JOURNAL OF THE SENATE

Friday, September 13, 1963

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Richard Kelly, Circuit Judge for the Sixth Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule adopted on September 9, 1963, prescribing the hours of the daily sessions.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable William G. O'Neill and Honorable C. Welborn Daniel, and their attorneys, Honorable James J. Richardson and Honorable Leo C. Jones, appeared in the seats provided for them.

The respondent, Honorable Richard Kelly, with his counsel, Honorable Perry Nichols, Honorable B. J. Masterson, Honorable Harvey V. Delzer, Honorable Alan R. Schwartz and Honorable Thomas McAliley appeared in the seats provided for them.

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

Askew	Covington	Johns	Price
Barber	Cross	Johnson (19th)	Roberts
Barron	Davis	Johnson (6th)	Ryan
Blank	Edwards	Kelly	Spottswood
Boyd	Friday	McCarty	Stratton
Bronson	Galloway	Mapoles	Tucker
Campbell	Gautier	Mathews	Usher
Carraway	Gibson	Melton	Whitaker
Clarke	Henderson	Parrish	Williams (27th)
Cleveland	Herrell	Pearce	Williams (4th)
Connor	Hollahan	Pope	Young

—44.

A quorum present.

By direction of the Presiding Officer, the Sergeant At Arms made the following proclamation:

Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Articles of Impeachment, exhibited by the House of Representatives against the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Thursday, September 12, 1963, was dispensed with.

The Senate daily Journal of Thursday, September 12, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Covington of the Thirty-eighth Senatorial District offered the following Prayer:

Teach us, good Lord, to serve thee as thou deservest; to give and not to count the cost; to fight and not to heed the wounds; to toil and not to seek for rest; to labour and not to ask for any reward, save that of knowing that we do thy will. Amen.

CHIEF JUSTICE DREW: You may call your witness, counsel, for the State.

MR. JONES: If the Sergeant would, we would like to recall Mr. Charlie Luckie, Jr.

Thereupon,

CHARLIE LUCKIE, JR.,

who testified previously in the trial, was recalled to the stand to complete his testimony and was examined further as follows:

DIRECT EXAMINATION (RESUMED)

BY MR. JONES:

Q You are the same Mr. Charlie Luckie, Jr. who was on the stand as we concluded the proceedings yesterday?

A I am.

Q Mr. Luckie, I refer you back to the case of State Road Department vs. Simpson, and ask you, sir, if the County Attorney in that matter also filed a Suggestion for Disqualification?

A Yes, he did.

CHIEF JUSTICE DREW: Counsel asked that question yesterday. I think you covered it. You might have forgotten it.

MR. JONES: Well, we were just trying to pick up - - -

CHIEF JUSTICE DREW: All right.

MR. JONES: - - - to get started again this morning.

BY MR. JONES:

Q Did his Suggestion for Disqualification contain the same grounds as the one which was filed by you?

A The grounds contained in the Suggestion of Disqualification filed by the County Attorney were also contained in our Suggestion of Disqualification.

Our Suggestion of Disqualification contained other grounds, but it included the same one that was contained in the one filed by the County Attorney.

Q What grounds could you speak of that were found in his petition and also found in your petition?

A The fact that Judge Kelly, when he was practicing and before he became a Judge, represented some of the parties in a law suit involving some of the same damages that were involved in the Eminent Domain proceedings.

Q Now, do I understand your testimony to be that the County Attorney - - -

MR. NICHOLS: Now, I object to your resummarizing what you "understand." I think everybody understood the witness and it doesn't need to be summarized by counsel, and I object to it.

MR. JONES: All right, sir.

BY MR. JONES:

Q Mr. Luckie, you stated yesterday that your firm of Dayton & Luckie appeared before Judge O. L. Dayton - - - who, I understand, is a brother of your partner, George Dayton - - - is that correct?

A Yes sir.

Q Would you please explain to the gentlemen and the lady the circumstances of those appearances?

A Prior to the time that Judge Kelly became a Circuit Judge, the only cases that we tried before Judge Orvil Dayton, Jr. were uncontested matters - - - such as uncontested divorces, mortgage foreclosure proceedings where there was no contest, and cases of that nature.

After Judge Kelly became a Circuit Judge and Judge Orvil Dayton was also a Circuit Judge at the time, we did try some contested matters before Judge Dayton. These were cases in which we were representing Defendants.

For example, if a suit should be filed in the county and the case - - - by some other lawyer - - - and the case should be assigned to Judge Dayton, and then if the Defendants in that suit came in and hired us to represent them - - - or if they were already our clients - - - we would go ahead and try the case before Judge Dayton, unless there was some objection from the other side.

And the way we handled that was that, for example, if I was involved as the attorney, I would call the attorney on the other side and explain the circumstances to him and ask him if he would prefer to have some other Judge handle it, and advise him that if he did, then he would not have to file any papers in Court, that we would just handle it by agreement. The cases that we filed, after Judge Kelly became a Judge, all of them were assigned to Judge Kelly. I believe all of them were.

Q Mr. Luckie, I would like to ask you now, for the benefit of all of us, if you would explain in whose behalf a Suggestion for Recusement is filed?

Is it filed in behalf of the attorney to protect the attorney himself, or is it filed in an effort to protect the client as a member of the general public?

A It is filed on behalf of the client, for the statute specifically refers to a party to the litigation; so it necessarily has to be on behalf of the client.

Q Mr. Luckie, there has been some discussion that every legal wrong can be cured by appeal. Is this true, sir?

A No sir.

MR. NICHOLS: I object to that as calling for the conclusion of the witness.

MR. JONES: Now, if Your Honor please, I think that this is an expert witness in the field of law, and I think, as we often do with physicians, in the field of medicine, that he can testify from the theoretical and practical experience that they have learned as experts in the field, in explaining to these gentlemen, who are not all lawyers, the system of our courts and the practicalities of our courts, and so forth, as expert witnesses.

CHIEF JUSTICE DREW: He can give his opinion and then explain it.

BY MR. JONES:

Q Mr. Luckie, as a practical matter, can all legal wrongs which occur in the trial courts be cured by an appeal?

A From a technical standpoint they can; from a practical standpoint, they cannot.

Q What is your reason for saying that they cannot, as a practical standpoint?

A Well, if you feel aggrieved, if your client feels aggrieved by a ruling of the Court they, of course, can appeal to the District Court of Appeal under our system. However, in many cases, in which there is not a great deal of money involved, the economics of the case prevent an appeal.

For example, if you had a case in which there was a thousand dollars involved, this would invoke the jurisdiction of the Circuit Court in our Circuit, and your client should lose, or you lose the case, and you feel like that there was some error committed by the trial judge during the course of the trial, and that this is a reversible error, that you have a good chance to reverse him on appeal, from a practical standpoint, the client would be most reluctant to appeal, even though he felt aggrieved, because the appeal would probably cost him from $500 to $700, and if he had a thousand dollars involved, he wouldn't - - - probably would not want to appeal just for $300 and, as a result, he would either try to settle the case for some sum less than he thought was proper, or just forget it.

It's similar to a situation in the - - - in tax matters. Many times an assessment is made against a taxpayer by the Federal Government, and he comes in and talks to the lawyer, and the lawyer - - - maybe he's got $200 or $300 involved, and he feels like he's been done a terrible wrong but, from a practical standpoint, it's too expensive for him to contest it.

Q Mr. Luckie, if you would, explain to the Court the probable or expected result anticipated by an attorney when he's found in a position of the court nagging or harassing or continually calling down one attorney, as opposed to the other. What is the expected result the attorney fears before a jury, the impression to be gained by the jury from this?

MR. NICHOLS: First of all, Your Honor, I object, on the ground that counsel, in his question, has used such generalized phrasing as nagging, harassment, so on and so forth; those are conclusions, even of the question of counsel himself.

CHIEF JUSTICE DREW: I don't think the question is specific enough. I'll have to sustain the objection.

BY MR. JONES:

Q Mr. Luckie, what is the practical effect, sir, of - - - before a jury when you have a case where the Court's attention is particularlized to one side as opposed to the other?

MR. NICHOLS: I object also to this question on the ground that this witness hasn't testified concerning any conduct of Judge Kelly concerning that, and as far as we're concerned with this witness, there's nothing before this witness on those matters.

CHIEF JUSTICE DREW: I'm going to overrule the objection. The Senate can weigh the value of the opinion. I assume you're asking his opinion.

MR. JONES: Yes sir, that is correct.

CHIEF JUSTICE DREW: The Senate can determine, give what weight to it as they care.

THE WITNESS: Well - - -

MR. NICHOLS: Also, I would like to ask counsel to limit the question to any actions of Judge Kelly. We're not here qualifying this witness on judges throughout the State of Florida, we're in the trial, the impeachment trial of Judge Kelly's conduct.

CHIEF JUSTICE DREW: I assume you will connect this up with some action of Judge Kelly?

MR. JONES: Yes sir.

CHIEF JUSTICE DREW: You may proceed.

MR. JONES: Two cases to immediately follow this testimony.

CHIEF JUSTICE DREW: If it's not connected up, it will be stricken.

You may proceed.

THE WITNESS: Particularly in a jury trial, the jury is composed of lay people. The jury looks to the Judge for guidance, for instruction on the law.

If a Judge appears, in his demeanor, to be favoring one side or the other this, of course, in my opinion, has a very adverse effect on the side of the case that the Judge seems to be leaning against, and it's hard to discern from the record after a case is over what actually happened, many times, in the course of the trial.

I think the Supreme Court of Florida has said, in one or more cases, that, in many instances, the demeanor and the manner in which a Judge conducts himself in a trial sometimes speaks louder than any words that might be said.

BY MR. JONES:

Q Mr. Luckie, I hand you two volumes of one file, and ask you if you can identify that file?

A Yes sir, this is a Circuit Court file, Circuit Court of Pasco County file, in the case of Haymons vs. Groover. It's Law Number 1607.

MR. JONES: Mr. Secretary - - -

MR. NICHOLS: Haymons vs. who?

THE WITNESS: Haymons vs. Groover.

MR. NICHOLS: Thank you.

MR. JONES: Mr. Secretary, will you mark that for identification as Board of Managers' Exhibit Number next?

SECRETARY FRASER: 15-D.

(Whereupon, the above referenced instrument was marked Managers' Exhibit 15-D for Identification)

MR. O'NEILL: May it please the Court, would it be possible for us to go ahead and to proceed, and then let it be permitted to be marked later, in order to save time. It takes so much time to take it back and forth there.

CHIEF JUSTICE DREW: It will be perfectly all right if, in each instance, we'll just let the witness put the number on it, and then he can hand it over to be marked.

MR. O'NEILL: Officially marked later.

CHIEF JUSTICE DREW: Yes, I think that will expedite it.

BY MR. JONES:

Q Mr. Luckie, after Judge Kelly came on the Bench, was this case set down for a hearing before Judge Kelly by you or any other attorney?

A Yes, it was.

However, before we set it down on our own motion, Judge Kelly issued a notice that he was going to conduct a hearing on a motion which was pending at the time he became the Judge.

Q In this case did you and your law firm file a certificate for disqualification, or recusement?

A We did.

Q Was this suggestion denied, or what was the disposition of the suggestion?

A It was granted.

Q Would you please read the order granting the suggestion?

A The order is dated and filed March 15, 1961.

Q If you will excuse me, Mr. Luckie. Without asking you to read this Suggestion - - - and, in order to save time - - - I might ask you is the Suggestion filed in this case similar to the one that was filed in the State Road Department vs. Simpson case, which you read yesterday?

A Yes sir, it is very similar.

Q If you will now, please sir, read the order granting the petition.

A This is labelled "Opinion and Order of Disqualification."

"I have decided to enter an order disqualifying myself from hearing any further matters in connection with the above styled cause, based upon the Suggestion of Disqualification which has been filed herein by the law firm of Dayton, Dayton & Luckie on behalf of the Defendant T. L. Groover, doing business as Safety Cab Company; because this Defendant has expressed fear that he will not receive an impartial judgment, it seems, under the circumstances, that my withdrawal from further presiding is advisable.

"This Suggestion of Disqualification sets forth statements and conduct on my part during the recent political campaign, which the firm of Dayton, Dayton & Luckie has construed to be hostile and against the entire Dayton family.

"I can see why they might consider some of the statements made by me to be of a hostile and prejudicial nature; and I therefore offer them my sincere apology for this unintended affront.

"I do not have a hostile attitude toward the Dayton family. I am not prejudiced against any of them; and this unfortunate interpretation of my statement does not reflect my attitude, either personally or in my official capacity.

"The Dayton family has served Pasco County for more than half a century in various governmental capacities.

"Some of the offices which they have held were by appointment and others by contested elections.

"I have no reason to believe that their service to the county has been other than honorable.

"However, it is my opinion that it is not good policy for any one group or family to stay in public office too long, regardless of other considerations.

"So my attack is not aimed at the Dayton family or any other family, but at a policy which I personally consider to be wrong.

"I have known Judge Dayton, Sr., George Dayton, and Charles Luckie for a number of years and they have always treated me with consideration and respect; and I have found them to be experienced and capable members of the Bar.

"I certainly do not want to be a party to any action which would hurt them personally or professionally.

"This unfortunate circumstance has stemmed entirely from the rigors of the recent highly contested political race, and I had no intention then, nor do I have any intention at this time to do anything or say anything prejudicial to the Dayton family or the law firm of Dayton, Dayton & Luckie.

"I have no prejudice or bias against these attorneys.

"It is my desire to reconcile this misunderstanding

which has been caused in part, at least, by misconstrued remarks made by me during the campaign.

"It is my desire to serve them and all other people who have business before the Court faithfully and honestly, to the best of my ability.

"In consideration whereof, I hereby disqualify myself from hearing any further matters or conducting any further proceedings in connection with the above styled cause, and request the Presiding Judge of the Sixth Judicial Circuit of Florida to appoint another Judge to hear matters which may be involved in this suit.

"Done and ordered in Chambers, at Dade City, Florida, this 15th day of March, A. D. 1961.

"Signed, Richard Kelly, Circuit Judge."

Q Did your firm, sir, file a response to that offer - - -

A We did.

Q - - - of apology?

A We did.

Q Will you please read the response?

MR. NICHOLS: I want to move to strike counsel's remark that this was an order of apology. This order speaks for itself and doesn't need your interpretation or phraseology about it.

MR. JONES: I will be happy to withdraw it, Mr. Nichols, even though that appears in there. I am sorry and I apologize for using the language of the order.

BY MR. JONES:

Q If you will continue, Mr. Luckie.

A This was filed, as well, on March 15, 1961.

It is entitled "Reponse of Counsel to Opinion and Order of Disqualification."

"We wish to express our appreciation to Judge Kelly for his remarks contained in his Opinion and Order of Disqualification.

"We also accept his apology and explanation as being sincere, and we too are desirous of effecting a reconciliation, and we sincerely hope that we will be able to utilize Judge Kelly's services in the future.

"We feel that the explanation and apology of Judge Kelly should allay the fears of any of our future or present clients so that they will not insist upon any effort on our part to disqualify Judge Kelly.

"For our part, we will make a determined and sincere effort to work in harmony and cooperation with Judge Kelly in future matters which may come before him.

"Dayton, Dayton & Luckie, Attorneys for Defendants."

Signed by George C. Dayton and by Charlie Luckie, Jr.

Q Mr. Luckie, after this, did you and your firm have several hearings before Judge Kelly?

A We did.

Q What was the relationship which existed after these two orders - - - the order and the response to the order?

A For a time the relationship was pleasant.

Q Would you explain what you mean by "for a time they were pleasant"?

A Well, there came a time when the relationships ceased to be pleasant.

Q Mr. Luckie, I now show you a file and ask you if you can identify that file?

A This is not the entire file.

THE WITNESS: Your Honor, could I ask a question for clarification on this?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: These are a copy - - - a certified copy of the transcript of testimony in a case. The original of that is contained in this Supreme Court of Florida file.

MR. JONES: The case is now pending in the Supreme Court, is that right?

THE WITNESS: That is correct.

CHIEF JUSTICE DREW: Would you straighten up your record now so that the record will show which file he is referring to, and so forth?

MR. JONES: Yes sir.

CHIEF JUSTICE DREW: If you will ask him some questions.

BY MR. JONES:

Q Can you now identify the files which are there before you?

A Yes. This is a file in the case of Willie Charles Hill vs. the State of Florida, originally commenced in the Circuit Court of Pasco County; and this is the file of the Supreme Court of Florida in that case on an appeal.

Q What is the other file which you have there?

CHIEF JUSTICE DREW: Just a minute.

MR. NICHOLS: He keeps saying "this." Can he identify it as being a large brown jacket, or if it has a number, identify it by the number.

MR. JONES: If it is not going to save any time, I think we might as well revert to the other procedure.

MR. NICHOLS: Run it any way you want to.

CHIEF JUSTICE DREW: You are speaking of the file in Case Number 31808, including the jacket and the original papers in the Supreme Court?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: All right, you may proceed.

BY MR. JONES:

Q What is the style of the case, Mr. Luckie?

A Willie Charles Hill vs. The State.

Q Did you have some representation in this case, Mr. Luckie?

A I represented Willie Charles Hill.

Q At the inception of the case, how did you come to represent Willie Charles Hill? Did you represent him or others at the inception?

A Judge Kelly appointed me to represent Willie Charles Hill, his mother Irene Jackson, and a man by the name of William Reddick, all of whom were charged with first degree murder.

Q Did you continue the representation of all three, as appointed by the Court?

A No sir. After my appointment and after talking with these people - - - they were jointly charged with the same crime - - - that of the killing of the wife of Irene Jackson - - - I mean the husband of Irene Jackson.

Johnny Jackson was his name.

As I began to talk to these people, I detected a possible conflict of interest and I went to Judge Kelly and told him that I could not represent all three of them under the circumstances, so he allowed me to withdraw as attorney for Irene Jackson and William Reddick, and I continued to represent Willie Charles Hill.

CHIEF JUSTICE DREW: At this point I wish to to announce for the record that this case is pending in the Supreme Court; but that the Presiding Judge of this Court, some time ago, disqualified himself in the case and has not - - - while he heard the argument - - - he has not since participated nor does he intend to participate in the decision of the case.

BY MR. JONES:

Q Mr. Luckie, if you will now, with reference to the official record that you have there before you, in the interest of saving time, can you give us a narrative of the procedure held in this file; I mean in this trial; the conduct of the trial, from the first through the trial.

A Could I ask one question in the interest of saving some time?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: I have filed a brief in this case which is a part of the case file; and of course, the brief having been prepared by me, it is my own notes. May I refer to this brief in describing the case.

CHIEF JUSTICE DREW: It is a part of the original Court file?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: Of course. Yes sir.

THE WITNESS: These three Defendants were indicted on the 21st of December, 1961, by the Grand Jury of Pasco County, charged with unlawfully and from a premeditated design killing one Johnny Jackson.

As I have stated, I was appointed by the Court to represent all three of them; and later, because of the conflict of interest, withdrew my representation of Irene Jackson and William Reddick and continued to represent Willie Charles Hill.

Prior to doing so - - - prior to withdrawing as attorney for the other two - - - I requested the Court to examine all three of them to determine whether or not they were sane or insane. This was done and the examining doctors determined that they were all three mentally capable of understanding what they did, but one of the doctors' report classified Willie Charles Hill as a high grade moron.

On February 19, 1962, we - - - when I say "we," I refer to the attorneys - - - there were attorneys appointed to represent the other two Defendants.

Mr. Jim Altman, from New Port Richey, was appointed to represent William Reddick; and Mr. Lester Bales, of Zephyrhills, was appointed to represent Irene Jackson. We filed a joint motion for severance of these cases, because we felt that the three Defendants could not be - - -

CHIEF JUSTICE DREW: Just a minute, Mr. Luckie.

Gentlemen of the Senate and lady of the Senate, a "severance" means that he asked the Court to try each one of them separately; so that you will know what it means.

THE WITNESS: We did this because we felt that these Defendants could not receive a fair trial if they were tried together; the reason being that before we got into the case all three of them had signed written confessions; and we also knew that in the testimony that would be presented - - - that is, if our clients should decide to take the stand and testify - - - that they in some respects would be testifying against each other. This was pointed out to the Court but the motion for severance was denied, and the Court required that we proceed to trial in one trial.

The trial commenced on March 12, 1962, and on that date we renewed the motion for severance with the Court, asking the Court to reconsider the motion. This was denied.

As the case proceeded, William Reddick decided that he would enter a plea of guilty, which he did - - - of course, outside the presence of the Jury; and, thereafter, the trial commenced with Willie Charles Hill and his mother, Irene Jackson.

One of the critical parts of the case, of course, was the confession of Willie Charles Hill, as far as I was concerned - - - I was representing him - - - and I tried to prevent the confession from becoming a part of the evidence in the case. For the benefit of the lay people here: In order for a confession of a Defendant to be admitted in evidence, the Court first has to take testimony outside the presence of the Jury to determine whether or not the confession was freely and voluntarily given.

Then, after the confession - - - if the Court determines that the confession is freely and voluntarily given, then the same testimony is presented to the Jury; but before the testimony or the confession may be presented to the Jury, the Court makes an initial determination as to whether or not it was freely and voluntarily made.

During the proceedings in which the Court was seeking to arrive at a conclusion as to whether or not the confession was given freely and voluntarily, I was, of course, throwing every legal road block that I could possibly do in the path of the State Attorney; thinking that this was my obligation and duty to do this, to seek to prevent the admission of this confession into evidence.

During the proceedings, Judge Kelly - - - excuse me, let me get the record on that.

I'd like to read from Page - - - beginning at Page 362 of the record. I think that this will be self-explanatory:

"MR. LUCKIE: Judge, all the circumstances surrounding this must be considered" - - - well, we were referring to the confession at that time.

"There's no question but that this boy was illegally arrested because the officers did not have proper cause when they went out there. They were guessing.

"THE COURT: Mr. Luckie, aren't we in this position: This Defendant has at least written out in his own hand a statement which clearly and concisely shows his guilt in this particular case. He has sat through the reading of three statements, at which time he did not in any way denounce what he had been read, which included his statement, Reddick's statement and the statement of Leverne, is that correct?"

"MR. GETZEN:" - - - who was the State's Attorney - - - "I might say, Your Honor, further, he made the statement to Justice of the Peace O'Berry at the time when he pled guilty, went ahead and told it all.

"THE COURT: All that is before this Court.

"MR. LUCKIE: What I was trying to say to the Court is this. You've got to take into consideration all of the factors here.

"THE COURT: Wait just a minute, Mr. Luckie. Isn't it a fact that all of that is before us?

"MR. LUCKIE: That's right.

"THE COURT: But what we are faced with is the fact, because he was illegally arrested, then, because of - - - even though what he told is the truth, and he is guilty as sin, the fact is that he told the truth while under duress, and he did not do so voluntarily, and the law is couched in such terms to protect the guilty as well as the innocent. Is that the proposition you are putting to the Court?"

Then I stated "That's the proposition I'm making.

"THE COURT: In other words, you are willing to admit this State's Exhibit Number 1 is completely true?

"MR. LUCKIE: I'm not admitting anything, if the Court please. I'm not admitting anything for the record or off the record."

Now, I think, perhaps, that the lawyers in here recognize the significance of such a statement as Judge Kelly made about the guilt of this defendant.

MR. NICHOLS: Mr. Luckie, might I interrupt you, just for the sake of clarity? This was not in the presence of the jury?

THE WITNESS: It was not in the presence of the jury, but the - - - all of the attorneys were there, the defendants were there, and the Court Room was practically filled with spectators.

From that point forward in the case I felt like that Judge Kelly had already prejudged my client, and that many of the discretionary matters that he had to rule upon, that he really didn't have any discretion, because he had already announced his feeling.

For example, the Judge had to make a ruling as to whether or not the confession was freely and voluntarily made; this is a discretionary ruling, and the Judge's discretion in such instances is - - - carries with it the presumption of correctness and, to my way of thinking, the Judge had destroyed his impartiality and, therefore, any ruling which he might make, which required discretion of the Court, was - - - would be tarnished.

Later in the proceeding a confession, a confession of Irene Leverne Jackson, who was represented by Mr. Bales, was admitted into evidence. Now, this confession was not made in the presence of Willie Charles Hill, nor was the confession of Willie Charles Hill made in the presence of Irene Jackson. The significance of this is that a confession made by one defendant, not in the presence of a co-defendant, ordinarily will not be admitted or considered as evidence against the other defendant. If they are made together, then the State may attempt to use the confession of a co-defendant as evidence against the other defendant.

When State's Exhibit Number 8, which was the confession of Irene Jackson, was admitted into evidence for consideration by the jury, Judge Kelly instructed the jury not to consider this confession as evidence against Willie Charles Hill.

I'll read to you the charge that the Court made. It's in the record, at Page 325:

"THE COURT: All right. Now, gentlemen of the jury, State's Exhibit Number 8 is received into evidence in the case against Irene Leverne Jackson."

That's the end of the charge.

After this exhibit was admitted into evidence, the State's Attorney indicated that the State would have only one more witness, and would then rest its case. At that stage of the proceeding the written confession of Willie Charles Hill, my client, which is referred to as State's Exhibit Number 1, was not in evidence, nor had a predicate been laid for the admission of that exhibit into evidence.

Now, by "predicate" "predicate being laid," that is that testimony necessary to the presentation of that document to the jury had not been made in the presence of the jury. Before such a document as that may be offered as evidence, our procedure requires that certain testimony be presented in the - - - before the jury.

Now, this testimony at this stage had been presented outside the presence of the jury, to the Court only, in order to determine whether or not it had been freely and voluntarily made, but the testimony had not been presented to the jury; that's what I mean by saying that a predicate had not been laid.

The next witness on the stand was a Deputy Sheriff by the name of Neil Keen. He was recalled to the stand. He had been on the stand before, and at this time Mr. Keen testified that after the three defendants were arrested, he put them in a cell together in the Pasco County Jail, and while they were there in the cell together, he read the confessions of each one of them in the presence of them, of each of them. In other words, he read all three of the confessions in the presence of all three of them. He said that they consented to the confessions of each other. His testimony on that point was that they nodded their heads.

Now, following the testimony of this witness, the State offered the confession of Irene Leverne Jackson into evidence against Willie Charles Hill, the theory of the State's offer being that, since the confession of Irene Jackson was read to the defendant, Willie Charles Hill in the jail cell, that Willie Charles Hill thereby assented to the confession of his mother, Irene Jackson, and the confession was admissible against him.

Objection was made to this proffer, and before the Court ruled on this offer, a conference was had outside the hearing of the jury, and the State then announced its intention to rest its case after the completion of Witness Keen's testimony.

Now, after the conference at the Bench, the Court asked the State's Attorney to hand him - - - Judge Kelly asked the State's Attorney to hand him State's Exhibit Number 8, which was the confession of Irene Leverne Jackson, and State's Exhibit Number 1, the confession of my client, Willie Charles Hill, and at that juncture the jury was present, and State's Exhibit Number 1 was not in evidence, and the State's Attorney announced to the Court, announced this to the Court.

The Court asked: "Well, is it proper?" The State's Attorney replied "No sir." The Court then stated, Judge Kelly stated: "You are withdrawing that?" And the State's Attorney replied, "Yes sir"; that's at Page 340 to 341 of the record.

BY MR. JONES:

Q Mr. Luckie, the item we're talking about now is the confession of Willie Charles Hill, that was not in evidence. Is that correct?

A That's correct.

Q All right, sir, go ahead.

A The Court asked the State's Attorney whether or not this document was going to be offered as evidence against my client, and the State's Attorney advised the Court that he was not going to.

The jury was then retired, and the basis of the - - - of our objection to the confession of Irene Jackson was stated to the Court and of course, that was because - - - or the basis of our objection was that it was not given in the presence of the defendant, Willie Charles Hill, and

that the reading of the confession in the presence of the defendant, Willie Charles Hill, did not make the confession admissible, then the Court stated. at this juncture: "Mr. Getzen" - - - referring to the State's Attorney - - - "you have State's Exhibit Number 1, which is this defendant's own statement. What is your intention to do with that?"

Now, remember that the State had already told the Judge that he was not going to offer that as evidence.

The State's Attorney answered the Judge in this manner:

"Outside of the jury, Your Honor, I don't know whether I'll be able to get it in evidence or not. I'm going to tell you just frankly. I'm not sure - - - frankly I would like for it to be in evidence, but under certain circumstances those portions that I might not be able to get in evidence, and there's no use, Your Honor, for me to offer something in evidence when I feel there's a possibility that it might not be in evidence." That's at Page 344 of the record.

Then the Court stated:

"Well, we have spent a good portion of this Court's time trying to get State's Exhibit Number 1 into evidence. Now, what do you know that has not been revealed to the Court?"

And then the State's Attorney replied:

"Frankly, I don't know whether the Court would hold that sufficient evidence has been shown that it was freely and voluntarily made."

Now, the significance of this is that - - - to me, that the State's Attorney himself was questioning whether or not the State had presented sufficient testimony to show that this confession was freely and voluntarily given.

Now, the question as to whether or not it would be offered, this very question of whether or not it was freely and voluntarily made, was one to be decided by the Court. However, the State was questioning whether or not it was freely and voluntarily made.

The Court then said:

"Well, if you're going to second guess the Court, don't you think it would be a good idea to present it to the Court and let the Court rule?"

Then the State's Attorney said:

"I'll offer it in evidence right now, then, Your Honor," and thereupon, the Court, Judge Kelly, said:

"All right, State's Exhibit Number 1 will be received into evidence, unless there is objection."

Of course, I objected at that point. For one thing, I objected to any evidence being - - - the jury was not there at that time, but the spectators were in the Court Room, and all the other parties, all the other officers of the Court were present. I objected to it on several grounds, one, of course, being that any piece of evidence must be admitted, if it's going to be admitted, in the presence of the jury in a trial of this nature.

Now, this confession was not admitted into evidence at that time. Witness Keen was recalled to the stand for further cross examination, and the jury was still not present. We were still trying to reach that determination, the Court was, as to whether or not the confession was freely and voluntarily made and, in my personal opinion, recalling Mr. Keen to the stand for additional cross examination was on the point of whether or not it was, in fact, freely and voluntarily made.

Now, while Mr. Keen was on the stand and in cross examination, Judge Kelly interrupted the proceeding, as he often did during the course of the trial, and said: "In either event, I think before - - - Mr. Luckie, before we go on with this - - - Mr. Getzen" - - - referring to the State's Attorney - - - "is it your opinion that State's Exhibit Number 1 is not admissible into evidence for any reason?" And the State's Attorney replied, "I think - - - personally, I think - - - personally, I think it was admissible. Now, whether or not what I think the law is and what the Court thinks" - - - the Court interrupted then and stated, "Mr. Getzen, why then - - - I want to make sure that the Court is not misunderstanding the law. Why, then, were you reluctant to offer it into evidence?"

The State's Attorney replied, "Well, I'll tell you why I was. I thought that possibly the Court might not let it in," and the State's Attorney stated further - - - this is at Page 349 - - - "I thought I hadn't proved sufficient willingness and everything else; voluntariness and everything else to" - - - and he was interrupted again. The Court then stated, "Wait just a moment, Mr. Getzen. Why did you think you hadn't done that?" And the State's Attorney replied, "I don't know, sir, Your Honor. Do you ever have intuition?"

Judge Kelly stated, "Then you had an intuition that you hadn't done it?" And the State's Attorney replied, "I had an intuition that you wouldn't let it in."

And then I stated to the Court, "May it please the Court, I don't think there's any better evidence that a statement wasn't freely and voluntarily made than the State Attorney himself."

Now, further cross examination - - - we're speaking of the cross examination of Mr. Keen, and during this examination the Court interrupted the proceedings again and said, "Mr. Luckie, excuse me just a minute. "At this time the Court is going to deny the State's request to admit State's Exhibit Number 8-against the defendant, Willie Charles Hill, as the record now stands. Now, at this time, Mr. Getzen - - - would you please stand, sir. At this time do you wish to proffer into evidence State's Exhibit Number 1, or how do you wish to proceed?"

The State's Attorney replied, "Yes sir."

Judge Kelly, "Now, what is your wish at this time?" Mr. Getzen replied, "Yes sir," and Judge Kelly said, "To admit State's Exhibit Number 1 into evidence?"

Mr. Getzen, "Yes sir."

Judge Kelly, "Now, is that done because the Court has suggested that to you?"

Mr. Getzen, "No sir, no sir."

Judge Kelly, "That is what the State wants to do?"

Mr. Getzen, "Yes sir."

Then Judge Kelly stated, "All right; so, Mr. Luckie, you are advised now that as the record now stands State's Exhibit Number 8 will not apply to your client," and I said, "All right, sir." And then the Court said, "Now, the proffer of State's Exhibit Number 1 has been made. I anticipate, gentlemen, that the wise thing to do at this time would be to let the jury go for noon recess and to try to dispose of this in the interim."

Then the jury was returned to the Court Room just before noon, and before they were excused, and Judge Kelly again instructed the Jury that they were not to consider State's Exhibit Number 8, which was the confession of Willie Hill's mother, as evidence against him; this was the second time that this instruction had been given to the jury by Judge Kelly.

Now, at no time after that particular point in the trial was there any additional testimony given pertaining to

the admissibility of State's Exhibit Number 8 against Willie Hill.

Now, one of the officers was allowed to come back and repeat his previous testimony on that point, but there was nothing new in the testimony whatsoever, it was exactly the same testimony on that point. Later, and this was the testimony of an officer named Billy Smith, outside the presence of the Jury - - - the Jury was not there at the time.

Mr. Getzen, the State Attorney, said: "We proffer that statement, referring to State's Exhibit Number 1."

And objection was made on behalf of the Defendant.

Judge Kelly said, "All right. The Court is going to admit Plaintiff's Exhibit Number 1 into evidence and, because Plaintiff's Exhibit Number 1 is in evidence, the Court is also going to allow Plaintiff's Exhibit Number 8 to implicate Defendant Willie Charles Hill."

Now, the Court had already twice ruled that that exhibit was not admissible, that State's Exhibit 8 was not admissible. And here again, without any suggestion from the State Attorney, he said that he would allow State's Exhibit Number 8 against Willie Hill.

Then the Court said, "All right, what says the State?

"These admissions into evidence will be done in the presence of the Jury.

"The opinions of the Court that have been given at this time are merely advisory to the attorneys at this time, in order to let them know how they should proceed under the existing circumstances.

"These rulings will be made in the presence of the Jury consistent with the announcement of the Court at this time." Mr. Getzen stated at that time, "Under those conditions, the State closes, Your Honor."

The Court said, "All right. You announce then that the State rests, is that correct?"

And the State Attorney replied, "Yes sir."

Then there was a noon recess and some hearings. During this noon recess the motion was made for a directed verdict on behalf of the Defendant Willie Charles Hill. This motion was denied.

After the recess we came back into the Court Room and at that time the State Attorney offered State's Exhibit Number 1 in evidence and also reproffered State's Exhibit Number 8 as evidence against Willie Charles Hill.

And I objected to the admission on several grounds. One of the grounds was that no predicate had been laid for their admission into evidence.

Then there was some discussion about - - - the Court called us to the Bench and he wanted to know what was my - - - the basis for my objection that there had been no predicate laid.

And I told the Court at that time that all of the testimony pertaining to the admissibility of these two documents, so far as Willie Charles Hill was concerned, had been made outside the presence of the Jury.

Therefore, there was nothing before the Jury which could be considered as a predicate or a basis for the admission of those documents into evidence.

A check was made of the transcript by the Court Reporter, and it was shown that my objection was proper; that the testimony, in fact, had not been tendered to the Jury.

The State had rested and I had made a motion for directed verdict at that point.

Now, with reference to the fact that no predicate had been laid, and after the State Attorney found out that that was correct, Mr. Getzen said, "Frankly, I thought it was in, and I told Mr. Keen he could go home."

"JUDGE KELLY: All I want to know is what you want to do now."

"MR. GETZEN: I can't put it on because I can't put it before the Jury."

"JUDGE KELLY: Are you tendering any more testimony?"

"MR. GETZEN: No sir."

"JUDGE KELLY: All right."

We had considerable discussion after that. You have to remember that this transcript is in three volumes and it is quite lengthy and these things have to be picked out of the record.

Judge Kelly made this statement after the Jury was retired: "Now, the ruling that State's Exhibit Number 1 would be admitted into evidence and that State's Exhibit Number 8 would apply to the Defendant Willie Charles Hill was founded upon the proposition that the evidence in support of the admission of these documents was in the record and was the basis for the admission and the Court's ruling. So it seems that it would be unjust for these exhibits to be precluded on such a mistake, and that Mr. Getzen's clear intention was that the Court's ruling that they would be admissible was the basis of his pledge which he clearly made; and the Court, I think, is bound by the ruling that was made in Chambers to the effect that it would have to rule on the admissibility in the presence of the Jury, and I think that it would carry with it the necessity of allowing Keen to testify along the line of the proffer that had previously been made.

"Now, as I have said, if this is the law, as you have stated that it is, you have authority to present. I will abide by that authority. But if you have no further authority or showing that you can make at this time, the Court has no choice but to do what appears manifestly just at this time. Now, you have that choice."

Then I stated, "May it please the Court, in addition to the fact that the State announced that it would rest upon the offering of these documents into evidence, the State pledged that no additional witnesses would be offered in the case."

Then this discussion begins at Page 399 of the record.

"MR. GETZEN: Number 1 is in evidence. That is Willie Charles Hills' confession."

"MR. LUCKIE: It is not, if the Court please."

"THE COURT: I beg your pardon."

"MR. LUCKIE: Exhibit Number 1 is not in evidence at this time."

"MR. GETZEN: Yes."

"JUDGE KELLY: But the proffer has been made. If the State withdraws the proffer, of causing State Exhibit Number 8 to apply to the Defendant Willie Charles Hill, I think that then the problem is circumvented."

"MR. GETZEN: Well, I will withdraw that."

"JUDGE KELLY: All right."

"MR. GETZEN: Number 8, as to Willie Hill."

"JUDGE KELLY: All right."

"MR. LUCKIE: Now, that is withdrawn."

"JUDGE KELLY: That is withdrawn, and the only thing that will be done is that the Court will announce to the Jury that State's Exhibit Number 1 has been admitted into evidence, and at this time to allow the State Attorney to read State's Exhibit Number 1 to the Jury."

"MR. LUCKIE: May it please the Court, I would like to remind the Court of my objection to both of these, the introduction of both Exhibit Number 1 and Number 8."

"THE COURT: Yes."

"MR. LUCKIE: Now, there is no predicate for the admission of Exhibit Number 1."

"JUDGE KELLY: Let me ask you this: What is the basis of that? Why do you think - - -"

And I stated, "All of the predicate laid for the admission of Exhibit Number 1 was outside the presence of the Jury."

"JUDGE KELLY: All right. It may well be that that is true. And, if the State has overlooked that, I think the State should be bound by that oversight.

"With regard to State's Exhibit Number 8, I think that it would not be just to require the State to be bound by it; but, if what you say is true with regard to State's Exhibit Number 1, I think justice would demand that the State bear the burden of its own oversight in the presentation of its case."

"MR. LUCKIE: All right, sir. Could we get an announcement from the State whether or not they will withdraw Number 8 as far as the Defendant Willie Charles Hill is concerned."

"MR. GETZEN: Yes. Exhibit Number 8, insofar as Willie Charles Hill."

"MR. LUCKIE: All right, then, so that will not be considered."

"JUDGE KELLY: That will not be considered."

"MR. LUCKIE: I think that the proper thing to do now is have the Court Reporter check the testimony pertaining to Exhibit Number 1, to determine what testimony was in the presence of the Jury."

"JUDGE KELLY: All right, Mr. Reporter."

And, thereupon, the Reporter checked the record and he found that what I had stated to the Court was correct.

Now, in spite of the fact that the State, as I have read to you, made an unequivocal withdrawal of the proffer of State's Exhibit Number 8 and the Court stated that the State would have to bear the burden of its oversight in failing to lay the predicate for the admission of State's Exhibit Number 1 in evidence, and following some additional discussion, the Court announced as follows:

"All right. The situation is this. That the State at this time will be permitted to put the necessary testimony before the Jury at this time in support of the admissibility of State's Exhibit Number 1 and 8.

"Do you wish to reconsider now your proffer of State's Exhibit Number 8 as it will apply to Willie Charles Hill?

"Now, you withdrew it in there but now I am asking you, with the understanding you will be able to put this additional testimony in, do you wish to reoffer that into evidence as it will apply to Willie Charles Hill?"

And the State Attorney then said, "Yes sir. I will after we get to the Court."

"THE COURT: All right."

Then I made this statement: "Judge, I would like to know how many times the State is going to be allowed in this case to change their position.

"I want to go back for a minute and talk about this Exhibit Number 1."

"THE COURT: All right."

And then I continued:

"The State had an opportunity to offer that exhibit in evidence.

"The Court asked the State, said 'Do you intend to offer Exhibit Number 1?' The State said, 'No.'

"Then, following that, the Court asked the State for an explanation.

"Now, my position is that the Court did not have anything before it at the minute that the State announced they were not going to offer this exhibit.

"There was nothing before the Court for the Court to consider, so the State had an opportunity back there to offer it.

"Then we came on down and additional testimony" - - - I am still quoting from what I was saying to the Judge - - - "Then we came on down and additional testimony was taken after the State decided that they would offer it; and now the State has announced they would rest.

"I announced in this office that I was going to make a motion, I was going to make an objection, rather, to the admissibility of both these statements when they were formally offered in evidence before the Court."

"JUDGE KELLY: Yes."

Then I continued: "Now I think that the State has had every reasonable opportunity to try to get this State's Exhibit Number 1 into evidence."

"JUDGE KELLY: Yes."

Then I continued: "They had the opportunity when the Court said, 'Do you want to put it in?' The State said, 'No, we are not going to offer this exhibit.'

"Now, I feel that we have been prejudiced by this, because based on the State Attorney's statement, we went ahead and made a motion for direct verdict. I think we have been prejudiced."

Now, this is the situation. The defense depended upon the outcome of whether or not these exhibits would be admitted in evidence.

MR. NICHOLS: Excuse me, Mr. Luckie. When you read from the transcript, just give us the transcript citation, please sir.

THE WITNESS: The last reading that I did was from the record at Page 410 and 411.

MR. NICHOLS: Thank you, sir.

THE WITNESS: In spite of the fact that on one occasion the State announced that they would not - - - that they were not going to even offer the confession of Willie Charles Hill, because the State Attorney apparently had some doubt as to whether it was freely and voluntarily made - - - in spite of the fact that the State Attorney told the Court this, Judge Kelly actually, literally insisted that that document be included in evidence, as I have read to you from the transcript; and he also ruled that it was freely and voluntarily made and allowed it to be presented in evidence to go to the Jury.

He also, in spite of the fact that we had a stipulation

with the State Attorney that State's Exhibit Number 8 would not be admitted as evidence against Willie Charles Hill, he - - - I think, by inference - - - he at least suggested to the State Attorney that he violate that stipulation, and then allowed State's Exhibit Number 8 to be put into evidence against Willie Charles Hill.

So that both of these documents were in evidence against my client. One of the most significant things about this is this:

Willie Charles Hill and his mother were being tried together.

She had signed a confession - - - this was State's Exhibit 8.

He had signed a confession, State's Exhibit Number 1.

The circumstances surrounding these two documents were the same, insofar as the admissibility of one document against the other Defendant. Both of them had been read in the presence of each other.

Judge Kelly insisted that State's Exhibit Number 8 be put into evidence against Willie Charles Hill, but at no point in the course of this trial did he ever suggest that Exhibit Number 1 be offered as evidence against Irene Jackson.

And the situation was exactly the same. The only conclusion that I could reach from that was that Judge Kelly was prejudiced against me, or he was trying to show me up in the trial, and the bad part about it was that if he did have such prejudice, it didn't hurt me so much, but it hurt my client; and of course, the client is the important person to consider in a case of this kind.

Another thing that Judge Kelly did in the course of that trial was that he - - -

SENATOR BARRON: Mr. Chief Justice, could we have the question read? I don't recall now what the question was that this witness is answering.

CHIEF JUSTICE DREW: I believe it's the position of counsel that it would probably save time to now let him read his testimony, rather than by question and answer, but I assume that it will be rapidly brought to a conclusion.

THE WITNESS: Yes, sir, Your Honor, it's going to be.

Another thing that Judge Kelly did, as far as Willie Charles Hill was concerned, he would not allow the testimony of the psychiatrist who had examined Willie Charles Hill, and who had determined that he was a high-grade moron to go to the jury. He refused to allow the doctor to testify. We offered the doctor's testimony. As a matter of fact, since - - - when Judge Kelly refused to let the jury hear it, we made a proffer of the testimony, which is in the record, and I'd like to read what the psychiatrist said about this boy:

"Q What is your opinion as to the intelligence of this defendant" - - - this is in the record, at Pages 188 and 189. This is Dr. Bourkard, psychiatrist from Tampa:

"A I would like to qualify this first by saying that there was no formal testing done in this realm; however, my opinion of this man is that he is of very low intelligence; either very dull normal intelligence, sub-normal intelligence, or high-grade moron. His comprehension of my questions was very difficult. I had to rephrase most of my questions and put them in very simple language. He attempted to cooperate. He had difficulty with simple mathematical problems. He did not seem to understand a great deal of what I asked him to do. I felt that he was a very gullible, easily led individual.

"Q What do you mean by the statement that in your opinion he is gullible?

"A I felt that his intelligence was such that he could be talked into doing just about anything anybody wanted him to do. He was almost animal like in his simplicity."

BY MR. JONES:

Q Mr. Luckie, could you tell us, what was the Court's demeanor throughout this trial, if you could?

A He was very erratic - - -

Q Would you explain what you mean by "erratic," please sir.

A Well, I think I have read some examples, in reading parts of the transcript. I think, in arguing the case before the Supreme Court, I referred to it as "Now you see it and now you don't rulings." He'd rule one way, and then he'd turn around and rule another way on the same question. He did this on a number of occasions. He interrupted counsel many times, he'd interrupt your chain of thought when you were trying to reach a point. He would jump around from one thing to the other, so that it was a very disjointed procedure.

I believe, also, that in my argument before the Supreme Court I referred to the case as a whole as being a mess.

Q Did the Court, in fact, inject himself into the case in behalf of the State, as opposed to the accused?

A Yes sir. For example, in my argument to the Supreme Court I stated to the Justices there that after the proceeding had gone on for some time, I felt like that Judge Kelly ought to get over there at the table with the State's Attorney.

Q And the charge against the accused was what, Mr. Luckie?

A First degree murder, and he was convicted of first degree murder without recommendation of mercy.

Q What was the age of the accused?

CHIEF JUSTICE DREW: I think I remember he was a young negro boy, under 22, wasn't he, Mr. Luckie?

THE WITNESS: He's 19 years of age.

BY MR. JONES:

Q Thank you. Mr. Luckie, leaving, now, the State vs. Hill, I will ask you if there has ever been an effort to procure a change in the Circuit for Pasco County and, if so, when?

A Yes sir.

Q Would you tell us when the first occasion occurred?

A The first occasion that I have any personal recollection of was in 1959. An effort was made during - - - no bill was introduced, as I recall, but - - -

Q Was this before Judge Kelly took office?

A Yes sir, Judge Kelly took office in 1961.

Q All right, sir. Thank you.

A That's my first recollection of it; anything else would be hearsay.

Q What was the extent of the evidence of which you have knowledge in 1959?

A It was discussed with the Senator and Representative at that time, and I believe that the Senator objected to it and, therefore, the bill was never - - - the Senator at that time was Mr. Getzen, and the bill was never offered.

Q Did this same question arise again, and if so, when did it next arise?

A Some consideration was given to it while Joe McClain was still the State Representative, and I believe, during an extraordinary session of the Legislature, I think that Joe was still Representative in that session, and there was some talk about it then.

Q Would this have been August of 1962?

A Yes, that would be right.

Q Was there any further consideration toward taking Pasco out of the Sixth Judicial Circuit?

A Yes.

Q When did this occur?

A It began in 1962, particularly after the general election was over. Both our present Senator and present Representative had opposition in the general election, and after that election we talked to them about a bill which would change the circuit and put Pasco County into the Fifth Circuit.

Q Who do you speak of as "them" sir?

A Senator Covington and Representative Stevens.

Q Did, or was an agreement, or was a decision made by Senator Covington and/or Representative Stevens?

A Both of them said that they would favor the bill and would seek its passage.

Q Approximately when was this?

A Well, the first time that Senator Covington told me this was while he was still running, when he was campaigning for office. As a matter of fact, the first discussion I had with Senator Covington was even before he announced for office, as I recall.

Q Was a petition actually presented to Senator and the Representative?

A Yes sir. This was being discussed in the Bar - - - I mean by the members of the Bar, and a petition was presented to them which was signed by nineteen of the lawyers in the county.

Q Had this petition been presented to the Bar of Pasco County at a meeting, or was it just generally circulated?

A It was generally circulated, it was not a formal action of the Bar.

Q Was such a bill prepared for presentation to the 1963 session of the Legislature?

A It was.

Q Could you tell us what, in effect, this bill did, if you will, please?

A It provided that Pasco County would become a part of the Fifth Judicial Circuit, and that the Sixth Judicial Circuit would remain just Pinellas County. It provided that the resident Judge in Pasco County would continue as a Judge of the Sixth Circuit. In other words, he would not go with the Fifth Circuit.

Q Who was the resident Judge at that time in Pasco County?

A Judge Kelly.

Q Was this bill presented to the 1963 Legislature, to your knowledge?

A It was presented in the House, as I recall, House of Representatives. It was not passed. I don't think it was even considered by the House as a body, but there was a committee report on it, as I recall.

MR. JONES: Does Your Honor wish a break at this time?

CHIEF JUSTICE DREW: If you can get to a pause or break in your testimony, we'll take a recess.

MR. JONES: Well, I think this is a good place.

CHIEF JUSTICE DREW: Very well, then, we'll recess for ten minutes.

Whereupon, at 10:58 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 11:12 o'clock A. M.

A quorum present.

BY MR. JONES:

Q Mr. Luckie, I believe when we recessed we were discussing bills pertaining to the circuit change. Did you or any members of the Pasco County Bar Association go to Ocala to discuss this matter with an attorney there?

A We did.

Q Following that hearing or following the trip to Ocala, did you have a hearing before Judge Kelly in the case of State Road Department vs. Bobo?

A Yes sir.

Q Will you please tell the Court what transpired immediately after that hearing?

A Judge Kelly called me into his office. I had left the office and was walking down the hall with another attorney; and he sent his secretary out into the hall and she told me that Judge Kelly wanted to see me in his Chambers, and I went back in there.

Q Did he ask you at that time why you had gone to Ocala and who the lawyers were that went there with you? If so, would you give an explanation of the questions and answers?

A He didn't ask me if I had gone to Ocala. He told me that he understood that a group of lawyers had gone to Ocala and asked me if I knew who they were, and I told him I did. And he then asked me who they were, and I declined to give him their names.

Q Approximately how long did this discussion go on?

A This particular discussion went on for maybe fifteen to thirty minutes.

We - - - Judge Kelly also asked me about the circuit change proposal at that time, and asked me my opinion about certain phases of the proposed bill.

Q Did you give him an explanation?

A Yes sir.

Q Of the proposed change. And what was that explanation, please?

A I explained to him that this was something that had been under consideration before, and that we felt - - - at least the group of us who were in favor of it - - - felt that it was in the best interests of the public. And he asked me what would happen to him.

And I told him that, in my opinion, he would continue as a Circuit Judge of the Sixth Judicial Circuit, but that his jurisdiction would be reduced, and that he would serve in Pinellas County.

And he asked me then, he said, "Well, what about my residence?"

And I told him that there was no provision in the statute which required that a Circuit Judge live in the circuit in which he presided.

Q Mr. Luckie, shortly thereafter was there a press release, allegedly by Judge Kelly - - - did one appear in the newspapers allegedly by Judge Kelly, concerning the attorneys' trip to Ocala?

A Well - - -

Q Let me ask you this: Was there a press release in the papers following your conference with Judge Kelly, allegedly concerned with the circuit change?

A Yes sir.

Q Was there also an announcement in the paper, allegedly by Judge Kelly, that he would make a speech concerning the circuit change at the Zephyrhills Republican Woman's Club?

A Yes sir.

Q Did you retain a Court Reporter to take down the speech that was made by Judge Kelly at that club meeting?

A Mr. Larkin, Bill Larkin and I jointly retained the services of a Reporter by the name of Joe Wichmann.

Q Was there also an announcement as to a speech to be made by Judge Kelly at the Valencia Restaurant, concerning the circuit change?

A I don't know whether there was an announcement that Judge Kelly was going to speak there. There was an announcement that Congressman Cramer would speak there to a group, and Judge Kelly did make a speech at that meeting where Congressman Cramer was in attendance.

Q Was there also a Court Reporter there in attendance to record that speech?

A No sir.

Q Did you have any further or other conversations, at Judge Kelly's insistence, about the proposed circuit change?

A After he made the speech at Zephyrhills and at the Valencia Restaurant, and after the first press release, I was up at the Court House, and Judge Kelly was not - - - I didn't have anything before him, but I ran into him, either in the hallway leading down to the library or in his outer office - - - I don't recall exactly which it was - - - I might have been in his office checking on the scheduling of a hearing or a case.

But he asked me - - - anyway, when we got in contact with each other, he asked me to come back in his office. He said he wanted to talk to me.

Q What was the conversation about, Mr. Luckie?

A Well, the circuit change was under consideration at that time, and he said that he would like to get together with the lawyers and see if we couldn't work out our differences.

And I told him that, in the light of the things that he had said about the lawyers in the Zephyrhills speech and to the press and at the speech in Zephyrhills, that I felt like that he had created an irreparable breach between himself and the lawyers. That he had said many things that - - -

Q What, for instance, Mr. Luckie, are you referring to?

A He said - - - I told him at that time that he had referred to us as an "anonymous group" in the Zephyrhills speech and in the press release and that he knew who the lawyers were when he said that - - - that we were an anonymous group; because I had told him who the lawyers were.

I told him in this manner, in the conference we had following the Bobo case. He asked who the lawyers were behind it, and I told him who the lawyers were in the county who were not. There were four of them who were not, and I gave him the names of the ones who were not in favor of it. He knew that there were nineteen lawyers who were in favor of it. And I told him that when he referred to us as an "anonymous group," that he was saying something that he knew was not correct.

He referred to us in the Zephyrhills speech as being a movement on the part of the lawyers - - - as being "sinister." In the Zephyrhills speech he referred to me on two occasions by my name.

He also made a statement in the Zephyrhills speech which I told him in this meeting we had - - - I told him that, in my opinion, he was accusing the lawyers of being guilty of complicity in the commission of crime.

Q Let me ask you this question, Mr. Luckie. Did Judge Kelly, in this conference, ask you what was wrong with his Court and what he was doing wrong?

A Well, in his statement to me, that he would like - - - in connection with the discussion, he said that he would like to get together with the lawyers and see if we could work out the differences - - - he asked me what I thought was wrong with the operation of his Court.

Q Did you at that time tell him what you thought was wrong with it?

A Well, the first thing I said to Judge Kelly was, "Judge, I am hesitant about making any remarks about your operation of the Court."

And he told me then, he said, "Well, I would like for you to go ahead and do it."

He said, "Feel free to do it."

And I then told him, I said, "Well, Judge, if I do tell you, you are not going to like what I say."

And he insisted that I tell him; and, before I started telling him what I thought about the operation of the Court, I asked him to get the third volume of the Statutes off the shelf and read the Canons of Ethics Governing the Conduct of Judges.

Q Did he do that, Mr. Luckie?

A He got the statute down and he - - - the third volume - - - and he opened it up and I read two of the - - two or three of the Canons of Ethics Governing Judges to him. And then he read the Preamble to the Canons of Ethics himself, at that time.

Q What was his reply, if any, after the reading of the Canons of Ethics for Judges?

A Mr. Jones, it would be helpful if I could see the Canons of Ethics, because - - -

(There was a pause while the witness examined the Canons of Ethics, above referenced.)

THE WITNESS: The Canon that I referred him to specifically at that time was Number 15, which deals with interference in the conduct of trials. I also referred him to Canon Number 28, which deals with partisan politics.

MR. NICHOLS: What was that last number?

THE WITNESS: 28.

MR. JONES: 28.

THE WITNESS: Those were the two that I specifically referred him to at that time.

BY MR. JONES:

Q What was his reply, if any, after the reading of these Canons of Ethics?

A He said that he had, on a number of occasions, violated Canon 15.

I told him that he had also violated Canon 28, which dealt with partisan politics; and he did not agree with me on that.

I told him that I felt that he had violated 28 in making the speech at Zephyrhills and in his releases to the papers.

CHIEF JUSTICE DREW: Senator from the 32nd?

SENATOR CROSS: Mr. Chief Justice, I think it only fair that he read both of those if he wants to talk about them.

CHIEF JUSTICE DREW: Will you read those Canons to which you refer?

MR. JONES: Canon 15 and Canon 28, I believe.

Canon 15 states:

"Interference in conduct of trial. A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

"Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

"He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment."

Canon 28, Partisan politics:

"While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, except as required by law, the public endorsement of candidates for political office and participation in party conventions.

"He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities."

He said that he had, on many occasions, violated Canon 15, and I said, when we were discussing that one, I said, "Judge, I have been talking to Jim Altman about your conduct in the bond validation suit in New Port Richey recently."

I said, "Your conduct in that case was, in Jim's opinion - - -"

MR. NICHOLS: If the Court please, Mr. Luckie is going, now, to other lawyers, other clients, and I - - -

MR. JONES: If the Court please, Mr. Luckie is relating a conversation that he had with Judge Kelly, are you not?

THE WITNESS: Yes.

MR. NICHOLS: Well, I'm sure that Mr. Luckie knows, as a lawyer well versed in the law, knows that he's not entitled to relate some conversation with another lawyer.

BY MR. JONES:

Q Mr. Luckie, if you will, just say what you said to Judge Kelly.

A Well, I told Judge Kelly what Jim had said to me.

Q All right, sir. Proceed.

A And Judge Kelly then made the statement that he was very sorry of the way that he had conducted himself in that proceeding, that bond validation proceeding, and he made this statement, he said, "I tore up that canon of ethics in that trial," he said, "I tore it up."

CHIEF JUSTICE DREW: Do you remember the date of the trial with reference to the date that Judge Kelly was sworn into office? Was it early or late?

THE WITNESS: The trial that we were referring to had been held within the past month.

CHIEF JUSTICE DREW: I see.

THE WITNESS: It was in the month prior to our conversation, sir, as I recall.

MR. NICHOLS: When was that, in relation to what you're talking about?

THE WITNESS: Well, that would have been in 1962. It would have been sometime in March, I believe, been, maybe, around the 1st of March or in that area of 1963, rather, and Judge Kelly took office in 1961. So, our conversation was this year.

BY MR. JONES:

Q Mr. Luckie, if you will, complete the conversation that you had with Judge Kelly. If you did, state any other things that you told Judge Kelly at his request, that were wrong with his Court.

A Judge Kelly did something else, too, there. I was looking in the book and he picked it up, and he said, "You talk about those two canons," he said, "There's one that I've really been guilty of violating, is the - - - this part of the ancient precedents" it's under the ethics governing judges, and he read it to me, and this is what he read:

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent."

I believe that was the extent of his reading; it's a part of the ancient precedents; and he said that that was one of the things that he had gotten a great deal of criticism from lawyers about, and that their criticism was well founded in that respect.

Q Mr. Luckie, did you also discuss with Judge Kelly a circulation which was allegedly being circulated about the county, opposing the Circuit change?

A I discussed with Judge Kelly at that time a petition which had been circulated, and which Judge Kelly had participated in the circulation of. In this petition that he - - - that I was referring to, it was a petition in opposition to the Circuit change bill, and a part of that petition re-

ferred to the lawyers again as an anonymous group, and said that the lawyers - - -

MR. NICHOLS: Excuse me. Mr. Jones, don't we have the petition itself somewhere, the one that was introduced in the House?

MR. JONES: We will have it, but we didn't anticipate introducing it through this witness, Mr. Nichols, but we will get to it.

MR. NICHOLS: All right. It's coming in, though?

MR. JONES: Yes sir.

MR. NICHOLS: Well, he's talking about it, and talking about the language in it; I prefer that we have the petition itself, rather than him telling the wordage.

MR. JONES: Yes sir. Well, right now we're just speaking of the conversation between Judge Kelly and Mr. Luckie, but we'll introduce the petition, the one that was circulated.

BY MR. JONES:

Q Go ahead, Mr. Luckie, if you will, with the conversation between yourself and Judge Kelly, with regard to this petition.

A He referred to us as a group of democratic lawyers, as I recall in the petition. At least, either in the press release or in this petition he referred to us an anonymous group of democratic lawyers, and with regard to the petition itself, the thing that I was most concerned about, and which I was talking to Judge Kelly about, was that he referred to us as being undemocratic and unAmerican in this petition.

In one of his press releases - - - and I discussed this at the same time, he had - - - he stated that this was an effort on the part of the lawyers to hand pick a judge; we were trying to get one of our members selected as a judge and that, as a result of our activities, that many people felt like that the court could be manipulated, and that some people could receive favored treatment in the court before he became a judge.

I told him that he certainly had no basis for making any such statement as that, that it was almost slanderous, as far as the lawyers were concerned, to say that we would be guilty of manipulation of the courts.

Q Mr. Luckie, I show you now a document, and ask you if you can identify this document?

A Yes sir. This is the petition that I discussed with Judge Kelly, this is a copy of it. There were a number of these petitions circulated.

Q Mr. Luckie, if you will, put an "F" on it; it will be House Managers' Exhibit 17-F for Identification.

A All right, sir.

(Whereupon, the above referenced document was marked Managers' Exhibit 17-F for Identification)

MR. NICHOLS: Is that the petition that he's been talking about in his previous testimony?

MR. JONES: Yes sir. I was just about to ask him what it was.

MR. NICHOLS: Just so we get some kind of continuity, if he's talking about it, have him actually read the preamble to it.

MR. JONES: I intend to, Mr. Nichols, in just a second.

BY MR. JONES:

Q Can you identify, sir, what this document is, and will you so do for us?

A This is the petition that I have referred to in my testimony, that I discussed with Judge Kelly, which Judge Kelly assisted in the circulation of, and it's a petition in opposition to the proposed Circuit change bill.

Q Is the petition - - - is this the petition which you and Judge Kelly were speaking of at the time?

A Yes sir.

MR. JONES: If the Court please, we would like to have this document introduced into evidence.

MR. NICHOLS: No objection.

MR. JONES: Thank you.

BY MR. JONES:

Q Now, Mr. Luckie, would you please read that petition?

A All right, sir. It's - - - just at the top it has the word "Petition," and under it, it reads as follows:

"Do you know that our Legislators have been asked by 19 attorneys to introduce and pass a bill in the coming Legislature to take us, the people of Pasco County, from the Sixth Judicial Circuit to the Fifth?

"The usefulness or the purpose of this bill is a mystery. Its motive is clearer. One of these 19 men will most certainly be appointed Judge. The democratic way is the majority rules. The majority of the citizens of the circuit elected a Judge. Now through a political maneuver 19 lawyers through the two Legislators seek to defeat the voice of the people by passing a bill to move Pasco County from the Sixth Judicial Circuit to the Fifth. This will not help the people of Pasco County. If the purpose is to have one of the 19 appointed Judge, why didn't he run for office and see if the people wanted him.

"This is a strange maneuver and it is wrong. It is undemocratic and un-American.

"THEREFORE, the undersigned petition the Legislature, the Governor and all persons in authority to prevent the passage of this bill and to prevent this bill from becoming the law," and below that are spaces for nineteen signatures, numbered spaces.

Q Did Judge Kelly admit or deny where this petition had been prepared?

A Mr. Jones, I'm not sure about that in this particular conversation.

Q All right, sir. Was this all the conversation, was this all the discussion which you and Judge Kelly had with reference to what was wrong with the administration of the courts?

A One other thing that I told him, and this was the beginning of the - - - this was - - - just after this, he read me a part of the ancient precedents, that part which I have read to the gentlemen here.

I told Judge Kelly, I said, "Judge, my - - - one of my main complaints, and one of the main complaints that I hear from the other lawyers is that you want us to discuss matters with you pertaining to the operation of this court." I said, "Other lawyers have discussed with you the same thing that I'm doing, but that your trouble is, you don't pay any attention to what anybody says, you won't listen to anybody."

Q Was this all the conversation, or was there further conversation, or what was the Court's reply, if you will?

A Well, the Court's reply to that was when he read this portion of the ethics governing judges, the ancient precedents, which deal with patience and gravity in hearings and "an overspeaking judge is not a well tuned cymbal."

Q Mr. Luckie, this was substantially the total conversation that you had at that time?

A Yes sir.

Q Do you recall the case of Giles vs. Raburn, which you had before Judge Kelly?

A Yes.

Q Were there any unusual circumstances surrounding that hearing, and if so, what were they?

A I represented the defendant - - -

MR. NICHOLS: Excuse me, I didn't get the style of that case.

MR. JONES: Giles vs. Raburn, G-i-l-e-s, R-a-b-u-r-n.

THE WITNESS: I represented the defendant, Raburn.

MR. NICHOLS: Excuse me, I don't believe we've been furnished with this, the particulars, or the amended bill of particulars, or anything.

MR. JONES: Mr. Nichols, there is no bill of particulars, there is no amended bill of particulars, and we do not have this file here, and we do not intend to introduce it at this time.

BY MR. JONES:

Q Go ahead, Mr. Luckie.

A I represented the defendant, Raburn. It was a damage suit brought on behalf of Giles by the Larkin law firm, in Dade City and the Thacker law firm in Kissimmee. Mr. O. S. Thacker, I believe it was, was the attorney from Kissimmee who was - - - we had a hearing.

I filed a motion to dismiss the complaint. To the lay people here, that's a motion to strike the complaint, similar - - - you had some argument about such a motion here. The complaint was in two counts, what we call two counts.

The second count of the complaint - - - it was either the first or the second count, was a complaint in which the plaintiff attempted to set forth facts showing gross negligence in connection with an accident, and claimed punitive damages, that is, damages over and above what you might ordinarily seek to recover in a lawsuit.

I moved to dismiss the entire complaint. We went in on an argument. I was present; Mr. Bill Larkin was present, and Mr. Thacker was present. I believe Mr. Goodson was also there, I'm not sure about Mr. Goodson at this time, but I announced to the Judge, when we commenced the argument, that although my motion was directed at both counts, that I was going to confine my argument to the second count, which dealt with punitive damages, and I commenced to argue, and I - - - as I started arguing, Judge Kelly interrupted me, and he started arguing the other side of the case.

It appeared to me that the hearing was going to go against me from the remarks that Judge Kelly was making, and the position that he was taking with regard to my argument on the law. Just before the hearing started, Mr. Larkin introduced Mr. Thacker, and one or the other of them made the statement, at the time of the introduction, that they each thought they had met the other someplace else - - -

Q Met the other who, Mr. Luckie, will you explain that, please?

A That Judge Kelly and Mr. Thacker had met each other before. While we were arguing, Judge - - - I was arguing the motion, Judge Kelly was arguing the - - - against me - - - I felt he was, at least, he was taking issue with what I was saying, he turned, and he said, "Mr. Thacker, I remember, now, where I met you." He said, "When I was in the United States Attorney's office," he said, "You represented a defendant," and I believe he said it was in Orlando, "we had an argument, and you moved to quash an indictment or information," and Mr. Thacker said, "Yes, Judge, since you recall that, I do remember it, the argument that we had on it," and Judge Kelly said, "As a matter of fact, Mr. Thacker, I recall that you won that case, and it was one of the few cases that I lost while I was an Assistant United States Attorney," and Mr. Thacker made some remark about that he was glad that he won - - - I don't remember exactly what he said there, but from that point on, Judge Kelly started arguing my side of the case, and he granted my motion to dismiss the second count.

Q Mr. Luckie, had the events of the Hill murder case, and in the speeches at the Zephyrhills and Valencia Restaurant, and the circumstance of the Circuit change caused you to advise your clients that they would not be able to - - - that you would not be able to effectively represent them before Judge Kelly?

A It caused me to advise one particular client of that.

Q On the 14th day of March, Mr. Luckie, 1963, did you file a petition for recusement in the case of State Road Department vs. Aiken?

A No sir, not on the 14th; that was filed on the 18th. I had a conversation with Judge Kelly about the filing of the recusement on the 14th.

Q On the 14th?

A Yes.

Q What was that conversation that you had with Judge Kelly, with reference to recusement in the case of the State Road Department vs. Aiken?

A Well, I went into the Judge's office, and just the two of us were there. I went there myself and told him that I felt, under the circumstances, that my clients would be prejudiced in any cases that he might try, and that we had a trial coming up in about two weeks, then, it was set for about the 1st of April, as I recall, somewhere along in that area, in the case of State Road Department vs. Aiken, in which I represented people by the name of Scussel, husband and wife.

I asked Judge Kelly if he would voluntarily recuse himself from that case; that is - - -

Q Where did this take place? In his office, just you and Judge Kelly in his office?

A That's correct.

Q All right, sir.

A His secretary was in the outer office.

I asked him if he would voluntarily excuse himself from trying the case. I told Judge Kelly at the time that I did not want to cause any additional public furor, that we had had - - - that there had been a lot in the newspapers about the disagreement between the court and the lawyers, although the newspaper accounts were as a result of Judge Kelly's activities, mainly, but that I would like for him to excuse himself voluntarily from the case, and told him that if he did not, that I would be compelled to file another suggestion for disqualification.

He declined to voluntarily excuse himself from the case. So, on the 18th of March, I did file a suggestion for disqualification on behalf of my clients, Scussel, in this case of State Road Department vs. Aiken.

Q Why did you go to Judge Kelly, in the privacy of his office, and talk about this matter, rather than go ahead and file for recusement, as you had done in other cases?

A We had at one time had what I considered to be a truce. Of course, a lot of things had happened since that time, but I wanted to give him an opportunity to voluntarily get out of the case, rather than avoid what I knew was going to be a hassle that would be picked up by the newspapers in the event I formally filed a suggestion for disqualification.

Q What was his answer to your request, Mr. Luckie?

A He declined to - - - he said he would not excuse himself voluntarily.

And I told him, "Well, I will have to file the Suggestion of Disqualification."

And he made some remark to the extent, "Well, that's your business."

Q And on the following day - - - I believe you said this transpired on the 14th of March - - - on the following day did you receive a telegram from Senator Covington?

A I did.

Q At approximately what time did you receive this telegram and what was the text of the telegram? The general text?

A The telegram was received about nine-thirty in the morning. I was in my office. The telegram advised that Senator Covington was withdrawing his support of the proposed circuit change bill. He said that he would not - - -

MR. NICHOLS: Excuse me. This was not in the presence of the Court. You were in your office?

THE WITNESS: I was in my office.

MR. NICHOLS: Then I object to it.

MR. JONES: Mr. Chief Justice, I hate to interrupt - - -

MR. NICHOLS: Well, let me state my objection.

MR. JONES: All right, go right ahead.

MR. NICHOLS: My objection is to his stating the contents of it when the telegram itself is the best evidence.

This was not in the presence of the Court and is not something that he said.

I would like for him to read the telegram. It is the best evidence.

MR. JONES: Mr. Chief Justice, I hate to be rude. I don't intend to be, to opposing counsel; but during this examination counsel has interrupted with suggestions of how we should put on our case.

MR. NICHOLS: I allowed him to testify for two hours without any objection.

And, Your Honor, we are going to make objections when it is necessary.

MR. JONES: If it please the Chief Justice, this is the first time that Mr. Nichols has objected. Instead, he has arisen with suggestions of what we should put in evidence and what he would like to know about it.

Now, we understand that he will have a full and ample opportunity to cross examine this witness and to put in any evidence which he feels should be there. We object to the constant interruptions except, of course, when he wishes to object.

MR. NICHOLS: Well, mine was an objection. And I addressed it to the Court, too.

CHIEF JUSTICE DREW: I will sustain the objection on the ground that the telegram - - - it concerns what is in the telegram and the telegram is the best evidence.

Now, I do agree that Mr. Nichols has a right, if he wants something clarified, to direct remarks to the Court.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: Objections must be made and, of course, you know that counsel should not unduly interrupt.

BY MR. JONES:

Q Mr. Luckie, on the same day were you called to the Court's office or were you called by the Court to come to his office?

A Yes sir.

Q Approximately what time was that?

A It was about eleven-thirty, the same morning.

Q The same morning?

A Yes sir.

Q Who called you, please sir?

A Judge Kelly.

Q What were the circumstances under which you received this call? What were you doing at the time, or what were the circumstances which existed, and where were you?

A I was in my office, which is in Dade City. Judge Kelly said that he was calling - - - I don't recall whether he said that he was or not - - - but I assumed he was calling from his office in the Court House.

At the time the call came in, Mr. Jack T. Edmund, a lawyer, was in the office with me and we were discussing a case in which I represented one side and Mr. Edmund represented the other side of the case.

Q If you will, please don't discuss any conversation.

So you had a client in your office who was a client of yours at that time?

A He was not a client. He was a lawyer.

Q All right, sir.

A And we were discussing a case in which I represented one side and - - -

Q Did you have any clients in your outer office waiting for you, or just exactly what was the scene there at your office upon receiving this call?

A Well, this was, as I say, about eleven-thirty. Mr. Edmund was in my office; and a Mr. Charles Touchton, a client of mine, was waiting in the outer office to see me as soon as I got through with Mr. Edmund.

Q Now, if you will, please sir, relate the conversation between yourself and Judge Kelly at that time.

A When he called, he of course identified himself, "This is Judge Kelly"; and said that he wanted me to come to a meeting that he was calling in the Court Room at the Court House at twelve-fifteen that same date.

Q What time was this that the call was being made?

A This was about eleven-thirty.

Q What was your reply, Mr. Luckie? If you will, relate to the Court the conversation between yourself and Judge Kelly.

A First I asked Judge Kelly what the purpose of the meeting was; and he said that he wanted to discuss some matters dealing with the administration of the Court.

I then tried to get him to be more specific about what

he wanted to discuss. Under ordinary circumstances I would have gone without question, but there were two circumstances that made me reluctant. One was the fact that I was busy and it was short notice. My client was waiting out in the office to see me. And I had Mr. Edmund in there. And the other was that I knew that Senator Covington's support of the Circuit Change Bill had been withdrawn just that morning, and that Judge Kelly knew about it.

And I was trying to find out from him what the nature of the conference was. And he said that he had called some of the other lawyers in town and that they had agreed to meet him up there at the Court House at twelve-fifteen.

And I said, "Well, Judge," - - - I asked him this - - - I said, "Well, Judge, does this meeting that you are going to have involve any of my clients?"

And he said it did not.

I said, "Well, does it involve any disciplinary action of any kind?"

And he said, "It does not."

And I asked him if it involved any case that was pending before the Court in which I represented a client.

He said it didn't.

I said, "Well, under those circumstances, Judge, I would prefer not to come."

Q Mr. Luckie, did you also explain to the Court the fact that you had a person in your office and a client outside that was waiting on you?

A Yes sir. He said, "Well, Mr. Luckie, are you refusing to come?"

I told him, I said, "Judge, under the circumstances, I do."

He said, "Well, I order you to come."

And I said, "Well, Judge, if that is your attitude about it, I suggest that you put it in writing."

And he said, "All right, I will," and hung up.

Q Mr. Luckie, what were your reasons for causing this to be brought about at this time?

A Causing what to be brought about?

Q Your failure to go except by his written order?

A Well, I was very apprehensive about what Judge Kelly wanted to say; and I was apprehensive enough that I called another lawyer in town and told him that if I was going to be required to go up to the Court House, I wanted him to be there to represent me.

Q Did the events in the Hill case and the discussion on the petition - - -

MR. NICHOLS: Now, I object to counsel's stating that. We have got a lawyer who certainly knows what the facts are.

MR. JONES: I withdraw the question. Thank you.

BY MR. JONES:

Q What was the result of the phone call and your denying or refusing to go to the Court at that time?

A Well, Mr. Edmund left my office and Mr. Touchton came in. And I received a phone call from a deputy sheriff advising that he had an order he wanted to serve upon me, and asked me - - - well, of course, this would be a conversation.

Q If you would, just tell us what happened, within your own knowledge.

A At twelve-sixteen - - - which is marked on the order, as the time of service - - - the deputy sheriff served an order upon me to appear before Judge Kelly in the Court Room at the Court House at twelve-fifteen.

Q Mr. Luckie, I show you a document and ask you if you can identify that document?

A I can.

MR. JONES: We would like to have it marked by the Secretary as Managers' Exhibit 18-G.

MR. NICHOLS: We have no objection.

CHIEF JUSTICE DREW: It will be admitted.

BY MR. JONES:

Q Is this the order that was served on you by the deputy sheriff?

A This is a copy of the order.

Q Is it a certified copy of the order?

A It is the copy that the deputy sheriff handed to me.

MR. JONES: We would like to admit it into evidence, Your Honor. Do I understand that the Chief Justice has done so?

CHIEF JUSTICE DREW: I have excused Senator Stratton. He has to catch a plane, and he will be excused under the same conditions that the rules provide. You may proceed.

MR. JONES: Is the order admitted, Your Honor?

CHIEF JUSTICE DREW: Yes, it is admitted.

BY MR. JONES:

Q Mr. Luckie, will you please read the order at this time?

A This order at the top says, "In the Circuit Court of the Sixth Judicial Circuit of the State of Florida, in and for Pasco County," then there is a space, and then "Order," and then these words:

"You, Charles Luckie, Jr., a duly licensed and qualified Attorney practicing in Pasco County, Florida, are ordered to appear before this court in the Courthouse in Dade City, Florida in the Circuit Court Room at 12:15 P. M. this 15th day of March, A. D. 1963, in connection with matters concerning the administration of this Court.

"If any matter in connection with your appearance would create a reasonable basis for any continuance it will be considered by the Court in light of this short notice."

Signed, Richard Kelly, Circuit Judge.

And then, "A true copy. Richard Kelly, Circuit Judge."

And on the bottom is the Sheriff's stamp, "Leslie Bessenger, Sheriff, Pasco County, Florida, by Billy Smith, D.S." dated March 15, 1963; time, 12:16 P. M.

Q Mr. Luckie, did you go to the Court House in response to this; and, if you will, would you please describe the circumstances that you found when you arrived there?

A Yes sir, I immediately went to the Court House. My client, Mr. Touchton, who was in the office when the order was served upon me, drove me to the Court House in his car. I went into the Court House and went upstairs and went into the Court Room.

When I arrived in the Court Room, there were four or

five lawyers present. Judge Kelly was not there. I believe also that there was - - - as I walked in the Court Room, Deputy Sheriff Billy Smith walked behind me, and I believe that there was a Court Reporter there.

Q This was in open court?

A Yes sir, it was in the Court Room. The order directed me to appear in the Court Room. Mrs. Nell Woodcock, a Reporter for the Tampa Tribune, was there.

Q Do you know who had called her to be there?

A I don't know anything about how she got there.

Q How many lawyers are in the Pasco Bar?

A Well, at that time I believe there were twenty-three lawyers.

Q How many lawyers were there present when you arrived?

A I believe, five.

Q Did the Judge appear later on? I believe you said he was not there at the time.

A Yes sir, we sat there, and Deputy Smith sat right behind me where I was sitting in the Court Room. And Judge Kelly then stuck his head in the door, of the entrance to the Court Room where spectators come in. He didn't come in through the door where the Judge ordinarily comes in the Court Room. It was back behind where I was sitting.

He stuck his head in the door and said, "Gentlemen, I would like to see you in Chambers."

And the lawyers started getting up, and I sat there. About that time Deputy Smith, who was in the Court Room, and then Deputy Snyder came in the Court Room from in front of me through another door. And I continued to sit there, and Judge Kelly said, "Mr. Luckie, I want you to come into my Chambers."

And I told him, I said, "Well, Judge, you served an order upon me directing me to appear in open court in the Court Room here, and I am here; and whatever you have to say to me I think should be said to me in open court."

Q What was the reason for this, Mr. Luckie?

A Well, I was afraid - - - I didn't know what was going to happen. And I was concerned. And if there was going to be anything embarrassing to me at that stage of our controversy, I felt like it ought to be there in the open court room. And I also liked the fact that, although I didn't have anything to do with her being there, I was glad of the presence of the Court Reporter.

Q What was the Judge's reply when you declined to go into his private Chambers?

A He told me, he said, "Well, your lawyer is in my office."

And I said, "Well, I still want whatever is said to be in the open court."

And then he ordered me to appear in his chambers, and when he ordered me to do it, I went in there.

Q What transpired then, Mr. Luckie, after you were in the Office? If you will just generally relate the conversation or what was said by yourself and Judge Kelly and no one else, if you will, please.

A Well, Mr. Larkin, who was representing me, Mr. E. B. Larkin, objected to the manner in which I had been brought into the Court Room and the circumstances of it.

MR. NICHOLS: Excuse me. You are relating what went on in the Chambers? Is that what you were asked?

MR. JONES: Mr. Nichols, you will have this opportunity on cross examination.

CHIEF JUSTICE DREW: He has got a right to clear it up.

MR. NICHOLS: I object to anything that went on inside the Chambers if a Court Reporter's transcript is available. It is my understanding that it is in the hands of both of us and it is the best record of what was said and what was done in the Court Room.

CHIEF JUSTICE DREW: Overruled.

MR. JONES: Thank you.

THE WITNESS: Judge Kelly made a speech to us, in which he said that he was aware of the conflict that had arisen and the unfortunate circumstances that existed. That we had had a heated dispute and that he thought that was a good thing to clear the air. That he didn't know whether he was going to run for Judge again or not, but if he did, he was sure that we would have another one. And he stated that he wanted to cooperate with the lawyers and wanted the lawyers to cooperate with him.

There was nothing that I could say was offensive about what Judge Kelly said at that hearing. He did not say anything to me as an individual. He said this to us as a group. It was the manner in which it was brought about that was so objectionable, as far as I was concerned.

BY MR. JONES:

Q Had the Judge said these same things to you many times prior to this meeting?

A Yes sir. It was like a - - - sort of like a record. I had heard that before.

Q Mr. Luckie, I hand you now a file in three volumes, and ask you if you can identify those files?

A This is a file in the Circuit Court of Pasco County, Law Case Number 1753, State Road Department of Florida and Pasco County, Petitioners, vs. James E. Aiken and other Defendants.

MR. JONES: Mr. Secretary, we would like to have this identified as Managers' Exhibit 19-H; and, if we may, we will let Mr. Luckie put it on. If 19-H is correct. Am I correct in that?

MR. NICHOLS: We have no objection to the identification.

MR. JONES: If counsel has no objection. We will just mark it for identification.

THE WITNESS: I will just put an "H" on here. Is that all right?

CHIEF JUSTICE DREW: It is admitted for identification.

THE WITNESS: The other file that I have here is the file of Kelly, Richard, Circuit Judge, vs. Scussel, George C. and others, File Number 32750, of the Supreme Court of Florida.

MR. NICHOLS: We have no objection to the identification.

MR. JONES: Thank you, sir.

If you will mark that one as "20-I," Mr. Luckie, as Managers' Exhibit I.

CHIEF JUSTICE DREW: It is admitted for identification.

BY MR. JONES:

Q Mr. Luckie, I will ask you if in this case you and/or

your law firm filed a suggestion to recuse or excuse Judge Kelly from hearing this case?

A We did.

Q Mr. Luckie, what was the date that Judge Kelly called you to come to his office under the order?

A March 15.

Q March 15th?

A 1963.

Q What date did you file the petition to recuse Judge Kelly in State Road Department vs. Aiken?

A March 18, 1963.

Q Is this the same case in which, on March 14, you went to the judge's chambers and asked him to voluntarily recuse himself?

A Yes sir.

Q Well, what date was that, if you recall?

A March 14.

Q And on the 15th, I believe you said, was the hearing in the judge's office, under the order?

A Yes sir.

Q Now, would you please give us the date that you filed your suggestion of recusement?

A March 18.

Q Have you located that suggestion in the official courts records, Mr. Luckie?

A Yes sir.

Q If you please, sir, read that to the Court.

A This suggestion of disqualification was to the Honorable Richard Kelly, Circuit Judge of the entitled Court:

"Come now the Defendants, GEORGE P. SCUSSEL and LOUISE W. SCUSSEL, his wife, by and through their undersigned attorneys of record, and respectfully suggests that Judge Richard Kelly be disqualified to preside as Circuit Judge in the above styled cause for the following reasons:

1. That the Defendants feel that they will not receive a fair trial in the above styled cause if Judge Richard Kelly is the presiding Judge on account of the prejudice of Judge Kelly against these Defendants. These Defendants are represented in this cause by Charlie Luckie, Jr., of the law firm Dayton, Dayton & Luckie, Dade City, Florida, which is composed of the undersigned attorney, Charlie Luckie, Jr. and George C. Dayton; and these Defendants aver and firmly believe that Judge Kelly is so biased and prejudiced" - - -

SENATOR BARRON: Mr. Chief Justice, I wonder if the Court would ask of the House Managers and the witness if this is the same type of thing that he read so long this morning, and if they will agree that it is, simply dispose of the reading of it.

CHIEF JUSTICE DREW: Is there any way - - - what is the purpose of the reading of this suggestion of disqualification?

MR. JONES: I would like to read it into the record and evidence to the Court the grounds upon which were stated and filed in the official file - - - why the petition was made.

It is - - - to answer Senator Barron's question, it is a petition for recusement, which is a petition for recusement that was filed in the first case; so, they are similar, but they're not similar in grounds or statements. So, it is - - -

CHIEF JUSTICE DREW: Could the witness read the ground of the difference, where the ground is different from the other? Could the witness pick out the differences in this case, in this one, and read any additional grounds, rather than - - - now, counsel has the right to have the witness read this, if they want to, but if you could save time, I'm sure the Senators would appreciate it, by stating that it's generally the same as the other one, with certain additional grounds.

MR. JONES: No sir, it is not, generally, and I state to the Court that it is substantially shorter than the one that was read on yesterday.

CHIEF JUSTICE DREW: Well, maybe we'll save time by going on and reading it.

THE WITNESS: Mr. Jones, I could leave out a great deal of this and still get down to the body of it. I could leave out considerable portions of it, and still get to the meat of the thing.

MR. NICHOLS: May it please the Court, I have no objection to the witness reading the full statement, because, just picking out parts of it, I feel - - -

CHIEF JUSTICE DREW: I think it would be better to read it.

Go ahead.

BY MR. JONES:

Q Please, Mr. Luckie.

A - - - "believe that Judge Kelly is so biased and prejudiced of their said counsel of record that they will be unable to obtain a fair and impartial trial of the issues involved in this cause.

"2. Attached hereto are the following documents filed in support of this Suggestion of Disqualification, which are by reference made a part hereof:

"(a) Affidavit of Bias and Prejudice executed by Charlie Luckie, Jr., counsel of record for the Defendants.

"(b) Affidavit of the Defendants, GEORGE P. SCUSSEL and LOUISE W. SCUSSEL, his wife.

"(c) Affidavits of two reputable citizens in the county who are not related to the Defendants or their counsel.

"(d) Certificate of Good Faith executed by Defendants' counsel of record.

"3. The Affidavits, Suggestion of Disqualification, Opinion and Order of Disqualification, and Response of counsel to Opinion and Order of Disqualification in the case of James T. Haymons, Plaintiff, -vs- T. L. Groover, d/b/a Safety Cab Co., Defendant, Law No. 6107, in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, are by reference made a part of this Suggestion of Disqualifications in the above styled cause.

"Respectfully submitted,

"DAYTON, DAYTON & LUCKIE
"Attorneys for Defendants

"BY: /s/ Charlie Luckie, Jr."

And then, there's a certificate of service on there. Do you think I should read that certificate, Mr. Chief Justice?

CHIEF JUSTICE DREW: No sir, omit that.

A (Continuing) Then, "Affidavit of Charlie Luckie, Jr., as to Bias and Prejudice:

"STATE OF FLORIDA

"COUNTY OF PASCO

"Before me, the undersigned authority, personally appeared Charlie Luckie, Jr., Counsel of record for George P. Scussel and Louise W. Scussel, his wife, Defendants in the above styled cause who, upon being first duly sworn, deposes and says:

"That Affiant avers and firmly believes that Judge Richard Kelly of the Sixth Judicial Circuit of Florida, is so biased and prejudiced against him and his law partner, George C. Dayton, that his client, the above named Defendant in this cause, will not receive a fair and impartial trial of the issues involved in this cause; and further the Affiant avers and firmly believes that the said Judge Richard Kelly is so biased and prejudiced against him and his law partner, George C. Dayton, that the said Judge should be disqualified to try any cases in which he or his law firm are involved as attorneys. The reasons that this Affiant feels that the said Richard Kelly is biased and prejudiced against him and therefore will not be fair and impartial to the said Defendants in this cause or any party whom this attorney or his law firm might represent in the Sixth Judicial Circuit of Florida are as follows:

"1. That this Affiant and his law partner, George C. Dayton, heretofore filed a suggestion of disqualification against the said Judge Richard Kelly in the case of James T. Haymons -vs- T. L. Groover, d/b/a Safety Cab Company, Law No. 1607, filed in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, Florida. As a result of the suggestion for disqualification in said cause, the said Judge Richard Kelly, entered an Opinion and Order of Disqualification in which he apologized to this Affiant and his law partner for his conduct which gave rise to the filing of the Suggestions for Disqualification therein. This Affiant and his law partner thereupon filed a Response to the Opinion and Order of Disqualification in said cause accepting Judge Richard Kelly's apology.

"2. Since filing the Response and acceptance of Judge Kelly's apology in Law Case No. 1607, this Affiant and his said law partner have made a sincere effort to work in harmony with and to cooperate with Judge Richard Kelly but in spite of their efforts, Judge Kelly has done the following things which effect the operation of his Court, this Affiant's representation of his client in this cause, and this Affiant's representation of past and future clients in matters before the said Judge Richard Kelly, to-wit:

"(a) That Judge Kelly heretofore appointed this Affiant to represent an indigent Defendant, Willie Charles Hill, who was indicted and tried for first degree murder in the Circuit Court of Pasco County, Florida, Criminal Case No. 996. During the course of this trial, Judge Kelly, in the opinion of this Affiant, flagrantly violated Canon 15 of the Code of Ethics governing Judges adopted by the Supreme Court of Florida on January 27, 1941, which Code of Ethics is still in full force and effect, by improperly intervening in the trial, by unnecessarily interrupting counsel in their arguments, by evincing a severe unwarranted attitude towards witnesses and by addressing counsel and the Defendant in said cause in a controversial manner or tone. For example in this cause, Judge Kelly stated during the trial of this cause the following:

"Mr. Luckie, aren't we in this position? This defendant has at least written out in his own hand a statement which clearly and concisely shows his guilt in this particular case. (R 363)

and further stated:

"But what we are faced with is the fact that because he was illegally arrested, then because of - - - even though what he told is the truth, and he is guilty as sin, the fact is that he told the truth while under duress and he did not do so voluntarily, and the law is couched in such terms to protect the guilty as well as the innocent. Is that the proposition you're putting to the Court?" (R 363-364).

"These remarks were made by the said Judge Kelly in open court at the Courthouse in Dade City, Florida, during the trial of said Defendant on a charge of first degree murder, in spite of the fact that the law says that a person charged with a crime goes into court clothed with a cloak of innocence until such time as he is proven guilty beyond and to the exclusion of every reasonable doubt. This cloak of innocence with which the said Willie Charles Hill was clothed when he went into Court was removed by the said Judge Kelly in that proceeding long before all of the evidence was in and the case was submitted to the jury for determination.

"That during the course of this trial, Judge Kelly insisted upon certain evidence (States Exhibit No. 1) being admitted into evidence in spite of the fact that it was not proffered by the State's Attorney and the State's Attorney announced to the Court that he was not sure that this piece of evidence, being a written confession, had been freely and voluntarily made.

"(b) That this Affiant along with eighteen other practicing attorneys in Pasco County, Florida, recently petitioned the State Senator and State Representative of Pasco County to enact into law at the next session of the Florida Legislature, a bill taking Pasco County out of the Sixth Judicial Circuit of Florida and putting the said county into the Fifth Judicial Circuit of Florida and providing that Judge Richard Kelly continue as a Judge of the Sixth Judicial Circuit of Florida to which office he was elected and is commissioned by the State to hold. The reason for the request that Judge Kelly remain as a Judge of the Sixth Judicial Circuit being that in the opinion of this Affiant and in the opinion of the Attorney General of the State of Florida the bill could not lawfully provide that Judge Kelly become a Judge of the Fifth Judicial Circuit of Florida. The people in the Fifth Judicial Circuit did not elect him and he is not qualified to hold that office under his present commission from the State.

"(c) That upon hearing about the move by this Affiant and other attorneys to have a law passed by the legislature to put Pasco County into the Fifth Judicial Circuit of Florida, Judge Kelly called the newspaper and gave a statement to a newspaper reporter from the St. Petersburg Times denouncing the move by this Affiant and other attorneys as being a 'straight gerrymandering by one political party' and said it could 'destroy the non-partisan character of the court' and further denounced the move as being inspired by democratic lawyers. A copy of the newspaper article setting forth the comments of Judge Kelly to the said newspaper reporter is attached hereto and marked Exhibit 'A.'

"(d) That on February 26, 1963, Judge Kelly made a speech before the Women's Republican Club of Zephyrhills, Florida, during which speech he mentioned this Affiant by name and labeled the proposed Judicial Circuit change as 'sinister' and an effort by those interested to select another Judge against the will of the people and by reference to a matter in which he was involved as a Federal Prosecutor and later as a practicing attorney inferred that the persons behind the proposed Judicial Circuit change would steal money from the people if it were not for him and his vigilance. A copy of the speech made by Judge Kelly is attached hereto and marked Exhibit 'B.'

"(e) That Judge Kelly in his speech before the Women's Republican Club in Zephyrhills, Florida, and on several other occasions, referred to this proposed Judicial Circuit change as a move by the nineteen lawyers including this Affiant to hand-pick a Circuit Judge from the group thereby implying that if a Judge should be selected from this group he would be a pawn for the remaining members of the group.

"(f) That in his speech before the Women's Republican Club in Zephyrhills, Florida, and on several other occasions, Judge Kelly challenged the lawyers who are in favor of the proposed judicial change to 'come and up in the broad daylight and to have them announce to you, the public, why they are doing this,' thereby inviting a public hassel or argument between the Court and these attorneys practicing before the Court which would be in violation of the Canons of Judicial Ethics governing Judges and the Canons of Judicial Ethics governing attorneys. That Judge Kelly has heretofore violated Canon 28 of the Code of Ethics governing Judges in Florida, which forbids partisan political activity by a Judge and is seeking to intimidate the attorneys involved in this matter into violating Canon No. One of the Ethics governing attorneys which forbids public quarrels between lawyers and Judges and demands that lawyers maintain a respectful attitude toward the Judges and the Courts.

"(g) That Judge Kelly, while a candidate for the office of Circuit Judge of the Sixth Judicial Circuit, conducted a partisan political campaign and attacked all of the Democratic office holders in Pasco County. He has recently alluded to the proposed judicial change legislation as being a partisan political issue.

"(h) That this Affiant is a life-long Democrat and Judge Kelly, who is a Republican, has recently renewed his feud with all Democrats, including this Affiant, which he started during his campaign for the office which he now holds.

"(i) That in recent speeches and statements to the press, Judge Kelly has said that this Affiant, as well as the other eighteen lawyers who have requested the change of Judicial Circuit will not say why they seek this change in spite of the fact that this Affiant and the other lawyers have stated publicly several good and justifiable reasons for the change and this Affiant and several other attorneys have privately told Judge Kelly, at his request, other reasons for the requested change which involve matters between the Court and the attorneys, and his conduct as a Judge of the Court.

"(j) That Judge Kelly has admitted to this Affiant that on a number of occasions in course of trials of law suits in this county, he has violated Canon 15 of the Code of Ethics, governing Judges which deals with the Court's unjudicious interference in the conduct of trials and this Affiant believes that Judge Kelly will continue to violate this Canon of the Code of Ethics to the prejudice of his client in the above styled cause and to the prejudice of his clients in future litigation.

"(k) That Judge Kelly has heretofore opposed a request by the attorneys practicing in Pasco County that other Judges of the Sixth Judicial Circuit of Florida, who reside in Pinellas County, come to Pasco County to try cases on a rotating basis. Judge Kelly has taken the position that he is the only Judge who should be allowed to try cases in Pasco County in spite of the fact that the Judges of the Sixth Judicial Circuit who reside in Pinellas County are Judges of the entire Circuit, including Pasco County. Before Judge Kelly was elected as Circuit Judge in Pasco County, other Judges of the Sixth Judicial Circuit, who reside in Pinellas County, frequently came to Pasco County to try cases, but no longer do so because of Judge Kelly's attitude and objections to their coming.

"(l) That on Friday morning, March 15, 1963, Judge Kelly and this Affiant, as well as other lawyers practicing in Pasco County, received notification from the Honorable D. D. Covington, State Senator of the 38th Senatorial District of Florida, that he, the Senator, was not going to introduce into the Legislature the proposed bill to take Pasco County out of the Sixth Judicial Circuit and make said county a part of the Fifth Judicial Circuit. That within approximately two hours from the time this Affiant received such notification, he received a telephone call from Judge Kelly and Judge Kelly advised this Affiant that he wished to see this Affiant and other attorneys at the Courthouse in Dade City, Florida, at 12:15 P. M. to discuss matters concerning the administration of the Circuit Court of Pasco County, Florida. This Affiant advised Judge Kelly that he could see no useful purpose for such a meeting because these matters had previously been discussed. Judge Kelly then stated to this Affiant over the telephone that 'I order you to appear before me at 12:15.' This Affiant then stated to Judge Kelly that if that was the way he felt about the matter, he had better put his order in writing because the matter which he was ordering him to appear for was not a disciplinary matter nor a matter involving this Affiant's clients or any cause pending before the Court. At 12:16 P. M., this Affiant was served with an Order signed by Judge Kelly directing this Affiant to appear before the Court in the Courthouse, Dade City, Florida, in the Circuit Court Room at 12:15 P. M. on March 15, 1963. A copy of the Court Order is attached hereto, marked Exhibit 'C' and made a part hereof."

CHIEF JUSTICE DREW: Mr. Luckie, inasmuch as you have testified with respect to what you read, will you go down, in your affidavit, to where you finish your previous testimony, and save some time?

I don't want to cut you off, but - - -

THE WITNESS: All right, sir. I was going to do that, but he said to read it all, but I will - - - I will, for the sake of time, if that's agreeable. Skipping down - - -

MR. JONES: Excuse me just a minute. Mr. Chief Justice, Mr. Nichols objected to this, and I wouldn't want him to do it - - -

MR. NICHOLS: This is your evidence. I'm trying to help you get it in.

MR. JONES: I know, but you objected to reading just parts of it. Now, do I understand that you - - - that your objection still stands, or do you withdraw it?

MR. NICHOLS: I didn't object. You introduced it, and I said I have no objection, but I thought he was just going to pick out parts. Now, you are the one that wanted this matter read.

MR. JONES: Do I understand now that you are in agreement - - -

SENATOR MATHEWS: Mr. Chief Justice, would the Chief Justice instruct both counsel that they should address their remarks to the Chief Justice, not to each other.

CHIEF JUSTICE DREW: Yes, I have, once or twice, and I think both counsel know that. Be sure to address your remarks to the Chief Justice, but not to each other, and Mr. Nichols - - -

MR. NICHOLS: You're absolutely correct, Your Honor, and I apologize.

CHIEF JUSTICE DREW: Mr. Nichols made no objection to the suggestion of the Presiding Officer, and I presume he has none, that he is in agreement.

BY MR. JONES:

Q Go ahead, sir.

A All right. I am skipping some.

"That Affiant had planned to attach to this Affidavit a certified transcript of the proceedings before Judge Kelly on March 15, 1963, as hereinabove referred to but when this Affiant contacted Mr. James M. Swain, Court Reporter, who stenographically reported the proceedings, the Court Reporter advised this Affiant that he has orders from Judge Kelly not to release the transcript or a copy thereof without his, Judge Kelly's, permission. This Affi-

ant asked Mr. Swain to contact Judge Kelly and to advise him that this Affiant desires a copy of the transcript of proceedings. Mr. Swain called Judge Kelly this date via long distant telephone in St. Petersburg and Judge Kelly has refused to release a copy of the transcript of proceedings to this Affiant unless a written Petition is filed requesting the release of a copy of the transcript and an Order is entered by him, Judge Kelly, authorizing such release. Attached hereto and marked Exhibit 'D' is a copy of the letter from the Court Reporter, Mr. James M. Swain, addressed to this Affiant, a copy of which has been sent to Judge Kelly confirming Judge Kelly's position in this matter.

"That Judge Kelly's actions in refusing to allow this Affiant to have a copy of the said transcript of proceedings upon oral request is arbitrary, is designed to cause this Affiant additional work and trouble in connection with this matter and is further evidence of his vindictive nature. Judge Kelly was advised by this Affiant on Thursday, March 14, 1963."

I believe that that would be repetitious, the rest of it, Your Honor.

And that is the end of the affidavit.

BY MR. JONES:

Mr. Luckie, were there other petitions filed in the same cause by other persons; and, if so, will you just tell us who they were?

A Well, there was an affidavit by Mr. and Mrs. Scussel; and an affidavit by Robert E. Clawson, an attorney; an affidavit by E. B. Larkin, an attorney; and a certificate of good faith which I signed. And the exhibits that I mentioned are attached.

Q Was a contempt citation served on you as a result of your filing this petition?

A Yes sir.

Q Was it filed on all of the parties - - - against all of the parties? The contempt citation?

A Judge Kelly - - -

MR. NICHOLS: Excuse me, Your Honor.

I object to Mr. Jones' statement that it was a contempt citation. I believe it was a rule to show cause. It was not a matter of contempt.

CHIEF JUSTICE DREW: Was it a contempt citation or a rule to show cause?

THE WITNESS: It was a contempt citation, and an order to appear. The citation stated, in many instances, that I was in fact in contempt; and directed me to appear before the Court on three different occasions, at three different times, over a period of two days, to show cause - - -

BY MR. JONES:

Q Referring back to my question, was such a citation order or rule served on all of the parties who filed affidavits in the cause?

A No sir. No, they were served upon me. And contempt citations were also filed against Attorney Bob Clawson and against Attorney E. B. Larkin.

Q Was a contempt citation filed on your clients, the Scussels?

A No sir.

Q Had they filed a petition for recusement?

A Yes sir.

Q Under oath?

A Yes sir.

Q Mr. Luckie, did the Court rule on the petition which you filed asking him to recuse himself?

A No sir.

Q Did you request him to rule; and if so, when - - - in relation to the filing of the petition?

A Yes sir. This case was set for trial, I believe, about two weeks after the date of filing of the Suggestion.

Q When did you request the ruling on your petition?

A Well, I did not hear from the Court; so on Wednesday, before the trial was to commence on Monday, I went up to Judge Kelly's office with George Dayton. And before I went I asked W. Kenneth Barnes, who was the County Attorney, to meet me at Judge Kelly's office; because I was going to discuss the Suggestion of Disqualification and Judge Barnes, of course, was an attorney of record in the case, representing the Petitioners.

So - - - do you want me to relate this?

Q Yes, if you will. The question was: Did you request the Court to rule on your Suggestion?

A Yes, I went there and I explained to Judge Kelly that time was short; that we were supposed to commence the trial on Monday, following Wednesday; and asked him to make a ruling on the Suggestion of Disqualification.

And he promised me that he would rule on it by noon Saturday.

Q Did he rule on the petition by noon Saturday?

A No sir.

Q Did he deny it or did he call you or did he say he would or would not, or what was the communication by which you learned that he was not going to rule on it?

A On Friday, before Saturday, Judge Kelly continued the case on a petition filed by the Larkin law firm.

He entered an order continuing the case. Mr. Larkin represented - - - this was a condemnation suit and there were a number of parties involved. I represented Mr. and Mrs. Scussel. Mr. Larkin's firm represented some other people. And, on behalf of their clients, they moved for a continuance and Judge Kelly granted it.

Q Mr. Larkin, I believe you said, had also filed such a petition to recuse?

A No.

Q Is that correct?

A No.

Q He did not?

A No, he did not. He filed a motion for continuance of the case.

Q How many witnesses approximately, if you know, were in the condemnation suit or to be called?

A I don't know exactly how many. I myself had my clients, of course; and I believe - - -

Q How many parties were there, if you can tell us?

A I don't know, but there must have been close to a hundred parcels of land involved.

Q And your case was set for trial on Monday, I believe you stated; and it was continued on the Friday prior to the Monday; is that correct?

A That's right.

Q In relation to Monday - - - or the day that the trial

was to have started - - - did you hear anything further; and if so, when - - - with regard to your petition for recusement?

A On Tuesday following that Monday, at about four o'clock, the Deputy Sheriff served me with three criminal contempt citations; and they were filed in separate cases. There was a case number assigned to each one of them. On one of them I was directed to appear before the Court at three o'clock in the afternoon on the following Wednesday. And then another one was set for four o'clock - - - on the following Thursday, I mean. There was a hearing set at three o'clock Thursday; four o'clock Thursday; and two o'clock on Friday.

The contempt citation was served upon me on Tuesday before those days, about four o'clock.

Q The case was to start on Monday, but on the Tuesday following that Monday you were served with three hearings; is that correct?

A Three criminal contempt citations.

Q And they were to be on Thursday and Friday of that week?

A That is correct.

Q Did you contact Judge Kelly in response to these notices?

A I tried to contact him by telephone as soon as I got them. He was not in Dade City, as I recall. And I tried to reach his home and he was not there. He was in St. Petersburg or Clearwater, I don't remember which. But I got information that he was en route to his home. That night I went to the law office of Larkin, Larkin & Goodson, and I called Judge Kelly at his home near Zephyrhills; and asked him if he would grant me a continuance of those hearings.

I explained to him that I had just been served that afternoon with the criminal contempt citations; that the hearings were set for the following Thursday and Friday; and that I did not have time to prepare myself or, as a matter of fact, I did not know what I was going to do at that time. That I was in a state of confusion about it. And I asked him if he would give me additional time in which to consider the matter.

Q What was his reply, Mr. Luckie?

A He said, "I won't tell you whether I will and I won't tell you that I won't. I won't say either way, Mr. Luckie."

He said, "If you will file a written application for continuance and present it to me tomorrow morning, I will consider it."

Q "Tomorrow morning" being Wednesday?

A Yes sir.

Q The first citation was to be heard on Thursday?

A Yes.

Q What did you do then, Mr. Luckie?

A Well, I asked Judge Kelly at that time also if - - - I said, "Well, Judge, will you give me some indication of how you would rule?"

I said, "I don't mind filing a written application for a continuance, but can you tell me now over the telephone what your inclination would be about it?"

I said, "I have stated to you the grounds of the application. If I do file a formal application," I said, "they would be the same as I have already told you."

I said, "Can you give me an indication of your ruling in the event I should attempt to present a petition to you tomorrow morning?"

And he said, "I can't do it. I will consider it when it is presented."

Q Did you prepare such a petition or what action did you take?

A No sir. I then began that night to work on a Suggestion for Writ of Prohibition to be filed in the District Court of Appeal of Florida for the Second District.

Q Would you explain, sir, what is a "Writ of Prohibition," very briefly, if you will?

A Well, what I started preparing was the Suggestion. That was addressed to the Court, asking them to prohibit Judge Kelly from proceeding in the contempt matters, and also to prohibit Judge Kelly from proceeding in the trial of the case.

That is, to require the Appellate Court to - - - to ask the Appellate Court to require Judge Kelly to dispense with any further proceedings in the cause.

Q When did you prepare this, Mr. Luckie, or when were you in the process of preparing it?

A I started preparing it Tuesday night; and I worked on it until pretty late that night. And I got up early the next morning and started again, and got my stenographer down there to the office. And I finished the Suggestion for Writ of Prohibition. I had to get a transcript of the record and I had to prepare a brief to go along with it. And when you present a Suggestion for Writ of Prohibition, in addition to the preparation of the Suggestion, you have to have a brief to file with it.

Q Mr. Luckie, with reference to the request of Judge Kelly to file a formal petition for a continuance, that was on a Tuesday night.

Had the petition for the continuance been denied, would you have had sufficient time to prepare a Writ of Prohibition prior to Thursday, which was the time set for the first hearing on the citation?

A I would have never made it.

Q Was this the reason that you prepared the Writ of Prohibition to the Second District Court of Appeal, is that correct?

A Yes sir.

Q In the meantime were you further set - - - between Tuesday night and Thursday, were you set down for a further hearing by Judge Kelly?

A Yes sir. While I was working on the Suggestion for Writ of Prohibition and my brief to be filed with the District Court of Appeal, Judge Kelly's secretary served me with a notice that he was going to conduct a hearing to determine the sufficiency of the Suggestion for Disqualification; and the hearing was set for, I believe, eleven o'clock on Friday. The following Friday.

Q Which suggestion for recusement was he going to hear at eleven o'clock on Friday? The one for which you were cited?

A No sir.

Q Or the other one?

A No, this was another one. This was another hearing. So this made four hearings that he had me scheduled for.

Q Which petition for disqualification was it?

A The petition out of which the contempt citation arose.

Q Was it the Scussel - - -

A Yes, Scussel.

Q Or State Road Department vs. Aiken?

A Yes, in connection with the petition for disqualification I filed for Scussel.

Q Did you file the Writ of Prohibition?

A Yes sir. The Suggestion for a Writ.

Q Where and when did you file it, and please give us the circumstances under which it was filed.

A I filed the Suggestion for Writ of Prohibition with the Clerk of the District Court on Wednesday afternoon.

The issuance of a - - - I asked the Court to issue a preliminary order; in other words, stopping Judge Kelly from proceeding preliminarily until the matter could be fully argued before the Court.

The rules of the Court, the District Court, require that three Judges assent to this type of order. Judge Shannon was the only Judge there. Judge Smith was in Fort Lauderdale, and Judge Allen and Judge Kanner were in bed sick with the flu.

The clerk agreed to take the Suggestion down to Judge Allen and Judge Kanner and see what their attitude would be about it.

Q What was the result of your application for a Writ of Prohibition?

A The Court granted what is called a Rule Nisi. That is, they stayed the proceeding and directed Judge Kelly not to hold the hearings on Thursday and Friday until the matter could be further argued before the Court.

CHIEF JUSTICE DREW: I would like to interrupt just a minute to inquire of counsel. The Senators were going to adjourn in ten minutes and I have a number of questions that have been asked by Senators. I would like to inquire if you have any objection to asking these questions at this time, rather than at a later time. They would like to have them answered before they adjourn.

MR. JONES: How long would it require?

CHIEF JUSTICE DREW: Well, it would take the balance of the time, most of it.

SENATOR PRICE: Mr. Chief Justice, I have several questions up there myself. I would particularly like to have my questions asked after the cross examination of the witness.

CHIEF JUSTICE DREW: Well, maybe that would be better. Inasmuch as there are several questions of the Senators, I think we had better proceed then and we will ask these questions after cross examination.

BY MR. JONES:

Q Mr. Luckie, did all three of the Judges of the Second District Court of Appeal assent to the order or the writ? The Rule Nisi?

A Yes sir.

Q What is a "Rule Nisi"? Explain it to us briefly.

A It is an order to show cause. It is an order directed to some person, telling that person not to do a certain thing; and setting the matter down for hearing. It is a preliminary order, is what it is. And setting the matter down for a hearing on a day certain, to determine whether or not the prohibition will be made permanent.

MR. JONES: Mr. Chief Justice, if I might say so, we are about to go into another case.

CHIEF JUSTICE DREW: I think we may have reached a good point to stop.

Senators, as you know, many of you are probably going to want to go home over the weekend.

The plane gets in Monday morning about 9:20, and I think it would probably convenience Senators more to adjourn our hearing until Monday morning at 10:00 o'clock, rather than 9:30 hereafter.

I think it would probably convenience everyone.

Are there any other matters to come before us before we adjourn?

SENATOR CROSS: I was going to so move, Mr. Chief Justice.

CHIEF JUSTICE DREW: I don't think it will require a motion.

The Chair, then, without any other matter that any Senator cares to bring up - - - the Chair, the Presiding Officer, will declare this Court in recess until next Monday morning at 10:00 o'clock A. M.

It is so ordered.

Whereupon, the Senate, sitting as a Court of Impeachment, stood adjourned at 12:52 o'clock P. M., until 10:00 o'clock A. M., Monday, September 16, 1963.