we attempted to break down the value of the leasehold between land and improvements, which I don't rcommend. If there is an attempt to do it, then I know it would be in the year 1961 no value of the leasehold as to land.

Q. Do you have any pecuniary interest in the

page 176 } outcome of this case?

A. None whatsoever. As a matter of fact, I don't even get a commission for drawing the lease. The Attorney General wouldn't permit it.

Q. Are you the real estate agent for Azalea Mall and Willow Lawn?

A. I am exclusive agent for Azalea Mall and joint agent for Willow Lawn.

Q. Did the leases in those two shopping centers control any restrictions as to hours or what have you, hours of operation?

A. With the exception of the ABC Store and the bank, which are established by other regulatory authorities, the leases provide that they will stay open from nine to nine, except the ones on recommendation of the majority of the then tenants to shorten those hours.

Q. But, there are regulations in the leases that affect the hours?

A. Yes. In every instance, with the exception of the bank and ABC Store.

Q. Are there any other restrictions generally found in all those leases?

Mr. Eichner: If our Honor please, I think if he is going to go into the leases, the leases ought to be proved.

Mr. Shaia: I withdraw the question.

page 177 } CROSS EXAMINATION.

By Mr. Eichner:

Q. Mr. Bates, you said those figures you just gave are your evalutions of a leasehold interest as of 1961, 1962, 1963?

A. That's correct.

Q. Would you define leasehold interest.

A. Leasehold interest is the right of the tenant to occu-

pancy and possession under a lease agreement. Interest which he possesses under a lease agreement.

Q. We are interested here in the lease of Harry and Zachia Shaia, is that correct?

A. That's correct.

Q. And the interest they have is the right to receive $12,000.00 a year?

A. Subject to certain limitations. They must pay to the Medical College of Virginia $3,000.00.

Q. Every year they must pay $3,000.00?

A. Yes, sir.

Q. When was the last time they paid $3,000.00?

A. Well, it is actually not paid, but it is paid in lieu of—they—

Q. But, this is no annual payment?

page 178 } A. Not as such, but the lease set out that at the beginning of each year this will take place, in effect, that in lieu of a payment of rent, they will receive a payment on the amortization and interest of the purchase price of 1101 East Clay Street.

Q. But, no money exchanges hands either way?

A. That's right.

Q. In fact, the $12,000.00, which Harry Shaia received from Richard and Edward Shaia, is called a net-net lease?

A. I don't know actually what the terms of the lease agreement are between Richard and Edward and their father.

Q. Didn't you hear them testify yesterday?

A. No, I did not.

Q. They explained that Richard and Edward would take care of all payments of maintenance; they would pay all heat and utilities. Nothing was said about fire insurance.

A. This would be normal. The tenant in determining the economic rent, which I used—this differs from the contract rent—the tenant would pay all the ultilites. The tenant would pay the public liability insurance, but not on the building for the benefit of the landlord or the landlord's agent, and he would pay all interior maintenance, including the maintenance of the air-conditiining plant; and, incidentally, there isn't any heating system in this building, but the owner of it, or in this case, the owner of the leasehold,

page 179 } would maintain the exterior of the building and the roof.

I have looked at it from an economic-rent point of view, and the contract rent comes pretty close to that except as to

such things as the Shaias paying—the younger boys paying taxes. I don't know whether or not any has ever been paid.

Q. Well, the testimony was they never thought about taxes, nobody had any occasion to pay taxes as between Harry and Richard Shaias.

A. Not under the terms of the lease.

Q. I am talking about the sub-lease of Edward Shaia and Richard Shaia. They testified about it here. Did you have anything to do with the sub-lease?

A. No, sir.

Q. Let's talk about the same lease. Let's talk about the testimony here of Richard and Harry Shaia. No one ever thought about which of them would have to pay taxes.

You have made your deductions on the assumption that Harry Shaia would assume that account was passed on to Richard and Edward?

A. The reason I used that?

Q. Would you answer that question? Did you make that assumption or didn't you?

A. I assumed that the taxes would be paid by Harry Shaia or someone substituting in his place. I was trying to measure the mind of the purchaser.

page 180 } Q. So, if there is no such—the agreement could be that the tenant would pay the taxes, then, you shouldn't make the deduction?

A. Then, the rent would be less by the same amount of money, because I have determined economic rent based on what is normal in the practice, and, therefore, the economic rent takes into account that the owner will pay the taxes. Now, if the tenant paid the taxes, the rent would be reduced by like amount.

Q. But, the contract rent might well remain the same, mightn't it?

A. The contract rent could, but it wouldn't be the economic rent and wouldn't determine the valuation in the mind of the purchaser.

Q. Now, in getting your net economic rent, you deduct $400.00 a year for fire insurance premium?

A. That's right.

Q. What valuation is that based on?

A. The lease provides that it's for the fire insurable value. The Shaias have insured their costs. My recollection is that it was—I didn't look at the actual insurance. I forget what amount it was.

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Q. Do you think it is actually a three-year premium rather than a one-year premium?

A. No, sir.

page 181 } Q. Did you examine the policy to determine that?

A. It's a possibility I made a mistake. I'm not sure.

Q. All right, sir. Now, you have deducted a management of—what did you say? I can't read my notes here.

A. I had a four per cent management fee.

Q. That is just—that is not an actual expense, is it?

A. Not at the present time, but anybody who was going in to purchase the Shaias' position, would have to either manage this thing himself or have to employ somebody to seek another tenant, if he lost the tenant, and, he, also, has to take care of the normal management functions of a landlord, which I put in only as a finder's fee, and not at the actual management fee.

Q. Where did you get—you finally—I believe this is the practice you followed here. You assumed an average gross receipt of, I believe, $226,000.00, right, gross receipts for the business?

A. Yes, sir, that's an average.

Q. In getting this average, of course, you ignored the 1963 gross receipts?

A. No, I testified that in determining the fair contract rent, these rose to $245,000.00.

Q. And, $226,000.00 is an average for three

page 182 } years?

A. $226,000.00 is an average, yes, sir. Five per cent of this is $11,331.00.

Q. Then, from that sum, you deducted five per cent vacancy. Was there any vacancy during 1961, '62, or '63?

A. This is not expected to take care of those vacancies, but those which might come in the future.

Q. Your answer was no, wasn't it?

A. I deducted—yes, I deducted a vacancy, and there were no vacanies; but, in a thirty-year period of time, a year and a half vacancy is a very small amount, in my opinion, to deduct, and any prudent investor would expect to do.

Q. Deducting $130.00 a year for repairs, you assumed this was an obligation of Harry Shaia?

A. That is standard procedure. Anyone who owns a building must set up a reserve to replace a roof. You can't insure it with a bond for longer than twenty years.

John W. Bates, Jr.

Q. But, you didn't hear the testimony of Richard and Harry Shaia that that was the obligation of the sub-leasees, did you?

A. No, sir, I didn't hear that testimony, and I have no knowledge of the sub-lease.

Q. You have again deducted—you have deducted all these expenses and come up with $9,316.00 net rent before ground rent, then, you deducted $3,000.00 a year ground rent to come up with $6,300.00 as—what would you call that, net rent?

A. Yes, sir.

page 183 } Q. Received by Harry Shaia. You called him a sandwich man. What is the sandwich man business?

A. He is in between the landlord and fee owner and the actual occupant of the property. He leases the land, builds his building, then sub-leases it, so he is in the middle.

Q. So, you are valuing the interest of the sandwich man as being the difference of what he has to pay his landlord and the difference of what he gets from his lessee after taking into account expenses?

A. That's correct.

Q. Is that accurate?

A. Yes, sir.

Q. What Mr. Shaia here, the lessee, from the owner, he actually owns the right to use and occupy this property for whatever the unexpired term of the lease is, doesn't he? That is what he owns, isn't it?

A. Yes.

Q. And he doesn't—he has already paid whatever he has to pay for it?

A. But, you would be taxing him on his capital then. This is unpaid purchase money.

Q. I am not going to argue the law with you, Mr. Bates.

A. I just had to assume that in arriving at my

page 184 } evaluation approach that all the income that Mr. Shaia had from this leasehold was that income after he paid a ground rent, which really represented a sale, which he sold another piece of property, therefore, that the $3,000.00 must be deducted from the income available to him.

Q. Well, this is what might be called finding the leasehold estate, isn't that correct? Isn't what you have been trying to do is compute the difference between the contract rent and the economic rent as far as Harry Shaia is concerned?

A. Plus the value of the bulding.

John W. Bates, Jr.

Q. Plus the value of the building?

A. Yes, sir, that's right.

Q. And the way you value leasehold estates, you take the value of the building—what do you do, depreciate it on a straight-line basis, or what do you do with it?

A. Well, in the determination of the value of the building, we are only working on income as a major approach, the dominant approach. The only time you worry about the value of the building is in the reversionary interest. When you are talking about the lessor's interest, the Medical College, that is when we get into the value of the building, depreciating that, but, the only interest which the lessee has is in the income over the term of the lease.

Q. Now, isn't that value as of the beginning of the lease when it has thirty years to run? I believe in page 185 } drafting this agreement, you put a value on the right to use, occupy and enjoy for a period of thirty years, didn't you, on page 2 of the lease, Paragraph 3?

A. No, sir, that represents the value of the building that was sold over on Clay Street. I think it so states there. I said there that the present worth of the income stream of $3,000.00 a year payable in advance discounted to six per cent interest is worth $43,773.00.

Q. So, actually, this lease is prepaid in advance, isn't it?

A. Yes, sir, that's correct.

Q. So, actually, let's assume now we have a purchaser who is interested in the property, who is interested in purchasing Harry Shaia's leasehold interest, or leasehold estate, whichever term you want to use, with all the rights he has. Let's say there is an investor who wants to purchase Harry Shaia's rights, and we won't concern ourselves with whether he wants to operate a restaurant or whether he wants to sublease it. Let's just assume that. Now, as of—let's look to April 1, 1961, which, I believe, is the expiration of the first year of this lease, isn't that correct?

A. '61 would be the first year, yes, sir.

Q. And Harry Shaia owned at that time, did he not, the rights to use and occupy this property for twenty-nine years, assuming no notice of termination was given by page 186 } either party, isn't that correct?

A. That's correct. No notice could have been given until the end of the second year, it couldn't be termi-

nated, and it might be better to use that as an example since that is calculated out.

Q. I will take your suggestion and go to the end of the second year, to the end of April 1, 1962. I think if you will take a look at page 12, you stated as of April 1, 1962, you figured the present worth of the right to occupy the land only for twenty-eight years was $42,630.00, isn't that correct?

A. No, sir.

Q. What did you figure that the present worth of the right to receive $3,000.00 for twenty-eight years was; wasn't that what it represents?

A. The right to receive $3,000.00 for twenty-eight years is worth $42,630.00.

Q. Yes, sir, that was the value of $3,000.00 a year for twenty-eight years discounted?

A. Six per cent.

Q. Six per cent. Why did you figure six per cent?

A. Because, after the improvements are put on this land, we thought it was going to be $70,000.00 plus fixtures. It turned out to be $127,000.00, plus fixtures at forty-five. That changed the characteristics to an extent that the security offered by these improvements, Shaia's position, page 187 } made the nature of the income worthy of the six per cent rate, where, under normal circumstances, it probably would have been higher.

Q. I believe you told us that if the Medical College gave a notice of termination that—you mentioned the figure $195,000.00, didn't you?

A. Yes, sir.

Q. That is at the end of the second year?

A. Maybe the first year. Wait a minute, I will tell you.

Q. Will you tell us how you computed that?

A. This was done for the Medical College sometime ago when they were talking about the eye hospital.

Q. This was at the end of the second year. I think you said $194,636.00.

A. $194,636.00. That is represented by $42,630.00 of the unpaid purchase money due on 1101 East Clay Street, but, $118,593.77 return of the unamortized portion of the building plus $33,412.92 representing the unamortized portion of the fixtures due the sub-tenant.

Q. That would be eight-tenths—

A. Yes, sir.

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Q. That would be 28/30ths of the value of the cost of the building, is that right?

A. Yes, sir.

Q. And twenty-eight years rent paid in advance?

A. Well, if you look at it purely as rent; but,
page 188 } in drawing the lease, we were unable to get Mr. Shaia to work out anything unless he was being assured of getting his purchase money back, and that was the reason for this device. Putting it in and payable in advance on the first of each year of the term, so that any time he would be assured that money which he was supposed to receive for his 1100 East Clay Street would be coming to him.

Q. Well, the main disagreement with you and Mr. Chandler is whether you should deduct the $3,000.00 from the income, is that right?

A. That's right, because Mr. Shaia pays the $3,000.00.

Q. You mean he has paid it?

A. In one way or the other.

Q. Yes.

A. So that this, in my opinion, should not be a part of his leasehold right.

Q. On the normal lease, rental is actually paid annually, isn't it, or monthly, as the case may be?

A. I know of no other lease like this in existence.

Q. So, if I sell my interest, I have say—say I am a lessee, I assign it to somebody else, he gets my rights to occupy it, he also gets my obligation to pay the contract rent, doesn't he?

A. (Indicating in the affirmative).

page 189 } Q. In this case, if Mr. Shaia sold everything he had, he would just sell his right to occupy the property for the remainder of the term?

A. If he sold everything he had, he would not only sell his rights to occupy the property, but he would sell his promissory note, is what it amounts to.

Q. Do you have a copy of the promissory note?

A. No, but I have got it written in my lease.

Q. Where does it say note?

A. It doesn't say anything about note.

Q. Where does it say I promise to pay? It doesn't say it anywhere, does it, Mr. Bates?

A. Well, the unpaid purchase money which is owed by the Medical College of Virginia, if the lease is terminated on the land, they have to pay it.

John W. Bates, Jr.

Q. Well, let me refer you to Paragraph 3. Would you read that.

A. (Reading from lease) Tenants covenant and agree in lieu of an annual rental of $3,000.00, payable in advance at the beginning of each lease year, to convey to the landlord by general warranty deed free and clear of all objections the following described real estate in the City of Richmond, Virginia.

Q. Still there on the legal description—we are talking about the Clay Street property, are we not?

page 190 } A. Yes, sir.

Q. Says: In consideration of this conveyance. Do you mean the Clay Street property?

A. That's right.

Q. That $43,733.00 is the present worth, and $3,000.00 payable in advance, so $3,000.00 was considered to be rent, wasn't it, ground rent?

A. That's correct.

Q. How did you arrive at your evaluation of the building? I am talking about the fee value of the Skull and Bones building.

A. I determined value of the building by comparison with thirty other buildings which have been built within this three-year period, and which I have the full breakdown, take-off cost, and in comparing it with that, I considered in the reproduction of the building that nobody would replace it for normal business purposes, and it was required that it be built by the Medical College and the Art Commission to meet the peculiarities of the neighborhood.

Q. So, I take it you came up with a replacement cost for this building?

A. For less than the actual cost.

Q. What was your replacement-cost figure?

Mr. Shaia: I don't object to this line of questioning, but I don't believe he testified on direct examination

page 191 } what the replacement cost of the building was.

Mr. Eichner: He went into values. He was asked the value of the fee simple, value of this building, and the value of land taken, and I think I have a right to cross examine him very thoroughly—

The Court: Counsel said he had no objection.

Mr. Eichner: —on how he got that.

John W. Bates, Jr.

A. Actually, in determining the fair market value of the land and building, I used three approaches and produced different answers.

By reproduction approach, the value of the building came to $69,700.00.

Q. Is that reproduction or replacement costs?

A. Reproduction.

Q. How could the reproduction cost be just a little more than half of what it actually did cost?

A. Because in replacing the building, as I said, I agree—

Q. Wait a minute. We are talking about reproduction. Don't you recognize the distinction between reproduction and replacement costs?

A. I am talking about to put the equivalent building there that would render the same function.

Q. That is replacement cost. Reproduction
page 191A } is the cost of re-creating a replica.

A. I am not talking about replicas. I am talking about putting up a comparable building that would render the same function.

Q. So, we are talking about replacement costs.

A. All right.

Q. All right, go ahead.

A. In determining the replacement cost, my opinion is the first floor of a building not required to be built under the auspices of the Art Commission and the Medical College examining and controlling the contractors could be built for $12.50 per square foot.

Q. That is your—is this a separate building that you are estimating here?

A. Yes, sir, except that it was based on the actual cost of thirty different store buildings of comparison.

Q. Store buildings?

A. Store buildings, restaurant buildings.

Q. What were the names of these restaurant buildings?

A. Restaurant buildings: The Kopper Skillet, The S & W Cafeteria, The Terrace Room in the People's Drug Store and Azalea Mall.

Q. How about Lendy's Restaurant out on Broad Street, did you examine that?

A. I am not familiar with it except—

page 192 } Q. How about Nick's Steak House?

A. I don't know what Nick's cost.

John W. Bates, Jr.

Q. Those are both separate buildings like Skull and Bones is a separate building.

The Court: Well, you furnished enough information.

Q. (Continued) Can you mention one single restaurant building whose cost you considered as a separate building, not a section to another part of a shopping center?

A. Well, actually, that—it is too old to be comparable, but you have got the Plantation Room on Cary Street, but what that cost, it is quite old, so—I actually have no separate building except that each of the buildings in these instances are separate buildings.

Q. They don't have separate bearing walls?

A. In some instances, yes.

Q. They cost $12.00 a square foot?

A. They did in S & W at Willow Lawn, they did cost $12.00, but it was much more elaborate than the one built for this type operation.

Q. And, your reproduction cost is $12.00 times the area of the first floor of the Skull and Bones, which is five thousand three hundred and fifty-four, something like that?

A. It comes out $65,000.000, plus the basement at $5.00 a square foot, with the cost of the basement at $6,500.00, making a total of $7,500.00 less physical deter-
page 193 } oration. I don't think there was an economic or functional obsolescence other than that which was reflected in deduction between the actual cost of the property and this given here.

Q. Since there was no depreciation you can speak of—

A. I took off $1,787.00.

Q. But, if you were talking about reproduction costs as opposed to replacement costs, $127,000.00 paid, you don't question that as being a proper reproduction cost; you are actually going back and doing the same thing over again, aren't you?

A. I think if they had to do it over again, they would have designed it differently.

Q. Assume they did build the same building, same plans, same specs.

A. I don't think they would.

Q. I asked you to assume it, though.

A. They wouldn't have hired the same architect, they

wouldn't have gone through the torment they went through at that time.

Q. But, building from the same plans you don't question as being a proper reproduction cost?

A. I think if the building were rebuilt today, it could be built for less with the same plans.

Q. You consider this, the sub-lease, to be producing economic rent of the building?

page 194 } A. Yes, sir, I do.

Q. $12,000.00, how much per square does that come out to?

A. $2.30 based on the first-floor level. Very seldom, you get a tenant to figure the basement in on his square-foot rental; but, if you figure it the other way, it would come up to $2.18, if you take it on over—this compares very favorably with quite a few restaurants on a square-foot rental.

Q. Would you define economic and contract rent?

A. Economic rent is the stabilized rent, rent which would normally be expected to produce based on the value of the land at the time,whereas contract rent is rent which is represented, in this instance, in the lease and paid by the lessee to the lessor.

Q. And, you say the value of the leasehold we are talking about—let's assume we are talking about ground rent. You deduct contract rent from economic rent to see if ground rent—if the lease has any value attributable to ground rent?

A. That's right.

Q. So, if economic rent equals contract rent, of course, on ground rent you figure there is a zero value for 1961, is that right, for the ground rent portion?

A. Yes, sir.

Q. But, as land values increase, therefore, the rental value —there has to be some change?

page 195 } A. Some slight, yes, sir.

Q. And don't you think that—of course, you agree that the value of the leasehold decreases as the lease is used up; but, might it not have a contrary influence if land values keep going up?

A. That would be correct. I think that reflects in the valuations.

Q. It is quite posible five years from now you might have to figure a different economic rent on it, isn't that true?

A. If the land value continued to increase, it is possible it could offset the depreciating value of the income stream.

John W. Bates, Jr.

Q. We don't know until the time comes?
A. No.
Q. You really can't predict these things in advance with great precision, can you?
A. That's correct.

Mr. Eichner: That's all I have.
Mr. Shaia: I have just two questions.

RE-DIRECT EXAMINATION.

By Mr. Shaia:
Q. The question was asked you if the inclusion of the $3,000.00 in your calculations in determining the leasehold interest, whether this prepaid item or the install-
page 196 } ment plan for 1101 East Clay, whether that was the only difference you had with Mr. Chandler's testimony.
That question was asked of you, I believe, and—
A. Well, I think Mr. Chandler and I disagree on the value of the fee if there were no lease, but, I think other than that, we, as far as principle is concerned, seem to differ in the value of the $3,000.00, which he has.
Q. On principle, that is the difference, but on amount, the difference is as to the value of the fee as well, isn't that correct, sir? In other words, do you agree with the valuations he placed on the fee? I don't know that he said.
A. I don't know that he placed a value on the fee.
Q. Also, on cross examination, you testified you made an appraisal for the Medical College on the property for the eye hospital might be interested in acquiring the property. What was the outcome of that appraisal?
A. I made these calculations which I was quoting from for the purpose of determining what the Medical College would have to pay in order to offer the property to someone such as the eye hospital.
Q. Has any notice of termination been given based on this evaluation as far as you know?
A. They determined from my calculations that it wasn't practical to consider repurchasing the building, terminating the lease.

page 197 } Mr. Shaia: That's all.

James S. Watkinson.

RE-CROSS EXAMINATION.

By Mr. Eichner:

Q. Who made this determination?

A. Medical College of Virginia officials.

Q. Is this type of repayment common where people re-buy or repay upon termination of the lease?

A. It is the only one I have seen. I think with all the trouble I have caused I shouldn't have created it.

Q. You never actually heard Mr. Chandler express an opinion on fee simple value of the property, did you?

A. No, sir, I did not.

Mr. Eichner: That's all.

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JAMES S. WATKINSON,

first being duly sworn, testified on behalf of the plaintiff, as follows:

DIRECT EXAMINATION.

By Mr. Shaia:

Q. State your name and address, please.

A. James S. Watkinson, 1013 East Main Street.

Q. Your age and occupation.

A. I am thirty-seven. I am a real estate broker and appraiser.

Mr. Shaia: If Your Honor please, I believe Mr. Eichner stipulated Mr. Watkinson is an expert.

Mr. Eichner: Yes, sir.

The Court: All right, sir.

Q. Are you generally or extraordinarily familiar with the area 12th and Marshall Streets, and 310 North 12th Street?

James S. Watkinson.

A. I believe I have more than a normal or us-
page 199 } ual familiarity with this general area.

Q. What is your basis for saying that?

A. Well, I have in the last several years represented or appraised properties owned by those owners whose properties were to be acquired by the City of Richmond, for example, the Richmond Motor Company, Broad Street Methodist Church, Life Insurance Company of Virginia, and I have also been involved in some leasings and sales of property in this general area such as the new 910 Capitol Building. I handled that lease. The Downtowner Motel, acquisition for the Life of Virginia of the Armory, and adjacent property was handled by myself and Mr. Thalhimer.

Q. Have you ever been employed by the City of Richmond to appraise property?

A. Yes, sir.

Q. Any property in this area?

A. Not in this immediate area.

Q. What property have you been employed to appraise. Just designate some of them, if you will.

A. Well, I was one of the three appraisers of the City of Richmond in the current annexation suit.

Q. Have you, at my request, appraised the leasehold interest of Harry and Zackie Shaia in the property at 400 North 12th Street?

A. Yes, sir.

page 200 } Q. Would you tell the Court what your findings were?

A. I found that there is a leasehold interest, in my opinion. A salable leasehold interest subject to the lease or agreement that is now in effect between the Medical College and the Shaias, and based upon the use to which the property has been put and the history of its use, general conditions in the area, I found there was a leasehold interest.

Q. What did you find the leasehold interest—let's discuss this first: What do you understand the term fair market value to mean?

A. Oh, very generally and simply, the price at which a buyer would be willing to pay and a seller would be willing to sell, both acting under no compulsion and both being generally familiar with all the uses to which the property is adaptable and can be put.

James S. Watkinson.

Q. Do you know what the fair market value of the fee interest in the land was during the years '61 through '63?

A. I have made an appraisal of what I think the fair market value of the entire property is as improved, and I have separated that between land and improvements.

Q. Would you proceed with that and tell the Court what your appraisal is.

A. Well, there are, basically, two general approaches that can be used. Based upon my familiarity with the properties that have sold in this area, improved properties page 201 } for the most part, that had some improvements on them, that had some value, taking into consideration what that value might be, I estimated that in 1961, if this property were unimproved, it had a value of $50,000.00, which is approximately $9.00 a square foot.

I then took into consideration the physical improvements that were on the property. I determined by an examination of the plans that had been prepared by Carl Lindner and Sons, the architects for the owners, the size, the dimensions, the type of materials and equipment that were designated for the property, and made a physical inspection of the property.

I was familiar with the reputed cost of the improvements, and I made my own estimates as to what I thought it would cost to replace these same improvements that would give the same utility and generally create the same rental value as th improvements that are there now.

I noticed in the agreement between the Medical College and the Shaias that there were unusual restrictions imposed upon the property owners in that the design of the buildings, the entire character of the building had to be approved by the Virginia Art Commission, I think is the correct agency. In my opinion, the building can be replaced, in 1961, provided the same utility, making allowance for very very slight, if any, depreciation, for $75,000.00.

I based this upon general familiarity with cost of construction of retail stores, having, in 1961, at that time page 202 } been actively engaged in negotiations for leases in shopping centers in the area and office buildings.

This is substantially less, Your Honor, than the cost of the property to the Shaias, and, in my judgment, the cost represents a substantial amount of improvements and a cost greatly in excess of what I think the typical purchaser would

James S. Watkinson.

have been willing to pay if, one, he didn't have a sole restriction imposed upon him and if he created something that wasn't quite as elaborate as the present improvement.

So, by this approach, which is generally referred to as the reproduction approach or replacement approach, I came up with a value free and clear of $125,000.00, of which $50,000.00 is the value of the land and $75,000.00 is the value of the improvements.

I did not take into consideration any fixtures or equipment costs that were in the building. As to equipment, I did take note, Your Honor, that this building is not equipped with a heating system. This system is provided through the Medical College system, so for that reason there is a—mechanical equipment is really much less than you would normally find in a building of this kind, and I took that into consideration.

I then took into consideration the highest and best use, what I thought the highest and best use of the property, and, that is, I believe, a restaurant at that particular point is one of the best uses for the property.

page 203 } I took into consideration the amount of sales that have taken place. Of course, my appraisal was—I was asked to appraise this property as of 1961. I had the benefit of the actual volume of sales that were done at this property, '61, '62, and '63.

I took into consideration the existing lease between the owners and their tenant. I really disregarded that, because it was between father and mother and their two sons. As it happened, however, I came to the conclusion that a fair and economical rent for the property would be $12,000.00 per annum, or for the land and building, and that happens to be the lease that is in effect between the senior Shaias and their sons.

I also wanted to check this, because it is axiomatic in real estate, whether it is appraising or brokerage, that a rental or commercial property is only worth what it will generate in sales or rent. There is also a definite relationship between amount of sales and amount of rent that that particular tenant can afford to pay.

We have at least a dozen restaurant leases in my office that we handle for property owners, and it was apparent in examining these leases that, particularly, for this type of restaurant that you cannot afford to pay more than five per cent of your total annual sales in rent.

James S. Watkinson.

If this were actually true, then, the rent for 1961 could not have exceeded but $10,400.00. I still think, how-
page 204 } ever, that in 1961, even though the percentage would have reflected a rental of $10,400.00, that $12,000.00 was a reasonable rent.

Generally speaking, in these types of leases, a rental, where it is agreed upon the percentage, an overage, a rental that comes in over that $12,000.00, would have been frosting on the cake. It is something you like to get, and it is a good hedge against inflation, but it is not normal that you get it right away.

Generally speaking, a restaurant will step up its business gradually, then tend to plateau off. However, the Skull and Bones had been in business many many years on North 12th Street, so it wasn't as if a new operator was coming into the area.

Based on an estimated rental income of $12,000.00, or approximately $2.30 a square foot of the first-floor area, I estimated that the net income attributable to land and improvements after deducting normal expenses, would be $9,000.00.

Now, at this point, I went to the agreement and found that the agreement stipulated that the fair rent as agreed upon between the Shaias and the Medical College was $3,000.00 a year. Well, if I hadn't had that in front of me, I would have still estimated $3,000.00 a year, which is a six per cent return on my own estimate of $50,000.00 land value. Deducting this land rent would indicate that the net income at-
page 205 } tributable to improvements was $6,000.00.

At that particular point, the appraiser has to rely a great deal on judgment, in the absence of comparable sales. I don't know of any leases that have been or sales that have been made based upon a lease of this particular nature or based upon a reasonable income of this nature.

In my own judgment, I think that the market would demand a ten per cent return on that $6,000.00, or, in other words, that by capitalizing the $6,000.00 at ten per cent, it would indicate that the improvement had a value of $60,000.00.

By adding to the land value,'61, of $50,000.00, I came up with the estimated value, free and clear of any encumbrances, liens and leases, of $110,000.00, on the basis of the income approach; and, as I said, as far as I am concerned, this type of

property has a value based principally upon the income approach, not on the reproduction approach.

I don't care what anything cost, it could be the greatest of improvements in the world, but if it won't generate sales or develop rent, it is not worth as much to the typical buyer.

From that point, I was asked, basically, what did I feel was the leasehold value? By definition—that is, by definiation I have gone by—by definition that is generally considered to be the Bible in real estate circles, the leasehold estate, or the leasehold interest, in any piece of

page 206 } property is the interest that the tenant has over and above his right to use this property and right to enjoy it during his lease term. It is that value he has in the property that was not put there really by the landlord.

If the landlord, the Medical College, had actually built the improvement and leased it to the Shaias, then there wouldn't have been any leasehold estate, in my opinion. Here, however, I believe that the fair economic rental of land is equal to what the Shaias and the Medical College had agreed to; so, on that basis I don't believe there is any leasehold value to the Shaias or to anybody else as of 1961 in the land. The difference is between the value of the property, if it is unencumbered with any lease and the value of the leasehold interest, if these is a leasehold interest. So, it is my opinion, Your Honor, that in 1961, th salable leasehold estate held by the Shaias was $60,000.00.

Now, briefly, Mr. Shaia, that is the basis upon my appraisal.

Q. What did you find the leasehold interest in the land and building to be for '62; you testified it was $60,000.00 for '61.

A. As to it, I think that in a leasehold estate where you have a definite termination date of the lease that the—each year the leasehold estate would get lower unless you had, for example, unless there was an inflationary trend or enhancing trend in the value of the land. I, for one,

page 207 } believe that the land here has enhanced in value. Today, I believe the land is worth slightly more than it was in 1961, but, I don't believe, based upon these values of sales, I don't believe that there is really any difference between the value—*fiar* market value of the property in '61 than there is in '64. If there is, it might be slightly higher.

James S. Watkinson.

In 1962, therefore, I think the basis upon which to appraise a leasehold estate would be to go to a table and say how much does this property depreciate each year based upon a thirty-year life? My basic approach was to appraise the 1961 value. In 1962, I have not made any careful examination of what that value would be. Offhand, I would say it would probably have declined a thousand dollars.

Q. For '63?

A. Another thousand. I don't believe it is a straight line. In other words, you wouldn't take the $60,000.00 and divide it by thirty, then say it goes off $2,000.00, because there probably is some reversionary value here that you might be able to have.

Q. If I understand your testimony, the fee value of the land and improvements, using replacement value for the building, is $125,000.00 in '61?

A. Yes, sir.

Q. Now, if you use the income approach, you consider that the fee value of the land and improvement for

page 208 } 1961 is $110,000.00?

A. Yes, sir.

Q. Now, which of those two approaches do you consider the preferred or better approach?

A. In this instance, I believe the income approach.

Q. Is that the approach recommended by the American Institute of Real Estate Appraisers?

A. It is one of the approaches. I think that the American Institute of Real Estate Appraisers would say that in property that is peculiarly retail in character, has an investment character, or one that is dependent upon the generation of income, that approach should be weighed very heavily, and it is certainly a far better approach to use than a reproduction approach.

Q. Are you a member of that institute?

A. Yes, sir.

Q. Now, you testified that the fair market value of the land for '61 was about $50,000.00, and, possibly, there was some increase in '62 and in '63?

I think you further testified that $3,000.00 would be a fair annual rental for the land for '61. Would it be a fair rental for the land for '62 and '63?

A. Yes, sir.

Q. Well, would you say that Harry Shaia had a leasehold interest of any value in the land from '61 through '63?

James S. Watkinson.

A. No, sir.

page 209 } Q. Why do you say that?

A. Because, by definition, a leasehold interest is only created if the landlord has a disadvantageous rental; or, conversely, if the tenant should be paying based upon market value of $3,000.00 a year, but is, in effect paying $2,000.00, and has that rental arrangement for a thirty-year period, then he has an advantageous lease. He has the difference between the fair rent and the contract rent. That is a salable item, but, here, we don't have that. I think the Shaias are paying a fair rent for the land. For that reason, I don't believe there is any leasehold interest in the land. They definitely have an interest in the improvement.

Q. Now, suppose in the future years, the land increases in value. Does this affect the value of the leasehold the entire time for land and building? Would it still remain $11,000.00?

A. It would, providing that—you say $110,000.00. The estimate I made is assuming there isn't any lease. It is free and clear and fee simple. If, for example, the tenant begins to generate sales of $300,000.00, they could afford to pay more rent; and, conversely, the overall value of the property would be coming up; but, in my opinion, looking at it from the years '61 through '63, I feel that as long as the fee simple remains the same, then, even if the land value increases, the improved value decreases, so that the total interest that the leaseholder has stays the same, assuming that the fee value stays the same.

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Q. The fee value in the land—

A. The fee value in the land and improvements considered as one unit.

Q. So long as the fee value in the land and improvement remains constant, then the leasehold value will remain constant, is that correct?

A. Yes, sir, based upon the sales I know of today, for example. I don't believe the fair market value of the property, if it were free and clear, is any more today than it was in '61 because the sales don't justify a rental in excess of this $12,000.00. Maybe slightly a hundred or two hundred dollars, but, for example, today, I would say that the difference of the $100,000.00 would not be 50-60. I think it is a little higher than it is valued. The land value is more than fifty thousand, and the improvement value worth less than sixty.

Q. It is really a question of how you slice the pie. If the

value of the land increases, the value of the building decreases, so you only have so much to allot to the whole?

A. Yes, sir. In my opinion, the leaseholder has an interest, and the landlord has an interest, and the two together cannot exceed the value of the whole, as if it were unimproved and unencumbered with any lease.

Q. Well, you have testified that the fair rental value for 1961, based on sales as you have them before you, page 211 } was $12,000.00.

A. Yes, sir.

Q. Would you say that $12,000.00 was a fair rental for '62 and '63?

A. Yes, sir.

Q. Do you know what the sales were for '62 and '63?

A. Yes, sir.

Q. I understand your testimony was that the building is being put to its best use?

A. Yes, sir.

Q. Is it likely that any other operator could enjoy any more success than is being enjoyed by the present operator,

A. I wouldn't think so. They have been in there quite a long time, and they have enjoyed a good reputation.

Q. Are there any unusual factors to be considered in evaluating this leasehold such as financing?

A. Well, I have taken into consideration under that—I haven't taken into consideration financing problems. From a practical standpoint, and based upon my experience in placing mortgages, it is extremely difficult to get a financial institution to lend money on property such as this. The lease term is so short. The financial responsibility of these tenants is not of the type of General Motors or Reynolds, or the like who won't have any trouble financing it.

I would say if you take into consideration the page 212 } problems involved in financing this, that $60,000.00 represents the maximum that would probably be discounted, because there are few people who can come up with $60,000.00 in cash. I think that's what you would have to come up with. I think it is definitely a tough piece of property to finance.

Q. Would you say that type of property has any limited market or any problems as to marketing?

A. I would say it has a very limited market. Limited, mainly, because of the financing of it, amount of cash that would be required, and because of the size of the property

that people like Hot Shoppes or S. & W. with large restaurant chains wouldn't go into a building of this size. You have got to have a smaller operator, and they don't normally have the financial responsibility to come up with this much cash.

Q. As I understand, you did not consider that factor in figuring the $60,000.00?

A. No, sir, I didn't discount it, no, sir.

Q. Are you familiar with the assessments for this property for 1961 through '63?

A. Yes, sir.

Q. Are they constant?

A. Yes, sir.

Q. Can you explain them?

A. No, sir.

Q. Why is that puzzling to you?

page 213 } A. Well, if they are appraising the leasehold, unless they consider it is a big enhancement along this line, if there is a constant market value, which I believe there to be, then the leasehold estate has to decline somewhat because they are running out of time, they are depreciating what they have to sell, because as years go by, they have that less to sell.

Q. Would a real estate tax on the leasehold interest reduce the value of the fee?

A. As opposed if there were no interest, no tax?

Q. No tax.

A. Yes, sir.

Q. Would it be a direct relationship there?

A. Yes. sir, certainly. In my calculations, I took into consideration a charge for real estate tax. If I don't make allowance for real estate tax, it would just increase the net income; and, using even the same capitalization rate, it would increase the overall value of the property. When you reduce the expenses, you increase the value of the property.

Q. Do you have a pecuniary interest in the outcome of this case?

A. No, sir.

Q. Did you have an appraisal independent of any other appraisal?

A. Yes, sir.

Q. Or any other appraiser?

page 214 } A. Yes, sir.

Q. Did you have any assistance?

A. No, sir. I did discuss with Mr. Bates the lease, itself,

since he had negotiated the lease. I only cleared up a couple of points in the lease, but I did not know what his appraisal was going to be of the property.

Q. Did you hear Mr. Chandler testify on Friday? I don't think you were here yesterday.

A. No, I heard him testify on Friday.

Q. What is your opinion as to the approach that he applied to evaluating the leasehold interest of the Shaias in this property for '61 through '63?

A. Well, I think that his approach is consistent with the general type of appraisal that is made of the leasehold estate. The thing that I was puzzled about was that if you follow his theories through for someone other than the State of Virginia or the federal government, then any tenant, regardless of whether his rent was fair or not fair, should be assessed as a leasehold or leasehold interest. I think the approach by using—by discounting the rental for a period of twenty-nine years and coming up with a valuation of forty-two or forty-three thousand dollars is not a reflection of what the leaseholder owns, but is the value to the fee simple title owner for the period of the lease, and to this you would add the reversionary value of the land and come out with the fee simple value as if it were unencumbered.

page 215 } I recollect Mr. Chandler said that was the approach he was using in an attempt to establish a leasehold value, because of the fact that it was owned by the State of Virginia; but, that isn't the approach that is normal in appraising a leasehold estate on typical property.

Q. Then, as you understand it, he was applying a different standard to the state-owned property than he was to individually-owned property?

A. Yes, sir, as I understand his testimony.

Q. That is the way I understood it. In summary, then, may I say, in your opinion, you think that the leasehold interest in the land and building of the Shaias for '61 was $60,000.00?

A. Yes, sir.

Q. And the leasehold interest, land and building, for '62, was approximately $59,000.00?

A. Yes, sir.

Q. And for '63, approximately $58,000.00?

A. Yes, sir. But, those last two figures are just estimates. I only made my appraisal for the year '61. I said, in theory, if the fee value remains constant, then the leasehold interest would decline.

James S. Watkinson.

Mr. Shaia: Would you answer Mr. Eichner's questions, please.

page 216 } CROSS EXAMINATION.

By Mr. Eichner:

Q. Mr. Watkinson, as far as the normal appraisal approach is concerned, have you ever had any experience with the appraisal of the leasehold interest for purposes of taxation before?

A. Not for purposes of taxation, but I have appraised them before.

Q. Not for taxation?

A. No, sir.

Q. Have you ever had experience in assessing property for taxation?

A. No, sir.

Q. You didn't discount rent at all in arriving at your value of the leasehold estate, did you?

A. Well, when you apply capitalization, you actually discount.

Q. Then, use the Inwood table?

A. No, sir.

Q. You work it out on a basis of, first, evaluating the fee, isn't that correct?

A. I approached it by evaluating the fee simple. By doing that, I used a method normally referred to as building residual technique. I arrive at the net income at-
page 217 } tributable to both land and building and then deduct from that the rental that is attributable to the land, and what you have left is attributable to the building.

Q. In other words, to reach the value of the leasehold estate, you first found the value of the fee simple interest, land and building together, using first the income approach and then the reproduction-cost approach?

A. Yes, sir.

Q. The third approach called the market-data approach, you did have sufficient data of comparable sales, didn't you?

A. I wasn't able to find any comparable sales.

Q. You couldn't?

A. It is a unique piece of property.

Q. You mentioned an accepted definition of leasehold in-

terest, I believe. Where did you get that accepted definition of leasehold interest from?

A. I got it from the terminology handbook of the American Institute of Real Estate Appraisers, was one of the—

Q. That is actually the term leasehold estate.

A. Leasehold estate, I believe, or leasehold interest. I've got the book, you've got it.

Q. You have the 1960—

A. Most recent one.

Q. I have here the 4th edition 1962.

A. Well, I think I left it in the office, but that

page 218 } looks like the last one.

Q. Would you take a look at it. Look at page 111 there. Do you accept that as an authoritative—

A. I see the definition of leasehold value, which is not marked, if that is what you are trying to call my attention to.

Q. I believe we heard that from Mr. Bates yesterday, but you don't—my question was you don't find the phrase leasehold interest?

A. No, sir.

Q. In that terminology book?

A. No, sir.

Q. Would you read the definition of leasehold.

A. (Reading from book) A property held under tenure of lease. A property consisting of the right of use and occupancy of real property by virtue of lease agreement. The right of a lessee to use and enjoy real estate for a stated term and upon certain conditions, such as the payment of rent.

Q. So, you have not actually valued the right to occupy and use as contained in that definition you have just read?

A. I don't think it has any monetary value to a typical property unless the rent is disadvantageous to the landlord?

Q. By—

A. I really meant leasehold value as defined in this book, a salable interest that the tenant has in the property.

Q. Leasehold estate would be—

page 219 } A. I believe I have heard it referred to as that, yes, sir.

Q. You are familiar with this Encyclopedia of Real Estate Appraising by Friedman?

A. Yes, sir.

Q. I wonder if you would just read the definition of an article by Mr. Solis-Cohen, page 465.

A. Where it is marked?

James S. Watkinson.

Q. Yes, sir, if you would, please.

A. (Reading from book) A leasehold is the right acquired from an owner—in parenthesis—lessor of a piece of real estate to occupy and use it for a fixed term of years, at a stated rental, and subject to conditions set forth in a written instrument of lease. The lease may include the right of the tenant—parenthesis—lessee to improve the land, mortgage and building, sublet all or part of the property, and assign or sell his leasehold.

Q. All right, now, then, the right to use and occupy. That definition, you have just read is not what you actually valued it?

A. No, I just said, typically, it is not a salable right. The only way you could sell anything is if the tenant had an advantageous lease. If he was getting a bargain on the property. I don't think the Shaias are getting a bar-
page 220 } gain for that land.

Q. You spoke of the Bible of appraisers. Which one of these books is the Bible?

A. The Bible is the one called the Appraisal of Real Estate. It has a similar cover. There it is.

Q. This, here, is the 1964 edition, 4th edition.

A. Yes, sir.

Q. This is published by the Education Committee of The American Institute, is that right?

A. (Indicating in the affirmative).

Q. Now, I would just first like to ask you to read from here, on page 399, a definition of leasehold estate, and then I will ask you to read the portion quoted on 409.

A. (Reading from book) It was stated previously that generally, but with exceptions, the sum of the leased fee and leasehold values equals the value of the entire property. In practice, the appraiser usually will calculate the leasehold value by subtracting the leased fee from the entire property value. However, the leasehold estate is correctly figured on an independent basis.

Q. You have done this by subtracting the actual reversion from the fee simple interest?

A. No, sir. In the income approach. I came up with a net income attributable to the land and building. I calculated that the land rent was $3,000.00, which was not
page 221 } only contract rent, but was the economic rent, in my opinion. So, by deducting that, I came up with the interest in the building. The building isn't owned

James S. Watkinson.

by the Medical College, the building is owned by the Shaias, at least to enjoy for the duration of this lease. So this is what they really owned at this time in '61. So by capitalizing the $6,000.00 attributable to the building, I came up with a figure of $60,000.00.

Now, separately, I said that, at that time, the land had a value of $50,000.00. This was the interest of the Medical College; and I added those two together to come up with the fee simple interest, because, as I said, my definition of this is the leasehold interest, and the fee simple interest cannot exceed the total of the two, and that is what this book just said.

Q. This book goes on—it also discusses capitalizing rent using the Inwood table.

A. Well, I think it is—unless you start to play with the interest rate, you wouldn't want to capitalize or use this annuity or the Inwood method on this property. Now, if the City of Richmond were the tenant or somebody of this financial quantity, where the rent took on the characteristics of an annuity, then I think you could use the annuity table. I think you can use this Inwood table, if you recognize the fact these are not Triple A tenants, by increasing the interest rates that you use to reflect this greater speculative page 222 } appeal of the property.

I didn't use the Inwood table because I didn't think the income was characteristic of an annuity.

Q. Just one more portion of the book which you call a Bible. If you will turn to page 399, I believe is the definition of leasehold estate.

A. (Reading from book.) The leasehold estate is considering of the use and occupancy of the property, the value of which arises from margin of the economic productivity of the property, subject to meeting the terms and provisions of the lease.

Q. By margin productivity, I think that is what you have been talking about, isn't that the difference between economic rent and contract rent?

A. Yes, sir.

Q. So, where there is no difference, you found no value?

A. I don't find any value in margin of productivity in the land. I do find it in the overall ownership.

Q. Now, you mentioned the gross receipts figure of the Skull and Bones Restaurant, but I don't think you actually gave us those figures.

A. 1961—these were the figures, Your Honor, that were

provided the city for license tax purposes—$208,581.00. At five per cent, that would be $10,400.00 in rent. I

page 223 } actually used $12,000.00.

1962, $225,911.00. That is about $11,000.00 rent. 1963, $245,419.00, which is slightly in excess of $12,000.00.

Q. So, in other words, did you average out those three years?

A. No, I used $12,000.00, because of the fact that I think you normally would find that you rarely will have a lease for a building and land that is strictly percentage. There is also going to be a minimum guaranteed rent.

In this instance, I thought, based upon the amount of square feet in the building, what I think is the replacement value of the property, what I would estimate that the sales would be, I think that the $12,000.00 figure is a reasonable minimum guaranteed rental.

Q. When a restaurant opens up, even though there has been a prior operation by the same owner, it still takes a couple of years anyway to get up to normal gross income?

A. Yes, sir, I said that.

Q. So, $245,000.00 would be really the basis, wouldn't it, to base future returns on?

A. I wasn't supposed to know that in 1961.

Q. Don't you think that—I don't think you heard Richard Shaia testify, did you?

A. No, sir.

page 224 } Q. He, of course, gave us those figures. As I understand, this year's came around to about the same as 1963.

A. I asked him that myself. He anticipated in 1964, would estimate maybe $250,000.00.

Q. So, $250,000.00 would be a fair basis to work this out on?

A. Today, it would be, yes.

Q. So, you took $12,000.00 as economic rent payable by Richard Shaia and Harry Shair for the sub-lease?

A. Yes, sir.

Q. Gross or net?

A. Gross.

Q. What is the difference between gross and net rent?

A. Well, it has a lot of variations conditioned upon general terms and conditions of the lease. Generally speaking, a gross lease implies that the landlord pays for the taxes; fire extended coverage; premiums of insurance; pays for

management fees; and, would normally pay for the wearing away of major repairs to little items of repair in the building. Replacing the roof, for example, is typical of the landlord's responsibility.

I also took into consideration the factor of vacancy because of the very nature of the tenants. I don't think you can look to Richard or Edward Shaia to be in the building page 225 } for thirty years, or even for the next ten or fifteen. I mean, it doesn't have the features of continuity that the S & W Cafeteria or Hot Shoppes, or somebody of that nature would have.

Q. You say there are different kinds of net leases. Is there one called a net-net-net lease?

A. There are some of those, too, if you get a negotiator.

Q. Such lease would be a lease in which the lessee paid all the expenses?

A. Yes, sir.

Q. And the landlord paid nothing?

A. Paid nothing, absolutely nothing.

Q. You took the $12,000.00, out of which you deducted what you call normal expenses of $3,000.00, I take it. Would you mind itemizing those for us.

A. I made a vacancy allowance of $600.00, or five per cent. Insurance, $150.00, which is just fire and extended coverage. That doesn't take into consideration public liability or insurance on the fixtures, all of which would normally be the responsibility of the tenant.

Management, I put at $500.00. There isn't any management charge now, but I think it would be a prudent thing to do. The Shaias have got to manage this property, whether they pay me or Harrison & Bates or Pollard & Bagby or anyone else. I think it is a fair and reasonable fee. page 226 } I used four per cent.

Q. For management, you don't mean the management of the restaurant business?

A. No, I mean the management of the real estate. Collecting rent, seeing to it that it is being occupied the way it should be. Seeing that the assessments are in line every year, things of this nature.

Q. All right, what else?

A. I allowed $1,200.00 for real estate tax. This would be hard also, because, actually, real estate taxes on property such as this could be a lot higher than that. I think $1,200.00 is a very reasonable figure.

James S. Watkinson.

Now, we oftentimes use a rule of thumb—I say we, that is, my office—when we are calculating out some of the factors or terms of sale. We use this in certain types of businesses, such as this round ten per cent of the gross rent. Sometimes, there is a better figure. In other words, ten per cent of the gross income on an apartment building is a lot more, in relationship to the final net figure, than ten per cent of a building like that where you don't have the expenses of operating.

I think, if anything, $1,200.00 is a low allowance.

I also made an allowance of $500.00 for reserve of repair. That building probably is not going to wear out too fast. I think it is a well-built building. It is solid ma-
page 227 } sonry. Has a steel deck roof—bar joist roof, rather. That roof will probably not last the life of the leasehold.

So, I had a deduction of $3,000.00. $600.00 for vacancy, and $2,400.00 for miscellaneous expenses.

Q. All right, sir. Let's get back to our fee simple evaluations here. By each of your two approaches to fee simple value of the land and improvement, you arrived at a total of $110,000.00. Of course, you made clear, I think, that you were valuing them together. Is there really no way to separate value of land and improvements?

A. Well, the land and improvement, it is really arbitrary when you start to divide the two.

Q. In fact, you could have a very expensive warehouse for tax purposes, assessed at $100.00, couldn't you, because the value of the land alone almost equalled the value of land and improvement?

A. Yes, sir.

Q. You have assigned $60,000.00. That is for the approximate fair market value attributable to improvements, which is less than half of the actual cost. You knew the cost was slightly over?

A. I was told it was $127,000.00.

Q. Actually, the total investment of Harry and Zackia Shaia was $127,000.00 plus $53,773.00.

A. If that is for fixtures, I don't know. I don't know anything about fixtures.

Q. Paragraph 3 of the lease.
page 228 } A. You mean the land?

Q. That is what they invested in it, isn't it? They conveyed the Clay Street property, and it was agreed

James S. Watkinson.

that consideration of $43,733.00 would be paid for the occupancy of the land for thirty years, isn't that right?

A. Well, you are getting into a realm here that I usually like to leave for the lawyers to define, but, personally, in reading this lease, I don't really think you have a lease. I think what you have done, you have got a method of paying for another piece of property. That is just like the Medical College giving the Shaias a note for the 11th and Clay Street property.

Q. It is nothing in there, no language of a note in there anywhere, is there?

A. Just by looking at the property. If you are familiar with the type of negotiation in these types of leases, they are saying that you are exchanging 11th & Clay Street, the title to 11th and Clay Street for the use of this property for a period of thirty years, so any value in this property in land as far as the Shaias are concerned is the value of the property at 11th & Clay Street. They are not going to get a nickel for this property.

Q. Obviously, though, the 11th & Clay Street property was purchased for $43,733.00. Is that what you draw from it, that it was a fair exchange?

A. I would say, obviously, I think where they
page 229 } made a deed—I don't have anything to do with
that, but, obviously, they must have thought
there was an even swap involved here, but, as I said—you understand, I have no interest in this thing other than to give my opinion—I don't think anyone would question that if Medical College were to cancel this lease tomorrow, that on the terms of this lease, whatever they paid the Shaias would be payment for 11th & Clay Streets, not for 12th & Marshall Streets.

Q. We are not asking you here for your legal interpretation—

A. I said I would rather leave that to you.

The Court: I think you have already asked that.

Mr. Eichner: Forget about the question I asked you. Let me see if you can answer this.

Q. We agreed they invested $43,773.00 to start with, haven't we agreed to that?

A. Well, I would agree they exchanged the deeds, yes, sir.

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Q. We agreed they also invested further $127,000.00 in construction of the building?

A. Yes, sir.

Q. So, that increased it slightly to in excess of $170,000.00?

A. Yes, sir.

page 230 } Q. That was done, first, when they conveyed the Clay Street property in 1959; secondly when, in 1960, they constructed the building at the expense of the Shaias?

A. Yes, sir.

Q. So, that increased it slightly to in excess of $170,000.00? end of 1960?

Mr. Shaia: That is all spelled out in the lease.

The Court: It is all in the lease. I don't think it is necessary to answer that, sir.

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Q. For the approach, you have to use reproduction cost or replacement?

A. If you use the replacement approach, and that is superadequacy of construction, if you are gilding the lily, so to speak, if you are putting too much into the building, either from your own personal wishes or because of the requirements of the Art Commission, I don't think that is a fair reflection of the actual value; and, if you use the reproduction approach, you should discount for certain of these superabundancies or overbuilding that took place.

page 232 } Q. So, you say it was $52,000.00 of superadequacy in the building?

A. I think you can replace the same thing and get the same rent if you pay $75,000.00.

Q. Then, if you were appraising a building, don't you—

A. I am appraising the market value of the building, not the cost of that building, because if it were only cost you wouldn't need my opinion, because all you would have to do is look at the figures.

Q. What percentage of the $75,000.00 is replacement costs, what would be the square foot of the replacement costs?

James S. Watkinson.

A. That would come to about $14.00 a square foot.

Q. Based on what area?

A. Fifty-two hundred square feet.

Q. Ignoring the basement?

A. That is including the basement. I heard Mr. Chandler testify, and his and my calculations don't jive, exactly. I came up with fifty-two hundred feet on the first floor and thirteen hundred feet in the basement.

Q. But, then, in computing, what did you say your *your* per-square-foot replacement cost was?

A. The way I did it was to—I used 5,200 square feet at $12.00 a square foot, and I added ten per cent

page 233 } for fees, less of interest earned, and taxes during construction, saying in round figures $70,000.00. I added $5,000.00 for the basement, which is just a big storage area, and there was one area that had some toilets, and for the total building, I came up with a figure of $75,000.00.

Q. Do you know of any comparable present standing restaurant building that has been built for $14.00 a square foot in Richmond?

A. No, sir, I don't have any information about that.

Q. As far as the five per cent of gross receipts as fair rental for restaurants, there are some in the downtown area with six per cent, aren't there?

A. Not that I know of, that's not what they are getting. I think I represent more restaurants than anybody in the city, that is, my firm. I can give you a list from the Hot Shoppes to the S & W Cafeterias. I can give you a number of them and percentage if you like.

Q. Well, how about the Hot Shoppes?

A. Five per cent.

Q. Is that—

A. On gross receipts.

Q. Is this excessive?

A. A certain amount of business situations mention guaranteed rental, then they either say it is five per cent of gross sales, whichever rental is greater, or it is five per

page 234 } cent of sales in excess of a platform figure.

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page 235 }

Woodrow D. Sealey.

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Q. There has been some testimony here that
page 236 } three restaurants in this area were displaced recently by Medical College. This would tend to increase the demand for restaurants such as the Skull and Bones, would it not?

A. I would think so.

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WOODROW D. SEALEY,

first being duly sworn, testified on behalf of the city, as follows:

DIRECT EXAMINATION.

By Mr. Eichner:

Q. State your name and occupation, please.

A. Woodrow D. Sealey. Appraiser for the City Assessor's Office.

Q. What was your area back in 1960 and '61?

A. The area in question which is a central business area, which the subject property exists in.

Q. Did you appraise the Shaia leasehold for the tax year 1961?

A. I did.

Q. Were you in court yesterday?

A. Yes, sir.

Q. Do you recall the first day of the trial, last Friday?

A. Yes, sir.

page 242 } Q. Did you hear Mr. Chandler's testimony about the 1961 assessment?

A. Yes.

Q. Do you have anything to add to that? Tell us briefly what your findings were.

A. In 1961, went back until the building was a new building. At that time, I did not know that it was a leasehold interest in the property. The property was assessed by Mr. Jack Bates for the owners. In turn, we re-examined the sub-

Woodrow D. Sealey.

ject property knowing it had a leasehold interest in the property.

Q. What year was it that you first saw the building, if you remember?

A. 12-21 of '60.

Q. That is when you saw the building permit?

A. First saw the building permit.

Q. When was it issued?

A. January 8, 1960.

Q. At that time, you knew the Medical College owned the land, didn't you?

A. At that time, we knew the Medical College owned twenty-seven feet of the land. They had purchased it in 1958.

Q. Was the 1961 assessment the same figure as your representation to the assessor?

A. Yes, sir.

page 243 } Mr. Eichner: No further questions.

CROSS EXAMINATION.

By Mr. Shaia:

Q. What was your representation for 1961, Mr. Sealey?

A. The land at that time could not—the leasehold interest in the land could not be brought forth for the reason of equalization with other comparable properties in the area. Therefore, the $33,800.00 land value was estimated to be the leasehold, part of the leasehold interest in the property, and it was put on there, which we knew at the time that the leasehold interest in the property was just about $42,000.00. But, it would have thrown it out of line with other property, being it would not have been equalized with other property.

Q. Did you determine what the fee value of the land was?

A. For 1961?

Q. Yes, sir.

A. I estimated the fee value $45,800.00, which is about $8.00 a square foot.

Q. Then, how did you derive what the leasehold value of the—how did you determine the leasehold value of the land then from that figure?

A. To that figure, as I said, we could not arrive at the correct leasehold value of the land because of
page 244 } equalization. The figure that I arrived at was a twelve-year deferred figure using the method

that Mr. Chandler, the assessor, had prescribed before in court, by the right of use and occupancy.

Q. Can you elaborate on that any?

A. Mr. Shaia, I wish I could elaborate to the Court, and I apologize to the Court. Mr. Chandler asked me sometime before for my field sheets and work sheets. I have looked for them, and I do not have them.

Q. Did you make the appraisal for 1962?

A. The appraisal was made in '61 for '62. Are you speaking of the calendar year '62?

Q. Yes, sir. Who made the appraisal in 1960 for '61?

A. I did.

Q. So, you made the appraisal for the calendar year '61-'62?

A. That's correct.

Q. We don't have available the notes you used in computing that value?

A. No, we do not.

Q. How long did you remain an appraiser for the central business area? How long had you been in that area?

A. Since 1956.

Q. When were you removed to another area?

A. When I received a promotion in 1962.

Q. Was it customary to move you around?

page 245 } A. It is customary to assign the appraisers in five districts.

Mr. Shaia: I have no further questions of this witness.

RE-DIRECT EXAMINATION.

By Mr. Eichner:

Q. One question. You said part of the leasehold interest you assigned to land was the $33,800.00, in making the assessment. What did you assign as attributable to the building?

A. $113,000.00.

Mr. Eichner: That's all. Thank you.

Witness stood aside.

W. OAKLEY, ROACH, JR.,

first being duly sworn, testified on behalf of the City, as follows:

W. Oakley Roach, Jr.

DIRECT EXAMINATION.

By Mr. Eichner:

Q. Give us your name and occupation, please.

Q. W. Oakley Roach, Jr. Appraiser in the As-
page 246 } sessor's office.

Q. How long have you had that job?

A. Since 1958.

Q. Have you prepared a statement here of your qualifications?

Mr. Shaia: If Your Honor please, to save time for the Court, we will stipulate he is an expert.

The Court: Very well.

Mr. Eichner: I offer that as Exhibit No. 6, I believe it is, if Your Honor please.

Note: The above-referred-to paper writing is marked and filed by the Court as City Exhibit No. 6.

Q. Can you identify this paper?

A. Uh huh.

Q. When did you first appraise the interest of Harry and Zackia Shaia in the subject property?

A. 1963, approximately, oh, it was about November, I think it was—it wasn't done in one day. I think it was around November or December, first part of December of 1963.

Q. That was the 1964 assessment, was it not?

A. That's correct.

Q. What did you come up with as of the value of the leasehold interest for the tax year 1964?

A. I found that the leasehold interest—I should say the
leasehold interest as per instructions of Mr.
page 247 } Chandler, total of $139,000.00, for the year 1964.

Broken down, $41,000.00 for the land and $98,-000.00 for the building.

Q. Did you, at that time, make any computation for other years for any other purpose?

A. Yes, sir. I made computations back to 1962.

Q. I want to hand you a paper here and ask if that is a true copy of the schedule you are referring to?

A. Yes, sir.

Mr. Eichner: I would like to offer this as City Exhibit No. 7.

Note: The above-referred-to paper writing is marked and filed by the Court as City Exhibit No. 7.

Q. I see you went back to 1962 and 1963. What was the purpose of that?

A. Mr. Chandler requested that I make these for those years. I also made them up through the years 1968.

Q. What was the purpose of making it through '68?

A. That would be the future schedule. According to the value that was estimated at that time, this would be the assessments for the future years 1965 through '68.

Q. So, now, for 19—value for 1962, March 31st, was the end of the second year of the lease?

A. That's correct.

Q. Is that your opinion of the value of the page 248 } leasehold interest as of that date?

A. That's correct. As per instructions of Mr. Chandler.

Q. $144,000.00?

A. Yes, sir.

Q. What were these instructions?

A. The instructions were to value the land and the building. Also, in the—as a total.

Q. You mean the value of the fee simple interest?

A. This is a leasehold interest. This is a leasehold interest in the property, according to the legal opinion on how to value this property. For leasehold purposes.

Q. What right would you call this right of tenancy of the Shaias?

A. It is a right to use and occupy the property.

Q. I see you have $142,000.00 for 1963, and $139,000.00 for 1964.

Now, these figures are for March 31st. Would the first of January of each year be higher or lower?

A. No, it would decrease for each succeeding year, until it finally reached the end of the lease.

Q. On January 1, 1963, would the leasehold interest be more or less than on March 31st of the same year?

W. Oakley Roach, Jr.

A. That would be worth slightly more. It would be slightly worth more than in March.

page 249 } Q. Approximately—

A. I don't know. A few hundred dollars. Three or four hundred dollars, possibly.

Q. Did you have available to you at the time you prepared this schedule the lease between the Medical College and the Shaias?

A. Yes, sir, I did.

Q. What other information did you rely on in coming to your estimation?

A. Well, I tried to estimate the value of the—of the leasehold interest by using the three approaches, the three separate approaches to value—market-data, the cost approach, and the income approach.

I didn't find any information as to sales of restaurants, but in going to market, I did find information as to cost of restaurants, which—

Q. What did you find in that area?

A. Well, I found that one restaurant, 3124 West Broad Street, Lendy's Restaurant—

Mr. Shaia: If Your Honor please—just a minute, if Your Honor please, if he is going to testify as to what all the restaurants cost, I think we should know what the expense, material and make-up of those individual restaurants were.

page 250 } The Court: I think you would be entitled to that. I think that is what he should testify to, as to what the standard cost of a restaurant is, not as to what some restaurant—

Q. All right, sir. Do you have an opinion on reproduction costs of a building similar to the Skull and Bones Restaurant using construction costs as of, say, 1961?

A. Well, of course, as I say, I went to the market to find out what other restaurants were costing to build at that particular time, plus using the Marshall Stevens Cost Manual.

Q. What would your opinion of square-foot reproduction cost be?

A. Well, I—not only did I use those, but, naturally, we considered the cost of the Skull and Bones at that particular time.

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Q. So, what did you come up with as a square-foot reproduction cost of a building of this general type?

A. Well, the reproduction—

The Court: Ask him wouldn't this evaluation be based on what would be the fair market value of the lease rather than cost.

Mr. Eichner: One of the applicant's witnesses, Your Honor may recall, came up with figures of about $14.00 a square foot when he was discussing the fee simple interest before he got back to leasehold, and we wanted to touch page 251 } on that briefly.

A. Found the restaurant, that is, using—excluding the Skull and Bones—the other two restaurants that I found in the market plus the Marshall Stevens Cost Manual—

Mr. Shaia: I think he should refer to particular restaurants.

Q. Give us your opinion on reproduction costs on what knowledge you have.

A. Well, it varied between $19.38 a square foot to $21.25 a square foot.

Q. In drawing up this leasehold schedule, which is City Exhibit No. 7, Mr. Roach, I notice you have economic rental attributable to land and building. Where did you get those two elements from What is your—would you give us those figures and then tell us your source.

A. The economic rental for the land is $3,000.00. And, as a matter of fact, in comparing it with other land that was studied in the area during 1963, this was estimated to be a fair economic rental for the land.

Q. Where did you get this $127,068.00 attributable to the building?

A. For the building.

Q. Tell us, generally, where you got that figure.

A. Well, I had to find the fee value of the property, which was estimated on the gross volume that the prop-
page 252 } erty was capable—business was capable of hand-
ling. I estimated that the business was a new business and it should reach a potential over a period of three

to five years of around two hundred fifty to three hundred thousand dollars, that, possibly, it would be tops at that time.

But, on the low side, I estimated $250,000.00 would be a normal gross volume that could be expected, and I used six per cent of the gross volume as an economic rental, which would be $15,000.00.

Now, I did consider that restaurants—it is true that restaurants can afford to pay different rents according to gross volumes. They range anywhere from five to six per cent; but, in figuring this, the property had air conditioning,—it was already furnished—and, in some instances the tenants are required to put in their own air conditioning; that they also had a ready-made patronage in that area, that I thought a five per cent would be what a tenant could afford to pay on their gross volume.

On that, $15,000.00 would be a normal economic rental, in my opinion.

Q. Is that gross or net?

A. That would be a gross figure.

Q. Yes, sir, go ahead.

A. And, I considered the fact that heat is furnished to this property. I estimated that the heat would run

page 253 } approximately $1,200.00 a year.

Q. That is furnished by the state, under the lease, is that correct?

A. That's correct. But, I figured that in a capitalization rate of eleven per cent. Actually, the $15,000.00 plus that $1,-200.00 for heat would be $16,200.00, including the heat; and, capitalizing eleven per cent gross which would come out to an overall figure of $147,000.00, subtracting from the $147,-000.00 the $43,000.00 for land, it left the building value of $104,000.00.

Q. That is fee simple?

A. That would be fee simple. The only reason I did that was to estimate the value of the building.

Now, $104,000.00 from the schedule in the lease, since it is a leasehold interest that we are assessing, and that is according to the lease, itself, the schedule that is embodied in the lease, the land, by applying the factor to the land of $3,000.00, and applying a six per cent Inwood factor, with a payment —one payment in advance, we had a figure of approximately $40,000.00. So, applying the same identical premises to this, to the figure—this Inwood factor is a net figure taking out all of the expenses—so, applying the factor—applying the $104,-

000.00 building value by this factor, we arrived at a net economic rental of $7,127.78.

Q. That is attributable to the building?

page 254 } A. That is attributable to the building.

Q. So, what did you come up with as a total net economic rental?

A. The total net economic rental was $10,127.68.

Q. Mr. Roach, I would like to hand you a paper here and see if you can identify that. What was the last figure you gave?

A. $10,127.68.

Q. What does that represent?

A. That represents the total net rent for the property.

Q. Economic?

A. Economic rent, yes, sir.

Q. What is that paper?

A. This is a present-worth-one-dollar per annum table, commonly known as an Inwood Coefficient Table.

Mr. Eichner: I would like to offer this as City Exhibit No. 8, if Your Honor please.

Note: The above-referred-to paper writing is marked and filed by the Court as City Exhibit No. 8.

Q. What use did you make of this table in your evaluation of the leasehold interest of the Shaias?

A. Well, under the Inwood premises, each year the value of the leasehold would decrease, according to the unamortized portion of it. The more number of years, of

page 255 } course, it has less time for the years to run, and it becomes less valuable each year. So, using the six per cent rate in the table, which I felt was perfectly justified—as a matter of fact, the six per cent was also used in the lease for the land—

Q. Let me interrupt you just a moment, here. In the lease where we have been reading from Paragraph 3, $43,473.00 represents the present worth of the $3,000.00 payable in advance, at the beginning of each lease year, for a period of thirty years discounted at six per cent.

Is that computed using the Inwood table?

A. That's correct.

Q. You have checked that?

A. Yes, sir.

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Q. All right, go ahead. So, which factor—let's start with 1962, the end of the second year. What factor did you use there from the Inwood table?

A. Well, at the end—let's see, the end of 1962—and the—

Q. March 31, 1962, I am talking about.

A. March 31, 1962.

Q. End of the second year of the lease.

A. That's correct, and it was one payment in advance, so that means there would be twenty-seven more years to go.

Q. Twenty-seven more payments?

A. More payments, that's correct, on it. So,
page 256 } this Inwood table factor, the decrease for each year for 27 years, is 13.210.

Q. Times what?

A. Times the economic rental.

Q. Of $10,127.68?

A. That's correct. Would produce a leasehold interest value here of $133,786.00, to which, of course, you have to add that one year advance payment.

Q. That is the top line on Exhibit No. 7, is it? The top?

A. Which one?

Q. The top line on Exhibit No. 7 that you are referring to.

A. Is this Exhibit 7?

Q. Is that how you arrived—

A. That would be, yes, that would be the total for the top section here. It says total. Rent times factor would be $133,-786.00, to which you would add the advance payment of $10,-127.68. That would produce a total value of the leasehold interest of $143,914.00, or, in other words, rounded off to approximately $144,000.00.

Q. You added to this figure you computed from the Inwood table, based on rent payable at the end of the year, an additional year's rent to account for the fact that rent is actually payable in advance?

A. Yes, sir.

Q. Is this an acceptable method of capitaliz-
page 257 } ing rent to determine the value of the leasehold?

A. Yes, sir, this is the prescribed method.

Q. Did you hear the testimony of Mr. Richard and Harry Shaia on the first day of the trial?

A. Yes, sir.

Q. Do you recall the testimony of Mr. Harry Shaia, Sr., that they pay no expenses in connection with the sub-lease to Richard and Edward Shaia?

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A. I believe that's correct.

Q. Now, assuming, then, that $12,000.00 a year which is paid is economic rent, how would you compute the leasehold value as of March 31, 1962?

A. Well, if the $12,000.00 were net economic rental, you would apply the same factor to the $12,000.00.

Q. In other words, you would substitute the $12,000.00 for your $10,127.68?

A. That is for one year.

Q. Would you compute that for March 31, 1962, tell us what operation you are performing here. You have taken twelve thousand and multiplied it times what?

A. It would be—are you referring to the second year? This is 1962?

Q. Second year, March 31, 1962.

A. You would take the $12,000.00, multiply it by 13.210.

Q. That would be from the six per cent col-
page 258 } umn of the Inwood table?

A. That's correct.

Q. Is that correct?

A. That's correct. Do you want me to figure this out? If my calculations are correct on this, this would produce a leasehold interest value of $158,520.00, plus one payment in advance of $12,000.00, or a total of $170,520.00.

Q. Assuming a net economic rental of $12,000.00, that would be your opinion of the fair market value of the leasehold interest?

A. If this were the economic rent, yes, sir.

Q. Would the actual economic rent of that year be higher or lower?

A. The actual—on the basis of this $12,000.00, it would be higher.

Q. Now, I want—did Mr. Chandler direct you to assess any other leasehold interest in properties owned by the Commonwealth?

A. Yes, sir, he did.

Q. I want to hand you Applicant's Exhibit No. 1 and 2. Do you have any notes in connection with those?

A. I beg your pardon.

Q. No. 1, what lease is that, Applicant's Ex-
page 259 } hibit No. 1?

A. This is a lease for building No. 1714 at East Franklin Street. It is Virginia Engraving Company.

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Q. What method did you use to evaluate that leasehold interest?

A. Applied the same principle that was applied to valuing the Skull and Bones, by capitalizing the income using the present worth of one dollar per month to determine the value of the leasehold interest.

Q. Leasehold interest, and did you use a—was rental payable monthly or yearly or what? What do you have in your notes on that?

A. I believe this is paid monthly.

Q. Did you use the same table, same Inwood table?

A. No, I didn't use the same table. I used a different table on this. I computed the present worth of one per month instead of per annum.

Q. This is because the money was payable over a longer period of time?

A. It is collected monthly and upon the premise it will be reinvested.

Q. If you use that monthly table in appraising the Shaias leasehold interest, would your result be higher or lower?

A. Been higher.

Q. Look at Exhibit No. 2, Applicant's Exhibit No. 2. Who is the lessee in that document?

page 260 } A. This is Richard G. Clagett.

Q. What address?

A. That is designated 1412 East Franklin Street. That is the first floor.

Q. Did you use the same method in appraising that leasehold interest?

A. That's correct.

Q. I would like to hand you then Applicant's Exhibit No. 3 Southern Planters, and nine, Edward McLane, respectively, and ask you the same question about those two leasehold interests.

A. The Southern Planters leasehold interest in that was appraised the same as the others.

Q. You capitalized the economic rent of each?

A. That's correct.

Q. In any of those cases, did you deduct the actual contract rent paid from the economic rent to arrive at the figure to capitalize?

A. Did I? No.

Mr. Eichner: I have no further questions.

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CROSS EXAMINATION.

By Mr. Shaia:

Q. Mr. Roach, why don't you keep those in your hands for a minute, you might need them. Going back in inverse order in which you answered the questions, did you ap-
page 261 } ply the same technique in appraising the leasehold interest of 1412 East Franklin Street and 203 Governor Street, and, of course, I am talking about both tenants in 1412, as you did to the Shaias?

A. The same principle, yes, sir.

Q. Now, the only variable factor—the only factor you mentioned, I believe, was different rates of Inwood factors computed rather than annually.

A. It would be a different table since it was paid monthly.

Q. Why did you use the same technique, because you think they are in the same class and taxable subjects?

A. That's the way you would value a leasehold—leasehold interest in the property.

Q. This is the only—for all leaseholders, that is the approach you would use?

A. Yes.

Q. You would put the Shaias' leasehold and these other leaseholders in the same class, then?

A. Yes.

Q. They are all leaseholders, isn't that correct?

A. Yes, sir.

Q. Was there any distinguishable difference you would use, a different formula for them?

A. No, sir.

Q. Now, you stated that you made your ap-
page 262 } praisal under specific instructions. Were there any instructions as to approach to use?

A. Not—no, sir, not to approach.

Q. You were just directed to make an appraisal?

A. That's correct. With certain assumptions,

Q. What were the assumptions, assumptions simply by an appraiser, or a particular one in this case?

A. It is unusual from an appraiser' standpoint to appraise the property, considering that the land was also taxable, that it would be valued as a leasehold.

Q. This is not the usual approach to appraising leasehold interest, is that correct?

A. Under present procedure, no, sir.

Q. This is not standard appraising procedure?

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A. That's correct.

Q. Now, you said you were relying on a legal opinion. Were you talking about the legal opinion as to land, interest, is that what you were talking about? In the first part of your testimony, you said: I was relying on a legal opinion. Which legal opinion?

A. Mr. Chandler gave me my instructions. He told me to do this, under what premise.

Q. You say you followed his instructions?

A. Yes.

page 263 } Q. Now, you assumed the gross value to be $250,000.00 for the year you computed this, is that right?

A. Yes, sir, I estimated that in 1963, yes, sir.

Q. So, in 1962, do you know what the gross sales were?

A. I had those, yes, sir.

Q. Was it about $225,000.00?

A. I think something like that.

Q. Was the '63 about $245,000.00?

A. That's correct.

Q. So, you start out with a figure of $250,000.00, which is not, strictly speaking, correct, is it, for the years 1962-63?

A. Yes, sir. You certainly would anticipate. What we were trying to do—I wasn't trying to create a value there, that is a rental value, by just applying the percentage they could afford to pay. The property had value regardless if the Shaias happened to do a hundred thousand dollars worth of business. That would not indicate that is the value of it. According to the lease, the rent would be $3,000.00 a year.

Q. Well, but, nonetheless, it is admitted this is the second year of operation in a new location?

A. That's true.

Q. They actually did $225,000.00?

A. Yes, sir.

page 264 } Q. You think someone could have done better than $225,000.00 in '62?

A. I don't know, sir.

Q. So, the premise you are assuming is $250,000.00 for '62 and '63?

A. It is my premise for the property in '64, maybe '65, too.

Q. But, of course, that is contrary to the factual situation in this case?

A. Well, usually it takes time for a business to build up in a neighborhood.

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Q. I understand that. The point I am trying to make is they didn't have that business in those years.

A. No, sir.

Q. Now, you used the six per cent of gross sales.

A. Yes, sir.

Q. You heard Mr. Bates testify, and Mr. Watkinson testify just more recently that he probably represents more landowners with restaurants on them than anyone else in the city, and he testified that he only knew, I think, of one restaurant out of some thirty where they found more than five per cent of the customary six per cent figure.

A. It was my opinion, Mr. Shaia, at the time I did this—as a matter of fact, I have not heard anything to the contrary. I don't know what those five per cents were. I realize leases are made on a five per cent basis, they are page 265 } also made on a six per cent basis.

I, myself, have had experience also with leasing agents of restaurants that gave me confidential information on it. There are some with six per cent; and it is very difficult to say exactly what some of these leases contain. For instance, say, the five per cent may be for a building where the tenant is to supply his own air conditioning. That happens quite often, too, has an effect on it; but this building, having the air conditioning there, the tenant doesn't have to supply that. He could afford to pay more. You have a ready-made patronage here, and a lot of restaurants don't have that.

When you have limited expenses like that, you don't have the overall cost you would have in some other operation.

Q. There are other operations in the area?

A. That's true, but there aren't as many as you might find, for instance, up on Grace Street or Broad Street.

Q. Do you know of any restaurants that pay six per cent? You said you had two or three. Of your own knowledge, first-hand knowledge.

A. Yes, I do.

Q. Could you tell us what they are?

A. Lendy's is one.

Q. All right, can you tell us another?

A. Another way, incidentally, Mr. Shaia, that we also determine what a business can afford to pay is page 266 } by checking the rent they are paying against their gross sales.

Q. Yes, sir.

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A. I am just trying to think offhand. The Crystal Restaurant, which is a small operation. The information that I had—

Q. Not information, but firsthand knowledge, if you will.

A. Firsthand knowledge. I have the lease information. It is extremely confidential, and I would rather not give it if I don't have to quote the figures.

Q. Well, we are not going to insist on it. I don't want you to break any confidences. I thought maybe this was a matter of recorded, publicy recorded leases.

A. Recorded leases, no, I don't know of any actual recorded.

Q. They certainly are not great in number, apparently, is that correct, is that a fair statement? Would it differ on what is furnished in each individual restaurant?

A. Yes, sir, yes, absolutely.

Q. This factor of using six per cent of gross sales, you say six times $250,000.00, assuming $250,000.00 is a fair figure, and this six per cent is a very crucial figure, is it not, because it is the basis of everything that follows? In other words, if he used five per cent instead of six per cent, you are reducing it something like eighteen per cent?

page 267 } A. That's correct.

Q. You reduce the entire assessment about eighteen per cent?

A. That's correct.

Q. So, assuming your six per cent is correct, and $250,000.00 is correct, you come out with a gross rental of $15,000.00.

Now, why did you put in $1,200.00 for heat? You added that to the income, as I understand it.

A. That's correct.

Q. Could you help me with that?

A. I was just recognizing the actual cost, since the Skull and Bones does obtain heat from the Medical College, which it wouldn't be an electric expense they have to pay themselves. What I did, actually, in capitalizing it out, I took it out again. In other words, I put it in in one place and took it out in another.

Q. So, it is not really a factor, then?

A. No.

Q. Where did you take it out?

A. Took it out in the capitalization rate.

Q. Where is that on this?

A. That isn't on that.

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Q. It isn't?

A. No.

page 268 } Q. So, that is why you used it, to appraise the property?

A. Yes, sir, the only reason.

By the Court:

Q. Excuse me a minute. Did you deduct the allowance for heat in this calculation from the lease?

A. Is that deducted?

Q. In here.

A. Yes, sir. This is a net figure here.

By Mr. Shaia: (Continued)

Q. Can you tell me if it is deducted?

A. These are all net figures.

Q. Well, I was trying to figure it out. Of course, I am no expert on it.

A. I am not valuing the real estate, I am valuing the leasehold interest.

Q. If you will tell me where it is taken out in here. Where is it reflected? I know it is not taken out per figure. Where is it reflected in the chart?

A. It was reflected in the $147,000.00, I arrived at the fee simple value of the property and reducing—rather deducting the land value from it in arriving at $104,000.00.

What I was doing here was to find the net rental applicable to the building. On this schedule. So, this is a net figure here to the building.

page 269 } Q. In other words, you determined what the value of the building was, then you deducted $1,200.00 from it, is that correct, sir?

A. No, that was deducted before that.

Q. Well, let me ask you this—well, I will let you go ahead and see if you can tell me where that was deducted.

A. That was deducted before we arrived at the $104,000.00.

Q. What did you start off with, then?

A. Started off with a figure including the heat, see, the economic gross rental including the heat, of $16,200.00, you see.

Q. That figure we just said is $15,000.00 per year?

A. That's right. You capitalize that by eleven per cent.

Q. All right, sir.

A. Which comes out to $147,000.00. In this eleven per cent

is the heat, which represents, oh, about, actually, about seven and a half per cent.

Q. You are capitalizing that in the fee value?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Don't they have to pay for this heat that is used?

A. That's correct.

page 270 } Q. Do you know the rate they pay for it?

A. No, I don't. It was estimated, sir.

Q. Based on what?

A. I say, I just estimated that.

Q. What did you base your estimate on?

A. There was actually no basis for it except for inquiring of people what figures they thought the heat would cost.

Q. For Medical College or just heat period?

A. No, no.

Q. I fail to see how this is a consideration if they are going to pay for what they get. If they get heat and they pay for it, I don't see why you should.

A. Well, actually, what I did, I put this in just to reflect the fact it was considered. If you want to, you can go back to your $15,000.00 figure, and the figure of $15,000.00 is your economic rent on that.

Q. Let me ask you this. You said you took—

A. You capitalize at a different figure, of course.

Q. You took the Inwood factor that the Medical College and the Shaias used in their calculations for determining the installment of 1101 East Clay?

A. Yes, sir.

Q. And applied the six per cent Inwood factor, is that correct?

A. That's correct, sir.

Q. Whose obligation is it to pay, isn't that

page 271 } Medical College's obligation?

A. Would that be the Medical College's obligation?

Q. Yes. That is what you are capitalizing at six per cent in the lease.

Mr. Eichner: I think we are getting into the interpretation of the lease here, if Your Honor please.

Mr. Shaia: I don't think it is at all, Your Honor.

W. Oakley Roach, Jr.

The Court: No. I think the gentleman stated the basis on which he based his conclusions.

A. The $3,000.00 rental, actually using the Inwood factor, would come out to the same amount they paid.

Q. I agree with you.

A. That's right.

Q. Now, what is the factor of $3,000.00 payable, by whom to whom?

A. The $3,000.00 would be payable to the Medical College from Harry Shaia.

Q. Exactly. Then, you took that same factor used in this lease applicable to an obligation of the Medical College which is the Commonwealth of Virginia, and applied it to the obligation of the sub-lessee to Harry Shaia, isn't that correct, sir?

A. I didn't have any knowledge of this lease with Richard and Edward.

page 272 } Q. That is what this Inwood factor is here, the economic rent, that is what is reflected on this?

A. All of this pertains to the economic rental of the property between Harry Shaia and the Medical College.

Q. Are you saying then that this six per cent factor here does not reflect the economic rent, or it does reflect the economic rent?

A. At six per cent, yes.

Q. In this case?

A. Uh huh.

Q. That is economic rent based upon the income that Harry Shaia received from the sub-lessees?

A. Not necessarily. I didn't know anything about it at the time. I didn't know that was what the lease was, because, actually, the father and mother could lease the property for $100.00, and that wouldn't be economic rental.

Q. But, you computed your value on what an arms-length transaction would be right?

A. That's correct.

Q. You computed your value on what the rent should have been between Harry Shaia and his children?

A. Not necessarily. Whatever his arrangement with his children is his own business. If he wants to take a two per cent return.

page 273 } Q. You computed the value of what it should have been between a lessor and sub-lessee in the same instance to determine the fair market value?

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A. Well, actually, I estimated the economic rental, what the property would be worth in the rental between the Medical College and Harry Shaia.

Q. You mean if Harry Shaia were getting it from the Medical?

A. That's right.

Q. Well, there—

A. They constructed the building.

Q. Yes, sir.

A. On Medical College land.

Q. In your economic approach, you did not take into consideration that a prospective purchaser wouldn't be leasing to operate this?

A. I took into consideration what Harry Shaia should be paying.

Q. Harry Shaia or Richard Shaia?

A. Harry Shaia should be paying the Medical College.

Q. $2,000.00 a year?

A. No, that—I didn't know anything about that lease at the time. I estimated the economic rental between Harry Shaia and the Medical College at $15,000.00 a year.

Q. That's right. I understood that to be your testimony.

page 274 } Well, didn't you take into consideration what the value should be between Harry Shaia and any potential sub-lessee?

A. No, sir.

Q. What has gross value got to do with this, in your approach?

A. Only as an indication of what the property is capable of producing.

Q. You are saying this six per cent Inwood factor is what you are applying to the rental figure between Harry Shaia and the Medical College?

A. According to the economic rental?

Q. Right.

A. That's right. That would be a net figure, a net rental.

Q. But, you are using that as an obligation of Harry Shaia's, right?

A. From a rental standpoint, yes.

Q. So, you used the same Inwood rate of six per cent as the obligation of Harry Shaia as used to get the obligation of the Medical College of Virginia?

W. Oakley Roach, Jr.

A. That's correct.

Q. All right, sir. That is the point I was trying to make. I am sorry it took so long to get to it.

A. I am sorry, I didn't understand it.

Q. So that if you assume that—in other words, this whole chart is based on what a fair Inwood factor

page 275 } would be if you used, for example, seven per cent instead of five, or five instead of six. It would make a tremendous difference, would it not?

A. Oh, yes, that's right.

Q. It would reflect in your values as projected out here?

A. It would, yes, sir.

Q. Seven instead of six would be about sixteen per cent, or something like that?

A. Possibly.

Q. Now, in determining your evaluations, did you take into consideration the difficulty that a prospective purchaser of this leasehold interest may have in financing?

A. No, sir.

Q. Did you take into consideration the restriction of use, it has to be used for a restaurant?

A. Not as such, no, sir. I feel that the highest and best use was for the restaurant.

Q. Did you take into consideration the limited marketability of this type of leasehold interest?

A. That is what we estimated—

Q. What the fair market value is, this is what we are trying to determine, isn't it?

A. To some extent, yes, I suppose that was what it was.

Q. Did you take into consideration allowance

page 276 } for maintenance?

A. Allowance for maintenance?

Q. Yes, sir.

A. No, sir.

Q. Why not?

A. Let me see. What I did, Mr. Shaia, was to take a rate which I felt was in the market which generally considers all of that. The rate that I used in arriving at the fee value of $147,000.00, which would include all of the expenses and taxes, everything.

Q. What was that rate, please?

A. Eleven per cent.

W. Oakley Roach, Jr.

Q. Eleven per cent?
A. Yes, sir.
Q. Did you hear Mr. Bates and Mr. Watkinson say they capitalized at ten per cent the net figure?
A. Yes, sir.
Q. How do you account for that?
A. I don't agree with them.
Q. There again, this one per cent would make a tremendous difference, would it not?
A. Yes, sir.
Q. In the projected figure.
Q. Did you take into consideration a deduction
page 277 } for real estate taxes?
A. Yes, sir.
Q. You did?
A. Yes, sir.
Q. How much did you allow for that?
A. I allowed two per cent for taxes and insurance.
Q. How much did that come out to?
A. I didn't figure it exactly, the exact amount of it. I can figure that for you.
Q. Well, didn't you have to compute it to work up your chart?
A. I built up a gross capitalization rate rather than breaking it down.
Q. Would you break it down if it won't take you too much time?
A. Be glad to.

The Court: We will take a five minute recess.

Note: At this point, 4:10 p.m., court is recessed until 4:17 p.m., whereupon court is reconvened, the witness, Mr. Roach, resumes the witness stand, and the matter is continued, as follows:

The Witness: Two per cent of $147,000.00 is $2,940.00.

By Mr. Shaia: (Continued)
Q. $2,940.00?
page 278 } A. Yes, sir.
Q. Did you take into account, make any allowance for vacancy?

W. Oakley Roach, Jr.

A. No, sir.
Q. For management?
A. No, sir.
Q. Did you make any allowance for payment on the land rent?
A. For payment—
Q. That $3,000.00 land rent paid by Harry Shaia to the Medical College, did you make any allowance for that?
A. I don't follow you. The allowance.
Q. Have you read this agreement between the Medical College and the Shaias?
A. Yes, sir.
Q. You said you had not read it at the time you made this appraisal, is that correct?
A. I had read it at the time I made the appraisal, yes, sir. I didn't know about the condition of the lease between Harry Shaia and Richard and Edward.
Q. All right, excuse me. Did you make an allowance for the payment of land rent to anyone?
A. No, sir.
Q. Did you make any allowance for risks of no receipt?
A. No, sir.
page 279 } Q. Did you make any allowance for interest?
A. Allowance for interest?
Q. Yes, sir.
A. Yes, I figured on interest. I suppose—excuse me. Will you clarify that. Do you mean did I figure an interest return for what, where there is an interest on a mortagage?
Q. Let me ask you: Did you make any computation for any rate of interest in your deducting from your net income or anything; was any interest factor involved?
A. Not in deducting it, no, sir.
Q. You deducted nothing insofar as any rate of interest is concerned?
A. No. I mean, I considered it in the capitalization rate.
Q. Did you consider it? You considered the rate applicable in your Inwood table?
A. That's correct. That is the interest rate, yes, sir.
Q. Your Inwood table?
A. Yes, sir.

Mr. Shaia: That's all.

W. Oakley Roach, Jr.

RE-DIRECT EXAMINATION.

By Mr. Eichner:

Q. Mr. Roach, in the last few questions about
page 280 } deducting for taxes, rent, insurance, so forth,
were you talking about your income approach as to the fee value of the property, not the leasehold?

A. That's correct. Leasehold is a net figure.

Q. Of course, Mr. Watkinson, in his approach, didn't deduct anything from rent in his income approach to fee simple value?

A. I don't think he did.

Q. He subtracted considerably less than you did for insurance and taxes, didn't he? Do you remember his testimony on that?

A. I believe he did, yes, sir.

Q. This Inwood factor, let's clear that up. Exhibit 8 is this Inwood table. This is just an arithmetical chart?

A. That's correct.

Q. It is for determining the present value of $1.00 returnable over—

A. A period of years.

Q. —so many years at various interest rates? It has nothing to do with interest?

A. Yes, sir.

Q. It has nothing to do with the income approach to value of the fee of the land, does it?

A. No, sir.

Q. So, when we talk about a fair Inwood fac-
page 281 } tor, there isn't any such thing as a fair Inwood
factor, is there?

A. No, sir.

Q. And the six per cent you have, six per cent has nothing to do with arriving at your estimate of economic net rent either, does it?

A. No, sir.

Q. Now, you talked about the highest and best use of the building being as a restaurant. If that is, in fact, the highest and best use of this property, is any restriction restricting the use to restaurant use a factor if it is the highest and best use?

A. No, it wouldn't be if it is the highest and best use of it.

Q. And, in your income approach to the fee simple value as opposed to the leasehold interest, and just figuring the

fee simple value of the land and building, did you make an allowance for maintenance expenses in that?

A. No, sir.

Q. You did not. You said that the appraisal of the leasehold interests—I believe you were talking about the Clagett and Southern Planter and those other properties owned by the state—in assessing those leasehold interests, did you say it was made under the assumption that the land was taxable? Did I understand you correctly?

A. The leasehold interest?

page 282 } Q. Did you say you assumed that land was taxable. I might have misunderstood you. Did you make that assumption?

A. I may have misunderstood. I may have said that.

Q. Did you make that assumption?

A. That is was taxable?

Q. That the land was taxable.

A. No—well, the leasehold, itself. I wasn't referring to land or building. I was referring to the leasehold, that if the leasehold is taxable.

Q. Did you assume that the land was taxable?

A. That was according to legal opinion. As a matter of fact, my instructions.

Q. My question was did you assume that the land was taxable; did you make that assumption?

A. No.

Q. Now, there was testimony yesterday, I believe, that the net economic rent before deductions of ground rent was $9,316.00.

Would you, on your leasehold schedule, Exhibit 7, substitute that figure for your $10,127.68?

A. Yes, sir. What is the figure again?

Q. The figure is $9,316.00. The top of Exhibit 7, the leasehold schedule, would you compute using the same basis—

A. Is that at the end of the second year, March 31, 1962?

Q. Please, would you compute that substitut-

page 283 } ing $9,316.00?

A. (Doing so). If my calculations are correct, it would be $132,380.36.

Q. Would you make the same computation for the third year ended March 31, 1963?

A. (Doing so). If my calculations are correct, it is $130,-154.95.

Q. Getting back to the discussion of gross income from the

restaurant business of Skull and Bones, did you hear Mr. Watkinson testify today about reaching a plateau?

A. Yes, sir.

Q. That plateau is your $250,000.00, isn't it?

A. Yes, sir. It could even go beyond that.

Q. Do you know of any instance of a leasehold interest either state or federal-owned property being assessed in a way any differently as you have done it?

A. No, sir.

Mr. Eichner: That's all the questions I have.

Mr. Shaia: I have no more questions, Judge.

A Copy—Teste:

H. G. TURNER, Clerk.

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