JOURNAL OF THE SENATE

Monday, September 16, 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 10:00 o'clock A.M. pursuant to adjournment on Friday, September 13, 1963.

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 Friday, September 13, 1963, was dispensed with.

The Senate daily Journal of Friday, September 13, 1963, was corrected and as corrected was approved.

Senator Herrell was excused from attendance upon the Afternoon Session this day due to an emergency requiring his presence in the City of Miami.

At the request of the Presiding Officer, Senator Edwards of the Twentieth Senatorial District offered the following prayer:

Our Father, we thank thee for this day and another week. We ask thee to be with us—to have mercy on us—to forgive us of our sins—to lead, guide, direct and care for us in every way—to give us wisdom, knowledge and power of sound judgment.

We recognize that thou knowest our needs before we ask and request that thou answer our prayers only if they comply with thy will. Amen.

CHIEF JUSTICE DREW: Senators, I would like to request that all Senators, while the testimony is being given from the stand, please pay close attention to the witness; and there should be no more moving around the room than is necessary.

I would also like to state that, for those Senators who desire for any reason a short time to leave the Senate Chamber, that it would be a more orderly procedure if in each instance they would report to the Presiding Officer and be excused, to make a telephone call or for any other reason that makes it necessary.

The evidence which has been taken to date has been reported and is on my desk. Those Senators who are absent for any appreciable length of time should procure that evidence, either from me - - - the testimony - - - either from me or from the Secretary of the Senate, and should familiarize themselves with its disclosures.

MR. O'NEILL: Mr. Chief Justice, I might, on behalf of the Board of Managers, announce that sufficient copies of these transcripts are being made and they are available at the Board of Managers' office for any of the Senators who might like to have an additional copy.

CHIEF JUSTICE DREW: Thank you very much. You have heard the announcement of the Manager, Mr. O'Neill, of the House.

You may continue with your examination.

MR. JONES: Sergeant, will you call Mr. Charlie Luckie, Jr.

Also, on behalf of the Board of Managers, after examining the testimony that was given on Thursday and Friday, we would like to announce that Mr. Luckie's testimony pertains to Articles Number I, II, VII, and VIII. This is in an effort to clear up any misunderstanding which may prevail.

Thereupon,

CHARLIE LUCKIE, JR.,

resumed the stand and testified further as follows:

DIRECT EXAMINATION (RESUMED)

BY MR. JONES:

Q Mr. Luckie, you are the same Mr. Luckie who has been previously sworn in this matter and who testified on Friday last, is that correct?

A Yes sir.

Q Mr. Luckie, I would first like to ask you: Have you ever been an associate or law partner or practiced with Circuit Judge O. L. Dayton, Jr.?

A No sir.

Q Mr. Luckie, did the District Court of Appeal finally decide the State Road Department vs. Aiken or the Scussel case, insofar as the three contempt citations

against you? Did the Circuit Court of Appeal ever rule on that case; and, if so, what did it rule?

A Yes sir. The District Court ruled that the matters contained in my affidavit of disqualification were not contemptuous; and, further, that if they were contemptuous, they were privileged.

Q Did the District Court of Appeal render an opinion in that case?

A Yes sir.

Q What was the extent of that opinion?

A It was a thirty-three page opinion.

Q Mr. Luckie, I shall not ask you to read that opinion.

What happened, sir, if you know, to the contempt citations that were brought in the same case against the two other attorneys, Mr. Clawson and Mr. E. B. Larkin?

A The contempt citation against Mr. Clawson was later dismissed by Circuit Judge Hobson.

With reference to the contempt citation against Mr. Larkin, Mr. Larkin appealed to the District Court of Appeal and the District Court of Appeal ruled in his favor; and Judge Kelly did not appeal the District Court ruling as far as Mr. Larkin was concerned.

Q Has Judge Kelly appealed the District Court ruling as far as you are concerned?

A Yes. He has asked the Supreme Court of Florida to review the decision.

Q And he did not review the decision of the District Court of Appeal with reference to Mr. Larkin, but he did with reference to you; is that correct?

A That is correct, sir.

Q Mr. Larkin's petition for disqualification was substantially the same as yours, is that correct?

A Yes, it was similar in some respects.

It was not as long as mine, but it did contain some of the - - - some similar matters.

Q Mr. Luckie, do you know whether or not Judge Kelly asked for information or advice as to whether or not your disqualification petition was contemptuous?

MR. NICHOLS: I object to that on the ground that it calls for hearsay.

MR. JONES: I asked him, if the Court please, whether or not he knows, within his own knowledge, whether or not Judge Kelly asked for advice as to whether or not Mr. Kelly's petition was contemptuous.

CHIEF JUSTICE DREW: He may answer yes or no.

THE WITNESS: Yes sir, I do know.

BY MR. JONES:

Q Could you tell the Court, if you do, from whom he solicited the advice?

A I know of my own knowledge that he solicited advice from former Circuit Judge Victor O. Wehle, and he also solicited advice from attorney Richard T. Earle, of St. Petersburg.

Q Mr. Luckie, do you know of your own knowledge whether or not Judge Kelly had decided your case and written an opinion prior to giving you a hearing?

MR. NICHOLS: Now, I object to that. That is merely a statement on the part of counsel. I have asked counsel not to make statements and not to lead this witness. We have an attorney on the stand and this witness can explain his testimony without the Manager's leading statement.

CHIEF JUSTICE DREW: I think he asked him if he knew, didn't he?

MR. JONES: Yes sir. Within his own knowledge - - - whether or not the opinion and order had been drawn prior to the hearing being given.

MR. NICHOLS: Now, that relates to a matter of fact, Your Honor. And I address myself to the Presiding Officer. That relates to a set of circumstances and a set of facts, as to which this witness can relate those facts. But for counsel to get up and make a statement as to whether or not the Judge has pre-judged or entered an order prior to the hearing is just merely a statement by counsel. He ought to let this witness relate the facts. We object to that type of question, on that ground.

CHIEF JUSTICE DREW: I think the objection is probably good; but, as I understand, you have asked him the question and you want to know whether he knows that an order was entered before that time. The answer is yes or no at this time.

BY MR. JONES:

Q Mr. Luckie, do you know whether or not an order had been entered by Judge Kelly prior to giving you a hearing - - - or prepared prior to giving you a hearing?

A Yes sir, I do know.

BY MR. JONES:

Q Thank you, sir.

Mr. Luckie, had you asked Judge Kelly to rule on the question of disqualification before he issued the contempt citation?

A Yes sir, I asked him to rule on the Suggestion for Disqualification about one week prior to that time, and Judge Kelly promised me that he would have a ruling on that by Saturday noon, before he cited me for contempt the following Tuesday.

Q Is there a specific law in Florida which grants to an attorney the right to file a petition for disqualification such as you filed?

A Yes sir, Section 38.10 of the Florida Statutes.

Q Did you follow the procedure outlined in the Statute with reference to the filing of your petition for disqualification?

A I did, and the District Court of Appeal held that I had correctly followed the procedure.

Q Mr. Kelly - - - Mr. Luckie, is it possible to correct, by appeal, Judge Kelly's conduct in this Scussel matter?

MR. NICHOLS: I object to that as a complete statement of counsel asking for a complete conclusion of the witness.

CHIEF JUSTICE DREW: Sustained.

MR. JONES: I think, if the Court, if the Chief Justice please, the Court ruled on this same type of question last week, and he ruled that it was within the knowledge of an expert witness, if he can, to give his opinion of what the - - - or whether or not, as a practical matter, as opposed to a theoretical matter, all of the errors can be cured on the appeal, and the Court ruled that he could testify.

CHIEF JUSTICE DREW: I don't believe there was objection made to it at that time.

MR. JONES: Yes sir, yes sir, we had quite an extensive argument over it.

CHIEF JUSTICE DREW: Well, read the question back, please.

MR. JONES: I can, possibly, read the question - - -

MR. NICHOLS: I'd like the Reporter to read back the question. I think I know what I objected to, and I - - -

CHIEF JUSTICE DREW: Mr. Nichols, I'll conduct the hearing. You let me conduct it. Will you read the question, please?

(Last question read)

CHIEF JUSTICE DREW: I sustain the objection to the question in its present form.

BY MR. JONES:

Q Mr. Luckie, with reference to the appeal in the Scussel matter, did you recover, or is it possible to recover for your clients the expenses of the prohibition suit, the writ of prohibition?

A Well, there are actually two facets to that appeal. One of them involves the contempt matter; the other involves the suggestion of disqualification itself, and as far as the contempt matter is concerned, neither myself or Mr. Larkin will be able to recover the expense which we have had to incur in connection with the contempt.

As far as the suggestion for disqualification itself is concerned, either the State Road Department or the clients, Scussel, will, necessarily, have to pay additional fees and costs because of the appeal.

Q Mr. Luckie, was there any time lost in this condemnation suit as a result of these contempt citations?

MR. NICHOLS: Object to that on the ground that the witness has already testified that on the petition of the State the matter was continued at their request.

CHIEF JUSTICE DREW: Overruled.

BY MR. JONES:

Q Will you answer the question, Mr. Luckie?

A Yes sir, there - - - the case, under ordinary circumstances, would have already been tried and completed, and it is still pending, it has never gone to trial.

Q Mr. Luckie, as an attorney, did you have any alternative you could revert to other than the petition for disqualification in the Scussel or Aiken case?

A No sir, I didn't feel that I did. I - - - under the circumstances, I felt compelled to advise my clients, Mr. and Mrs. Scussel, that I either had to withdraw as counsel in the case, or that Judge Kelly would have to be disqualified.

Q Sir, do you know whether or not Judge Kelly had made any decision about holding you in contempt of this Court, or his Court on the three citations issued against you before he was notified by the District Court of Appeal to discontinue the hearings which he had scheduled for Thursday and Friday?

MR. NICHOLS: Object to that on the ground that it calls for - - - in your statement itself and in your question, you are asking whether or not Judge Kelly had rendered a decision; that's improper. Whatever the facts were, the witness can relate.

CHIEF JUSTICE DREW: He asked him if he knew. He can answer "yes" or "no." I overrule the objection right now. Do you know?

THE WITNESS: Yes sir, I do know.

BY MR. JONES:

Q How do you know that, Mr. Luckie?

A I know that Judge Kelly, on the morning, Thursday morning - - -

CHIEF JUSTICE DREW: Well, state how you know.

THE WITNESS: I obtained a copy of the opinion, or order which he dictated to Mr. James M. Swain, the Court Reporter.

BY MR. JONES:

Q Thank you, sir.

A On this opinion, in which Judge Kelly actually found that I was - - -

MR. NICHOLS: Just a minute, Your Honor. I object to any further questions, or letting the witness just run on to explain. He says that he obtained the written memoranda, which has not yet been properly identified and produced; we need to see it, and if there's an order of the Court, then we need to know whether or not it's an order of the Court, but to let this witness describe this is entirely improper.

MR. JONES: We'll go on.

BY MR. JONES:

Q Mr. Luckie, how many attorneys are in the Pasco County Bar Association?

A There were twenty-three. There have been - - - two members of the Bar have moved from the County.

Q Did some of those attorneys petition the Speaker of the House of Representatives to conduct an investigation of the conduct of Judge Kelly?

A Yes sir, there were nineteen attorneys.

Q Nineteen. How many of those attorneys petitioned the Senator and Representative from Pasco County about the Circuit change?

A There were nineteen who petitioned the Senator and Representative. However, they were not the same nineteen. The County Judge, W. H. Brewton, signed the petition with respect to the Circuit change. He did not sign the petition to the Speaker of the House. Mr. Raymond Hodges, from Zephyrhills, did not join in the petition with respect to the Circuit change, but did join in the petition to the Speaker of the House.

Q And so, there was a total of how many lawyers that signed the petition to the Speaker of the House of Representatives?

A Nineteen.

Q Mr. Luckie, after the contempt citations, and the District Court of Appeal's petition, did you file further petitions for disqualification before Judge Kelly?

A No sir, I didn't file petitions for disqualification.

Q Well, let me ask you this: Did you have some that were filed and pending - - -

A Yes.

Q - - - at the time of disqualification?

A Yes sir, our firm had another suggestion for disqualification pending, which was filed after the suggestion for disqualification in the Scussel matter.

Q Did Judge - - - did the Judge rule on these petitions after the District Court of Appeal's decision?

A Yes sir, on the one, which is the Jasmine Properties case, involved a client by the name of Jasmine Properties,

Incorporated, he did make a ruling after the District Court's opinion was handed down in the Scussel matter.

Q After - - - during the District Court of Appeal's opinion, did Judge Kelly then grant your petition for disqualification?

A No sir, he denied our petition for disqualification, saying that it was legally insufficient, and - - - but voluntarily excused himself from the case.

Q Was the petition in this instance substantially the same as the petition upon which the District Court of Appeal had ruled?

A Yes sir.

Q And Judge Kelly again denied the petition, as I understand your testimony?

A That's correct.

Q To your knowledge, has Judge Kelly ever stated whether or not he intended to try cases in which you are involved as an attorney, if he is not removed from office in this trial?

A Yes sir, in the hearing before the Select Impeachment Committee of the House, Judge Kelly testified that he saw no reason why he should not try cases in which I was involved as well as the other attorneys in this matter.

Q Mr. Luckie, do you feel that a client of yours can get a fair trial in the Court if Judge Kelly was the Presiding Judge?

MR. NICHOLS: I object to that because it deals with a question of what the client would feel, would receive. We haven't got any clients before this body at all; these are just the lawyers involved.

MR. JONES: If the court please - - -

CHIEF JUSTICE DREW: Overruled.

MR. JONES: Thank you, sir.

THE WITNESS: I do not, Mr. Jones. I would have to advise my clients that I could not represent them before Judge Kelly, for fear that they would not receive a fair trial.

BY MR. JONES:

Q Mr. Luckie, what has been the effect of Judge Kelly's conduct upon the administration of justice and the operation of the Court system in Pasco County?

MR. NICHOLS: I object to that on the ground that it calls for an opinion. We had a long discussion last week on the question of opinion evidence. We're talking about this man's conduct on the administration of justice in the County, and it calls for his opinion about it. Now, we're going to get into this business of opinion again, and we're, necessarily, going to have to try to meet this by a long question of opinion again - - - I thought we had the matter eliminated down to one question, and that was, whether or not the general reputation in the community and among the Bar was - - -

CHIEF JUSTICE DREW: I'm going to sustain the objection. I think the statement, his testimony, leaves a clear impression and states what his opinion was, or his impression was as to his reputation in the community.

MR. JONES: Thank you, Your Honor.

Your witness.

MR. NICHOLS: Your Honor, may we have the questions that have been sent up read at this point, so that we could - - - there may be questions that I might want to interrogate the witness from further, and as the questions go along, I think, because they may pertain to the testimony at this point, and I believe it would be, for clarity's sake, and help us expedite the matter, if we had any questions that have been presented, because we get too far along from the subject matter of these questions.

CHIEF JUSTICE DREW: Without objection, I will read the Senators' questions at this time, and if any Senator has any question to send up in addition to those which I have before me, you may send them up afterward.

Now, the first question is from Senator Gautier, of the 28th, Mr. Luckie: He wants to know what per cent of your cases before Judge Kelly have been appealed?

THE WITNESS: I don't know the percentage, Your Honor.

CHIEF JUSTICE DREW: Answer as best you can.

THE WITNESS: I haven't tried to determine any percentage. I've appealed the Willie Hill case, and we've had the appeal in the Scussel case, and I believe those are the only two cases that have actually been appealed. There are a number of cases that are still pending, that Judge Kelly has been involved in, and whether or not appeals might result from them is something I can't say at this time.

CHIEF JUSTICE DREW: The second question, by Senator Gautier, of the 28th, is: In what per cent of the cases appealed did the Appellate Court reverse Judge Kelly's decree in the lower court?

THE WITNESS: The Appellate Court, District Court of Appeal, reversed - - - they didn't reverse Judge Kelly; actually, they sustained our appeal in the Scussel matter.

In the Willie Hill cases, the Supreme Court of Florida has not handed down a decision.

CHIEF JUSTICE DREW: Senator Gibson, of the 10th, asks this question: Have you ever been held in contempt of court and/or fined by a judge in any other court since you have been in the practice of law? If so, when, where, and the amount paid?

THE WITNESS: No sir, I've never been held in contempt before. I don't recall ever being threatened to be held in contempt before.

CHIEF JUSTICE DREW: Senator Barron of the 25th District, asks these two questions: First, do you have a strong personal dislike for Judge Kelly?

THE WITNESS: No sir, I don't know Judge Kelly socially; so, I don't have any personal like or dislike for him. I do, you might say, dislike him as a Judge but, as a person, I don't have any feeling of dislike or - - - neither do I have any feeling as to whether or not I like him.

CHIEF JUSTICE DREW: Senator Barron's second question is, "Are you prejudiced against Judge Kelly?"

THE WITNESS: That is a difficult question to - - - am I personally prejudiced against him as a person? I would say "No." I do have a feeling that, as a Judge, he has done things to me which, of course, I don't like; and I do feel prejudiced to that extent.

CHIEF JUSTICE DREW: This question from Senator Askew of the Second District: "I understood that the removal of Pasco County from the Sixth Circuit to the Fifth Circuit was considered prior to Judge Kelly's candidacy for the Circuit Judgeship. If this is so, during the early consideration of the Pasco County Judgeship was the resident Judgeship of Pasco County by law to become a part of the Fifth Circuit; or was the resident Pasco County Circuit Judgeship to remain a part of the Sixth Circuit, as later provided by the House Bill introduced in the 1963 session of the Legislature?

I realize that is a long question. Would you like to read it and have it before you?

THE WITNESS: I believe I understand the question, Your Honor. I don't know whether or not the matter of the resident judgeship was included as a part of the proposed bill in 1959; so I couldn't answer that question. I would have to rely upon the record as far as the answer is concerned. I really don't know.

CHIEF JUSTICE DREW: Senator Askew of the Second would like to ask you this question: "Were the nineteen lawyers who signed the petition - - -"

SENATOR ASKEW: I will withdraw that.

CHIEF JUSTICE DREW: This question I am reading?

SENATOR ASKEW: Yes.

CHIEF JUSTICE DREW: Senator Askew of the Second asks this question:

"How many other Defendants were there in the Aiken case besides the Scussels?"

THE WITNESS: In the original suit filed - - - I could count them from the Complaint if it is here. I would estimate there were twenty-five or thirty.

CHIEF JUSTICE DREW: Senator Barron of the 25th District asks these questions: Number 1: "As a lawyer, do you know of or have you ever heard of a lawyer failing or refusing to go to the Circuit Judge's Chambers when asked to do so?"

THE WITNESS: No sir, and I have never failed to do so except on the one occasion when Judge Kelly asked me. I had gone to Judge Kelly's office on many occasions before that time at his request; but the circumstances surrounding this particular event made me apprehensive and reluctant to go.

CHIEF JUSTICE DREW: The second question: "Do you feel the Judge must give a reason to call a lawyer, who is an officer of the Court, before him?"

THE WITNESS: Yes sir. If the lawyer asks for a reason I think that he is entitled to it. Unless the Judge announces to him when he makes the request that he wants to discuss a case which the lawyer might be involved in, or some disciplinary matter, or one of the lawyer's clients. If it does involve his client or a case before the Court or some disciplinary matter, then I think the lawyer is obligated to go.

CHIEF JUSTICE DREW: Senator Herrell of the 13th asks this question: "By testimony it appears that you were constantly taking Judge Kelly to task for breach of ethics. Under what portion of the Code of Ethics governing the legal profession did you assume the authority of questioning the Judge on other than legal points?

THE WITNESS: The only time that I talked to Judge Kelly about his legal ethics was when he requested that I discuss it with him. This discussion about Judge Kelly's ethics was at the Judge's specific request, and I was merely - - - I was reluctant to do it and I told the Judge in the beginning of the discussion that I was reluctant to do it, but when he insisted upon it, then I did discuss it with him.

CHIEF JUSTICE DREW: Senator Price of the 36th wants to know: "Do you think any stipulation between Defendant's counsel and the State Attorney as to evidence which may be admissible in a murder case is binding on the Presiding Judge?

THE WITNESS: I think it is, because the ordinary - - - in order to have orderly procedure in a trial, lawyers many times stipulate on matters. It is for the purpose of expediting the trial in many instances. And generally, a stipulation between counsel will not be broken unless one of the lawyers who was a party to the stipulation requests that it be broken and shows some unusual reason or circumstances why it should be. It is most unusual for the Court to suggest that a stipulation between counsel be ignored.

CHIEF JUSTICE DREW: Senator Price has another question relating to the cases lost and tried and appealed, which I think may have been answered in a previous question. Senator Price asks: "If you felt Judge Kelly had committed error in the Jackson murder case, did you not have further legal remedy in a higher Court to ask that his error be reversed?"

SENATOR PEARCE: If Your Honor please, Senator Price does not seem to be in the Chamber. Since he was the one who asked the question, I wonder if you could withhold that question.

CHIEF JUSTICE DREW: Yes. He will be back shortly. I excused him. His father is seriously ill. I will read the question later.

By Senator Blank: "How many active members of the Pasco County Bar are there altogether?" I think that has been answered.

Senator Mapoles asks this question: "Is it not true that Willie Charles Hill, and his mother, and Irene Jackson, are of the Negro race? Is this the case that the NAACP and the CORE have become very interested in?"

THE WITNESS: It is true that Willie Hill and Irene Jackson and William Reddick are negroes. Whether or not the NAACP or CORE have been involved in it, I don't know. I have had no contact with either of these two organizations.

CHIEF JUSTICE DREW: Senator Herrell asks: "I note the name of your law firm is Luckie, Dayton & Dayton. It has been stated that one of the Daytons is a brother of former Judge Dayton. Is the other Dayton in the firm former Circuit Judge Dayton?"

THE WITNESS: Yes, former Circuit Judge Dayton, Sr., Judge O. L. Dayton, Sr., was a Circuit Judge at one time. He is now dead.

CHIEF JUSTICE DREW: That concludes the questions except Senator Price's, which I will hold until later.

You may proceed, Mr. Nichols.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Luckie, may I inquire of you, please sir, how long you have been connected with the Dayton firm?

A Since 1952, about November.

Q Is that when you first went to Pasco County to practice?

A Yes sir.

Q And you were an associate, I guess, for some time and then became a partner later on?

A That's right.

Q At the present time you are a full partner with that firm?

A That is correct.

Q And just to get this clear, George Dayton used to be in the House and later on in the Senate here in the Legislature, didn't he?

A Yes sir.

Q And his brother, O. L. Dayton, was the Circuit Judge?

A That's right.

Q Who Judge Kelly beat at the election polls?

A Yes sir.

Q Will you tell us, that was a pretty close political race, wasn't it? I mean the outcome by vote was fairly close, wasn't it?

A I believe that there was some 420 votes difference.

Q There were some 70,000 votes cast each way, weren't there?

A I believe there were.

Q And there was approximately 300 or 400 votes difference. That was the only difference between the two; isn't that substantially correct?

A Yes sir.

Q Now, O. L. Dayton, of course, ran on a Democratic ticket, didn't he?

A Yes sir.

Q And Judge Kelly ran on a Republican ticket, didn't he?

A That is correct.

Q Now, in your testimony or in your affidavit - - - one of them that you were reading from, concerning the first motion to disqualify - - - I think you referred to a wave of Republican votes that put him in office. Isn't it a fact that in Pasco County alone, Judge Kelly received forty-three percent of the votes in Pasco County in that race? Approximately?

A I don't know the percentage. I assume that that is correct.

Q Now, by the way, over there in the Sixth Circuit Democrats do get elected, don't they? In the judicial races? And in the last race, didn't Judge Hobson and Judge Phillips get elected over two Republican opponents?

A That is correct.

Q And in the race before that, I believe Judge Bird got the highest plurality of votes of any Judge in the whole race, including Republicans and Democrats, didn't he?

A I am not sure about that. I assume that that is correct.

Q Now, when Judge Kelly ran for this office, I believe there was on the statute books a statute Number 26.071 concerning the Judges of the Sixth Circuit, which reads: "That the number of Judges of the Sixth Judicial Circuit shall be one for every fifty thousand inhabitants or major fraction thereof, as may be determined pursuant to law; provided that one of the said Circuit Judges shall reside in and be appointed or elected from Pasco County." That was a statute on the books at the time of that election race, wasn't it?

A Yes sir.

Q And I believe that history will record that Judge Dayton, while he was in the Legislature, had this bill passed, did he not?

A Judge Dayton has never been a member of the Legislature.

Q Excuse me. I beg your pardon. George Dayton. I meant George Dayton, when he was in the Legislature, had this particular act passed, did he not? He was the sponsor of it?

A I believe he did. I was not connected with the firm at the time, but I believe that George Dayton had something to do with the bill that was passed.

Q Anyway, when Judge Kelly ran for the office which he held until these impeachment proceedings, he was elected at the polls under a statute which provides that a Judge shall be appointed or elected from Pasco County and one judge shall reside in Pasco County. That was the language and intent of that Legislative Act at that time, wasn't it?

A Yes, that is the law, as I understand it.

Q Now, there is some advantage, is there not, in having a Circuit Judge reside in and be a part of the community and available to the people of Pasco County; isn't that more than likely the reason that was passed?

A Yes, I think there are some advantages to the litigating public.

Q The litigating public.

A And to the lawyers.

Q You would concede, would you not, that the Courts belong to the people?

A Yes. I think that the Courts do belong to the people, Mr. Nichols.

Q They pay for the building of Court Houses and pay for the upkeep of the jurors and the per diem of the jurors and the maintenance of the Court Houses, and they furnish the air conditioning, and so forth, in which we lawyers practice, do they not?

A Yes sir.

Q The public?

A That is correct.

Q You don't believe that the Courts belong to the lawyers, do you?

A Well, the lawyers are a part of the public, of any county.

Q That is correct.

A I don't think that the Courts belong to the lawyers, but of course, the lawyers are officers of the Court and, of course, they are citizens in the county in which they practice.

Q You would give them as much right - - - or give the citizens as much right about the Courts as you would the lawyers, wouldn't you?

A Yes. Of course, I think that the lawyers' responsibility, as far as the Court, is greater than the ordinary citizen's; because of the fact that they are officers of the Court and are especially trained in that field, so that I think that the lawyers have a greater responsibility than most of the people.

Q They have a greater responsibility to help with the administration of justice too, as well as the Court itself, don't they?

A Yes sir.

Q And that responsibility goes both ways, both to the Court - - - not necessarily the individual who is in the Court - - - but that responsibility exists at all times to help foster the administration of justice, doesn't it? As an officer of the Court?

A Yes sir.

Q But, as far as the general public is concerned, they elect the judicial officers, don't they? Under our system?

A Yes sir.

Q And they have a right to say who they want to be their elected officials, do they not?

A That is correct.

Q And nineteen lawyers have no more right than nineteen members of the public to say who their officials are, do they?

A No.

Q It doesn't take nineteen hundred or nineteen thousand people to outweigh nineteen lawyers, does it, in their view of who shall be the public officials?

A I think that is rather obvious.

Q Now, how long have you been a partner in the Dayton firm?

A Since 1955, I believe, Mr. Nichols, when I became a partner.

Q You men have a fairly substantial general practice of law there?

A Yes. I would say we have a substantial practice.

Q Would you say that in Pasco County probably your firm did more legal business than any other firm in the county?

That is a fair statement, isn't it?

A I am not sure about that. Probably as much as any other firm.

Q And Mr. Dayton, Sr., at one time was a Circuit Judge in the county, wasn't he?

A Yes sir.

Q Did he receive his first appointment by gubernatorial appointment, or did he run for the office?

A Judge Dayton, Sr.?

Q Yes.

A I really don't know. I believe Judge Dayton left the Bench about 1935, so I don't know the circumstances surrounding his tenure in office.

Q Well, let's move on to O. L. Dayton. Is that O. L. Dayton, Jr.?

A Yes.

Q In other words, he was O. L. Dayton, Sr.?

A Yes.

Q Let's move on down to O. L. Dayton, Jr. He was first, I believe, a Probate Judge there, wasn't he?

A Yes, he was a Judge - - - the County Judge.

Q County Judge. All right. The County Judge has probate jurisdiction, doesn't he?

A That's right.

Q Now, a Probate Judge can practice law himself, can't he?

A Yes sir.

Q And when he was on the Bench as the Probate Judge or County Judge, he was a member of the firm of Dayton, Dayton & Luckie, and so on, wasn't he?

A I believe he was, but that was before my time, Mr. Nichols.

Q All right, sir. Now, a Probate Judge in these estate matters sets the fees, doesn't he?

A He sets - - -

Q The lawyers' fees?

A He sets the lawyers' fees in connection with the estates, yes.

Q Your firm handles quite a bit of estate work, doesn't it?

A Yes. An average amount, I would say.

Q Now, then - - - by the way, what do - - - the Probate or County Judge, do you recall whether or not he received an appointment, political appointment, or did he run for election for that office?

A I don't know, I was not there when Judge Dayton was Judge of the Probate Court.

Q All right, sir. Now, when he moved up to become a Circuit Judge, I believe that in 1949 Mr. George Dayton passed a bill to do away with a Court of Record, did he not?

A I believe he did. I was not there in 1949, but I was not - - - I don't know, as a matter of fact.

Q Now, when he moved up to become Circuit Judge, did he run for election, or was he appointed to the Circuit Judge's office?

A There, again, I was not in the county. In fact, I was not in Florida, but I understand he was appointed.

Q Now, then, sir, at the present time, on down to the present time, about this election time, Judge Dayton was handling the - - - Judge O. L. Dayton was handling the work of your firm, was he not, practicing before him?

A Up until what time?

Q Up until election time.

A Just for clarification, what election are you talking about?

Q Well, the Judge Kelly election, we'll call it, the Kelly-Dayton election, is what I'm talking about; prior to that. I think you explained that.

A Yes.

Q You explained that on direct. You were practicing before him?

A Yes sir, in uncontested matters.

Q All right, but you were practicing also before him, I think was brought out in your testimony, in contested matters, in which you called up the lawyer on the other side, and he made no objection; wasn't that your testimony?

A No sir, my testimony was that after the election, the Kelly-Dayton election, that - - - and Judge Kelly became Circuit Judge, that we did take some cases before Judge Dayton. Judge Dayton received an appointment for a two-year term; so that we had Judge Dayton and Judge Kelly in the County, and after that time I did try some contested cases before Judge Dayton.

I believe that my partner, George Dayton, tried one case before him during that time, and I tried - - -

Q I believe, at the committee hearing, you said that during that two-year time, period of time, until his office ran out, I believe you had approximately ten contested matters?

A Eight or ten contested matters, and one of those George Dayton tried, and I tried the rest of them.

CHIEF JUSTICE DREW: At this point here, if I may interrupt, one of the Senators would like to know when Judge Kelly's term expires. Was he elected for a six-year term, beginning in 1961, Mr. Luckie?

THE WITNESS: Yes sir.

MR. NICHOLS: I believe his term will expire in approximately three years, will it not?

THE WITNESS: Yes, that's correct.

BY MR. NICHOLS:

Q All right, sir. Now, we were talking about litigation that was being handled before Judge Dayton.

Let's take up, I believe, the first case that you talked about was, I believe, the State Road Department vs. Simpson, wasn't it?

A Yes sir.

Q All right. Now, that matter was already pending before him before this election, wasn't it?

A Before whom?

Q Before Dayton?

A That's correct.

Q All right. So, this - - - and this was a contested piece of litigation, involving a number of people's property, and the condemnation of property by the State Road Department, wasn't it?

A Yes sir.

Q All right. So, this was a piece of contested litigation that was before Judge Dayton before the election of Kelly, wasn't it?

A Yes, Mr. Nichols, but, under ordinary circumstances, Judge Dayton would have entered some preliminary orders but, under the manner in which we had been handling these things, at the trial, Judge Dayton would not have presided, but some other judge would have been brought in to conduct the actual trial itself.

Q All right, provided that the other lawyer on the other side, when you called him, didn't make any objection?

A You mean objection to the change of judge?

Q Or objection to Dayton trying it?

A No, as a matter of course before the Kelly-Dayton election, in any contested matter, Judge Dayton refused to preside as the judge.

Q All right, sir.

Now, in this very case, you filed a motion to disqualify - - - this was the Simpson case, State Road Department, I'm referring to, you filed this motion to disqualify Judge Kelly twenty-eight days after he had been elected, or taken office, was sworn in?

A Yes sir, I believe it was on the 28th of January when it was filed.

Q That's right. Now, you nor your firm never went before him or gave him a chance to rule on any matter, to see what his attitude might be or might not be in a legal matter, did you?

A No sir, we had some idea as to his attitude - - -

Q Wait a minute, just answer my question.

MR. JONES: Mr. Chief Justice, we would like to ask counsel to allow the witness to answer his questions, whether they're embarrassing to him or not.

MR. NICHOLS: I'm not worried about being embarrassed, but I have the man on cross examination - - -

CHIEF JUSTICE DREW: Direct your remarks to me, please.

MR. JONES: Mr. Chief Justice, our request is that counsel allow the witness to answer the question fully.

CHIEF JUSTICE DREW: I think he's been allowing him; I haven't observed any violation. Have you had an opportunity to answer the question, Mr. Luckie?

THE WITNESS: I didn't fully answer that one, Your Honor.

MR. JONES: Yes sir.

MR. NICHOLS: Your Honor, I have this witness on cross examination - - - and I'm addressing myself to the Court. I do not - - - we've got a lawyer, we've got a contested matter, and I do not want to give this witness wide range just to give us a lecture on every matter, and I ask that he answer my question specifically, and if he has not had an opportunity to explain, certainly, counsel, on redirect, can ask him to explain anything, but I do not wish to give this witness an opportunity to give us a twenty-minute lecture on a matter.

CHIEF JUSTICE DREW: Mr. Witness, you will answer the question as directly as you can, and if you desire to explain your answer, if you'll ask permission, I will see if I can try to let you answer-explain.

THE WITNESS: I think that that question, your Honor, does require some explanation.

MR. JONES: If Your Honor please, could we have that question read back, so that this witness can have an opportunity to answer it.

CHIEF JUSTICE DREW: Would you read the question, Mr. Reporter?

(Question read as follows:

"All right, sir.

"Now, in this very case, you filed a motion to disqualify - - - this was the Simpson case, State Road Department, I'm referring to, you filed this motion to disqualify Judge Kelly twenty-eight days after he had been elected or taken office, was sworn in?")

MR. NICHOLS: My question was, did he file his motion to disqualify twenty-eight days after he had taken office; doesn't necessitate any long explanation.

CHIEF JUSTICE DREW: You can answer it "yes" or "no," Mr. Witness.

THE WITNESS: Yes, in point of time, that's correct.

BY MR. NICHOLS:

Q All right. Now - - -

A I don't recall that as being the question I was answering, however.

MR. JONES: Mr. Chief Justice, that was not the question.

CHIEF JUSTICE DREW: Is that the question?

MR. JONES: Mr. Nichols was interrupting, Your Honor.

CHIEF JUSTICE DREW: We - - - the Reporter seems to have - - - to take some time, and rather than that, let's go on from here. Ask the question again, so we'll know what we're talking about. Go ahead.

BY MR. NICHOLS:

Q You nor your firm, from the time that Judge Kelly took office, until you filed this motion for disqualification, never had any hearing or a case before Judge Kelly, did you?

A No sir.

Q So, the first legal proceeding that you filed before Judge Kelly after he took office was the motion to disqualify Judge Kelly in the Simpson-State Road Department case?

A Yes sir. And, if Your Honor please, I would like to explain that.

MR. NICHOLS: Well, now, I - - - no sir, that's exactly what - - -

CHIEF JUSTICE DREW: Just answer the question - - -

MR. NICHOLS: That's exactly what I'm talking about.

CHIEF JUSTICE DREW: I think it would be better to let the Managers discuss it, go over it with you; I think that's the better way to proceed.

THE WITNESS: All right, sir.

BY MR. NICHOLS:

Q All right, sir.

So, your motion to disqualify Judge Kelly also was returning the case to Judge Dayton, wasn't it?

A The motion had no reference to what judge might try the case in the event Judge Kelly should be disqualified. The motion was directed at Judge Kelly himself, as a judge, and had no reference whatsoever to any other judge.

Q Well, it had the effect of sending it back to Judge Dayton, didn't it?

A Not necessarily that effect, because - - -

Q Well - - - excuse me - - - that's what did happen, isn't it?

A Judge Dayton did try the case.

Q Now - - - by the way, Judge Bird was the Presiding Judge of the Sixth Circuit, was he not?

A Yes sir.

Q And had he not entered a verbal order among the judges that all cases in Pasco County were to be decided by, or handled by Judge Dayton and Judge Kelly?

A Would you read that question again? I didn't understand it.

Q Well, I'll rephrase it so we can move along faster.

A All right.

Q Had not Judge Bird directed that all matters in Pasco County be handled by Judge Kelly and Judge Dayton?

A I'm not sure about that, Mr. Nichols.

Q Well, you think that's substantially correct, don't you?

A No sir, because I really don't know.

Q All right, sir. Now, in these condemnation cases, and in this instant condemnation case, one of the things that the Judge does is to appoint an appraiser for the appraising of this property, isn't it?

A Yes sir, he appoints an appraiser in order to arrive at the amount of deposit which the State Road Department has to make prior to the actual taking.

Q That's right; and the lawyer's fee, of course, is based on the total amount that he recovers for his client, or the appraisal values that are involved, doesn't he?

A Yes sir, but not the appraisal value that you're talking about.

Q All right.

A The appraisal value that is made by the Court-appointed appraiser does not become a part of the testimony of the case, and it is not allowable in the case.

Q I understand that, but that's the basis on which you start negotiating, from there up for your client?

A No sir, I negotiate on the basis of the appraisers that I employ for my clients.

Q I understand, but you certainly don't start below the appraisal value that the appraiser has said the State is willing to pay; so, you start at that figure and then go up, don't you?

A Well, Mr. Nichols, the appraisal that the Court-appointed appraisers make is not binding upon the State. The State does not accept that - - -

CHIEF JUSTICE DREW: I don't think that was the question he wanted to ask. You can answer, "yes" or "no," whether you started with that and went up. Let's don't get into - - -

SENATOR PEARCE: If the Chief Justice please, I would rather hear that question re-read. I thought that the witness was answering the question directly, and I would rather have the Reporter read the question.

CHIEF JUSTICE DREW: Would you read the question, Mr. Reporter?

MR. NICHOLS: In order to save time, I'll withdraw the question.

BY MR. NICHOLS:

Q Isn't it true that the higher a figure that the appraiser puts on the property, the better your position is with the client?

A Now, which appraiser are you referring to?

Q I'm talking about the Court-appointed appraiser, that the Court appointed, in these condemnation cases?

A No sir, I don't think that's true, because it's been my experience that the State Road Department, in negotiating, does not accept that as the value for the purpose of - - - not in our Circuit, anyway.

Q Well, the more that you get for your clients, the better fee that you get; we can agree on that, can't we?

A Yes, the fees that are set are based, to a great extent, upon the final recovery which your client makes in the suit.

Q Just as a general proposition, you will admit, will you not, that it's pretty good to have friendly appraisers in these condemnation cases?

A The Court-appointed appraisers, whether they are friendly or not, doesn't have any effect upon the case, really, Mr. Nichols.

Q Well, if he puts a figure high enough, you'll just take it and quit right there, won't you?

A Yes sir, but the State does not have to accept that.

Q I understand that, the State - - - I'm not talking about the State, I'm talking about you and your client. If he gets that figure up here good and high, you and your client can take it and settle right there, can't you?

A No sir, we can't.

Q Now, when this case was - - - when Judge Kelly, I believe you said, disqualified himself on the - - - by the way, how many pages did your motion to disqualify cover, counting all the affidavits? Can you just tell us, approximately?

A No sir, I can't.

Q Well, would it be twenty-five or forty pages long?

A Well, there's a lot of difference between twenty-five and forty, but you could check the record and - - -

Q Well, I'm just trying to get you to tell me the number of pages. If you want to check the record.

A Well, if you want me to check it accurately, if you'll hand me the record, I'll be glad to do it.

Q All right, sir. I'm just trying to get you to give us some idea about how long it was.

CHIEF JUSTICE DREW: Mr. Nichols, why is the length of this - - - didn't he read it previously? Why is the length of it important to the Senate?

THE WITNESS: Yes sir, I read it.

MR. NICHOLS: Well, I'm certainly not going to ask him to re-read it.

CHIEF JUSTICE DREW: Is your inquiry directed at what he read on Friday?

MR. NICHOLS: On Friday, I think; and I simply asked him approximately how long of an affidavit to disqualify, and the affidavits attached to the motion, was involved. This was the first one that he filed, in the first case that he ever had before Judge Kelly.

THE WITNESS: You want to know the length of it, including the exhibits attached?

BY MR. NICHOLS:

Q Just approximately, the number of pages.

A Well, I can't approximate it. I can count them for you.

Q All right, sir, the pages.

A Do you want me to count them?

Q I thought that's what you were doing.

A Forty nine pages.

Q Thank you very much. Now, the attorneys for the State came along with a shorter motion, and he granted their motion and denied yours, to step aside in the case when they pointed out to him that one of these parties, somewhere, he had represented them in some - - - some former client relationship?

A That's right, and we had pointed out the same thing in our motion.

Q That's right, you pointed it out yesterday, I think.

MR. NICHOLS: Now, Your Honor, I don't know what time you want to take a recess - - -

CHIEF JUSTICE DREW: About 11:30.

MR. NICHOLS: All right, sir, fine. We'll be here a good while with the cross examination of this witness.

BY MR. NICHOLS:

Q Now, in the - - - in this very case - - - by the way, you, I think, read to the Judge some Code of Ethics yesterday, concerning his conduct. I'll ask you, do you think that there's anything improper, or any impropriety in you attempting to continue to handle matters before Judge O. L. Dayton, who was the brother, of - - - or a member of - - - the senior member of your firm?

A I do not.

Q All right, sir, let me read you the Code of Ethics for lawyers, Number 13:

"Kinship or influence.

"A Judge should not act in a controversy where a near relative is a party. He should not suffer his conduct to justify the impression that any person can improperly influence him, or unduly enjoy his favor, or that he is affected by the kinship, rank, position of influence of any party or other person."

Don't you think your firm, in continuing to insist that lawyers let you try cases before the judge's brother, and making the lawyers even state an objection, is a violation of that Canon?

A No sir, I do not. That Canon, as well as the statute with regard to disqualification for interest, refers to a party. A lawyer is not a party to the litigation.

Q Now, you refer to 38.02. Isn't that the statute of disqualification? Among other things that disqualify you, and skipping the first part of the paragraph: ".. or that said judge is related to an attorney or counsel of record in said cause."

A That statute refers to - - - that's not an automatic disqualification; that is a ground for disqualification. If a lawyer is related to the judge, the other party has the right to move for the judge's disqualification, and the judge must step down in that instance - - -

Q That's right.

A - - - but - - -

Q Now, this statute, this rule of ethics that we were talking about a minute ago, about conduct for attorneys, about kinship or influence, "he should not suffer his conduct to justify the impression that any person can improperly influence him, or unduly enjoy his favor." Now, don't you feel, Mr. Luckie, that over a period of time, the fact that one of your partners is a judge - - - brother of the judge, has helped you and your firm attract business in the County, legal business?

A Mr. Nichols, I don't. Because prior to the time that Judge Dayton was defeated, it was common knowledge that Judge Dayton just did not try cases, contested cases, in which we were involved. I think, as a matter of fact, it caused us to lose business because Judge Dayton was well thought of as a Judge, and many times we might have been associated in cases, had it not been for the fact that if we had been associated Judge Dayton would no longer have been the Presiding Judge.

Q Well, just as a matter of medium, can we agree that probably there are more uncontested matters handled by Courts than contested matters? Would you say that was the general rule and is it your general practice?

A Yes, I think so. That there are, that that would be true.

Q All right. Now, don't you think that it is known all over the county - - - that they sit down and they are talking among themselves, "Who should we get to handle this matter?" And they say, "Well, let's get the Dayton firm over there. The Judge's brother is on the Bench." Don't you think that would be considered in that community?

A I really don't know, Mr. Nichols, the answer to that.

That would be speculation on my part. I don't know what effect it might have, one way or the other.

Q All right, now, when Judge Kelly came along - - - and, by the way, you were active in helping Judge Dayton get elected, weren't you?

A I did not contribute any money to his campaign, but I did help him in some ways. I think I did. Of course, I also think I might have had some influence on friends, but I also believe that most people's sphere of influence is not as large as they think it is.

Q Well, you talked with your friends and those that you thought you would have some influence with, and said, "I hope you will vote for O. L. Dayton. He is George's brother, a member of the firm."

A I did, because I thought he was a good Judge.

Q Well, I don't impute anything improper about it. You did actively support and tell your friends that you hoped they voted for Judge Dayton, didn't you?

A Yes, I did.

Q Now, when Judge Kelly came on the Bench, under this statute he was elected to be the Resident Judge of Pasco County. When he started out, in fact, to become the Judge of Pasco County the effect of his asking that cases in the Clerk's Office be assigned - - - of the Dayton firm - - - to him would have eliminated any question that might be in the public's mind about your influence or non-influence with the Court, wouldn't it?

A I don't believe that there was any question in the public's mind about that, Mr. Nichols. I think you are assuming something that was not a matter of fact.

Q All right, sir. Now, did you know that Judge Kelly, at the same time, told the Clerk that he did not wish to preside over any matter in which his law partner had a legal matter? In other words, he wanted that assigned to Judge Dayton so that there would be no question of influence?

MR. JONES: If the Court please, we would like to at this time make an objection to the style and manner in which counsel is asking these questions. Counsel - - - and he objected to this procedure - - - is making a short speech, and then at the end of the short speech or testimony, he says, "Is this not true?" And the witness answers the question. We think that the Court should admonish counsel to ask proper questions on cross examination without making a speech.

MR. NICHOLS: Well, if Your Honor please - - - and I address myself to the Court - - - this is cross examination, and I am allowed broad latitude on cross examination. I am moving along with the matter under cross examination.

CHIEF JUSTICE DREW: I think that great latitude is allowed on cross examination. The Senators here are able judges. I will overrule the objection. It should not be argumentative, as you know, of course.

MR. NICHOLS: It will not be argumentative.

THE WITNESS: Mr. Nichols, I don't know what Judge Kelly did or did not instruct the Clerk with regard to his law partner, former law partner.

BY MR. NICHOLS:

Q You never heard of any case that he tried, by his former law partner, did you?

A I don't recall Mr. Howay ever trying a case while he was in Pasco County.

Q Well, he was a practicing lawyer there and he has legal matters before the Court, whether they are contested or uncontested, doesn't he?

A If he ever had a matter before the Court, I was not involved and I don't recall ever seeing him in Court.

Q Now, you had no legal rulings before this Judge on any case prior to the filing of this Disqualification paper in that case?

A I had no legal rulings. He has sent out notice of hearing in some cases pending before other Judges.

Q That is correct. Now, I want to explore a little bit further the process that you said you used to get lawyers to agree to come before Judge Dayton in contested matters, after Judge Kelly was elected. Did I understand you to say that you called up the lawyer on the other side and asked him if they had any objection?

CHIEF JUSTICE DREW: Just state what the procedure was, Mr. Luckie.

THE WITNESS: I never did ask the lawyers to agree to go before Judge Dayton. The procedure was that if a case was filed by another law firm and we were called in to represent the Defendant - - - it was the other lawyer's case - - - and if the case should be assigned to Judge Dayton, then we would take it upon ourselves to call the lawyer and ask him if he wanted to have another Judge try the case, and would advise that lawyer that, in the event he did want another Judge, he would not be required to file any formal motion or petition. That just as a matter of course, it would be handled by another Judge and in the simplest possible way it would be assigned to another Judge.

BY MR. NICHOLS:

Q Fine. So you put the lawyer in the position of having to tell you or George Dayton that he did not want to go before his brother, O. L. Dayton.

CHIEF JUSTICE DREW: He has answered the question, Mr. Nichols.

MR. NICHOLS: I understand, Your Honor, but I want to pursue this a little bit further.

BY MR. NICHOLS:

Q So the lawyer, if he desired not to go before Judge O. L. Dayton, has got to tell you or his brother that he doesn't want to go before Judge O. L. Dayton in the matter or wants to go before somebody else?

MR. JONES: We object to the question, Your Honor, as argumentative.

CHIEF JUSTICE DREW: I shall sustain the objection. I think it is argumentative.

BY MR. NICHOLS:

Q Now, in one of these matters after Judge Kelly was elected, did you have a matter with a lawyer named Eric Wagner in the Hamilton case?

A Yes, we represented the Board of Public Instruction of Pasco County in that case, and Mr. Wagner represented Mr. Hamilton.

Q And in that, after Judge Kelly was elected, is it not a fact that Mr. Wagner, the lawyer, set down the matters and motions to be heard before Judge Kelly?

A He did set a hearing before Judge Kelly, and that was cancelled.

Q All right.

A And later Mr. Wagner set it before Judge Hobson.

Q All right, now let's pursue that: Isn't it a fact that the only reason that it was cancelled was because you called him up and berated him up one side and down the other because he had set it down before Judge Kelly?

A No sir. I never have "berated" - - - I never did "berate" Mr. Wagner in that case. I believe we had a conflicting appointment in the District Court of Appeal, and we requested that the hearing be postponed, because of that conflict.

Q Didn't you have a pretty heated discussion with him, and you bawled him out because he had set it down before Judge Kelly?

A I don't ever recall that.

Q And you insisted that it go on before some other Judge?

A No sir. I do recall discussing it with him, the fact that that was not Judge Kelly's case.

Q You got pretty mad about it, didn't you?

A I don't recall whether I got mad or not. I did discuss it with him.

Q Well, how did you get? I don't want to misdescribe you.

A As I recall, I told Mr. Wagner - - - I told him first we had a conflict; and, secondly, that the case was not Judge Kelly's case; that there was another Judge who was handling that case.

CHIEF JUSTICE DREW: Who is Mr. Wagner?

THE WITNESS: He is a lawyer.

MR. NICHOLS: He was a lawyer who was handling one side of the Hamilton case, is that correct?

THE WITNESS: He was representing Mr. Hamilton.

BY MR. NICHOLS:

Q That is correct. Now, your conduct was such that you called him up and apologized to him later on, didn't you?

A No sir, I did not.

Q You did not. Now, you don't like for anybody to set any matter down before Judge Kelly, do you?

A You mean now or then?

Q Any time since the election. You started this about twenty-eight days after.

A Mr. Nichols, the only thing that I objected to and what I became concerned about was that Judge Kelly seemed to be taking an undue interest in cases in which other Judges were involved by sending out notices of hearing. I could not understand why he was taking such an undue interest, and I became alarmed about it, as to his motives in doing it.

Q Hadn't he been elected to be the Resident Judge of Pasco County; you are stating that he hasn't got a right to hear those cases of Pasco County?

A I don't think that he has a right to set down a case for hearing that another Judge was involved in, without consulting that other Judge about it.

Q All right. Judge O. L. Dayton's election to be the Resident Judge of Pasco County had come to a halt, hadn't it, in January?

A Yes sir.

Q All right. He was no longer the Resident Judge of Pasco County, was he?

A That is correct.

Q Now, let's take up how he got back on the Bench. Immediately after his election, didn't you and some of the others come and call on Governor Collins and get him to be reappointed under a population increase of the Sixth Circuit?

A I did not go to see Governor Collins.

Q Well, you lawyers, or some group of lawyers there who had been supporters of his in the past, got together and discussed the matter, didn't you, to get him reappointed?

A I don't recall having any particular discussion about it, myself. There were some other lawyers who were trying to do it, but I was certainly not involved in that to any noticeable extent.

Q Well, you wouldn't say that it was a surprise to you that O. L. Dayton got the appointment, would you?

A I don't know. I wouldn't say that I was surprised or that I was not surprised about it.

Q Well, who did come up and call on Governor Collins to get him to reappoint the man who had just been defeated?

A I don't know. I really don't.

Q You haven't got any idea about it?

A No sir, I don't know the first one that came to see him.

Q Were you not a Collins supporter?

A No sir.

Q Was George?

A No sir.

Q Wasn't there a petiton for him to go back on the Bench presented to Governor Collins?

A I believe there was, and I might have signed that petition, Mr. Nichols. I don't recall, but it is possible that I signed the petition.

Q That's right. Then you were actively interested in petitioning Governor Collins to get him back on the Bench?

A To the extent that I signed the petition.

Q Now, that appointment was the result of a population increase of the entire circuit, was it not? Talking about the increase of the circuit?

A Yes sir.

Q Not just Pasco County?

A That is correct.

Q And he was appointed to be a Circuit Judge for how long? Two years?

A Yes sir, a two year term.

Q A two year term. Then he returned to the area, did he not, after his appointment?

A Yes sir. He lived in Dade City at that time. He does not now.

Q And Judge Kelly lived at Zephyrhills?

A Yes sir.

Q How far is Zephyrhills from Dade City?

A About nine miles.

Q And that is also in Pasco County?

A Yes sir.

CHIEF JUSTICE DREW: Mr. Nichols, I think we are

going to take a ten minute recess at this time. We will stand in recess for ten minutes.

Whereupon, at 11:22 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 11:32 o'clock A. M.

CHIEF JUSTICE DREW: Will the Senators be seated?

A quorum present.

Senator Johnson (6th) was excused for a short period from attendance upon the beginning of the Afternoon Session for the purpose of attending a hearing in Federal Court, previously set.

CHIEF JUSTICE DREW: At this time I would like to interrupt the cross examination to allow Mr. Luckie to again explain for the benefit of some of the Senators who have asked the Presiding Officer, the question that he was interrogated on as to whether or not all these matters could be cured—that he complains of—could be cured by an appeal to a higher court, and I'm going to ask Mr. Luckie to restate what he stated with reference to this matter, and then we will proceed with the cross examination. You can do that very briefly, I think, can't you, Mr. Luckie?

THE WITNESS: Yes, Your Honor. My statement was that these matters cannot be corrected by appeal, some of them cannot. The loss of time can never be corrected, nor can the additional expense involved be corrected, neither can the demeanor of the Court, with reference to the case, actually be corrected, because of the effect it has upon the over-all administration of justice in the county.

Your Honor, before I proceed any further, I would like to correct a misstatement that I made in my testimony.

CHIEF JUSTICE DREW: Go ahead, sir.

THE WITNESS: In testifying with relation to the bill which was passed in 1955, requiring that there be a resident Circuit Judge in Pasco County, I believe I testified that that was - - - that my partner, George Dayton, was the sponsor of that bill. I've checked the Senate Journal and, actually, that bill was introduced by Senator Houghton, from Pinellas County.

MR. NICHOLS: May we proceed, Your Honor?

CHIEF JUSTICE DREW: You may proceed.

BY MR. NICHOLS:

Q Mr. Luckie, let's pursue a little bit further with that question about appeal that was just asked, costs. By the way, the cost involved, the winning side can tax against the losing side, can it not, the cost?

A The actual court costs, but not the additional fees, the attorney's fees that are involved in the appeal.

Q Now, Mr. Luckie, you and I are both lawyers, and when I say "the court costs," you understand what I mean?

A Yes sir, and I answered it.

Q Now - - - so, the court costs can be recovered, can they not?

A Yes, they can be taxed in the trial court, after the appeal is completed, the court costs.

Q All right, sir. Now, you said that many cases may involve $500 or $750, or $1000, and that it might not be worthy of an appeal, to appeal those types of cases. Is that correct?

A That's right.

Q All right. Now, you have referred to Judge Kelly having decided those types of cases, I presume. Likewise, wouldn't it be true, of the same proposition, that Judge O. L. Dayton decided those types of cases?

A That's true.

Q So you are really seeking a favorable forum before whom the error might be committed, if error was committed?

A Well, are you asking me a question or making a statement?

Q No sir, I'm asking you a question.

A What was the question?

Q Judge O. L. Dayton can make errors and mistakes of law just the same as Judge Richard Kelly, couldn't he?

A Theoretically, he could.

Q So, if Judge O. L. Dayton makes them, and it happens to be in your favor, then the other fellow is faced with the cost and the appeal, isn't he?

A That's right.

Q And that would be all right, in your estimation, wouldn't it?

A Well, the only two cases that I was ever involved in, as far as the appeal was concerned, in which Judge Dayton was the Presiding Judge, I won the appeal.

Q All right, sir. So, you had only two matters in which you had appeals from Judge O. L. Dayton and, if my memory serves me right, during the past two and a half or three years of your practice before Judge Kelly, I think you said you only had two appeals of Judge Kelly, isn't that right? The Scussel case and in the Hill case?

A That's correct, only two appeals.

Q Right.

A I don't recall but, maybe, two or three cases that reached final conclusion before Judge Kelly.

Q All right, sir. Now, the Scussel case that you referred to, you got that matter corrected, and corrected very quickly in the District Court of Appeal, did you not?

A Yes sir.

Q And in fact, you had a stay order, I think, entered almost within twenty-four hours, is that correct?

A That's correct.

Q All right. So, you got immediate, speedy legal relief in the District Court of Appeal in the matter, didn't you?

A Yes sir.

Q And you're not dissatisfied with any of those District Court decisions, are you, in that regard, the Scussel case?

A No sir.

Q You liked them pretty well; you won the matter?

A That's correct.

Q At that point you have a ruling of the District Court that Judge Kelly was wrong and you were right, is that correct?

A That's right.

Q All right, sir. Now, that matter is on appeal to the Supreme Court of Florida at the present time, isn't it?

A Yes sir, Judge Kelly appealed.

Q That's right, and it's up before the Supreme Court, and it's been argued, hasn't it?

A Yes sir, the arguments were held last November.

Q All right, sir, and it's now before the Supreme Court?

A That's right.

Q All right, if the Supreme Court reverses the District Court and says that the District Court is wrong, instead of Judge Kelly, will you want the District Court impeached because they made the wrong ruling?

A No sir, I don't think that any member of that District Court has been guilty of any impeachable offense, anything that even touches on an impeachable offense.

Q But you are now before the Senate, asking the Senate to impeach Judge Kelly because he made a wrong ruling, as far as the District Court, up to that point?

A That's not correct.

Q Now, let's take up, I believe, in sequence - - - I'm trying to follow the chronology - - - before I do leave the Simpson case, though, I want to ask you a little bit more about the basic proposition of disqualification. Mr. Luckie, that statute that you were proceeding under is 38.10, I think, is it not?

A That's right, sir.

Q And that deals with - - - says, "When a party is aggrieved," does it not, whenever a party - - - and I quote, "Whenever a party to any action or proceeding shall make or file an affidavit that he fears that he will not receive a fair trial" - - - let's start, now, with the basic proposition that the party is the person involved, isn't it?

A That's correct. However, the Supreme Court has ruled that if a Judge is prejudiced against an attorney, that that prejudice against the attorney might reflect upon the client, and that that can be the basis of disqualification under that statute.

Q But there's a great body of law that has a difference of opinion on the point, dealing with the question of whether or not the party or the attorney has the right, isn't there?

A There's no disagreement on that point; that point has been established by the Supreme Court.

Q But there have been many rulings and decisions in that regard, and there's a good body of law and differences of opinion in that regard, isn't there?

A No sir, the law is fairly well settled on that point.

Q Well, under this very statute that we're - - - I'll hand you in a minute, I'll ask you if there are not a lot of cases that rule on that very question?

A There are a lot of cases, but the ruling has been that prejudice or claimed prejudice of a - - - that the lawyer claims that the judge is prejudiced against him may reflect upon the client's cause and that, therefore, that that is a ground for disqualification under this statute.

Q I'll read one of them right here off the bat: "This section refers to prejudice against clients, not his lawyer, but prejudice against the lawyer may be of such character and degree as to rob the Court of the degree of impartiality required by law" - - -

A That's exactly what I said.

Q That's right but, by the same token, it primarily deals with the parties and, later on, there are some decisions that rule one way, there are some decisions that rule the other, are there not?

MR. JONES: Mr. Chief Justice - - -

MR. NICHOLS: I withdraw the question.

MR. JONES: Thank you.

CHIEF JUSTICE DREW: I think we'll save time if you'll just ask questions, but do not argue the law with the witness. Otherwise we'll be here all summer.

BY MR. NICHOLS:

Q Now, the point that I'm trying to get to is this: Did any one of those clients in the Scussel case come to you first and say they wanted Judge Kelly disqualified?

A No sir. I explained before that I called my clients in and told them that I would either have to withdraw as counsel, or that we would have to disqualify him, that I did not feel that they would receive a fair trial if I was the attorney representing them in the case, so that I either had to withdraw, or we had to proceed to disqualify him, and they elected to follow the disqualification procedure.

Q So, the answer is that the clients didn't call you up and say they wanted Judge Kelly disqualified, you called them up, didn't you?

A Yes sir, but I felt compelled to do so in representing them, that I didn't feel like I had any choice in the matter.

MR. NICHOLS: Now, Your Honor, I don't want to cut this man off, but I asked him a simple question, and he wants to give me a rambling - -

CHIEF JUSTICE DREW: I think he's answered the question four or five times, Mr. Nichols.

BY MR. NICHOLS:

Q All right, sir. Now, in this very case some of the litigants themselves, I notice the affidavits are executed in Minnesota, Maryland, one in DeSoto County, and one in Polk County. So, those people were following your advice about disqualification?

A They were following just exactly what I told you, Mr. Nichols, that we advised them that we did not feel that they would receive a fair trial before Judge Kelly and, for that reason, we would either have to withdraw or disqualify him, and they elected to follow the disqualification procedure, rather than have us withdraw.

Q Did you tell them at the same conversation that if Judge Kelly disqualified, the case referred back to Judge O. L. Dayton?

A We didn't discuss that.

Q Now, you have some lawyers who have filed accompanying affidavits, is that correct, in this very matter we're talking about, the Simpson case?

A Yes sir - - - I'm not sure about the Simpson case, but maybe Mr. Clawson might have filed an affidavit.

Q Well, in this or some of the others, you recall there are some lawyers in the county there that have filed accompanying affidavits, do you not?

A Yes sir, Mr. Clawson has filed an affidavit, and Mr. E. B. Larkin has filed one.

Q And Mr. E. B. Larkin, Mr. Clawson and them are some of the first names on any type of a petition or anything that has to do with the changing of the Circuit, or petitions for disqualification, or impeachment proceedings, are they not?

A I don't recall the order in which the petitioners were signed; they just signed them.

Q Well, they were some of the first, weren't they?

A I don't know. I know they signed them.

Q Well, isn't it a fact that you lawyers, kind of agreed among yourselves that any time you want an accompanying affidavit, that you will furnish it, to disqualify Judge Kelly?

A No, there hasn't been any such agreement as that. I have - - - Mr. Clawson discussed that with me; I believe Mr. Larkin did, and I told both of them that I would file an accompanying affidavit, because I don't feel that either Mr. Clawson's or Mr. Larkin's clients can receive a fair trial before Judge Kelly.

Q Now, then - - - and that's the feeling that has existed ever since he got elected?

A No, it has not.

Q And you filed your motion to disqualify him in the first - - - based on the election campaign, didn't you?

A It was not based - - - it was based, in part, on the election campaign. It was also based upon Judge Kelly's activities in trying to take over the jurisdiction of cases which other judges were handling, judges other than Judge Dayton.

Q Now, you never have liked Judge Kelly since, when he was District Attorney, and in the case of Sam Latham, in which you represented Sam Latham, and that Sam Latham was convicted for narcotics and morphine, and put in the penitentiary for five years, as the prosecutor, and you defended?

A I defended Mr. Latham, yes.

Q And Mr. Kelly was a lawyer, or District Attorney at that time, wasn't he?

A Yes, he was.

Q He argued the other side of the matter?

A Yes, he did.

Q And you all prepared briefs and went to the Fifth Circuit Court of Appeal?

A That's right.

Q And the Fifth Circuit affirmed it, and your client was sent to the penitentiary for five years?

A That's correct.

Q And actually, you never have liked Kelly since that time, have you?

A There was nothing that happened in that case that would affect my feeling toward Judge Kelly in any way.

Q Now, sir, I want to take up the case in which - - - I believe it was the case of Haymons vs. Groover, in which you again filed a motion to disqualify Judge Kelly in that case; I believe that was the State Road Department - - - Haymons vs. Groover, that was the one in which I think you had a similar motion to disqualify, wasn't it?

A Yes sir. That was a damage suit, involving the death of a child.

Q All right, sir. Now, that was filed in March of 1961, wasn't it?

A I believe that is correct.

Q I'm trying to get the sequence of dates here.

A It was filed after the Simpson disqualification.

Q I believe - - - if there's any question about it, I don't mind your checking the record, but I believe, from your previous testimony that it was in March of 1961. All right, sir, now, in your testimony before the House, I think you referred, after he filed this order disqualifying himself, and said that he had no ill will or feeling toward the Dayton family or your firm or you, personally, and that he certainly wanted to get along with the firm, and there wasn't any reason why you men couldn't have a fair trial, and so forth and so on, I think you all filed a response to it, didn't you?

A We did.

Q Now, how long a period of time - - - I will use your phrase, I think you used the phrase "truce" - - - did you all have this truce before there was an eruption of circumstances between you and Judge Kelly?

A The Willie Hill case.

Q All right, sir. Now, that was, the Willie Hill case was in March of 1962, wasn't it?

A Yes sir.

Q And I think that was March 12, 1962, that you were having this trial; so, we have approximately a year there - - -

A That's right.

Q - - - that you all - - - now, your firm was continuing to practice before Judge Kelly during that period, were you not?

A Yes sir. We - - - I believe that we had some cases before him during that time; I would have to check the docket to be sure, but it was - - - I've explained to you what our practice was on that, that if any cases arose, we did try them.

Q I think you testified before the House - - - and I quote, "We tried some matters before him, which we had, I would say, pleasant relationship existed."

A I testified the same thing here before the Senate.

Q That's correct. So, during that year - - - during that period of time, then - - - then you said, "Then Judge Kelly appointed me to represent three indigent defendants" - - - we're talking about the Hill case.

A Yes sir.

Q All right, sir. Now, these three indigent defendants, he asked you to defend all three of them, I believe, at first, didn't he?

A That's right.

Q And then, after you had a conference with these people, you felt there might be some conflict of interest?

A Yes sir.

Q And you came back to him and told him that, didn't you?

A Yes sir.

Q Isn't it a fact that at that point he told you for you to select which one of the three you wanted to defend?

A Yes sir. I already have testified to that.

Q All right, sir. Well, he wasn't trying to embarrass you by making you take the tough one or anything, he said that you could select one of the three, didn't he?

A No sir, there was nothing about that that I could object to, or that I felt aggrieved about.

Q That's right, but what I'm talking about, he wasn't

- - - he let you have your selection of the three, didn't he?

A Yes, he did.

Q All right. Now, then, during this trial, the trial of that case, the circumstances came up relating to the confession; that was one of the main things that you were aggrieved about, weren't you?

A Two confessions.

Q Well, two confessions, all right. Now, the testimony that was taken by the judge concerning that confession was taken outside the presence of the jury, was it not?

A Yes sir; that's what I testified to.

Q That's right, but in your brief to the District Court, and in your testimony before the House, you made the statement, did you not, that it was made in open court?

A I said it was made in open court, but the jury was not present. My testimony was, and my statement to the Supreme Court was that all of the other officers of the court, spectators were present at the time, but that the jury was not.

Q All right, sir. Now, he determined, after he made a special inquiry - - - incidentally, isn't it the judge's duty and responsibility to find out whether or not there has been any undue influence or any impropriety in the obtaining of a confession?

A Yes sir, he's required, in the first instance, to make a determination as to whether or not it's freely and voluntarily made.

Q Now, I think you were reading from Page 363 of the transcript, and that - - - if you'll get that, please sir, I'll appreciate it.

A Will you tell me, generally, what you are referring to, so I can find it?

Q All right, sir, we're talking about where you said that - - - where the judge said, and I think it's Volume 5, Page 60 - - - no, it's Volume J, Page 363, and the proposition, Mr. Luckie, was the court - - - the jury was out, and the court was inquiring of you all what your positions were about this confession, and isn't it a fact that the Judge had a discussion going, and the State's Attorney was trying to get in the confession, and you were trying to block it; that, basically, is what we're talking about, isn't it?

A Yes.

Q Actually, you may have been working from your brief when you presented your testimony?

A I was.

Q Here. That is the same brief, Mr. Luckie, incidentally, that you argued from in the Supreme Court of Florida, is it not?

A Yes sir.

Q And you made substantially the same argument to the Senate here that you made to the Supreme Court of Florida when you argued it over there, didn't you?

A Yes sir. I would say that I did.

Q Do you think that the Court of Impeachment should sit on these appeals, or do you think that the Supreme Court of Florida should decide these appeals?

A I think that the Supreme Court of Florida necessarily would have to decide this one way or the other; but there were things that happened during the course of that trial that can never be corrected by an appeal. They can only be corrected in a proceeding such as this.

Q Now, the main thing that you were referring to was the admission in evidence of that confession, wasn't it? Or that was one of the main propositions anyway, wasn't it?

A During the trial, that was one of the first things that came up that we had trouble with.

Q And during the preceding year - - - during this "truce," as you refer to it - - - you had gotten along pretty well with this Judge, in trials and hearings and rulings, hadn't you?

A Yes sir, I had.

Q And this ruling about this confession was the first time that he had ruled against you, of any substantial nature, wasn't it?

A I don't believe that he had ruled against me before that time. I don't recall having a trial before him during that year's period, except a Chambers hearing before him. Not a Jury trial; I have never had a Jury trial before him.

Q Well, in Chambers you got along all right with him, didn't you?

A Yes.

Q And during that year's time was the only time you had given him a chance to rule on matters one way or the other, wasn't it?

A What was the question?

Q During that year's period of time was the only time that you had given the Judge an opportunity to rule on matters one way or the other, wasn't it?

A Yes - - - no, that is not true exactly, because I had given him a chance to rule on matters with regard to the Simpson case and the Haymons vs. Groover case.

Q And those were disqualification proceedings. Everything prior to this year's truce had been motions to disqualify him and get him out of cases, hadn't it?

A Yes. Because of his conduct.

Q So, when you gave him a chance, during this period of a year, he made a pretty good Judge, didn't he?

A There were some things that I could have complained about. He certainly was not as good a Judge as I was accustomed to go before.

Q Well, you were accustomed to going before Judge O. L. Dayton and you got good ruling?

A No sir. Up until that time my custom was to go before Judge Leavengood or one of the other Judges down in Pinellas County. The fact is, in my practice I would say that I went before Judge Leavengood more than I did any other Judge.

Q Do you wish to retract your previous statement that you had a pleasant relationship during that period of a year?

A No sir, I do not.

Q You don't think Judges have to have the same attitude and the same pleasant personality at all hours of the day or night, do you?

A No sir.

Q In fact, every particular Judge has his own peculiarities in some way, doesn't he?

CHIEF JUSTICE DREW: Mr. Nichols, you are getting far beyond anything that this Court is interested in; and you are arguing with the witness. Ask your questions directly, and I think we can get along much faster.

BY MR. NICHOLS:

Q Now, we were talking, I believe, about the Hill case. Your client, I believe, was a nineteen year-old colored boy, was he not?

A That is correct.

Q And the Jury, however, found this boy guilty of murder in the first degree, is that right?

A Yes sir.

Q And you lost the case?

A Yes.

Q I presume that you made the same type of motion for new trial and argued substantially the same matters before the Judge in the lower Court, did you not?

A Yes. I did file a motion for new trial and argued that motion.

Q Now, the Supreme Court of Florida - - - you knew that the Supreme Court of Florida reviewed criminal cases, did you not?

A Capital cases.

Q Capital cases. And the Supreme Court of Florida corrects legal errors and affirms legal rulings, day in and day out, do they not?

CHIEF JUSTICE DREW: Mr. Nichols, that is still argumentative. Every member of the Court knows that the Supreme Court of Florida does that in cases, and it has been testified to three or four times.

BY MR. NICHOLS:

Q Now, Mr. Luckie, I will take up a completely new subject matter. By the way, during this year of so-called truce that you were having, did not you and some other lawyers attempt to change the jurisdiction for Circuit Judge Kelly's jurisdiction and create a Court of Record during that year?

A No sir. I had nothing to do with any Court of Record. I never - - - the only thing I have ever said about the establishment of a Court of Record was that I was opposed to it. And I was opposed to it and I still am.

Q Well, during that period of time there was some movement to create a Court of Record?

A There was some movement and some lawyers asked me about it, and I told them I was opposed to it, and I was and still am.

Q That would have materially cut down the jurisdiction of the Circuit Court, wouldn't it?

A Yes sir, it would have. I didn't see any need for a Court of Record in our county.

Q Because actually the Circuit Court now serves just one week in Pasco and then goes over to Pinellas for the other week, doesn't it?

A That is about the way it is handled, yes.

Q After O. L. Dayton was appointed under that population bill, did you and some other lawyers petition the Senior Circuit Judge for him to be the Resident Judge and for Judge Kelly to be the - - - did you all petition - - -

A No sir, we petitioned Judge Bird and asked him to allow the Judges in the Circuit to rotate. That is, to have the Judge in Pinellas County to come to Pasco County on some sort of rotating basis.

Q And that was to get Judge Kelly out - - - there were eight Circuit Judges, weren't there?

A Well, Mr. Nichols, those Judges are in Pinellas County and are Judges of the Sixth Circuit, and Pasco County is a part of it; and before Judge Kelly came it was customary for those Judges to come up to Pasco County. But after Judge Kelly came, he opposed it.

Q All right, now, let's move on. Now then, some of you lawyers decided that you wanted to change the circuit; to take Pasco County out of the Sixth Circuit and put it with the Fifth Circuit. Is that correct?

A That's right.

Q Now, when that bill was first discussed, I think you gave some history of its being discussed in the past - - - isn't it a fact that the Circuit Judge would have remained the Judge of the Fifth Circuit - - - or would have remained the Circuit Judge for Pasco County, and it would have put him over with the other five counties?

A I testified that I didn't know about that. However, it is my opinion that the Judge could not have gone to the Fifth Circuit.

Q Well, that is what they were talking about, though, at that time, was it not?

A I don't remember. If there was discussion about that, I don't remember it. But I don't believe that, then or now, the Judge who is elected in the Sixth Circuit could have gone to the Fifth.

Q All right, sir. You took up that matter first with the Legislature, did you not?

A Which matter?

Q About changing the circuit. I think you all filed a petition for the passage of legislation concerning the same?

A Yes sir, we did. We filed a petition with the Senator and the Representative. It had been discussed before that, but this was the first formal action.

Q I will ask you to identify, please sir, if that is not a photostatic copy of that petition, and I think that was introduced in the House before the Committee, was it not, through your testimony?

CHIEF JUSTICE DREW: Mr. Nichols, you asked two questions. Will you ask him one at a time?

THE WITNESS: This is a copy of the petition that was presented to the Senator and the Representative.

BY MR. NICHOLS:

Q And does it have the signatures at the bottom of it?

A Yes, it does.

Q Who are the first five signatures?

A Well, there are two lines. On this left hand side, the first one is George Dayton. The second one is mine. The third, E. B. Larkin. The fourth is W. M. Larkin. On the other side, the first one is Jim Altman, and the second one is - - -

Q All right. Wait a minute; I just asked you the first five.

MR. JONES: Your Honor, will he just let him read them?

MR. NICHOLS: Well, Your Honor, I asked him for the first five. If they want to read the whole petition, they can do so. I am not trying to block it. They can go through it if they want to. But I think I am entitled to have my question answered, and that is all I am asking.

CHIEF JUSTICE DREW: You wanted the first five names in the petition?

MR. JONES: Which side of the page?

THE WITNESS: Judge, it is all according to which side of the page you start on. There are two columns. On one side I have named the first ones, and on the other side I was going to give the names of the first ones on that side.

CHIEF JUSTICE DREW: Which ones did you want read?

MR. NICHOLS: Well, I thought matters in the English language read from the left to the right, but maybe I am off my rocker.

THE WITNESS: Well, if you wanted me to read the left side, I have already done it.

MR. NICHOLS: Thank you very much. Now, we would like this one marked for identification.

MR. JONES: No objection.

CHIEF JUSTICE DREW: Exhibit 2B.

BY MR. NICHOLS:

Q Now, later on in your petition addressed to the Honorable Mallory Horne, concerning these impeachment proceedings, or appointment of a special select committee, who are the first five, please sir, on the petition? Reading from left to right.

A This one is set up the same way as the other one; but reading from the left, it is E. B. Larkin - - - myself - - - George Dayton - - - Joe McClain - - - and Jim Altman.

Q Thank you very much. This is the petition - - - a copy or photostat of the petition, isn't it?

A Yes.

Q And this was introduced before the House?

A Yes.

MR. NICHOLS: We would like this marked for identification.

CHIEF JUSTICE DREW: Is there any objection?

MR. JONES: No objection.

CHIEF JUSTICE DREW: This will be 3B.

BY MR. NICHOLS:

Q Now, was the petition to change the circuit - - - now, I am going to stay on the subject matter of the change of circuit for a little while - - - was the petition to change the circuit approved by the people of Pasco County?

A It was not submitted to the people. I don't know how the people felt about it, Mr. Nichols.

Q All right, sir. On this list you have the signatures of nineteen lawyers, is that correct?

A Yes sir.

Q There is not a single signature of any citizen or general public or business man or anybody other than a lawyer, is there?

A No sir. And I can explain to you why, if you would like me to.

Q Now, I don't want a long explanation. I would like to proceed with my cross examination.

MR. NICHOLS: Now, Your Honor, if they want to go into the matter, they can.

THE WITNESS: This would not be a lengthy explanation.

MR. NICHOLS: Well, I don't even wish a short one.

BY MR. NICHOLS:

Q Now, after this matter got under way, the change of the circuit, did you and the other lawyers receive a telegram from Senator Covington about the matter?

A We did.

Q And in the telegram did he say, and I quote, "The refusal of a majority of the attorneys in Pasco County to support a referendum on this question makes my position impossible."

A Yes sir, those words are in the telegram.

Q I will ask you, please sir, if you will give us the date and if you will read the entire telegram from Senator Covington.

CHIEF JUSTICE DREW: Is that the telegram you received? A copy of it?

BY MR. NICHOLS:

Q Read it, please, the message that you got. Or, if you have the telegram, use it.

A I have the one that I received.

Q Fine.

A The telegram is dated March 15, 1963. It says - - - it is addressed to Dayton, Dayton & Luckie - - - this particular one - - - attorneys at law, Dade City, Florida.

"Regarding the proposed change of Pasco County from the Sixth Judicial Circuit to the Fifth, I can no longer consider this bill for introduction in the 1963 session of the Legislature. The refusal of a majority of the attorneys in Pasco County to support a referendum on this question makes my position impossible. I sincerely feel that I would be morally wrong to take this legislation any further under these circumstances. You can be assured of my continued interest in your problems. Respectfully, D. D. Covington, Jr., State Senator, 38th Senatorial District."

Q May we just use your telegram and mark it for identification?

A Well, I would like to retain it in my file, if I may.

MR. DANIEL: We will stipulate that a copy may be substituted.

MR. NICHOLS: Either way. It doesn't make a bit of difference.

CHIEF JUSTICE DREW: The copy will be marked for identification?

MR. NICHOLS: Yes sir.

CHIEF JUSTICE DREW: The copy will be received as Respondent's Exhibit for identification 4 B.

BY MR. NICHOLS:

Q The verbiage on this copy is exactly the same as on your original telegram, is it not?

A Yes. Except that this copy shows copies to some other people, and my telegram does not show that.

Q It shows copies to others.

A From this point on, it is not on my telegram.

Q Well, why not just let us use your telegram and make a copy of it? Now, is it the same?

A Yes.

Q Thank you. Now, I think you, in your explanation, said that this bill was designed to take Pasco County and put it with the Fifth and put Circuit Judge Kelly over in Pinellas County, is that correct? Basically?

A The request to the Senator and the Representative was that the circuit be changed and that the Resident Circuit Judge remain in the Sixth Circuit.

Q Well, if you take Pasco out and put it with the Fifth, that makes him - - - he is only a Judge for Pinellas County?

A Pinellas County, Florida.

Q Yes sir. Now, by the way, in your set-up there at the present time, what is the basic salary of a Circuit Judge in the Sixth Circuit, do you recall? Would it be $13,500 when this matter started?

A Yes.

Q And doesn't Pinellas County pay a $4,500 supplement to all Circuit Judges in that circuit?

A They did at one time. I don't know whether that supplement has been continued or not. I don't believe it has.

Q Well, you could just be mistaken about that if it does?

A Yes, I could be mistaken.

Q If it does, then, Pasco County does not pay any supplement at all, does it?

A No sir.

Q So, if it does pay a supplement, you get the benefit of the supplement - - - or the Judge who has the supplement?

A The Judge would benefit from the Pinellas County supplement, yes.

Q All right, sir. Now, moving a little further about this petition to change this circuit: Did you take it up with the lawyers of Pinellas County that you wanted to change their circuit?

A I don't recall discussing it with any of the lawyers in Pinellas County at the time we first started discussing it.

Q Well, you never did present it to a Bar Association in Pinellas County, did you? Anywhere, at any time?

A It was considered in the Pinellas County - - - in the Clearwater Bar Association. Whether any formal action was taken on it, I don't know; but the former president of the Clearwater Bar Association said that if we tried to send Judge Kelly down there, they would test the constitutionality of the bill.

MR. NICHOLS: Now, Your Honor, I move to strike that, as a completely gratuitous statement on the part of the witness, which shows his bias and prejudice.

CHIEF JUSTICE DREW: I think the answer should be stricken. It was not responsive. The question was whether any Bar Association of Pinellas County - - - whether it had been presented to any Bar Association in Pinellas County, if you know? Answer if you know; if you don't know, you can say so.

THE WITNESS: I know that it was discussed. Whether any formal action was taken by the Clearwater Bar Association, I don't know.

BY MR. NICHOLS:

Q You said Pinellas County. You are talking about Clearwater.

A Clearwater is in Pinellas County.

Q Now, were you the president of your Bar Association during this period of time, on the change of circuit?

A I was president of the Bar Association for one term. I believe I was president at some time when this circuit change was being considered.

Q Now, the lawyers of Pinellas County never, anywhere, at any time, said that they wanted a change in the circuit, did they? By any formal action?

A Not that I know of.

Q All right, sir. Did you take up with the lawyers - - - let's see, the Fifth Circuit is composed, I believe, of Sumter, Citrus, Marion, Lake and Hernando. How about the lawyers - - - I want to go back to the lawyers in Pinellas; there are about three hundred fifty or four hundred lawyers in Pinellas County, aren't there?

A I don't know the count. There are quite a number of them.

Q Well, that would be approximately correct, wouldn't it?

A I assume that that's correct if you say so.

Q All right. Now, how about the lawyers of Sumter County? Did you all go over there and ask them about changing their Circuit?

A Yes sir, I talked to several of the lawyers in Sumter County.

Q Did the lawyers of Sumter County, by resolution or any written action, endorse the matter?

A Not by resolution or written action.

Q Did you take it up with the lawyers of Citrus County?

A I don't recall discussing it with the Citrus County lawyers.

Q Did you take it up with the lawyers of Marion County?

A I discussed it with one lawyer, that I can recall, in Marion County.

Q Well, the lawyers in Marion County didn't endorse it, did they?

A Not by any written - - -

Q Did you take it up with the lawyers of Lake County?

A Yes.

Q Did they pass any resolution or otherwise?

A No, there was no resolution passed.

Q Did you take it up with the lawyers of Hernando County, and did they pass any written resolution endorsing it?

A Just by discussion with lawyers in Hernando County, not - - - there was no written resolution.

Q Now, did you or your Bar Association in any way attempt to get the reaction of the people of Pinellas County about this Circuit change, changing their circuit around?

A No sir, the Bar Association did not.

Q So, you all didn't say anything to the general public about changing their circuit, did you?

A No, we did not.

Q Now, did you take it up in any way with the people of Sumter County about changing their Circuit?

A No sir, we didn't, except some of the lawyers that we talked to.

Q Did you take it up with any of the people of Citrus County about changing their Circuit?

A The question would be the same as to each county in the Circuit.

Q So then, you never took it up with any of the people at all in any one of the seven counties?

A Except for lawyers.

Q I said "people," and I believe you understand, we're talking about the general public.

A Yes sir. Lawyers are people, too.

Q All right, sir, I'll stand corrected. Now, in that Sixth Circuit, of those two counties, and in the Fifth Circuit, of five counties, there's approximately a million people; would that be an approximate estimate of accuracy?

A I don't know. I assume that that's correct, if you say it is.

Q So, your group that was attempting to change this Circuit Judgeship never took it up or consulted anywhere with over a million involved in their Court?

MR. JONES: Mr. Chief Justice, we'd like to object to the question as being repetitious, grossly repetitious.

CHIEF JUSTICE DREW: I think it's repetitious. I'll sustain it.

BY MR. NICHOLS:

Q All right, sir. Now, Senator Covington, of course, was interested in having the people have something to say about it, by referendum, and he tried to get you lawyers to put a referendum on, so all the people could say something, didn't he?

MR. JONES: Mr. Chief Justice, we would like to object to the question as being argumentative. There is nothing in evidence as to what Senator Covington thought.

MR. NICHOLS: Well - - -

CHIEF JUSTICE DREW: The objection will be sustained.

MR. JONES: Thank you, sir.

BY MR. NICHOLS:

Q All right, I'll go back to the telegram itself.

MR. JONES: Very good.

BY MR. NICHOLS:

Q Isn't it a fact that Senator Covington was trying to get you lawyers to let the people down there have something to say about their Court?

MR. JONES: I'd like to object to the question on the preceding grounds. The telegram speaks for itself, your Honor.

CHIEF JUSTICE DREW: Overruled. I think he can answer the question, if he knows. Have you talked to the Senator enough to know his reaction?

THE WITNESS: I did talk to the Senator about the possibility of a referendum to the bill. I told him that, since it was the general feeling, that I didn't think that a referendum should be attached to it. The cost of a referendum on a general bill had been just absolutely prohibitive.

BY MR. NICHOLS:

Q Well, boiling it all down, you all didn't want the people to have anything to say about it, did you?

A Well, sir, it would have had to have been a referendum throughout the State of Florida and of course, I think that the cost of that would have far exceeded the - - - would have just made it completely out of reason.

Q So, it boils down to the fact that you were going to change the Circuit Judgeship with only nineteen lawyers on the petition?

CHIEF JUSTICE DREW: That's purely argumentative.

MR. NICHOLS: All right, I withdraw the question.

BY MR. NICHOLS:

Q Did you confer with any of the Circuit Judges in the Fifth Circuit, as to whether or not they wanted Pasco County in their Circuit?

A Of the Fifth Circuit?

Q Yes sir.

A Yes sir, I did.

Q Who did you confer with?

A I talked to Judge Fussell.

Q Judge who?

A Judge Fussell.

Q Where is he?

A Judge Carroll Fussell, from Bushnell.

Q Yes. And what was his reaction?

A Judge Fussell said that he was in favor of it, provided we didn't bring Judge Kelly with us.

Q Well, nobody wants Judge Kelly but the people that elected him, do they?

CHIEF JUSTICE DREW: You needn't answer that question, Mr. Witness.

BY MR. NICHOLS:

Q Now, you're not adverse to letting the people who elected him likewise remove him, are you?

CHIEF JUSTICE DREW: Whether he's adverse to it or not, Mr. Nichols, I don't think can possibly make any difference.

BY MR. NICHOLS:

Q Well, you are now asking the Senate, sitting as a Court of Impeachment, to remove him are you not?

A The only request that I have made was to the Speaker of the House, that the Speaker appoint the Committee to investigate, to determine whether or not he should be impeached, and I'm here merely as a witness.

Q Now, isn't it a fact that you have helped prepare and get the witnesses - - - and help prepare and get the witnesses, even before the House Committee?

A The witnesses were subpoenaed.

Q Yes, I understand, but you helped get them together, and helped get them up here, didn't you?

A I might have let somebody ride in my car, and I discussed it with some of the witnesses in connection with the House proceedings, yes sir, I did.

Q And you've been one of the active movers in getting this thing going before the Legislature, have you not, Mr. Luckie?

A Yes sir, I was very much in favor of it.

Q I understand; and you, likewise have been helping the Managers in getting the witnesses up here for the trial, haven't you?

A No sir, I have been here as a witness only, I have not participated in their procedure, or what they would - - - the order of witnesses or - - -

Q I understand that they're running the order; I'm talking about helping get the witnesses down from the area, and talking to the witnesses themselves about it?

MR. JONES: Mr. Chief Justice, we would like at this time to object to this line of questioning, and ask counsel to make it very clear, now, as to whether or not he wishes to attack the integrity, or impugn any overt action against the Rule, as set forth by this Chief Justice, for the witnesses talking back and forth. I think, if this is counsel's approach, I think it should be made very clear to the Court.

MR. NICHOLS: Well, I think - - -

CHIEF JUSTICE DREW: I think the question is proper, to show the witness' bias or prejudice or interest.

MR. NICHOLS: That's the only purpose of it, Mr. Jones.

CHIEF JUSTICE DREW: I overrule the objection to the last question.

THE WITNESS: Prior to the commencement of the impeachment trial here I might have had some general discussion with some of the people, or meet the lawyers from day to day but, as far as any active participation in the Managers' handling of the case, I have not had any such activity.

BY MR. NICHOLS:

Q Now, then, I want to go back - - - didn't you help draw the Articles of Impeachment in this case?

A Yes, I worked on them.

Q Now, let's go back to something else concerning the activities of abolishing or changing this Circuit around. I think you went in and talked with Judge Kelly about it, and when he asked what I have to do with my home, and being a resident here, you said, "Well, I guess you'll go over to Pinellas County." Is that substantially what you said?

A Yes sir.

Q And at that point, I think, you feel that he should not have had anything to do with the change of this Circuit, with the abolition of this office. You charge him with partisan politics in that regard, don't you?

A The way you phrased your question, Mr. Nichols, my answer is no.

Q Well, don't you think that the changing of a Circuit Judgeship from one County to another, and moving him into another office, and under the circumstances under which he was elected, under that statute I read you, that those moves are non-partisan and deal with the entire office itself?

A It would be non-partisan, except that Judge Kelly made it a partisan matter.

Q All right, sir, but the ability to change his circuit around, or change it from one place to the other, is certainly a non-partisan proposition, isn't it? Everybody's interested in that Circuit Court, aren't they?

A Yes sir.

Q That's not a partisan political matter, is it?

A It should not be.

Q Right. Now, then, he set out to speak before every group that he could find, and inform the public that it was about to be done without a referendum to let the public vote on it, didn't he?

A That is a small part of what he set out to do. He said that he was going to make speeches, and before every group that he could, and I can only assume that he was going to make the same kind of speech that he made at Zephyrhills.

Q That's right.

A And if he intended to do that, then, of course, it involved a great deal more than what you have suggested.

Q Well, you concede that he has a right to inform the public about what's going on, about the Circuit Judgeship and the jurisdiction and the resident judge being moved around, do you not?

A Yes sir, as long as he does it in an inoffensive manner.

Q Now, I believe you stated that he violated Canon 28 of the Code of Judicial Ethics, on partisan politics in that regard; is that one of your charges?

A Yes, I think he did, and I told Judge Kelly I thought he did in response to his request.

Q Doesn't that deal with partisan politics, saying that he shouldn't participate in partisan politics, that Canon?

A That's correct.

Q And that he shouldn't belong to a political committee?

A Yes sir.

CHIEF JUSTICE DREW: Did you read that Canon to the Court previously, Mr. Luckie, do you remember?

THE WITNESS: Yes sir, I did.

BY MR. NICHOLS:

Q Was it read? If it wasn't - - -

A I read Canon 15 and Canon 28, and also the ancient precedents, preamble part of it.

Q Now, you complain about the - - - one of the places that he spoke was before a Republican group at the Zephyrhills - - - at the Woman's Republican Club of Zephyrhills?

A Yes.

Q And I think you and somebody else had his speech transcribed, did you not?

A That's correct.

Q In the introduction of the speech - - - will you get your copy of it, please sir?

A I don't have a copy of it.

Q I believe that you filed it in your motion to disqualify?

A In the State Road Department-Aiken case.

Q In what case?

A State Road Department vs. Aiken.

Q Yes sir. Do you have that with you up there?

A No sir, I don't have the file.

Q It's just to your right, there, I think.

A This is the Simpson file.

SECRETARY FRASER: Here it is (A Court file was handed to the witness by Mr. Masterson)

THE WITNESS: This is not the volume. It's in another volume.

BY MR. NICHOLS:

Q Do you have it before you?

A Not yet.

(Another Court file was placed before the witness)

BY MR. NICHOLS:

Q Right after the introduction by the speaker, will you read us, please sir, the first remark of Judge Kelly, first paragraph?

A "First I would like to say this, I don't appear here today as a partisan. I don't appear here as a Republican guest. I work hard every day, being somebody's Judge - - - being every body's Judge."

Q Now, he didn't use the word "somebody's" he said "everybody's Judge."

A I corrected it.

Q Will you read the second paragraph?

A "There are some of the attorneys that were used to coming to Court, your Court, in khaki, that now wear coats and ties and show the proper respect for your Court, and that are not pleased with the way the Court is being conducted, but the fact is this, that everybody wears coats when they appear as an attorney in this Court, not just the Democrats. Everybody wears coats and everything that goes on in that Court goes on the same for everyone, as nearly as my intelligence and the guidance of God will permit me to have that done."

Q Now, the Judge then also - - - and it's about twenty-seven or thirty pages long - - - I'm not going to ask that it all be read, but isn't it also true that in there he also advocated that the people study their Court and find out what's going on, and let the people themselves have a right to vote on these matters? Wasn't that discussed generally?

A He discussed that, among other things, yes.

Q Among other things?

A Yes sir.

Q He also, I think, said that if somebody else wants this job, then let them run at the polls and be elected, let the people decide whether or not they want - - - who they want to be their Judge, too, didn't he, among other things?

A Yes, I believe he made that statement.

MR. NICHOLS: Thank you. Judge, we're about to go into a new matter with this witness.

CHIEF JUSTICE DREW: I think we'd better go on until 1 o'clock.

BY MR. NICHOLS:

Q Mr. Luckie, I think you referred in your testimony on direct concerning the fact that Judge Kelly participated in the circulation of a petition concerning this judgeship, and of sitting at - - - helping inform the Senator as to the people's reaction down there.

Is that part of your charge, that he helped draw these petitions and circulate them?

A Yes sir.

Q Now, did you know that when this matter came up, that he went over to Tampa and conferred with Mr. Mike Kinney and Mr. Cody Fowler, the Past President of the American Bar, as to what he should do and not do about it, his position in that regard?

A No sir, my exact knowledge of whether or not Judge Kelly participated in it was by his own admission to me.

Q Now, did you know that the very language that was put in the petition was drafted by Mr. Cody Fowler and his office?

A I don't know who put the exact language in it; the only thing I can say is that Judge Kelly admitted to me that he participated in the circulation of this thing and in the preparation of it.

Q Would it change your opinion in any way that that was advocated partisan politics to know that a life-long Democrat, and Past President of the American Bar, actually drafted the language of this?

A No sir, it wouldn't change my opinion in the least, Mr. Nichols.

Q Did you know that many more Democrats than Republicans signed those petitions and sent them to Senator Covington?

A I never did see one that had any signatures on it.

CHIEF JUSTICE DREW: What was that question? The petition to Senator Covington?

MR. NICHOLS: The petitions, Judge, were - - - the petitions themselves with nineteen names on them, and then they were getting the people in the community to sign them.

CHIEF JUSTICE DREW: And your question was, were they presented to Senator Covington?

MR. NICHOLS: That's right, they were being - - - getting ready to present them.

CHIEF JUSTICE DREW: I just wanted an understanding of the question.

BY MR. NICHOLS:

Q Now, you knew, throughout the community, that the people themselves, both Democrats and Republicans, were very much upset about losing their resident Judge, didn't you?

A I don't think that that is a fair statement. I know that the movement to circulate these petitions was instituted by the Republican Committee in the county, in cooperation with Judge Kelly.

Q Well, you would admit that they had the right to say something about their Circuit Court, too, won't you?

A Yes sir.

Q You are familiar with many Democrats themselves circulating those petitions, too, aren't you?

A I don't recall ever seeing a Democrat with one of them.

Q Who runs the theater right across, there in Dade City? What's that man's name?

A I don't know his name.

Q Businessmen right there by the hardware store, and the hardware store man, both, both right there at the theater?

A In what town?

Q Sir? In Dade City.

A Which hardware store are you talking about?

Q Well, right next to the theater there?

A There is no hardware store next to the theater.

Q Oh, excuse me, I'm wrong, I stand corrected. I'm talking about Zephyrhills, at Zephyrhills, the theater and the hardware store are right side by side.

A I don't recall. I know where the theater is in Zephyrhills, but whether there's a hardware store next to it, I don't know.

Q Well, both the hardware man and the theater man are active Democrats, and circulated the petition throughout the County, didn't they?

MR. JONES: Mr. Chief Justice, we'd like to object to the question as not being proper. It's the testimony of counsel, rather than a question to this witness.

CHIEF JUSTICE DREW: Sustained.

Q Now, moving on down to the Aiken-Scussel case, which is State Road Department vs. Aiken and Scussel?

A My clients were Mr. and Mrs. Scussel.

Q Now, in this matter, you had another motion to disqualify Judge Kelly, did you not?

A Yes sir.

Q And, again, it was composed of thirty-five or forty pages, approximately?

A Approximately.

Q And it, in substance, contained similar charges; only additional ones as to events that had occurred, both in the Hill and as a result of his rulings in the Hill case - - - you put those in the new petition, did you not?

A Yes sir. And along with a lot of others. I read that to you.

Q I understand. I would be the last one to ask you to read it again.

A I am glad of that.

Q Now, in that Disqualification proceeding - - - and this is the one in which I think you said that you called him up, I believe, at his home, and asked him to give you some additional time and I believe he told you to file a motion for continuance if you wanted additional time, is that correct?

A That was in connection with the contempt matter. I called him at his home on Tuesday night, and asked him for additional time.

Q Now then, isn't there a good body of law that says that in these contempt proceedings that where affidavits are filed they must be limited to the facts involved and shall not involve extraneous matter?

A Mr. Nichols, all I can say is that the District Court of Appeal ruled on it and they said that they were proper.

Q I understand, but the matter is up before the Supreme Court.

CHIEF JUSTICE DREW: Mr. Nichols, don't get into an argument as to what the law is, between you and Mr. Luckie.

MR. NICHOLS: All right, sir. I asked him if there wasn't a good body of law that could have agreed with Judge Kelly's position.

THE WITNESS: No sir. I don't think that there is any justification for Judge Kelly's position.

MR. NICHOLS: Well, now, if you want to argue it - - -

THE WITNESS: You asked my opinion and I gave it to you.

MR. NICHOLS: I am asking you - - -

CHIEF JUSTICE DREW: Let's move on to another subject.

MR. NICHOLS: Judge, I am trying to show that there was a legal basis on which Judge Kelly handled this matter, and I am trying to show that this witness will not even admit that there is any legal basis.

CHIEF JUSTICE DREW: If that becomes necessary to determine, I think that this Court is capable of determining whether there was a legal basis. The Court ruled the other day that opinions of this kind are not admissible, on your objection.

At this time, gentlemen, I think the Court will recess until 2:30 o'clock.

Whereupon, the Senate recessed at 12:57 o'clock P. M., until 2:30 o'clock P. M., of the same day.

AFTERNOON SESSION

The Senate reconvened at 2:30 o'clock P. M., pursuant to recess order.

The Chief Justice presiding.

CHIEF JUSTICE DREW: The Presiding Officer observed the presence of a quorum, and you may proceed.

Thereupon,

CHARLIE LUCKIE, JR.,

resumed the stand and testified further as follows:

CROSS EXAMINATION (RESUMED)

BY MR. NICHOLS:

Q Mr. Luckie, there are one or two things that I would like to go back to, just to clarify a moment. Did you participate, or did your firm participate in helping to draft the bill to change the circuit, the proposed legislation?

A The bill, in its final form, was drafted, as I recall, by the Attorney General's Office.

Q In the beginning, at the inception, did you or your firm participate in drafting the original bill that was brought up to Senator Covington?

A Yes.

Senator Johnson (6th) appeared in the Senate Chamber, asked to be recorded as present, and took his seat.

Q I show you a copy of that draft of the bill and ask you if that is the proposed piece of legislation that was, I believe you said, introduced in the House but not ever reported on?

A I believe it was, Mr. Nichols. However, I do not have access to the bill itself that was presented in the House, so I cannot say that it is exactly the same. I cannot say if it is an exact copy.

Q Was this introduced before the House Committee?

A If that is the bill. There was a bill introduced before the House Committee, yes sir.

Q And, to your recollection, to the best of your recollection, this looks like the same bill, does it not?

A Yes, it does.

Q This bill does not carry a referendum?

A That is right, it does not carry a referendum.

MR. NICHOLS: We would like to have this marked for identification.

MR. JONES: No objection.

CHIEF JUSTICE DREW: Admitted, as Number 5B.

BY MR. NICHOLS:

Q Now, I am getting along toward the conclusion of the cross examination of your testimony, Mr. Luckie, and I would like to take up this subject matter, please sir. After you received the telegram from Senator Covington and the contents that he stated were the reasons for not introducing that piece of legislation in the Legislature, - - - I believe you said you got that along about 9:30 or somewhere around 10:00 o'clock one morning?

A Yes sir, it was around 9:30.

Q Around that.

A Or 10.

Q Now, on that same day, was the day that along about 11:30, I think you said, you had a call from Judge Kelly that he would like for you to come over to the Court House at 12:15; that he had a matter concerning the administration of the Court or the administration of justice, and he would like to talk with the lawyers in the area? Is that correct?

A Yes, a matter concerning the administration of the Court.

Q Correct. Now, at that point you, then, began to examine him as to why he wanted you over there; is that correct?

A Yes sir, I asked him - - -

Q I think you asked him three questions?

A I asked him what was the nature of the matter that he wanted to discuss.

Q Now, you will concede that lawyers are officers of the Court, won't you?

A Yes sir.

Q We are all officers of the Court, are we not?

A Yes sir.

Q And we have a duty and responsibility for the administration of the Court, do we not?

A Yes. Mr. Nichols, I believe that, as far as the administration of the Court is concerned, that is the Judge's prerogative.

Q And you don't think that you have any responsibility at all concerning the administration of justice or the administration of the Court?

CHIEF JUSTICE DREW: You may explain your answer if you want to, on that, Mr. Luckie.

THE WITNESS: Well, the Judge has to determine how he is going to administer his Court. The lawyers might make suggestions to the Judge on matters of administration - - - might be requested to give their opinion on matters of administration; but that would be merely of an advisory nature. The final decision as to how the Court should or should not be administered is up to the Judge himself.

BY MR. NICHOLS:

Q That is correct. Of course it is his responsibility to actually run the Court, isn't it?

A Yes sir.

Q Because that is what he is; he is the Court. Now, however, in aid of his administration of justice or aiding in the administration of the Court, you don't feel that it is your responsibility to make suggestions or corrections or have anything to do with it?

A I think that a lawyer should respond to the Court if the Court asks the lawyer about it. In this particular conversation we had, however, I asked Judge Kelly if he intended to discuss matters which we had previously discussed, and he said he would involve that; and I had gone over that with him before.

Q Now then, you told him, right after those three questions, that if he wanted your presence over there, he would have to put it in writing and order you to be there, didn't you?

A No sir. That is not the sequence of how it happened. Judge Kelly asked me if I was refusing to come, and I told him that under the circumstances, I was, and he said, "Well, I order you to come." And then, when he said, "I order you to come," - - - it was a verbal order over the telephone - - - I told him that if that was the way he felt about the matter, I thought he should put it in writing.

Q All right. Now, of course at this particular point the controversy in the community and in the county had just come to rest as a result of Senator Covington's position concerning not introducing in the Legislature this circuit change. Had not that matter just been announced that morning?

A I had received the telegram from Senator Covington.

Q That morning?

A Which I read that morning, yes.

Q That morning. And the Judge was trying to get the lawyers in the area to sit down with him and have a conference, trying to proceed with the Court's business with respect of the Court toward the lawyers and the lawyers toward the Court, wasn't he?

A I don't know what he was trying to do, Mr. Nichols. He was very evasive about what he wanted to discuss with me, in our telephone conversation.

Q When he did, as you suggested, put it in writing and ordered you to appear before the Court in the Court House at Dade City, Florida, in the Circuit Court Room at 12:15, on March 15th, 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 the light of this short notice" - - - is that the order?

A Yes sir.

Q All right. Now, in your exhibits that you introduced before the House Committee, Exhibit A - - - which is the Code of Ethics of the lawyers of the American Bar Association - - - you have seen this, have you not?

A I don't recall whether I introduced that exhibit or not. It might have been one of the exhibits introduced, yes.

Q The first code deals with the duties of the lawyer, under the Canons of Professional Ethics, including the following: "As an officer of the Court, the duty to aid in the administration of justice and maintain towards the Court a respectful attitude, not for the sake of the temporary incumbent of the judicial office but for the maintenance of its supreme importance." Are you familiar with that?

A Yes sir.

Q Then, it's part of the lawyers' duty and responsibility to help and aid the Court in the administration of justice, isn't it?

A Yes, but, Mr. Nichols, as I told Judge Kelly over the phone, I had previously discussed these matters with him on several occasions. He did not say that he wanted to discuss anything new with me, and on the occasions when I did discuss the matter with Judge Kelly, he disagreed with me and, under the circumstances which existed on that day, I felt like that I had the right to refuse to go.

Q All right, sir. Now, everyone else in the County that was in the city did go voluntarily except you, didn't they?

A I assume that they did. I had no control over them.

Q All right, sir. When you got over there, though, the other lawyers were there, and they had appeared there voluntarily, hadn't they?

A As far as I know, they had. There were about five lawyers in the Court Room and, I believe, two in Judge Kelly's office.

Q Now, isn't it a fact that the two in Judge Kelly's office, when you got there, had gone in and told him that they thought there were newspaper reporters - - - a newspaper reporter sitting out in the outside, and that they would prefer to have the conference in the Judge's Chambers, instead of out there in the presence of that newspaper reporter. Isn't that correct?

A I wasn't in the Judge's office when that conversation went on, if it did go on.

Q Well, that's reflected also in the transcript which you had typed up, is it not?

A It may be. I was not in the office; so, I don't know what the conversation was, Mr. Nichols.

Q All right, sir. Then, when you did get over there the judge had agreed with the lawyers, including yours, that it was to be in Chambers, and he came outside, and he asked the lawyers that were in the open Court Room to come back into the Chambers, didn't he?

A He asked us to come into Chambers.

Q All right, sir. Now, everybody got up to go into the Chambers except you, didn't they?

A Yes sir.

Q And you were the only one that refused even to go into the Judge's Chambers, when all the rest of the lawyers had voluntarily gone in, weren't you?

A I refused, because I had been served with a specific order to appear in the Court Room, and I was there.

Q Yes sir, but I'm talking about, you were the only one that wouldn't go in the Judge's Chambers unless he ordered you to do so?

A I testified that I refused to go unless he ordered me to go.

Q All right. Then, he explained to you in this transcript of record - - - this is a recording of what took place, wasn't it?

A I don't know what you're referring to.

Q There was a - - - when he asked you to come on in with the rest of them, that your own lawyer was in there, you said you weren't going to do it unless he ordered you to go, isn't that correct?

A That's correct.

Q And then he ordered you to do so, said, "Come on."

A He did. He said, "I order you to come into my Chambers," words to that effect.

Q Now, you have been one of those spearheading the change of the Circuit, haven't you?

A I wouldn't use the term "spearheading" - - -

Q All right.

A - - - I was very much in favor of it.

Q Okay, you were very much in favor of it. Now, it's natural that he wants you and the rest of the lawyers to understand his feelings and his position after this controversy was laid down, wasn't it?

CHIEF JUSTICE DREW: Is that a question, Mr. Nichols?

MR. NICHOLS: Yes sir, that's the question.

CHIEF JUSTICE DREW: Do you understand - - -

THE WITNESS: If Your Honor please - - - yes sir - - - I don't know what was in Judge Kelly's mind.

BY MR. NICHOLS:

Q Now, when they did get on into the room there, I believe Judge Kelly, or someone requested the Court Reporter to come on in also, didn't they?

A I believe that the Court Reporter wanted to go into the Judge's Chambers, and Judge Kelly excluded him.

Q Well, how did the Court Reporter get in there for the transcript?

A Oh, you mean the Court Reporter? I'm sorry, I misunderstood you.

Q I'm talking about the Court Reporter, I'm not talking about the newspaper reporter.

A I'm sorry. I misunderstood you. The Court Reporter was there. I had requested the Court Reporter to appear at the Court House, and he was in the Court Room when I arrived, and then I believe Judge Kelly had the Court Reporter come on into the Chambers.

Q Well, the Court Reporter went on into the Chambers with you and with the rest of the lawyers, didn't he?

A Yes sir.

Q And a transcript was made of what was said there?

A That's correct.

Q I show you a photostatic copy of the proceedings that transpired in the Chambers there, and ask you - - - I think it's got a certificate on the back, and again, I believe you all introduced this in the House proceedings, did you not?

A Yes sir, this is a copy of the transcript.

Q And it has the certification of the Court Reporter behind it, doesn't it?

A Yes, it does.

Q Would you please sir, just read us what happened there?

CHIEF JUSTICE DREW: Do you want to identify that?

MR. NICHOLS: Yes sir. Excuse me, Judge, I do. We want this marked for identification.

SECRETARY FRASER: 6-B.

MR. NICHOLS: 6-B.

CHIEF JUSTICE DREW: You can just mark it, just put "6-B" on it. Without objection, it's admitted for identification.

(Whereupon, the above referenced instrument was marked Respondent's Exhibit 6-B for Identification.)

BY MR. NICHOLS:

Q Just read it, please sir, what actually transpired. It's very short.

A The entire proceeding?

Q Yes sir. It's not but about four or five pages. Go ahead.

A "IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

"TRANSCRIPT OF PROCEEDINGS

"WHEREUPON at 12:15 P. M., on Friday, the 15th day of March, A.D., 1963, the undersigned court reporter and the following attorneys, all of Dade City, Pasco County, Florida, appeared in the circuit courtroom of the courthouse, Dade City, Pasco County, Florida:

"Mr. William F. Brewton

"Mr. W. Kenneth Barnes

"Mr. Jack T. Edmund

"Mr. T. H. Getzen

"At approximately 12:22 P.M., Mr. Charlie Luckie, Jr., attorney, Dade City, Florida, also appeared in the courtroom. Also seated in the audience section of the courtroom were Deputy Sheriff Billy Smith of the Pasco County Sheriff's office and Mrs. Nell Woodcock.

"At 12:27 P.M., the Honorable Richard Kelly, Judge of the above court, appeared at the door to the courtroom, and the following proceedings were had, to wit:

"THE COURT: If you would, come into chambers, please.

"MR. LUCKIE: Judge Kelly.

"THE COURT: Yes, sir.

"MR. LUCKIE: I have an order to appear before you in court.

"THE COURT: Yes.

"MR. LUCKIE: Now, are you changing the order and asking that I appear before you in Chambers?

"THE COURT: Yes. Mr. Luckie, your attorney is in here.

"MR. LUCKIE: I would rather have whatever is going to be said about this thing in open court.

"THE COURT: All right, Mr. Luckie, if you will, please come into chambers and we can continue now.

"(WHEREUPON all of the attorneys present except Mr. Luckie began leaving the courtroom.)

"COURT REPORTER: Your Honor, do you want me in chambers? I was told to be in the courtroom at 12:15 P.M.

"THE COURT: No, but I ask that you stand by, Mr. Luckie.

"MR. LUCKIE: Yes, sir.

"THE COURT: Please come into chambers.

"MR. LUCKIE: Judge, I'm going to decline to do so unless you directly order me to.

"THE COURT: I am directly ordering you, Mr. Luckie. Come into chambers now.

"(WHEREUPON Mr. Luckie also left the courtroom. At 12:30 P.M., the court reporter was instructed to likewise report to the Court's chambers, where the Court and all of the attorneys previously listed were present, and in addition Messrs. W. M. Larkin and E. B. Larkin, attorneys of Dade City, Florida, were also present, and the following proceedings were had in chambers, to wit:)

"THE COURT: Gentlemen, there is a simple message that I wish to deliver to the Bar. Now, the entire Bar of this county is not here, and the reason they are not here is the geographics involved. I intend to see that the attorneys in Zephyrhills and New Port Richey and Port Richey get the same message, and the message is just simply this:

"That I consider that there has been a controversy and as all professional attorneys you have all been involved in controversies before, and sometimes you have become heated, and I have seen you become heated. I have seen you become heated at one another, and I have seen you become, to a degree, displeased with the Court. But I want to say this: there isn't one of you that has ever treated this Court discourteously and I have no complaint about your conduct before the Court.

"The next thing is that this controversy we have had is not without some benefits. I expect to be a better human being and a better judge because of it. And I have no rancor, I have no displeasure, or not even any dissatisfaction. The whole situation has made me humble, and nothing more.

"Now, I want to serve you and as attorneys before this Court I want to serve the people of the county. I will work hard and do the best I can, and I expect no more of you than you have given in the past. This court I think will be conducted in the way that it has in the past to a large degree, but I hope with a great deal more grace. I'm going to need your assistance. It would be a very helpful thing if I had the feeling that you were trying to assist the Court and to assist me.

"Now, it isn't even decided that I'm going to run again in four years, so if I do then we will have another controversy, as we should have; but as long as I am here I'm going to be available and serve you in any way I can.

"Now, if any of you - - - Mr. Larkin and - - - Mr. Bill and Mr. E. B. Larkin arrived here first in chambers, and I talked to them about this newspaper thing. I asked them four questions: should we discuss this at all; should we discuss it in the courtroom; should we discuss it in chambers; should we discuss it with the newspaper reporter present? They indicated that they thought it would be better if I just talked to the attorneys on an individual level, and I intended to use that system, but it's kind of messed around here a little bit until we're doing it in more or less joint session.

"MR. W. M. LARKIN: I believe it would be better not to have said a thing; just forget the thing, and the least said about it the least there is to mend.

"THE COURT: Well, Mr. Larkin, I agree and I feel like that I have kind of been trapped into this thing. I had these attorneys out there and as far as I'm concerned there's no need that this record be preserved. If Mr. Luckie wants the record preserved, of course, or anyone else as for as that's concerned, it is available. But if any of you have anything to say that you want to now, on or off the record, this is a good time to say it.

"MR. E. B. LARKIN: Your Honor, as attorney for Mr. Charles Luckie - - -

"THE COURT: Yes.

"MR. E. B. LARKIN: I want to object to the court order that he appear on the grounds that it is illegal and entirely out of order and should never have been issued. I think all attorneys are subject to the Court's directions on reasonable notice and for any legal purpose on cases, litigation before the Court, but I don't believe that this Court has the authority to legally order any one of us to be here.

"THE COURT: Well - - -

"MR. E. B. LARKIN: For myself, I appeared because the Court asked me to. He didn't order me to, but he asked me to, and in courtesy to the Court we appeared. But Mr. Luckie was by written order and by sheriff's summons brought here, and I object to that on the grounds it is illegal, void.

"THE COURT: Well, let me say this, Mr. Larkin. The same courteous request was made to Mr. Luckie as was made to everyone else, and I felt that it was necessary that he be here, and he is at liberty at this time to go. I have said what in essence I wanted to say.

"MR. W. M. LARKIN: If the Court is through, how about all of us going.

"THE COURT: Good-bye.

"MR. E. B. LARKIN: We are permitted to get a copy of that order and the remarks, if that is determined - - -

"THE COURT: Certainly.

"MR. W. M. LARKIN: I object to it being discussed publicly.

"THE COURT: Well, let's discuss this just a minute here.

"MR. LUCKIE: Well, I'm going. The Court has released me.

"THE COURT: Go ahead, Mr. Luckie.

"(Whereupon Mr. Luckie left the chambers.)

"THE COURT: Mr. Larkin, on behalf of your client, what do you want to do about this court reporter's record?

"MR. E. B. LARKIN: I would hesitate - - - I would like to leave it alone. For myself, I agree with my brother. I represent a client, though.

"THE COURT: Right.

"MR. E. B. LARKIN: I would just like to leave it with this reservation. I personally agree with what he said, but I don't think it would help the Court or attorneys for it to be released; but after having given thought to Mr. Luckie's position, if he wants to pursue the matter further - - - I have no idea - - - I would want to be able to get the record if I need it.

"THE COURT: It will certainly be available.

"MR. E. B. LARKIN: Off the record, I hope I don't need it.

"THE COURT: I hope you don't too.

"MR. W. M. LARKIN: Do I understand nothing said here is going to be released to the newspapers?

"THE COURT: You do. One thing further: the fact that we met here even will not be released as far as I'm concerned.

"MR. W. M. LARKIN: If the Court will instruct the newspapers - - -

"THE COURT: I'm going to ask her not to. I have long since quit instructing any newspaper to do anything.

"MR. W. M. LARKIN: Thank you.

"WHEREUPON THE PROCEEDINGS WERE TERMINATED AT 12:40 P. M."

Q Thank you, Mr. Luckie. Now, I would like to move to another subject.

I believe, in your direct testimony, and I - - - so that I don't misquote you, I've got the daily copy that was furnished to us last Friday, and the subject matter, I believe, was this change of Circuit again, and you were referring to the position of Senator Covington and Representative Stevens. I would like to read you what was said, and then I'm going to ask you a question from that, so that - - -

CHIEF JUSTICE DREW: You're reading from last Friday's testimony?

MR. NICHOLS: Yes sir, correct. So that I don't misquote you, I'd like to read it:

"In the beginning, 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 Do 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."

BY MR. NICHOLS:

Q Now, sir, I would like to ask you, first, when that conversation took place?

A The first time that I discussed that with Senator Covington and with Representative Stevens was before either one of them announced - - - announced publicly that they were going to run.

Q All right, sir. Now, will you tell me where you were when that conversation took place?

A Both of them took place in my office.

Q No, let's just take one of them.

A In my office.

Q Both of them took place in your office?

A In Dade City.

Q All right, let's take the Senator. Let's find out who was there?

A Senator Covington and I, on the conversation between the two of us; and Representative Stevens and I, as far as his conversation - - - the conversation with him was concerned.

Q Never was there, then, three people in the room?

A I don't believe so. I don't - - - I think - - -

Q Each time, then, Senator Covington was there, just you and he were there in your office?

A Yes sir.

Q And then, when you were having a conversation with Senator - - - Representative Stevens, there was just you and Stevens, is that correct?

A That's correct, as I recall it.

Q Now - - - and will you give us the approximate dates of those two separate - - - was there more than one conversation with Senator Covington?

A I believe that there was more than one conversation. It seems like I did talk to him briefly a time or two, either before or after that, but I do recall the conversation with him in my office.

Q All right, sir, let's take up the conversation in your office. Tell us just exactly what Senator Covington told you?

A He told me that he would favor such a bill to change the Circuit. Senator Covington was aware of the fact that there had been an effort made previously to change the circuit, and he said that he would favor that.

Q Had you told him in that conversation that this bill was not going to have a referendum?

A We didn't discuss a referendum at this conversation.

Q And he didn't know this bill didn't have a referendum, didn't automatically have a referendum, did he?

A We didn't discuss it; so, it just was not raised in any way.

Q Now, was there any other conversation with Senator Covington?

A I had a number of conversations with the Senator about this.

Q About this change?

A The Circuit Change Bill, yes. After the election, the general election was over, I had.

Q Now, before the election was over, - - - how long did that conversation last in your office?

A I don't remember.

Q Before the election?

A I don't recall how long it lasted. We discussed some other matters in addition to that.

Q Now, when the bill was finally drawn and presented - - - by the way, the bill had not been drafted at the time of your conversation with Senator Covington, had it?

A No sir.

Q Then, when the bill was finally drawn and presented to him, it did not have any referendum clause in it, did it?

A No sir. It didn't, because in our early discussions about the bill, nothing was ever mentioned about a referendum. It was only after Judge Kelly began to make his public speeches that the Senator mentioned the referendum.

Q But you lawyers never would agree to the referendum proposition?

A We - - - I tried, and some of the other lawyers in my presence, tried to impress upon the Senator the fact that the bill would be ineffective with a referendum because it was a general bill; and it was my position that if there was a referendum, it would have to be a statewide referendum.

MR. NICHOLS: Thank you very much, Mr. Luckie. I have no further questions.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mr. Luckie, in order to clear this record: Were you appointed in the Willie Hill case, or were you retained?

CHIEF JUSTICE DREW: Would you like for me to ask some questions for the Senators first?

MR. JONES: I would be glad for you to, sir.

CHIEF JUSTICE DREW: So that you can cover it in your examination.

Mr. Luckie, the following questions have been asked by Senator Connor: "Judge Kelly was elected from the Sixth Judicial Circuit. Would it not have been impossible for him to be transferred to the Fifth Judicial Circuit by the Legislative Act?" I think you have previously answered that, but you might answer it again.

THE WITNESS: It was my opinion, after considerable research of the legal aspects of it, that Judge Kelly could not be taken into the Fifth Circuit.

CHIEF JUSTICE DREW: Senator Connor asks another question: "Governor Collins appointed Judge Dayton, Jr., knowing he did not support him, neither did you nor George Dayton support Governor Collins. Isn't it reasonable to assume that Governor Collins considered him a fine Judge?"

THE WITNESS: I suppose that the Governor did consider that or he wouldn't have appointed him.

CHIEF JUSTICE DREW: Senator Friday of the 24th District asks: "Were all the Dade City lawyers present at the meeting with Judge Kelly at the time you were ordered to be present; all of the Dade City lawyers?"

THE WITNESS: No sir. There were eight, including myself, who were present; and there were approximately five other lawyers in Dade City.

CHIEF JUSTICE DREW: I imagine Senator Friday would like to know if the rest of them weren't asked, or were out of town, or something of that nature, if you know.

THE WITNESS: I don't know whether they were asked. I know that George Dayton was out of town at the time and I don't know who else was or was not out of town.

CHIEF JUSTICE DREW: Senator Cleveland of the 42nd asks: "Is it true that the appraisals of the appraisers directed by the State Road Department are the ones that are negotiated and binding on the State Road Department, unrelated to the Court appointed appraisers?"

THE WITNESS: That is correct.

CHIEF JUSTICE DREW: Second: "Court appointed appraisers are appointed for the purpose of appraising property involved, and serve as a guide to the Judge in determining the amount of money to be deposited by the State Road Department in the Court Registry?"

THE WITNESS: That is correct.

CHIEF JUSTICE DREW: The third question: "State Road Department appraisers are selected before suit is filed and the Judge has no jurisdiction," is that correct?

THE WITNESS: Yes. He has no jurisdiction over them, except as Presiding Judge when they come to testify at the trial.

CHIEF JUSTICE DREW: Senator Gibson of the 10th asks: "Had Judge Kelly sent out notices of hearing of Luckie's case or cases, then before other Judges, before you filed for disqualification of Judge Kelly?"

THE WITNESS: Yes sir. He had sent out three.

CHIEF JUSTICE DREW: From Senator Gibson: "Did Judge Kelly issue to you notice of hearing on a case or cases that were before some other Judge before you filed for disqualification of Judge Kelly?"

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Another question: "What other Judges were the Luckie cases before when Judge Kelly served notice of hearings to be made before Kelly?"

THE WITNESS: Judge White and Judge Hobson.

CHIEF JUSTICE DREW: From Senator Gibson: "Were the Circuit Judges of the Sixth Circuit rotated prior to the election of Judge Kelly?"

THE WITNESS: There was no formal rotation order. However, as a matter of practice, the Judges did - - - there was no actual rotation, but other Judges from Pinellas County did come up. Judge Leavengood - - - well, when Judge Wehle was the Judge, he used to come up, and Judge Dickenson, who is now dead, used to come up quite often; and then Judge Leavengood came up. Judge Kissenger came up and heard one particular case I was involved in. Of course, Judge Hobson and Judge White came up to Pasco County.

CHIEF JUSTICE DREW: "If the answer is yes, why was this stopped and, if so, who stopped it?"

THE WITNESS: The only way that I can answer that is that I know that Judge Kelly objected to the Pinellas County Judges coming to Pasco County. I had a conversation with him about that at one time, and he told me that he objected to it, and he stated in speeches that he objected to it.

CHIEF JUSTICE DREW: I have two questions here from Senator Price that I started to put this morning when he was absent from the room. Do you wish me to put those now, Senator?

SENATOR PRICE: Mr. Chief Justice, if you think they are still pertinent you can put them; if you do not think so, disregard them.

CHIEF JUSTICE DREW: I think that the questions were covered in connection with other matters, Senator Price.

Oh, I have two more questions: Senator Askew would like to ask two questions: "Would you have supported the petition to change the circuit if Judge Kelly had gone with the circuit change to the Fifth Circuit?"

THE WITNESS: No sir. In the first instance, because I didn't think that he could be transferred into the Fifth Circuit by legislative enactment; and, secondly, I didn't feel that he had the qualifications to be a Judge and I didn't want to have anything to do with it.

CHIEF JUSTICE DREW: The second question: "Was not the movement to change the circuit merely a method of getting rid of Judge Kelly without an election?"

THE WITNESS: We certainly - - - if I can speak for myself - - - I didn't want to have anything else to do with Judge Kelly; but, I think as far as the circuit change was concerned, that there were other considerations involved and that, even before Judge Kelly came on the scene, I thought - - - and some of the other lawyers thought - - - that this should be done.

CHIEF JUSTICE DREW: I have no other questions.

REDIRECT EXAMINATION (RESUMED)

BY MR. JONES:

Q Mr. Luckie, would you briefly describe for us, sir, the procedure whereby attorneys are appointed for indigent accused persons prior to the beginning of the case?

A The Court contacts the attorney and asks him if he will undertake the responsibility. First, there has to be a determination that the person is an indigent person and unable to employ counsel of his own choosing. Lawyers will not refuse such a request of a Judge unless there is some unusual circumstance which would prevent that lawyer from undertaking the defense.

Q Then you did not take the case of Willie Charles Hill by your own choice and choosing. You were appointed to defend Willie Hill, is that correct?

A Yes, I was appointed to defend him. If I had had my druthers, I would not have because his was a very unpopular case in the community.

Q Is it true also, Mr. Luckie, that the State pays a stipulated fee in those cases?

A The State pays a fee which is the maximum set by statute.

Q Now, with reference to the Eminent Domain proceedings, which I understood were brought in the Scussel case before Judge O. L. Dayton, is it true, sir, that there are a good deal of preliminary things that have to be taken care of in an Eminent Domain proceeding?

A Yes, there are. Such as the appointment of appraisers to determine - - - to arrive at the figures that the State Road Department has to deposit in order to take over possession of the property prior to the final termination of the suit.

Q And Judge Dayton was hearing those preliminary motions, as I understand it?

A Yes sir.

Q Who finally sets the attorney fees in Eminent Domain proceedings?

A It is set, in some jurisdictions, by the Jury.

Q Let's speak of your jurisdiction.

A It is set generally by stipulation of the lawyers and the attorneys for the State.

Q If it is not set by stipulation of the lawyers and the attorneys for the State, then who sets it?

A The Jury.

Q In any case do the appraisers appointed by the Circuit Judge set the attorney fees?

A No sir.

Q Mr. Luckie, I believe you were asked this question on cross examination but I don't believe you ever had a chance to answer it: Why, sir, did you file a Suggestion for Recusement just twenty-eight days after Judge Kelly took the Bench? I will give you an opportunity to answer.

A Because, in the period between the time the Suggestion was filed and the time when Judge Kelly became the Judge, he had sent out notices to us that he was going to conduct hearings in cases which other Judges had been handling.

Q Were there some other circumstances that had transpired preceding those twenty-eight days, going on with this, that gave you apprehension; and, if so, what were they?

MR. NICHOLS: Your Honor, he is going back over the whole thing again. This witness has explained that fully.

MR. JONES: No sir. This was a question that - - -

MR. NICHOLS: I withdraw my objection. Keep going.

MR. JONES: Thank you, sir.

BY MR. JONES:

Q Go ahead, Mr. Luckie.

A Well, the Judge, in his campaign, had made attacks upon Democrats in general. For example, he had challenged Judge Dayton to debate with him the National Democratic platform, as opposed to the Republican National platform; which was a challenge to Judge Dayton to debate with him a matter which certainly involved purely partisan politics. And a Judge should not become involved in that sort of campaign and debate.

He had made statements that Judge Dayton and his family had been involved in political offices for a period of half a century and that there was nothing in their record to give anybody any hope. He used that term, "any hope."

He also, in some of his campaign literature, he said that this was particularly in view of the fact that, since the May primary, there had been three unsolved murders in our county; leaving the implication that Judge Dayton had something to do with the unsolved murders - - - which, of course, a Judge has nothing to do with the detection of crime and the bringing of criminals into Court. He is merely there to try them when they get there.

He made a general attack upon the Dayton family, and of course my partner was a member of that family.

And he had also talked about cleaning out the Court House in Pasco County, and made a general attack upon all office holders in the county.

So that his demeanor was such that it appeared that he might be vindictive when he became a Judge - - - if you believed what he said in his campaign speeches the only conclusion that you could reach was that he was going to use that office to further the avowed purposes stated in his campaign. So, with the background of these statements that he made during his political compaign, and when he started sending out notices that he was going to conduct hearings in cases which other Judges were handling, we became very apprehensive and fearful for our clients; because we tied in this activity with the previous conduct of Judge Kelly during the campaign for that office.

Q Mr. Luckie, is it also true that - - - with respect to the officers of the Court House - - - were you then the attorney for the School Board of Pasco County?

A George Dayton was the attorney for the School Board and I attended some of their hearings when George was absent.

Q Now, with reference to the kinship between George Dayton and O. L. Dayton, and with respect to law partners practicing before their Circuit Judge, I will ask you this: Do you know whether or not Lester Bales was a former law partner of Circuit Judge Richard Kelly?

A He was.

Q Was Lester Bales also one of the attorneys in the Hill murder case?

A Yes.

Q And Lester Bales represented one of the Defendants in the Hill murder case before Judge Kelly, as Circuit Judge?

A Irene Jackson.

Q This would have been the same relationship whereby you had appeared before Judge O. L. Dayton, as a partner; is that correct?

A It would have been very similar.

Q With reference to the appeals that you have taken from orders of Judge Kelly, can you give us an estimation, sir, of how many cases - - - Jury cases - - - you have had before Judge Kelly which have reached a final conclusion and were ready for appeal since he has been on the Bench?

A One.

Q Just one?

A The Willie Hill case.

Q And you have appealed that?

A Yes.

Q During the Willie Hill case, when you learned that the Jury was out with reference to the argument on the confession, would you give us an estimation of how many of the general public were there present and heard the crossfire between you and Judge Kelly?

A The Court Room was over half full. As I testified, Willie Hill was a negro. The man that was killed was a very popular person in the - - -

CHIEF JUSTICE DREW: Mr. Luckie?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: He asked you a very simple question.

BY MR. JONES:

Q Approximately how many people, if you can give an estimate? I believe you said it was half full? How many people would that be?

A Probably seventy-five people.

Q How long did the trial go on?

A Three days, maybe three and a half days.

Q Did the trial receive this much attendance each day?

A No sir, it was - - - I think, perhaps, the first day of trial was the day during which more people were in attendance than any other day.

Q Mr. Luckie, with reference to experience as an attorney at law, practicing in the State of Florida, could you tell us whether or not it is the right and the custom of Circuit Judges in a Circuit to travel around and hear cases in various areas within their Circuit?

A It is.

Q In other words, it's the custom of Judge Patton, or - - -

MR. NICHOLS: Now, I object, because the Circuit Judges themselves allocate the business in their area, and there was a Circuit Judges' conference, and there was a ruling by the Circuit Judges concerning the Circuits.

CHIEF JUSTICE DREW: I don't know that, Mr. Nichols.

MR. JONES: Nobody else, but - - -

CHIEF JUSTICE DREW: If he knows what the custom is, I think he should be allowed to state.

BY MR. JONES:

Q Mr. Luckie, is it generally the custom for Circuit Judges to travel to the various counties and hear cases in the counties in the Circuit in Florida?

MR. NICHOLS: All right. Now, wait a minute, I object, then, unless it's limited to the Sixth Circuit. We're talking - - - let's limit it to what it is. We're not going to bring in the other Circuits around; what they did, I don't think Mr. Luckie knows about the other Circuits.

MR. JONES: Well, let me ask him if he does, shall we?

BY MR. JONES:

Q Do you know the custom in the Circuit, Sixth Judicial Circuit, and the Fifth, and the Circuits surrounding you, as to whether or not, prior to Judge Kelly's ascension to the Bench, that the Circuit Judges heard cases in the various counties in their Circuits?

A Yes sir, I know.

CHIEF JUSTICE DREW: I'd like to inquire: What is the purpose of that question?

MR. JONES: We are attempting to show, Your Honor, that in the Circuits, generally, in the State of Florida, Circuit Judges can go places and do travel to the other counties, but that in this particular Circuit, Judge Kelly laid down the law that no other Circuit Judges would come into his county but him. We're attempting to show this.

CHIEF JUSTICE DREW: Go ahead.

MR. JONES: Thank you, sir.

BY MR. JONES:

Q Mr. Luckie, do you know the practice in the Sixth Judicial Circuit, prior to Judge Kelly ascending the Bench - - -

A Yes sir.

Q - - - and in the Circuits surrounding, with reference to whether or not the Circuit Judges of a Circuit hold cases in the other counties?

A Yes sir. I particularly know about the Sixth Circuit and the Fifth Circuit and, to some extent, the Circuit in which Polk County is located.

Q What is that practice?

A They do travel about from county seat to county seat in the Circuit.

CHIEF JUSTICE DREW: Mr. Jones, is it your idea, with these questions, that this conduct tended to bring the Court into scandal and disrepute?

MR. JONES: The question had been asked - - - and this is on redirect, the question had been asked as to this procedure, did Mr. Luckie object to Judge Kelly hearing all the cases in his county, and merely want to point out that it's the custom everywhere else but in Judge Kelly's court, and it doesn't have any reference to whether Mr. Luckie would object.

CHIEF JUSTICE DREW: It seems to me - - - I've allowed the question, but it seems to me to have little bearing on the - - -

MR. JONES: Yes sir, I just wanted to clear it up on redirect, that it was not Mr. Luckie's choice.

BY MR. JONES:

Q Mr. Luckie, if you will, just one or two more questions. With reference to whether or not errors can be cleared up and corrected on appeal, could you tell us, sir, when Willie Hill was convicted, approximately, now? I know you can't give the date.

A It would have been in the spring, March or April of 1962.

Q March or April of 1962. Now, where is Willie Hill?

A In the death house at Raiford.

Q How long has Willie Hill been in the death house at Raiford?

A Since about April of 1962.

Q Mr. Luckie, if you could, please, tell us who you supported in the 1956 race for Governor?

A Senator Johns.

Q Now, let me ask you this: Do I understand that Governor Collins made the appointment of Judge O. L. Dayton?

A He did.

Q And whom did the Dayton family support in the 1956 campaign for Governor, if you know?

A I know that George Dayton supported Senator Johns. Judge Dayton was a Judge, and as far as I know, he didn't express himself - - -

Q Now, were you also appointed to an office by Governor Collins during his administration?

A Yes sir.

Q To what office?

A Assistant State Attorney.

MR. JONES: Thank you. We have no more questions.

CHIEF JUSTICE DREW: I have one question from a Senator, Mr. Nichols. Senator Campbell would like to know how much in fees Judge Kelly allowed you for representing Willie Hill, and you might also, in answering that question, if you don't know, you don't have to, state the maximum allowed under the statute for defense in murder cases, or what is usual and customary.

THE WITNESS: The maximum is $500, and that is the usual fee allowed. The case is not at the state yet where the fee can be set. Being on appeal, the fee will not be set until the appeal has been decided.

CHIEF JUSTICE DREW: I assume that Senator Campbell would also like to know whether the fee which you get for representing the man includes the fee for the matter in the appellate court, or whether there is an additional fee?

THE WITNESS: There is an additional fee allowed for the appellate work, I believe.

CHIEF JUSTICE DREW: Would you like to add something else?

MR. JONES: No sir, if Your Honor please, we'll be happy to excuse Mr. Luckie.

MR. NICHOLS: If Your Honor please, I have one or two other questions on redirect.

MR. JONES: Do we understand that we didn't have the redirect; it's not direct, then cross, then redirect?

MR. NICHOLS: Recross.

CHIEF JUSTICE DREW: If you bring out anything new on your redirect, I think you ought to have the right to interrogate.

MR. JONES: I don't know of anything we did, Your Honor. We wrote down here what we wanted.

MR. NICHOLS: Well, suppose you wait and - - -

CHIEF JUSTICE DREW: I'm trying to - - - will you please try to remember to restrict your cross examination to anything that - - -

MR. NICHOLS: All right, sir.

RECROSS EXAMINATION

BY MR. NICHOLS:

Q Now, you were asked on recross about the custom in the Circuit, and you answered Mr. Jones in that regard, did you not?

A Yes sir.

Q And that you were fairly familiar with the Circuits, in the Fifth Circuit and the Sixth Circuit?

A Yes sir.

Q Do the other counties have - - - that you are familiar with - - - have a statute on the books that there shall be a resident Circuit Judge in those counties?

A I'm not sure. I can't answer that question, one way or the other, because I'm not familiar with it.

Q Now, then, you are also familiar, in Circuits, where they have eight or ten Circuit Judges, that the Circuit Judges have a set of rules concerning who's to have the administration of work, too, don't they?

A I believe that some of the Circuits have rules; whether all the Circuits have them, I don't know.

Q And you heard Judge Bird say here that in the Sixth Circuit that all criminal cases in Pinellas County, he tried, but all the criminal matters over in Pasco County were left to the Pasco Circuit Judge, didn't you?

A I didn't hear - - -

MR. JONES: Just a minute. We'd like to object to the question; as the Court will recall, Mr. Luckie didn't hear Judge Bird testify.

MR. NICHOLS: You are correct, Mr. Jones.

BY MR. NICHOLS:

Q Now, I believe, on cross, you said - - - and I think this will conclude my examination - - - on cross you said that Judge Kelly, in the change of Circuits, was to stay with the Pinellas County Circuit, is that right?

A That was the proposal.

Q Sir?

A That was the proposal.

Q That's correct. So, if that change of Circuit had taken place, and Judge Kelly had stayed over in Pinellas County, we wouldn't have these impeachment proceedings, would we?

A I don't know whether you - - -

MR. JONES: I'd like to object to the question on the ground that it's highly argumentative.

CHIEF JUSTICE DREW: The objection is sustained. I don't know that Mr. Luckie has any way to start - - -

MR. NICHOLS: We'll withdraw - - - rephrase that.

BY MR. NICHOLS:

Q Then, if - - - you were one of the ones that petitioned for the impeachment, were you not?

A Yes sir.

MR. JONES: If Your Honor please, that's highly repetitious, going over the same thing we went over for an hour this morning.

MR. NICHOLS: No sir, on cross.

MR. JONES: This was on cross examination. There's nothing that's in redirect of - - - nothing was asked in redirect of this matter.

MR. NICHOLS: May I state my position, Mr. Chief Justice?

CHIEF JUSTICE DREW: Yes, you may.

MR. NICHOLS: Senator Askew asked a question that relates to this very subject matter that I'm going into, that the witness answered on this subject matter, and I certainly think I should be permitted to clear up this one proposition.

MR. JONES: If Your Honor please, he attempted for thirty minutes this morning to clear up the same point, and I believe the Court has ruled this morning that his examination in this respect is repetition.

CHIEF JUSTICE DREW: I think it's repetitious, I think it's been over, and I don't think that Senator Askew's question raised any new point.

MR. NICHOLS: Well, I would like - - - may I ask the question, then let you rule on it - - -

CHIEF JUSTICE DREW: Yes.

MR. NICHOLS: On this proffer? I'm addressing myself to the Court. If the change of Circuits had taken place would you have participated in a petition for impeachment?

THE WITNESS: Yes sir.

MR. NICHOLS: We have no further questions.

CHIEF JUSTICE DREW: There's one question by Senator Stratton: Are you related to the Dayton family? I assume he means by marriage or blood.

THE WITNESS: No sir.

CHIEF JUSTICE DREW: The second question: In the cases that Judge Kelly has completed for you, has he ruled fairly and impartially?

THE WITNESS: No sir.

CHIEF JUSTICE DREW: You may come down. This witness, you say, can be excused?

MR. JONES: Yes sir. We have his phone number and his address; he would be subject to call.

MR. NICHOLS: We will abide by that same rule.

CHIEF JUSTICE DREW: Mr. Luckie, you are excused, subject to being called by either counsel at another time.

THE WITNESS: Thank you, sir.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Will the Secretary call Mr. Jack T. Edmund.

MR. O'NEILL: While the Secretary is getting that, for the purpose of counsel for the Respondent, Mr. Edmund will testify covering Articles VII and VIII, and such other Articles of the Articles of Impeachment as the testimony might be pertinent to.

MR. NICHOLS: While this witness is coming, Your Honor, may I step over to the Managers and see if we can't stipulate on something?

CHIEF JUSTICE DREW: Yes sir. We'll be at ease for just a few minutes, gentlemen. I wouldn't leave the room. We'll be in informal recess at this time or, perhaps, we'll make this our mid-afternoon recess, of about five or ten minutes.

Whereupon, at 3:35 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 3:45 o'clock P. M.

CHIEF JUSTICE DREW: Senators, please be seated.

A quorum present.

You may swear the witness, please, Mr. Secretary.

Thereupon,

JACK T. EDMUND,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. O'NEILL:

Q State your name, address, occupation, or profession, please sir.

A Jack T. Edmund, Lake Alfred, Polk County, Florida. I am an attorney at law.

Q How long have you been a practicing attorney, Mr. Edmund?

A Seven years, sir.

Q Where did you receive your education?

A Two years at the University of South Carolina Law School, and one year at the University of Miami Law School.

Q Have you ever practiced law in Dade City, Pasco County, Florida?

A Yes sir, I practiced law in Dade City between the months of April, 1962, and the end of May, 1963.

Q Where did you practice prior to the time that you went to Pasco County?

A In Lake Alfred in Polk County, Florida.

Q Did you return to Lake Alfred, Polk County, Florida, after you left?

A Yes.

Q In 1963?

A I did.

Q Will you state the reason that you left Dade City, Pasco County, Florida?

A My reasons for leaving were purely personal. The decision was made some time prior to the time that I left and the ultimate time of my leaving was, to a degree, expedited by the pendency of these proceedings before the Senate and before the House Investigating Committee.

Q With whom did you practice law in Pasco County?

A W. Kenneth Barnes.

Q What type of practice was that that you and Mr. Barnes had while you were there?

A It was a general practice, of the type that you normally would find in an area such as Polk or Pasco County.

Q Did you yourself handle any trial work for that law firm?

A Yes, that was my purpose in going there; to handle the trial work of the firm.

Q Do you know Judge Richard Kelly, of the Sixth Judicial Circuit?

A Yes, I do.

Q Do you know where he resides?

A Yes, he resides in Pasco County, Florida.

Q Was he the so-called Resident Circuit Judge of that county?

A Let's see. Subsequent to January 1, 1963, I understand he was the Resident Judge.

Q Did you handle a case commonly known as and styled Lamb vs. Lamb?

A Yes sir, I did.

Q What type of proceeding was that?

A It was a divorce action which ultimately evolved into an ex parte proceeding in that there was no answer filed on behalf of the Defendant, and we proceeded to a Decree Pro Confesso.

Q This would be considered an ex parte or uncontested divorce action?

A Yes.

Q Was the husband or the wife your client?

A The wife, the Plaintiff.

Q What is her full name?

A Louise Lamb.

Q Did you set that cause for a final hearing before Judge Kelly?

A Yes. I set it for a final hearing, as I recall, sometime in the month of March; but I had to continue it because it developed that I had to be out of town at the time of the original scheduled hearing.

Q State whether or not you had a conversation with Louise Lamb relative to this final hearing and the subsequent hearing that was held?

A Yes, I had conversations with her, both prior to and after the scheduled date of this hearing that we are referring to.

Q Did Mrs. Lamb, your client, ever discuss the case with Judge Richard Kelly out of your presence and hearings?

A Yes, I have been advised that she did.

MR. NICHOLS: I object to his "being advised" that she did. This is completely hearsay. This man is testifying concerning what he heard or has been told, rumorwise.

CHIEF JUSTICE DREW: Who told you?

MR. O'NEILL: I was going to get to that, Judge, in the next question.

CHIEF JUSTICE DREW: I overrule the objection.

BY MR. O'NEILL:

Q Mr. Edmund, who told you that Judge Kelly had discussed this case with Mrs. Lamb?

A Mrs. Lamb.

Q Did she state the conversation between her and Judge Kelly?

A Yes.

MR. NICHOLS: Objected to. They are talking completely about hearsay evidence. I object to it.

CHIEF JUSTICE DREW: On what theory do you think it is admissible?

MR. O'NEILL: I think I have established the point that she discussed it. That is all I was trying to establish, Your Honor.

CHIEF JUSTICE DREW: You withdraw the question?

MR. O'NEILL: Yes sir.

BY MR. O'NEILL:

Q Mr. Edmund, as I understand your previous answer to the question, you practiced law for some fourteen or fifteen months in Pasco County, Florida?

A Yes sir.

Q Is that correct?

A Yes. Fifteen months, I believe.

Q Do you know what Judge Kelly's reputation, in Pasco County, is, among the Bench and the Bar and the community, as to the way he handles cases in his Court?

A Yes.

Q What is that reputation?

A Bad; in that it is unpredictable.

MR. O'NEILL: Your witness.

MR. NICHOLS: I have no questions.

CHIEF JUSTICE DREW: Do you excuse this witness permanently or subject to call?

MR. O'NEILL: Subject to call, Your Honor.

CHIEF JUSTICE DREW: You are excused subject to being called at a later time. Call your next witness.

MR. O'NEILL: John Bonner.

For the benefit of counsel for Respondent, this witness' testimony will relate to Articles VII and VIII and such other Articles as it may appertain to.

CHIEF JUSTICE DREW: Does it refer to a particular case?

MR. O'NEILL: Not at this particular time, It might at a later time.

Thereupon,

JOHN R. BONNER,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your full name, address, and occupation or profession, please sir?

A My name is John R. Bonner. My address is 1871 McKinley Street, Clearwater, Florida. My business address is 16 North Fort Harrison, where I carry on a practice of law in the firm of Wolfe-Bonner-&-Hogan, Attorneys. I am one of the partners.

Q Mr. Bonner, how long have you been engaged in the practice of law in Clearwater, Florida?

A Since 1950 - - - September - - - or approximately thirteen years.

Q Where did you receive your pre-law education, as well as your law education?

A I received both educations at the University of Florida, Gainesville, Florida.

I received my Bachelor of Arts with highest honors in 1949; and my Bachelor of Law in the year 1950.

Q State what positions of trust or community service you have held in Clearwater, Florida, including any official positions, as an attorney or Judge.

A I was appointed the Municipal Judge of the City of Clearwater in December, 1954, and that is a position which I still hold, although I would like to add that - - - in approximately 1959, after five years of being the only Municipal Judge - - - other Judges were appointed, and I am, therefore, an associate Judge at this time. There are two other Judges. I was appointed as Town Attorney for the town of Largo, Florida, in February, 1959; and I continue to serve in that capacity. I was appointed by the County Commission of the County of Pinellas as the Examiner for the Pinellas County Water and Navigation Control Authority in 1957, and continued in that capacity until the year 1961. I might mention that that required me to sit in the nature of a Judge on dredge and fill applications for any of the waters in Pinellas County, Florida; and then I would render findings and recommendations to the Authority, which consisted of the County Commissioners, and they would either affirm or deny the recommendations that I made to them as to the granting or denying of dredge and fill; the setting of bulkhead lines; and also the purchase applications for the purchase of submerged lands. I was President of the Clearwater Republican Club in the year 1954 and again in the year 1957. I have been a Precinct Committeeman for the Republican Party in Precinct Number 42 since approximately the year 1956. I am at present on the Council at Large of the Republican Party for the County of Pinellas. I have been Chairman of the Upper Pinellas Chapter of the American Red Cross. I have been President of the Community Council for Upper Pinellas County. And I am Past President of the Clearwater Lions Club. And probably numerous other civic jobs which I think are included in your question, but which perhaps you would not want me to go into any further detail with.

Q Are you qualified to practice law in all Federal, State and Appellate Courts in the State of Florida?

A Yes sir, I am.

Q Have you so engaged in the general practice and the trial of cases in both the Federal and the State Courts?

A Yes sir, I have, since the year 1950. I might mention that, in making this answer entirely accurate, that for the period from 1952 through 1953, I took a leave of absence from my firm and served in the United States Air Force as Assistant Legal Officer at Maxwell Air Force Base, in Montgomery, Alabama, in the Judge Advocate General's

Corps of the Air Force during the major portion of that time; and during which I also graduated from the Air Command Staff School, of the Legal Corps.

Q Are you familiar with the Canons of Ethics that govern attorneys?

A Yes sir.

Q Are you familiar with the Canons of Ethics that govern Judges?

A Yes sir.

Q Do you know Judge Richard Kelly, of the Sixth Judicial Circuit?

A Yes sir, I do. I believe that I first met Judge Kelly at various party meetings when he was running for election to that position which he was ultimately elected to; and also I recall that he came by my house to discuss with me the election, because of my holding the post of Precinct Committeeman. I was not present when he came by the house. I, of course, have had occasion to know him as a Judge after his election.

Q Have you had occasion to appear before Judge Kelly in the conduct of your general practice of law in Pinellas County?

A Yes sir, on several occasions.

Q Will you state what those occasions are, the nature of the suit, and the style, if you will, please?

A The first case is a case that was filed by the First Federal Savings and Loan Association of St. Petersburg, Florida; a mortgage foreclosure case which represented foreclosure of a number of homes in one case, against Marcal, Incorporated. This case is in Chancery and is Number 57358.

Q Who did you represent in that particular case, Mr. Bonner?

A Mr. Raleigh Green represented the Plaintiff and I represented two of the Defendants, Clearwater Paint Company, a Florida corporation, and Mr. George Pillsbury. Each of my parties in the case had filed mechanic's liens which affected the properties, upon which foreclosure was sought.

Q What, if anything, unusual in that particular case, occurred at the time you were before Judge Kelly?

A Well, the final hearing on the case was set for Friday, March 24, 1961; and, pursuant to the setting of the case for final hearing, I appeared before Judge Kelly with my client, at St. Petersburg, Florida, at the County Building. Mr. Clinton Mitchell, representing Clearwater Paint Company, was present; and Mr. George Pillsbury was present in person, on his behalf. The purpose of being there was to give testimony and to prove to the Court that there was a valid lien for each of my clients, even though it was conceded that First Federal had a paramount or prior first lien on the property. The purpose of proving our liens was that, in the event at foreclosure sale there was a surplusage or overage, then my clients would be entitled to that, of course, before the Defendants would receive any money from the sale of the property. It might be what you could call a salvage type of operation. We were there in hopes that there would be an overage at the foreclosure sale. In other words, that the houses would sell for more than enough to cover the first mortgages, and that my clients could recover for the work and materials that they had put into the homes in constructing them.

Q Mr. Bonner, on a mortgage foreclosure suit, under the laws of the State of Florida, isn't it permissible and isn't it usually customary that the attorney for the Plaintiff - - - in this particular case, First Federal Savings and Loan Association of St. Petersburg - - - that the attorney would be entitled to an attorney fee to be set by the Court?

A Yes sir. The instruments upon which the suit had been brought provided that if it was necessary to bring suit and foreclose them, that the Defendants would be obligated to pay a reasonable fee; and, failing to do so, that would be included in the final decree, and the amount that the property would be sold for would have to pay that off before there would be any surplusage, to which I have been referring.

Q Surplusage for those clients that you represented, who were mechanic's lien holders?

A That is correct.

Q Are there any attorney fees - - - under Chapter 84 of the Florida Statutes, existing at that time, where claimants for mechanic's liens can secure attorney fees in such type of action?

A There were not at that time. This was prior, of course, to the present law which was recently enacted.

Q Now, was there any discussion at the time, or was there any evidence relating to attorney fees for the attorney, Mr. Raleigh Green, representing First Federal Savings and Loan of St. Petersburg?

A Yes sir.

Q If so, state the nature of the conversation and what occurred.

A Yes sir. Mr. Green presented an affidavit to the Court by another attorney or attorneys, which would substantiate as to what would be a reasonable amount for an attorney fee. Of course, the Court, the Judge must set the attorney fee; but it is customary, on a hearing of that nature, to have an affidavit as to what would be a reasonable amount, in guiding and assisting the Court or the Judge in setting the attorney fee. Mr. Green had such an affidavit. He exhibited it to me and then presented it to the Judge, Judge Kelly. At that time Judge Kelly asked me if I had any objection to the attorney fee which was requested by Mr. Green. I stated that I did not, and he asked me then had I read it; and I said I had glanced at it; and he said, "Well, don't you think you had better read it?" And so I took it back from Judge Kelly, the document, and I read it very carefully and handed it back to the Judge; and I again told him that I did not have any objection to it. Judge Kelly at that time said to me words to the effect, "Mr. Bonner, do you agree that this is a reasonable amount for an attorney fee?" And I said, "I have no objection to it." But he asked me again, and I got the definite impression that he felt that it was objectionable. My clients were sitting behind me where I could not see them, but their chairs scraped as if they were moving about and were restless, and I got the opinion that they maybe were uncertain about it.

Q Did you object then?

A I did object at that time, in the following respect: I said to Judge Kelly, "There are, I believe, seven cases that were combined in one law suit." And I said, "In view of that, perhaps the fees could be scaled down a bit because there might be a little less work in combining these cases all in one suit." Ordinarily, the fees are set on a percentage basis and I thought perhaps there was less work in filing them as one law case. Judge Kelly said to me then, "By that I understand you are objecting to them." And I said, "That is right." And Judge Kelly then took the affidavit and looked at it for a minute and said, "Mr. Bonner, I find no merit to your objection and I am going to overrule it."

Q What transpired after that, Mr. Bonner, if anything?

A Well, the hearing was concluded and we left the room, and my clients asked me to explain what had gone on in the room. I did the best that I could, but they didn't understand it. They could not understand why the Judge seemed to feel that fees were objectionable and then, when I objected to them, overruled it and found them in order. From time to time, one of the clients has mentioned this and, as recently as about a week ago, still stated to me that he did not understand just what had transpired on that day; that he couldn't understand the Judge's ruling in connection with that matter.

Q Have you had other cases before Judge Kelly other than the one you have just related and testified to and about?

A Yes sir, I had a foreclosure case before Judge Kelly, and if I may take just a minute to take the file out of my - - -

Q Will you refresh your memory. Is this your office file that you are refreshing your memory from, sir?

A Yes, it is.

Q Would you refresh your memory? Give the style, please.

A The style of this case is the case of John Watson and Edith M. Watson, his wife, vs. J. E. Hall and others, and was Chancery Number 61005 Pinellas County, Florida.

Q I believe you have previously stated that that was a mortgage foreclosure proceeding?

A That is correct.

Q Were you representing the Plaintiff or the Defendant?

A I was representing the Plaintiff, Mr. and Mrs. Watson, in that case.

Q Will you state the circumstances relating to that particular case before Judge Kelly?

A This was an uncontested mortgage foreclosure. Representing the Plaintiff, we took a default against all Defendants, none of whom appeared at the final hearing. The final hearing was held on January 12, 1962. At that time Mr. Watson, who was elderly and who, perhaps, had the best recollection of the details, was in the hospital and was unavailable as a witness. I, therefore, asked Mrs. Watson, his wife, who was a co-owner of the mortgage, to appear with me before Judge Kelly to make proof of the various documents that would be introduced at that time. Now, Mrs. Watson - - -

Q How old a person is Mrs. Watson, Mr. Bonner?

A I would like to be polite and accurate at the same time. I would say that she was a senior citizen; she was in the golden years. If I had to guess, I would say that she was in her late sixties.

Mrs. Watson appeared with me. She had not, to my knowledge, been in Court before, and she was quite apprehensive about appearing in Court, even though this was an uncontested matter, a routine matter.

When I attempted to introduce the documents, Judge Kelly told me that I had not laid a proper predicate for having them introduced; and so, I asked Mrs. Watson if she was familiar with the signatures on it. I asked one or two questions - - - I can't remember how many, but Judge Kelly took the questioning over and asked one or two questions, and was not satisfied with her answers on it, and told me that he felt that she was not a proper witness.

At this time I told the Judge that I was present when the documents were signed, and that I knew the signatures. The Judge said words to the effect, "Why didn't you say so?" Had me raise my right hand and be sworn as a witness, and then I testified to the execution of the documents.

He then allowed them to be introduced into evidence, and the hearing was concluded, and he then did - - - at that time or very shortly after, the next day or so, enter a final decree of foreclosure in favor of my client.

Q Do you know whether or not this lady, Mrs. Watson, was upset, and did she show any emotion at the time she was before Judge Kelly?

A She was quite upset by the experience. As I say, she was not familiar with courtroom procedure, and even though this hearing was held in the Judge's Chambers, it did upset her very much, because she said she felt that she had failed as a witness in the case because she hadn't been able to satisfy Judge Kelly's questions.

Q Are you a member of the Clearwater Bar Association, of Clearwater, Florida?

A Yes sir, I have been a member of the Clearwater Bar Association since the time that I have been practicing law. During that period I have held several positions with it, including the position of President. I have been Chairman of the Minimum Fee Schedule Committee on several occasions, and I have been Chairman of various other committees of the Bar Association from time to time.

Q Were you present at the meeting of the Clearwater Bar Association at the time that Judge Kelly made a speech before that association in Clearwater, Florida?

A Yes sir, I was.

Q Can you state the nature of that speech and the words, generally, that were used, and the subject matter thereof?

A The nature of the speech had to do with the dispute between Judge Kelly and Judge Bird, which had erupted into the public notice in the newspapers and other new media, and as I recall it - - -

MR. NICHOLS: Excuse me a minute. I thought that that whole count had been stricken. We're going into something that has nothing to do with this proceeding.

CHIEF JUSTICE DREW: Are you talking to me?

MR. NICHOLS: Yes sir.

MR. O'NEILL: May it please the Court, if you will read articles VII and VIII real closely, you will find that "Judge Richard Kelly did bring his Court into disrepute, scandal," and otherwise, and this is going to the pertinency of that Article, as previously announced at the opening testimony of this witness.

CHIEF JUSTICE DREW: Proceed.

BY MR. O'NEILL:

Q All right, sir, continue.

A All right, sir. As I say, there had been some considerable notoriety about it. The Bar was very concerned - - -

MR. NICHOLS: Well, now, excuse me again. I'm going to move the Court that - - - and I object to anything other than the interests of Mr. O'Neill's question. He asked him the substance of the speech that Judge Kelly made.

MR. O'NEILL: I think that is a proper objection, if it please the Court, and I'll ask Mr. Bonner if he will restrict his comments to the substance of the speech made by Judge Richard Kelly at that time.

THE WITNESS: All right, sir. I will try to confine my self, but it's a little bit difficult, because it was, in a sense, in the order of a debate, or a dual appearance by Judge Bird and Judge Kelly both. It had been announced in advance to the members of the Bar that they would be at this meeting, and a very large attendance of the Bar, a particularly large attendance of the Bar were at the meeting. It was a noon luncheon meeting, and was held at the then called The Fort Harrison Hotel, what is now - - -

SENATOR BARRON: Mr. Chief Justice, would you instruct the witness to answer that question, please sir, and not tell us all about the meeting.

CHIEF JUSTICE DREW: I think the Senator's position is well taken. If you will repeat the question and - - -

MR. O'NEILL: I will rephrase the question, if the Court please; I think we can shorten it.

BY MR. O'NEILL:

Q Mr. Bonner, will you give the substance of the speech given by Judge Richard Kelly, please?

A Yes sir. The substance of the speech of Richard - - - Judge Richard Kelly was to state his views concerning the way that Judge Bird ought to be running the Circuit Court of Pinellas County, Florida.

Q Was this a public meeting?

A Yes sir.

Q I believe you previously stated that Judge Bird was also there?

A Yes sir.

Q Did he make any comments at the time?

A Yes sir, he did.

Q Will you state the substance of his comments, and what it might relate to you?

MR. NICHOLS: If Your Honor please, I object to going into hearsay testimony.

MR. O'NEILL: Judge Kelly was there. I don't see how it could have been hearsay, if it please the Court.

MR. NICHOLS: We're asking the witness to relate what Judge Bird said. Now, Judge Bird's already been on the stand - - -

CHIEF JUSTICE DREW: Overruled. The Respondent was present.

BY MR. O'NEILL:

Q Respond to the question asked, the substance of Judge Bird's remarks?

A Judge Bird mainly introduced Judge Kelly, and I cannot tell you the exact words, but his main effort seemed to be to keep the matter as amicable as possible. He tried to treat the topic lightly. He referred to Judge Kelly as "My young friend from Pasco County," and tried to keep it on a friendly plane, so that there wouldn't be any heated debate, and Judge Bird stated how he felt about it, and then he introduced Judge Kelly, and he said - - - words to the effect - - - "My young friend from Pasco County feels opposite about it," and gave him an opportunity to state what he felt his opinions were. Now, this I might mention, is one occasion that Judge Kelly was before the Bar. I believe that he was before the Bar on at least another occasion, when he dealt with - - -

CHIEF JUSTICE DREW: Let's restrict it to this occasion.

THE WITNESS: All right, sir. That is the nature of - - - all right, sir.

BY MR. O'NEILL:

Q Mr. Bonner, do you know the reputation of Judge Kelly among the members of the Bar and the Bench, and the community, as to the way he conducts and handles his cases in Court in Clearwater, Pinellas County, Florida?

A Yes sir.

Q What is that reputation?

A It is very bad.

Q Do you know the reputation, if I would ask you a similar question, as it relates to St. Petersburg, Florida?

A Yes sir.

Q Do you know that?

A Yes sir.

Q What is that reputation in St. Petersburg?

A I would say it is bad there, too.

Q Do you know that reputation as it might relate to Pasco County, Florida?

A Yes sir.

Q What is that reputation there?

A I think it is bad there, too.

MR. O'NEILL: Your witness.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Bonner, I believe you testified concerning your connection with Republican activities?

A Yes sir.

Q I hold before me, and I'll ask you to look at it, the pre-election report to the Secretary of State of Judge Orvil L. Dayton, and is - - I think it shows a contribution from you as supporting Judge Dayton in that election - - -

A Yes sir.

Q - - - is that correct?

A I don't know, sir. I haven't seen the report; so, I'm afraid I can't answer as to what the report might - - -

Q You did support him, though?

A Beg pardon?

Q You did support and contribute to his campaign?

A Yes sir. I think it would be fair to say that I supported Judge Dayton in that particular campaign.

Q And you contributed to his campaign financially?

A I don't recall, sir. If that report says I did, then I must have. I have contributed to various campaigns from time to time, and it's possible that I did.

Q Is your name John R. Bonner?

A Yes sir.

Q Of Clearwater?

A Yes sir.

Q Does it show on there your name as a contributor?

A Yes sir, it does show on the report.

MR. O'NEILL: We concede that the records of the Secretary of the State of Florida show that Mr. Bonner contributed to O. L. Dayton Jr.'s campaign fund for Circuit Judge of the Sixth Judicial Circuit.

THE WITNESS: But the reason I have to qualify that - - -

MR. NICHOLS: Now, wait a minute, I just asked you one question. I have no further questions from you, and thank you very much.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Mr. Bonner, is it also true that you contributed and did support Judge Leavengood, a Republican?

MR. NICHOLS: Now, wait a minute. We're not trying Judge Leavengood.

MR. O'NEILL: You've gotten us into politics, now, Counsellor.

MR. NICHOLS: But there's no need to go into Judge Leavengood's campaign.

CHIEF JUSTICE DREW: I don't think Judge Leavengood is involved.

MR. O'NEILL: I'll rephrase the question.

MR. NICHOLS: This is not in cross of anything on direct. I asked this man only one question.

MR. O'NEILL: May it please the Court, I think you'll find this question goes to redirect.

CHIEF JUSTICE DREW: You want to ask him another question?

MR. O'NEILL: Yes sir.

BY MR. O'NEILL:

Q Mr. Bonner, have you also supported other Judges in the Sixth Judicial Circuit of the State of Florida for their candidacy for public office - - -

A Yes sir.

Q - - - as Circuit Judges?

A Yes sir.

MR. O'NEILL: You may step down.

MR. NICHOLS: Thank you.

THE WITNESS: May I appeal to the Court, please. The question was asked on cross examination, and I thought that I would be allowed to complete an answer, sir, and may I appeal to the Chair to complete my answer to Mr. Nichols' question?

CHIEF JUSTICE DREW: Not at this time. They asked you a question or two, and if your counsel wants to ask a question, you see him and he should be able to straighten it out.

This is a question to you from Senator Henderson:

Did you take an oath to support one hundred per cent of the Republican candidates?

THE WITNESS: At what time?

CHIEF JUSTICE DREW: Another question, from Senator Gibson: What did Kelly say at the Bar Association speech?

THE WITNESS: Well, sir, that is one of the two places that we had some problems, because he spoke twice, and you asked me about one time, and I wasn't trying to differentiate between what he said on one occasion and what he said on another occasion.

CHIEF JUSTICE DREW: What did Judge Kelly say at the Bar Association speech about which you have testified?

THE WITNESS: All right, sir. At that particular time he attempted to explain his side of the controversy over assignment of cases and other matters, which was then pending between he and Judge Bird and the other judges of the Court.

CHIEF JUSTICE DREW: There's another question from Senator Mathews, of the 18th.

SENATOR MATHEWS: That's the same question, Your Honor, but I don't think he's answered the question yet.

CHIEF JUSTICE DREW: What Judge Kelly said, do you remember what he said, the substance of what he said?

THE WITNESS: Yes sir. He said that he felt that he should be entitled to come to Pinellas County and try any kind of cases that he wished to try, that he felt that he was elected as a Judge, and that he ought to have the right, on his own say-so, or his own authority, to try cases without being limited in his authority. I believe that was the gist of what he said, sir. I cannot recall the exact words but, basically, that was his position, I believe, as he stated it to the Bar Association.

I'm not trying to evade that question; that was why I came away with this as being his position, and any arguments he might have used in favor of his position, I cannot state to you with any more particularity; I'm sorry.

CHIEF JUSTICE DREW: Mr. Witness, I think that this may enable you to say what you wanted to:

SENATOR GIBSON: In addition to what he said at the Bar Association speech, he wants to know what he said at any other time, or both times. Is that what you wanted to say?

THE WITNESS: Yes sir, because I'm quite sure that he spoke to the Bar Association on another occasion, when he was the principal or sole speaker, and when he came and stated how he expected to run his Court, and talked on Court Room procedures and things of that nature, methods of introducing evidence, and what he felt was acceptable practice, and so forth, but, now, the only qualification, it is possible that he spoke on both subjects at the same time. My best recollection is that these were two different occasions. I didn't mean to confuse anyone, but it is possible they were both on the same date. I don't believe so. My best recollection is that they were not.

CHIEF JUSTICE DREW: Senator Johns, of the 15th, asks this question: Why did you support Judge Dayton, a Democrat, with Judge Kelly, a Republican, running?

THE WITNESS: Sir, I thank you for that question, because the contribution list which you have seen shows a contribution from myself and a contribution from my partner, Mr. W. H. Wolfe. This is the first time that I have seen this list, but it is my belief that that was a check drawn on the firm of Wolfe and Bonner, and that Judge Dayton allocated half to Mr. Wolfe and half to myself; that's my best belief on the thing. Whether or not that's a fair allocation, I can't tell you at this time. I have stated to you honestly that I did support Judge Dayton. I did not believe until this very minute today that I supported him financially, and the only explanation I can give to you for seeing that on the Secretary of State's report is that a firm check, a partnership check, was possibly allocated, half and half, between two partners.

Now, I don't know if that fully answers the Senator's question. Why did I support Judge Dayton? I felt that he was eminently qualified to continue in his judicial post. I felt that as a member of the Bar, that it was my duty and understanding of ethics, it was my duty to support a Judge who was highly qualified and who was - - - indicated that he was willing to continue serving, and I did support him, and I'm not ashamed of that.

CHIEF JUSTICE DREW: Senator Cleveland, of the 42nd District, would like to ask: What was Judge Kelly's attitude as to his handling of cases in Pasco County? Do you understand the question?

THE WITNESS: "His" being Judge Kelly's attitude?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: The same as it was in Pinellas County. Judge Kelly seemed to have a vindictive spirit towards the attorneys of both Bars, and he seemed to take opportunity to try and embarrass us and subject us to ridicule in front of our clients similar, I believe, to the occasion when I was in St. Petersburg, and at which time he encouraged me to make the objection, and then peremptorily overruled it, in my opinion, to ridicule and embarrass me.

CHIEF JUSTICE DREW: A question from Senator Ryan, of the 30th: Did Judge Kelly comment at the Bar Association regarding other Circuit Judges having cases in Pasco County?

THE WITNESS: I don't recall.

CHIEF JUSTICE DREW: Now, Gentlemen, in view of these questions, do you desire to - - -

MR. O'NEILL: I would like to ask - - - I don't believe that Senator Cleveland's question was answered, and I would like to rephrase that question with what I think he intended to get at.

REDIRECT EXAMINATION (Cont'd)

BY MR. O'NEILL:

Q Do you know what Judge Kelly's attitude was as to other Circuit Judges coming to Pasco County at the time that he was trying to come to Pinellas County to try cases? I think that that's what Senator Cleveland was alluding to in his question, and I don't believe you answered that.

A No sir, I don't feel qualified to state that aspect of the case; that was something that bore on the situation in Pasco County, and I don't feel that I should answer that question.

MR. O'NEILL: Counsel for Respondent may inquire.

CHIEF JUSTICE DREW: Do you have any questions, Mr. Nichols?

MR. NICHOLS: No further questions.

MR. O'NEILL: Mr. Bonner, you are excused, subject to recall; and we do have his phone number, Mr. Nichols.

MR. NICHOLS: All right, sir.

THE WITNESS: Thank you.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. DANIEL: For the record, Mr. Phillips will be testifying as to Articles VII and VIII and such other Articles as may be pertinent, in view of his testimony.

Thereupon,

LLOYD M. PHILLIPS,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. DANIEL:

Q State your name, occupation, residence and profession.

A My name is Lloyd M. Phillips. I am an attorney at law. My office is at 311 South Missouri Avenue, in the City of Clearwater, Pinellas County, Florida.

Q Would you give a brief resume of your legal education, Mr. Phillips?

A I attended the University of Florida, where I graduated in the Business Administration College and the College of Law.

Q Receiving a degree in both?

A I did.

Q What year did you receive your degree in law?

A 1943.

Q Have you been in continuous practice in Pinellas County since that time?

A I have.

Q Will you state what official positions or civic positions you have held in Pinellas County since 1943?

A I was the County Prosecuting Attorney from 1948 through 1952. That was the only political position that I have held.

Q What positions, civic or community?

A I have been involved in much of the civic activity of Clearwater. I have served twice as a Member of the Board of Governors and the Chamber of Commerce. I was President of the Clearwater Junior Chamber of Commerce. I have served in all of the fund drives. I have been active in civic work of the city. At the present time I am Chairman of the Liaison Committee, appointed by the City of Clearwater, to work on the question of race relations in Clearwater.

Q Mr. Phillips, do you know Judge Richard Kelly?

A I do.

Q Have you ever appeared before him as an advocate?

A I have.

Q I call your attention to a case entitled Fifield vs. Fifield, and ask you if you are familiar with the same?

A Yes sir, I am.

Q Did you appear before Judge Kelly as an advocate in that case?

A I did.

Q Representing whom, please?

A The Plaintiff, Alice Fifield.

Q What was the nature of that case?

A It was a divorce case.

Q And you appeared at a hearing in this case before Judge Kelly?

A I did.

Q Would you briefly recite the sequence of events occurring in this hearing?

A This case was filed by me on behalf of the Plaintiff, the wife. Service was obtained, personal service, on the Defendant; and a Decree Pro Confesso was entered. The hearing before the Court was on the final hearing of the matter.

Q Briefly, what is a "Decree Pro Confesso"? How does it come about being entered?

A After service is made, by the service of process by the Sheriff, the Defendant has twenty days in which to file an Answer or other defensive pleadings. If you do not file such an Answer, application is made on behalf of the plaintiff, and the Clerk of the Court enters a Decree Pro Confesso, or default judgment against you.

Q Thereafter, does it proceed as what we call, in the profession, an uncontested matter?

A An ex parte matter, yes.

Q In other words, there is no opposing side. There is no defense. There is no opposition in the matter?

A None whatsoever.

Q All right, sir. What transpired then at that hearing?

A I examined the witness, as we do in such matters, getting from her information relative to her address, her residence, the marriage, the date of separation, children, etc.; the normal things which are all recited in the Complaint. And during the course of the examination, which was before Judge Kelly, the Plaintiff became extremely nervous and upset by reason of certain questions and the manner in which they were asked by the Court.

Q What do you mean, "became upset and nervous"?

A She became nervous. She commenced crying. She was practically in hysteria.

Q What was the nature of the questions that Judge Kelly was asking her?

A I do not understand this - - - the record does not reflect what happened in that case. I do not know if it was off the record or whether the Court Reporter did not write it down. The record will not reflect this. The questions were asked in a manner which was - - - using - - - it has to be my opinion in the way that I describe it - - - as prosecuting her. She was asked questions which she could not answer, such as to the time of day - - - the exact date - - - although all of these instances had occurred more than a year prior to this time. Such things as exactly where, exactly who was present, what hour, what minute, things such as that.

Q Was it the words or the manner that seemed to drive your client into hysteria?

A I do not know what drove her there. In my opinion, the attitude of the questions was such that it was reasonable for her to become upset.

Q I now refer you to the Free Dealership proceeding, in which Mrs. Mary Molly Yates, I believe it was, sought a Free Dealership, and ask you if you are familiar with that case?

A I am.

Q Who did you represent in that matter?

A I represented the Petitioner, Mary Molly Yates.

Q Now, for the benefit of those of us who do not know what a Free Dealership proceeding is, would you briefly relate what this process is?

A Application for a Free Dealership is made by a married woman for reasons sufficient to her. She does not want it necessary for her husband to sign either deeds or mortgages pertaining to real property. Under the law of Florida, a wife may own property but, for her to convey it, or to encumber it, by what we normally refer to as a mortgage, it is necessary for the husband to join her.

Q In other words, a married woman who is a Free Dealer can sign a deed or mortgage or contract without being joined in such signature by her husband?

A She can transact her business affairs exactly as if she were single.

Q Now, what does the husband have to say about this, if anything, Mr. Phillips?

A This is a statutory proceeding and the statute provides that it is necessary for the husband to be served with a copy of the petition and the summons, exactly as you do in a normal Chancery case; or, in the alternative, he may under oath sign a consent to have this decree entered.

Q Which one of these alternatives had been followed in the Molly Yates matter?

A The husband signed the consent. That was made a part of the record at the time the petition was filed.

Q He signed a consent for the wife to become a Free Dealer?

A He did.

Q All right, sir. Did you come on for hearing in that matter?

A We did.

Q Before what Judge?

A Judge Kelly.

Q Judge Richard Kelly?

A Yes sir.

Q Briefly relate what transpired at that hearing.

A When we walked into the Judge's Chambers, I was accompanied by the Petitioner, Mrs. Yates, and her witness, a gentleman by the name of Charles Shingler, who had been her employer for seven years.

Q What is the purpose of having a witness if the husband consents to it?

A In our county, our Circuit Courts there, have required us to appear before them and to give testimony relative to the the matters set forth in the petition; and one of those questions to be determined is whether or not the woman is capable of managing her own business affairs.

Q All right, sir. I interrupted you. I apologize.

A And for that reason, we normally take a witness, and this was the purpose of Mr. Shingler.

Q You were relating what happened at this hearing when I interrupted you. Would you proceed, please.

A The three of us walked into the office of Judge Kelly. He was handed the file by me.

He made the statement that he did not know anything of the Free Dealership law; that we would have to educate him in this matter.

I went to the bookcase and took down the statute, and opened it to the proper page and gave it to him, and informed him that I thought he would find that the petition tracked the statute. That it was a statutory proceeding and that the facts as alleged complied with the statute. He had the statute before him.

I commenced questioning the Plaintiff or the Petitioner relative to the matters set forth in the petition. And, again, the Court interrupted in a number of instances. Again, things occurred, insofar as statements made by Judge Kelly, which apparently caused this

woman to become quite upset, to the point that she also could not answer the questions properly. And this was pertaining to several things that he asked her about. Of course, I am sure that all of you gentlemen here do not think that it is improper for the Court to question her, so there is no complaint on that; but the method and the manner of the questions and the things that were said by the Court completely unnerved this woman also.

Q Give an example of what you are referring to, Mr. Phillips.

A Well, there was one place in the record of this that it shows clearly that we were off the record. I don't know what was said there. But in this particular instance that I am thinking about that got her upset, the printed words perhaps would not show why you, as reasonable men, would think it would upset, but it did upset this woman. It was on the question of residence. She had testified that she had lived in Clearwater, Pinellas County, Florida, for thirteen years. She had given her address. And it was clearly apparent that her residence was in Pinellas County, Florida. And the Judge commenced questioning her about this, and he went into the question of did she ever vote, was she registered to vote, and where she had lived, and how long she had lived there, and if she had a Florida driver's license, and things like this; all of which had been completely covered by the testimony that she had given in response to the questions I had asked; certainly sufficient to track the petition.

Q Again, as in the previous case, was it the manner of the questions, rather than the words themselves that you attributed the hysteria to?

A Entirely.

Q In what manner was Judge Kelly questioning Mrs. Yates?

A He was asking her questions as if he were a Prosecuting Attorney, as if he were prosecuting her. The same way that I would have done, examining a witness, when I served in that capacity.

Q Examining her as if she were a hostile witness?

A Yes sir.

Q Now, Mr. Phillips, did this cause Mrs. Yates to make any comment to you, as her attorney, with respect to this case?

A It did.

Q What was that comment?

MR. MASTERSON: Objected to, Your Honor, as hearsay.

CHIEF JUSTICE DREW: Was Judge Kelly there?

THE WITNESS: He was not.

CHIEF JUSTICE DREW: Sustained.

BY MR. DANIEL:

Q Did you have another case in which there was also a person named Yates involved, but not relating to Molly Yates?

A Yes sir.

Q What was the nature of that case?

A This was an adoption.

Q And this adoption appeared before Judge Kelly too?

A Yes sir.

Q What type of adoption was this, Mr. Phillips?

A It is normally what we refer to as a step-father adoption. A man had married a woman, and the woman had two children, and he was applying for the right to adopt these children.

Q The children of the wife by a former marriage?

A That is correct.

Q Now, does the law require notice to the natural father in these cases?

A Yes sir.

Q Was this notice given?

A Yes sir.

Q What method did you follow in giving this notice or obtaining service of process on the natural father of these children?

A You can, as in the Free Dealership, obtain a consent, which is clear-cut, of course, notice that he has knowledge of what is happening; or you can serve him by means of personal service; or the statute provides that you can serve him by means of publication. In this latter manner, which was the method used in this particular case, a copy of the petition is sent by registered, certified mail, by the Clerk of the Court, to the address given in the affidavit; which, by law, must state the last known residence of the Defendant or, in this case, the Defendant father. This was the method that we utilized. The man was living in Pennsylvania, as I recall. I had written him letters that had not been answered. I had sent him a consent which I had asked him to sign, and which he had not signed. And I had filed the case, using the process of service by publication.

Q Is this purely a statutory procedure?

A Yes sir.

Q And had you complied with all of the requirements of the statute?

A Yes sir.

Q Now, sir, would you relate what transpired at this hearing before Judge Kelly, Mr. Phillips?

A Judge Kelly read the pleadings and began to question the affidavit, which was attached, relative to the address or residence of the Defendant father. The statute requires, of course, that the residence be alleged, and this is not necessarily the same as the address. The residence had been alleged, and he asked us, or asked me what method had been utilized to determine whether or not diligent search and inquiry had been made in accordance with the law and in accordance with the provisions of the affidavit before him, to determine whether or not the Defendant father actually resided or was a resident at the address in Pennsylvania given.

Q Was this inquiry of you conducted in the presence of your client?

A Yes sir.

Q Proceed.

A I explained to him that I had written to the man at this address and that the letters had not come back; and that I had sent him a consent by a different mailing and that it had not come back; that these people had lived in Pennsylvania before they moved down here; and that the affidavit was in the proper form; and that there had been a Decree Pro Confesso entered against the Defendant; and that, the affidavit being in a proper form, I thought it was proper for us to proceed.

Q Did he proceed then with the hearing?

A He told me that he would not accept the affidavit.

Q This affidavit in which you had complied with all the requirements of the law?

A Yes sir. And I asked him if he would permit me, by reason of the fact that both the father, the adoptive father to be, and his wife, were before the Court - - - if he would permit me to take the testimony in order that they would not have to again come from St. Petersburg.

We have a very small county in Pinellas County, in land miles, and most of us attorneys have practices that encompass the county. These people had come from St. Petersburg and I asked him to do this; and he very readily agreed to permit me to do so, and I proceeded to take the testimony. He instructed me that I would have to find out if this man resided at this address given as his residence in the affidavit.

Q What steps did you take to determine this?

MR. MASTERSON: That is immaterial, Your Honor. I think the matter involving Judge Kelly has been covered.

BY MR. DANIEL:

Q Did Judge Kelly give you any instructions with respect to what steps you should take to determine this?

A He did.

Q What were those steps?

A I wrote to the Chief of Police of the town to ascertain if this man was actually a resident of the address given. I did so. I wrote to the Chief of Police of this town. In a matter of a short period of time, I received a letter stating that the Chief had gone to this address, the man was there. I presented this letter to the Court. Judge Kelly, I believe, put it in the file; I cannot tell you this, because the file of adoption matters is sealed, and I have not had any access to check this. The original was not in my file. He put this in the file and thereupon permitted me to take a final decree of adoption for these two children to Mr. Richard M. Yates.

Q Will you describe this letter that you received, physically; not necessarily the contents, but physically?

A It was just a letter.

Q What type of stationery was it on?

A It was on the letterhead of this small town in Pennsylvania.

Q Now, had you been asked, in an adversary proceeding, or had you sought, in an adversary proceeding, to introduce this letter into evidence as residence, would it be admissible evidence?

A No sir, it could not be.

Q So that this inadmissible evidence was substituted for what would conform to good evidence?

MR. MASTERSON: I object to the form of that question.

THE WITNESS: I object to the content of it, sir, because it wasn't - - -

MR. MASTERSON: Object to the form of the question.

THE WITNESS: Oh, excuse me.

MR. DANIEL: I'll withdraw the question.

BY MR. DANIEL:

Q Now, Mr. Phillips, let me pursue a little further the type of practice in which you have been engaged for the past twenty years. To what Courts are you admitted to practice?

A I am admitted to practice in all of the State Courts of the State of Florida, and the Federal District Court.

Q What type of matters have you handled in your twenty years of practice in Pinellas County?

A I do not handle criminal work, insofar as defense counsel work is concerned.

Q You have handled it as the County Prosecutor?

A I have handled it as County Prosecuting Attorney, and I have an active practice in all Courts, the bulk of my practice being in Probate Courts and in Chancery. I have not sought, necessarily, litigation before Juries.

CHIEF JUSTICE DREW: May I interrupt right here? One of the Senators - - - he's trying to follow the testimony. What was the date of the Molly Yates final hearing?

MR. DANIEL: I loaned that file to counsel for the Respondent. I believe they can give you the answer to that.

MR. MASTERSON: The transcript reflects that that final hearing was held on December 12, 1961.

CHIEF JUSTICE DREW: Thank you.

THE WITNESS: Thank you.

BY MR. DANIEL:

Q Now, have you had occasion, during this twenty years of practice, and in connection with the practice you have related, to do continuing research in connection with Florida Rules of Civil Procedure and the Florida laws?

A I am somewhat familiar with them, yes sir.

Q And in what Courts in Pinellas County have you tried cases?

A Every Court in Pinellas County. This, of course, the Constitutional Courts, the Justice of the Peace, Small Claims Court, the Civil and Criminal Court of Record, which was created by special act of the Legislature at the time that I was the County Prosecuting Attorney in the Circuit Court, both on the civil side, law side, and the chancery side. I have had an active practice in Pinellas County.

Q What would be your best estimate of the number of cases, either ex parte or contested, in which you have appeared as an advocate, Mr. Phillips, in any type of Court? I should say all types of Courts.

A I have well over twenty-five hundred files in my office, but many of these, of course, are real estate and business deals. I could not estimate the number of cases that I have been involved in, but it must - - - exclusive of my criminal practice, when I was County Prosecuting Attorney, it must be at least four or five hundred cases.

Q Are you familiar with the Canons of Ethics governing the conduct of both lawyers and Judges?

A I certainly try to be, yes sir.

Q Do you know the reputation of Judge Kelly in Pinellas County, among the Bench, Bar and public, with respect to the handling of cases in his Court?

A Among what group, did you speak of?

Q The Bench, Bar and the public.

A I don't believe that can be answered in one - - -

Q Well, I'll ask you one at a time. Among the Bar?

A Yes, I do.

Q What is that reputation?

A Bad.

Q Do you know Judge Kelly's reputation among the public, in the manner of the handling of his cases in his Court?

A To an extent, yes.

Q To that extent, what is that reputation?

A Bad.

Q Now, I have particularly noted that in these three cases you have not testified that Judge Kelly jumped on you as an attorney. I'll ask you, now, if you handled any other cases on the law side of the Court before Judge Kelly?

A I have handled one Jury trial case before Judge Kelly, yes.

Q And with that respect, or in that respect, how did he handle this case?

A Perfectly fine.

Q All right. Now, how do you reconcile the fact that he has not jumped on you as an attorney in any one of those four cases, and your answer that his reputation among the Bar - - - let me finish the question, Mr. Masterson - - - and your answer that among the Bar his reputation was bad, and to an extent, among the public, his reputation is bad? How do you reconcile that fact?

MR. MASTERSON: Objection, Your Honor, as calling for a conclusion of the witness.

CHIEF JUSTICE DREW: I'll let the Court judge what they think. I'll overrule the objection.

THE WITNESS: Concerning the public, the difficulties which arose between John U. Bird, who has just retired as Circuit Judge, after having been a member of the judiciary of our county for in excess of thirty-five years, and between Judge Kelly had a very demoralizing effect upon the public.

The other people who I have been in contact with, which gives me the basis for these opinions are, frankly, the clients of mine that I have described the actions before you today of Judge Kelly, and who have discussed this with me, and the clients of other attorneys who have been subjected to what, to them, appeared to be indignities; I was not there. I can reconcile my own personal cases with Judge Kelly in that he did not treat me uncivilly. I have an opinion as to whether or not he is right as a Judge and, in my opinion, he was wrong on the matter pertaining to the affidavit in the Yates adoption case. Unfortunately, this type of matter has been aired, this difficulty has been aired enough in my county, but even though I thought he was wrong, I knew he would comply with what he told me to do, and I did so, and in each of the cases that I have had before Judge Kelly, the results which I thought - - - which I sought after, was obtained. I do not - - -

BY MR. DANIEL:

Q So that your answer to my question about reputation is not based upon any handling of you or any treatment of you as an attorney, is that correct?

MR. MASTERSON: May it please the Court, the answer speaks for itself.

CHIEF JUSTICE DREW: I think so too.

MR. DANIEL: Very well, I withdraw the question.

BY MR. DANIEL:

Q Now, Mr. Phillips, because of this feeling that you have, have you been caused yourself to change the manner in which you practice law with respect to Judge Kelly in Pinellas County?

A I would not willingly submit any of my clients to additional treatment such as I have described today before you. It is not necessary, and I just will not do it.

Q By that you mean you would not willingly go before Judge Kelly?

A This is absolutely correct.

Q If you had any choice in the matter?

A I said "willingly."

MR. DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Phillips, you mentioned that in the three Chancery matters which you have had before Judge Kelly, you reached the result that you wished to attain, is that correct?

A That is correct, Mr. Masterson.

Q Did you also reach the result you wished to attain in the law matter?

A Yes sir, the Jury found for my client.

Q So that you have never been before Judge Kelly on a matter in which the relief which you sought for your client was denied?

A This is absolutely correct.

Q And you believe that he conducted an excellent Jury trial?

A He did in my case, yes sir.

Q All right, sir. Now, you have mentioned that in the case of Fifield - - - if I'm pronouncing that correctly - - - Fifield vs. Fifield, he mistreated your client in some manner, but that the transcript does not reflect that?

A This is very true, yes sir.

Q I believe you have reviewed the transcript recently, have you not?

A Certainly.

Q And do you recall that at the end of the transcript there is a certificate by the official Court Reporter?

A Yes sir.

Q This does purport to be what went on in the hearing?

A Yes sir. There were many instances of where things were said off the record in both these cases that I described to you.

Q Well, let me go over very quickly with you, Mr. Phillips, the Fifield transcript, during the period in which Mrs. Fifield was on the stand, and I'll confine myself to the Court's actual remarks, as reflected by this record, and if you want any question that was asked before the Court intervened, let me know. First, let me refresh your memory; there are thirteen pages of testimony in which Mrs. Fifield's remarks are set out. Now, I will relate each of the Court's remarks. Now, on Page 3, the Court said this: "The reason" - - - the previous testimony had been that she was a resident of Clearwater, Florida, and the Court said: "The reason I" - - -

CHIEF JUSTICE DREW: Just a minute on that. Is this the Fifield case?

MR. MASTERSON: This is the divorce case.

CHIEF JUSTICE DREW: All right, the divorce case.

BY MR. MASTERSON:

Q The Court's remark was: "The reason I ask is that it is necessary to establish the child is within the jurisdiction of the Court." Now, that's the only question of the Court on that page.

A Well, you should start with - - - earlier than that, when he asked her if it was her baby, and the baby of her father - - - I mean of her husband.

Q That comes later.

A It does? I'm sorry.

Q Now, the next remark of the Court is at Page 5. The Court inquired: "Who was present at that time?" Now, that didn't upset your client, did it?

A It should not have, certainly; you are correct.

Q Now, at Page 6, the Court asked this - - - the lady had been saying that she was embarrassed, and the Court asked: "What did he say to embarrass you - - - did he say it in a loud voice? Please describe, as he could say you had two eyes and that would make you ill, or call you a name and that would not bother you so much. Do you understand the question? Please describe some of the things he said and his tone of voice and who was present and when he said these things." Did that disturb your client?

A It should not have, no sir.

Q All right, sir, the next remark of the Court was set out on Page 8, and apparently there was some problem about a previous answer that had been "Yes" - - - by Mrs. Fifield, "Yes, and the night before my baby was born" and then there are two dashes, and then the Court said this: "Just a minute. Did anyone have any claim to this baby?" And you said, "She does not mean that, Judge." And the question by the Court was: "Was this child fathered by the Defendant?" Now, that's the Court remark on Page 8. Did that upset your client?

A This girl, by this time, was so upset that she made a statement that would reflect upon the parenthood of this baby, which is why I interposed the remark I did. There's nothing in the record, Mr. Masterson, to indicate the way that this girl was upset. I've told you that already.

Q Well, I would like to conclude, since we only have a few more remarks.

The next remark that we have is on Page 11, and it really follows your statement that you had concluded your case:

"The Court: Is there a prayer for attorneys fees?"

And you said, "There is, and this is the first of these cases I have had before you. I have stated the minimum fee of the Bar Association is all I would like to have."

"THE COURT: What is that fee?"

"MR. PHILLIPS: One hundred seventy-five dollars."

"BY THE COURT: Where is your husband, you said he worked up until yesterday?

"A Yes.

"Q How long had he been working at his present place of employment up until yesterday?

"A I don't know when he started there.

"Q How long to your knowledge has he been working at that same place?" And you intervened, said, "He was working there at the time you filed this Complaint. How long before then?

"THE COURT: Just a minute. Let's get the answers out of the witness if we can. If she doesn't know, she should say so." The Court then went on to say: "How long has he been working there, as far as you know - - - has he been working there at all?

"A Yes, at least three or four months.

"Q Do you know from any source what his income is?

"A No, I don't.

"Q Do you know how much he was making on any occasion when he was employed while you were married?

"A He was employed by Ad's Everbest Fuel Oil and made about $65.00 a week.

"Q When was that?

"A Last winter.

"Q Did he have any other employment while you were married?

"A He worked for Gulf Oil delivering fuel oil.

"Q What was his income at that time?

"A About the same, around $55.00 or $60 a week.

"Q He is capable of earning $55 a week or $60 a week?

"A Yes. I believe that is what he is going to do this winter, work for the fuel oil company.

"THE COURT: Mr. Phillips, if this Court awards attorneys fees of $175.00, how much time would you give the Defendant to pay this fee?

"MR. PHILLIPS: A year.

"THE COURT: Well, let's give him six months.

"MR. PHILLIPS: All right."

Now, is there anything, Mr. Phillips, in this affair, that should have upset Mrs. Fifield that was not reflected in this transcript?

A The manner in which some of these questions were asked, due to the state that the girl was in, continued to upset her. From what you have read to me, the answer, of course, is obviously no, it should not have upset her. She was upset by things that do not appear in this record.

Q Now, Mr. Phillips, if I went over, in this same painstaking fashion with you, the same questions in the Yates case, the Mary Molly Yates case, the answer would be the same, would it not?

A Yes, I believe it would be, yes sir. It was the method and the manner of questioning, and not what was said, plus the facts that were not disclosed by this record, that upset these two women; there's no question about it, Mr. Masterson, what's in the record would not upset a normal woman.

MR. MASTERSON: Thank you, Mr. Phillips.

THE WITNESS: Thank you.

CHIEF JUSTICE DREW: Senator Price of the 36th District would ask this question: "You have stated that Judge Kelly's reputation was bad with the public. My question is, what is the number of citizens to whom you have talked in arriving at this conclusion?"

THE WITNESS: I am in many activities in Clearwater, Pinellas County, Florida. I was born and raised there. I

have talked to at least two to three hundred people concerning this very tragic situation.

CHIEF JUSTICE DREW: Mr. Daniel.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Phillips, with respect to cross examination, I believe you said that the remarks that upset these clients in this matter were remarks that are not contained in that transcript?

MR. MASTERSON: May it please the Court, I think this is grossly leading. The witness' statements speak for themselves.

BY MR. DANIEL:

Q Where did the remarks appear that upset your clients, Mr. Phillips?

A Where did they appear?

Q Where do they appear, if anywhere?

A They don't.

Q But they were stated by Judge Kelly at the hearing?

A Well, for me to tell you what I thought was said at that hearing would be ridiculous. This is a long time ago, and I'm not that good of a man when it comes to memory. I was there. I saw this woman get upset. I was upset because of the way that she was treated by Judge Kelly, and I cannot tell you what was said. I am only telling you that it happened, and it is not reflected by this record.

This happened with two cases for me. Mrs. Fifield was a young woman, I think she was only twenty-one years old. Mary Molly Yates had held down a fairly responsible position with a client of mine, Mr. Charlie Shingler, for seven years. I had gotten her a divorce from her first husband, which you will find reflected in this record. This woman is a mature woman, and would not be upset by the mere fact that something was said that she did not like. She was upset to the point of tears by the method that this was done, and the demeanor of Judge Kelly in asking her this question. I cannot emphasize it more, nor can I say less. This happened.

CHIEF JUSTICE DREW: Let me ask a question which might straighten up something in my mind, and maybe in the Senators': Was anything said at this hearing which was not reported in the transcript?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: You mean the transcript which you heard is not an accurate statement of all the events which transpired at the hearing?

THE WITNESS: It is not a complete report. In one of the cases - - - I don't know which it was, but it was one of the two transcripts, either in the Fifield divorce case or the Yates case pertaining to the Free Dealership, it shows that things were said off the record. The Court Reporter put this on here. This happened more than once.

Had I known now - - - had I known then what I now know, this record would have reflected every word said by me from the time I walked in the door until I left, but Judge Kelly was a new Judge. He had just become a Judge. There is even in the divorce case, which was the first case I had before him, a statement that it was the first case that I had had before him, and I did not hold him to what I think the proper rules. When he said, "Off the record," it's not off the record, it goes on the record as said in the Court Room, and if I had done so, we, perhaps, would have a record of this. We do not. I take the blame for it. There were things said that do not appear in this record, and nothing of - - - insofar as anyone asking me, well, what did he say? This I cannot tell you. It was pertaining to the matters that were discussed on the record that had these two women upset, which did not happen to me once by a flighty girl; once by a young woman who was very nervous and upset, and one by a mature woman, well capable of taking care of her own affairs. I wish I could tell you better about it.

CHIEF JUSTICE DREW: Well, you don't remember any particular statement that Judge Kelly said which could have upset your clients?

THE WITNESS: I do not, and I honestly believe that if the words were on written paper, that they would not tend to show something that would upset a person; it was the method and the manner in which it was done that had these women completely disturbed.

CHIEF JUSTICE DREW: Question by Senator Price: "Were there two hundred or three hundred citizens exclusive of members of the Bar?"

THE WITNESS: Yes sir. And I think most of the Bar had discussed this matter; when something affects us - - -

CHIEF JUSTICE DREW: Don't volunteer any statement. Were there three hundred exclusive of members of the Bar?

THE WITNESS: Yes.

MR. DANIEL: We have no further questions, Your Honor.

MR. MASTERSON: None from the Respondent.

MR. DANIEL: We have his phone number, and we stipulate that he may be excused subject to recall.

(witness excused)

MR. O'NEILL: May it please the Court, the next witness would take a considerable length of time beyond the hour of adjournment.

I would respectfully suggest to the Senate that we adjourn until tomorrow.

CHIEF JUSTICE DREW: Without objection, we will stand recessed until tomorrow morning at 9:30.

Whereupon, the Senate sitting as a Court of Impeachment, stood adjourned at 5:06 o'clock P. M., until 9:30 o'clock A. M., Tuesday, September 17, 1963.