

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Tuesday, September 17, 1963

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

The Chief Justice presiding.

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

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

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

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

—44.

A quorum present.

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

Hear ye! Hear ye! Hear ye!

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

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Monday, September 16, 1963, was dispensed with.

The Senate daily Journal of Monday, September 16, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Davis of the Fortieth Senatorial District offered the following Prayer:

Our most Gracious Heavenly Father, we ask thy divine blessing upon our nation and state, the Honorable Chief Justice of our Supreme Court, and the members of this Senate as we sit in deliberation in this proceeding, a trial of our fellow man. We ask thee to give us wisdom

and understanding. As we realize we have all sinned, we ask that we be forgiven of our sins.

O Lord, be with the respondent and his attorneys and the House Managers and their attorneys, and also with this Senate in its deliberations, and may we all seek diligently for the truth so that our decision will be cloaked with honor and justice. In the name of Thy Son, our Lord and Savior Jesus Christ, we humbly pray. Amen.

CHIEF JUSTICE DREW: I wish to announce that the Court, on this day, will recess at 12:50, in order to give the members of the Court time to attend the luncheon at Lafayette Park, which will begin promptly at 1:00 o'clock.

The senators who were absent yesterday or who have been absent, will find a copy of the proceedings of yesterday at a later time during the day on the desk of the Presiding Officer, and it will be available for them in order that they may familiarize themselves with the proceedings which took place during their absence, in accordance with the rules.

Now, House Managers, you may call your next witness.

SENATOR PEARCE: Mr. Chief Justice?

CHIEF JUSTICE DREW: Senator Pearce?

SENATOR PEARCE: I would like to make a motion. I would first like to explain the reason for the motion. You will recall that I discussed with you on Friday, last Friday, the possibility of the Court's recessing a little early on Wednesday for the purpose of having the meeting of the Legislative Council. Under the law, the Legislative Council is supposed to meet and organize; and we could save the expense of having to come back up here after the adjournment if we could hold it this way. There are nine members of the Senate affected and there are also some members of the House Managers who are affected. The Chairman of the Legislative Council, Senator Connor, has called the meeting for tomorrow afternoon, Wednesday afternoon at four o'clock. If we could recess an hour earlier, it would give those members an opportunity to attend to this business, instead of going home and then having to come back again. With that explanation, Mr. Chief Justice, I would like to move that the Court recess tomorrow afternoon at four P. M.

(The motion was duly seconded.)

CHIEF JUSTICE DREW: You have heard the motion. Is there any discussion? As many as favor the motion to adjourn tomorrow afternoon at four o'clock, say "aye." Opposed, "no."

The ayes have it. The motion is adopted.

You may call your first witness.

MR. DANIEL: Mr. Secretary, will you call Ralph Steinberg, please.

Thereupon,

RALPH STEINBERG,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you please state your occupation and profession and your address, please?

A I am Ralph Steinberg, attorney at law. My address is 308 Tampa Street, Tampa, Florida.

Q Would you pull the microphone a little closer to you and speak directly into it? You are a practicing attorney in the State of Florida?

A Yes, I am.

Q How long have you been practicing, Mr. Steinberg?

A For the past four years.

Q Would you give a brief resume of your formal education?

A I am a graduate of the University of Tampa, Tampa, Florida, a B. S. Degree. I am a graduate of the Stetson College of Law, with an LLB Degree.

Q In what type of practice do you engage?

A General practice.

Q I believe you stated that you practiced in Tampa?

A Yes.

Q Do you know Judge Richard Kelly?

A Yes, I do.

Q Have you ever had occasion to appear before him as an advocate?

A Yes, I have.

Q I call your attention to the case of First National Bank of Yonkers vs. Davisson. Are you familiar with that case?

A Yes, I am.

Q Did you represent either party in the matter?

A I represented the Plaintiff.

Q That would be the First National Bank of Yonkers?

A That's right.

Q What was the nature of this suit?

A This was a mortgage foreclosure suit.

Q Did it come on for hearing before Judge Kelly?

A Yes, it came on as an uncontested hearing after a default.

Q A decree pro confesso having been entered?

A Yes, it had.

Q On what type of service on the Defendant?

A It was service by - - - constructive service, by publication. The Defendants, parties by the name of Davisson, were non-residents, and I filed an affidavit for constructive service stating that they were non-residents, as required by the Florida law, and gave the residence of the Defendants, which was known.

Q Did you comply with all of the requirements of the statute for constructive service or service by publication, as it is sometimes informally called?

A Yes, I did.

Q All right, sir. This came on for hearing before Judge Kelly. Would you briefly relate the events of that hearing?

A Well, when I got to the hearing, Judge Kelly went through the file and, when he ascertained that it was service of process by publication, he asked me whether or not the Defendants had actually received the notice of suit. And I told Judge Kelly that this was not required that I prove it. And he stated that he wanted some proof that they actually received it. All that is required, under Florida law, with the residence known of a non-resident, is that the attorney submits to the Clerk of the Court a copy of the notice of suit and a copy of the complaint to be mailed to the Defendant at the address that is stated. And there was a certificate in the file showing that this had been done by the Clerk of the Court. I told the Judge that I would check with the Clerk of the Court and find out whether or not the notice of suit and the copy of the Complaint were returned, and I ascertained that it had not been returned. This was some forty days after suit was instituted; and, had it been returned, the return would be filed in the Court file, which was before Judge Kelly.

Q What did Judge Kelly say when that letter had not been returned to the Clerk?

A Well, Judge Kelly said he wanted some proof that they had actually received the notice of suit. So, I asked him how I could accomplish this satisfactorily to the Court, and he stated, well, send a letter by registered mail to the Defendants at the address stated, and ask them whether or not they had received the notice, and if they replied, he wanted me to file an affidavit, stating that I had sent the letter and attach the return letter to the affidavit; that, if they did not reply, to attach the return receipt to an affidavit, stating that I had mailed the letter to them.

Q Is any of this embraced in the statute embracing constructive service in the State of Florida?

A No sir, the statute does not require actual notice, just constructive notice, and in this case I was required to prove actual notice. Fortunately, the Defendants remained at the address that I had - - - or that had been given to me, and signed the return receipt, and when I received that, I prepared the affidavit and attached the return receipt, and then submitted it to the Judge, and he entered the final decree of foreclosure. In this case I was fortunate. In many of these foreclosures the people will abandon the property, not leave an address, and it's very difficult to find their residence. In this case they came to the office of my clients, gave their residence, left the keys there.

CHIEF JUSTICE DREW: One of the Senators would like for you to establish when this hearing took place.

MR. DANIEL: I beg the Senator's pardon.

What was the date of this hearing?

THE WITNESS: It was May 2, 1962.

BY MR. DANIEL:

Q May 2, 1962?

A Yes sir.

Q Now, did this requirement by Judge Kelly result in a delay in the entry of a final decree in this matter?

A Yes, it delayed the final decree approximately two weeks.

Q In the meantime, what was happening to the property that you were seeking to foreclose on?

A Well, it was vacant, and it was subject to vandalism, and so forth.

Q Now, do you engage in a lot of foreclosure practice?

A Over the past three years I believe I've handled at least two hundred, mainly FHA insured mortgages.

Q You have handled at least two hundred foreclosures?

A Yes.

Q Has this method ever been required of you before by any other Circuit Judge?

A No other Circuit Judge has required actual notice, as was required in this case.

Q Were you called upon to explain to your client the reason for the unusual delay in this matter?

A Yes, I was. They - - - especially in these FHA foreclosures, they have to give information to the Federal Housing Administration as to all the progress in the case, and I had to give them a status report. They asked the reason for the delay, and it was difficult for me to explain in this case the reason.

Q Now, you testified that you practice in Tampa. Tampa is not in the Sixth Judicial Circuit, is it?

A No, it's in the Thirteenth Judicial Circuit.

Q But you do practice in the Sixth Judicial Circuit at this time?

A Occasionally.

Q From your occasional practice there, and from your practice in the Thirteenth Judicial Circuit, do you know the Judge's reputation in either of these circuits, among the Bar and public - - -

A Yes, I do.

Q - - - as to his reputation for handling cases?

A Yes, I do.

Q What is that reputation?

A It is bad.

Q Now, on what do you base your answer, "bad"?

A My discussion of the Judge with other attorneys in Hillsborough County, mainly.

Q So that this reputation has extended over into Hillsborough County?

A Yes, it has.

MR. DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Steinberg, I would like to go over with you a little bit about the foreclosure proceedings, and particularly, those in which the FHA is involved. Now, you said you've handled some, approximately two hundred foreclosures. Now, many of these people turn over their property, or their homes, and leave, do they not?

A Yes, they do.

Q And then they figure that when they've given over their property, that that's the end of it, do they not?

MR. DANIEL: Now, Mr. Chief Justice, certainly, the question is innocuous enough; it's not the question I'm objecting to so much as it is the procedure that Mr. Nichols has used throughout on cross examination, in making a speech to the Senate, and ended it up by saying,

"Do they not?" Or, "Is this correct?" or something of that nature, but the question, in and of itself that he's asked this morning is innocuous enough, but I just don't want him to get started off on the procedure he's been following throughout this whole procedure.

MR. NICHOLS: Well, Your Honor, this is cross examination, and we're allowed a broad latitude, and we - - -

MR. DANIEL: I don't object to the latitude, Your Honor, but to make a long dissertation, and then to end it with, "Is this correct?" or, "Is it not?" or something of that nature, is rather broadness of latitude, I think.

MR. NICHOLS: I think counsel has a right, Your Honor - - - and I'm addressing myself to you - - - to object to any question he wants to, but I think, likewise, that I have a right to cross examine this witness. Now, if my question is objectionable, he can object.

MR. DANIEL: I just objected.

MR. NICHOLS: I don't need to be dressed down as to the procedure for cross examination in front of the Court.

CHIEF JUSTICE DREW: Do you make an objection?

MR. DANIEL: Yes sir, I stated that I was objecting. In spite of the fact that this question was not offensive to me particularly, but it is an example of the method of cross examination that he's used throughout the trial.

CHIEF JUSTICE DREW: There being no objection to the question, overruled.

MR. DANIEL: Sir, I stated my objection.

CHIEF JUSTICE DREW: You do object?

MR. DANIEL: Yes sir.

CHIEF JUSTICE DREW: On what ground?

MR. DANIEL: On the grounds that it's argumentative, editorializing, leading, in the broadest sense, beyond that which would be ordinarily allowed in cross examination.

CHIEF JUSTICE DREW: I think the witness - - - Mr. Nichols has a perfect right to lead the witness on cross examination, but as to it being argumentative, I sustain it. I think, Mr. Nichols, that in any of your questions, you have had a wide latitude, and we want to extend that, but I do believe that many of your questions, I hope that you can make them more brief.

BY MR. NICHOLS:

Q We were talking about the FHA. In these foreclosure proceedings, quite frequently is it not true, Mr. Steinberg, that the Government can get a deficiency judgment against these people for over and above the amount of the property, and then, they thinking that they, having turned over the property, that that clears up the matter?

MR. DANIEL: I must object again on the grounds that it's argumentative. I'm not offended by the question itself, but I must object, because it's argumentative.

MR. NICHOLS: I'm not arguing about the matter, I'm asking for a fact.

CHIEF JUSTICE DREW: Overruled. I overrule the objection, but you've asked him, now if he can get a personal judgment on constructive service, Mr. Nichols. I think I should tell the Court he could not get a personal judgment against him if it's constructive service. You may proceed.

BY MR. NICHOLS:

Q The Judge, in these matters, is simply stating to you - - - let me ask you, sir, Mr. Steinberg, were Judge

Kelly's questions to you, or his suggestions to you in any way offensive or discourteous?

A No, they were not.

Q They were not discourteous in any way?

A No.

Q He simply told you what he wanted you to do to try to persuade you to help show the Court the diligence in which you had tried to locate the Defendant? Is that right, substantially?

CHIEF JUSTICE DREW: Would you speak directly into the microphone, not look at the interrogator?

THE WITNESS: I don't think he was inquiring into my diligence, he was inquiring directly into whether or not the Defendants had actually received the notice of suit.

BY MR. NICHOLS:

Q That's correct. In other words, he was trying to be sure that the party for whom the proceedings were proceeding against had some knowledge about what was going on, wasn't he?

MR. DANIEL: Objected to as argumentative.

CHIEF JUSTICE DREW: Sustained, Mr. Nichols.

MR. NICHOLS: Well, Judge, I'm addressing - - -

CHIEF JUSTICE DREW: I have sustained the objection. I think, in the questions that you direct, you should not follow that with your interpretation.

BY MR. NICHOLS:

Q Now, after you showed the Judge, I think, that you had complied with his suggestion about this Defendant having not, the proceeding went right on through, did it not?

A Yes, it did.

MR. NICHOLS: We have no further questions.

CHIEF JUSTICE DREW: Come down.

Call your next witness.

MR. NICHOLS: I do want to ask him another question, sir.

BY MR. NICHOLS:

Q Sir, do you feel that the Judge's conduct in this instance that you've related here is of a nature to impeach him?

MR. DANIEL: Objected to as an argumentative question. The question of impeachment is not a question for the witness, but a question for the Senate, Your Honor.

CHIEF JUSTICE DREW: Overruled.

SENATOR MAPOLES: Mr. Chief Justice, Your Honor, I believe I have a question up there.

CHIEF JUSTICE DREW: Yes - - - oh, I beg your pardon, Senator.

BY MR. NICHOLS:

Q Go ahead and answer the question.

A To be perfectly honest, I'm not sure whether it is or not. I couldn't give my opinion whether this is impeachable. Certainly, I feel that he was going beyond the Florida Statutes, that he was doing something that the Legislature has not required in this constructive service, and I feel that he was just usurping his function as a judge to require me to do something that the law didn't require.

Q You will concede, in many instances it's the duty and responsibility of the Court in proceedings, and that you don't just proceed the way lawyers want to, do you?

MR. DANIEL: Objected to as argumentative, Your Honor.

CHIEF JUSTICE DREW: I sustain the objection.

Q Were you subpoenaed here?

A Yes, I was.

Q Is that the only reason you are here?

A Yes.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Senator Mapoles would ask this question: "Mr. Steinberg, from whom did you receive your authority to represent FHA cases?"

THE WITNESS: The cases - - - well, this particular case - - - and most of them at that time did come from a servicing agent - - - United Mortgagee Servicing Corporation - - - they would service mortgages for investors such as the First National Bank in Yonkers; and, when a case was ready for foreclosure they would forward the papers and documents to me to institute foreclosure.

CHIEF JUSTICE DREW: He would like to know also, "Was this a Kennedy appointment?"

THE WITNESS: Well, this is no political matter at all. It did not come directly from the FHA, such as - - - there are some that would come from the - - - the Fanny Mae mortgages; I didn't handle any of those at all.

CHIEF JUSTICE DREW: "Are you a registered Democrat or Republican?"

THE WITNESS: I am a registered Democrat.

CHIEF JUSTICE DREW: Senator Price of the 36th asks this question: "How many people, exclusive of attorneys, have you talked to concerning the reputation of Judge Kelly?"

THE WITNESS: If I understand the question correctly, I have only talked to attorneys; no one other than attorneys.

CHIEF JUSTICE DREW: Senator Cleveland asks this question: "Did you inform Judge Kelly that Defendants had turned the keys in to your clients?"

THE WITNESS: Yes, I did.

CHIEF JUSTICE DREW: Now, gentlemen, I am trying to follow the procedure that, after these Senators' questions are asked, if either counsel for the House or counsel for Respondent desire to ask any questions concerning these questions or to further elaborate, you may do so. Do you have any further questions?

MR. DANIEL: I would assume that the Board of Managers would have the closing questions, in the nature of redirect. Under that arrangement, if Mr. Nichols has any questions he would like to ask at this time - - -

CHIEF JUSTICE DREW: Senator Mathews asks this question.

SENATOR MATHEWS: That is a question of you, Your Honor. That is a question of you, sir.

CHIEF JUSTICE DREW: (Responding to the written question by Senator Mathews): Not to my knowledge, Senator. The question that Senator Mathews was asking the Chair was if I previously ruled whether another witness could not give an opinion as to whether Kelly's conduct constituted an impeachable offense. If I did, I

think I erred in it and I don't remember having ruled that way. If I did, then I would allow the question to be asked again. I don't think I did.

BY MR. NICHOLS:

Q Mr. Steinberg, is it not a fact that the Government quite frequently, in separate actions, files suits for deficiency decrees or deficiency judgments against these people in foreclosure proceedings?

A It has been my experience - - - not as to FHA - - - only as to VA mortgages.

Q Then in those cases, in VA mortgages, they do pursue these deficiencies and, on occasions, collect for the deficiencies, do they not?

MR. DANIEL: That is argumentative, the very nature of the interrogation.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: It is my understanding - - - I have not handled many VA mortgages and I have never been requested - - - FHA or VA - - - to obtain a deficiency judgment.

BY MR. NICHOLS:

Q Then in those instances where the people have turned over the property, they think that eliminates the indebtedness?

MR. DANIEL: Objected to, Your Honor. How in the world could this man know what other people think?

CHIEF JUSTICE DREW: Sustained. I have another question, Mr. Nichols.

MR. NICHOLS: I am through.

CHIEF JUSTICE DREW: This is from Senator Price: "Did you not state, on a question from the Managers, that you knew the reputation of the Judge with the public?"

THE WITNESS: I don't recall. If I did, I was in error. Among attorneys; I will have to limit that to his reputation among attorneys.

CHIEF JUSTICE DREW: Any other questions?

BY MR. DANIEL:

Q Just to clarify this point, Mr. Steinberg. Attorneys are a portion of the public, are they not?

A Yes.

Q Now, this company that you represented, this was a private corporation?

A Yes, it was.

Q Not a government corporation?

A That's right.

Q With respect to Mr. Nichols' question as to whether or not you think this is an impeachable offense: Have the House Managers taken you into their confidence with respect to every bit of evidence that they have in this case? Have they gone over the evidence of every witness with you in this case?

A Oh, no.

Q Then your answer would be limited to your testimony alone, and not the overall case of the House Managers; is that correct?

A That is correct.

MR. DANIEL: That is all.

MR. NICHOLS: No further questions.

CHIEF JUSTICE DREW: Come down.

MR. DANIEL: The House Managers would like to permit this witness to return home under the usual arrangement, subject to recall. May he be released under that?

MR. NICHOLS: He may be released under that.

MR. O'NEILL: The Board of Managers will call Richard T. Bennison.

(witness excused)

While he is being called, for the purpose of counsel for Respondent, Mr. Bennison will testify as to Articles VII and VIII and such other Articles as his testimony might relate and be pertinent to.

CHIEF JUSTICE DREW: I would like to ask Senator Mathews if he remembers the witness that he had reference to. I would like to check the record on that. I want to be consistent in these rulings.

SENATOR MATHEWS: I don't recall the witness, but it came up right after our discussion about opinions. You ruled on that and I recall distinctly that question being asked, and there was an objection, and my recollection is that your ruling was that, just as an opinion with reference to his conduct, that the question was for us as to whether his conduct was an impeachable offense; and that the opinion of the witness as to what we were trying to do would have no evidentiary value. Robert Williams, the St. Petersburg attorney, I believe it was.

CHIEF JUSTICE DREW: Who?

SENATOR MATHEWS: Robert Williams.

CHIEF JUSTICE DREW: I will look at the record. I want to be consistent. I didn't remember that. I think my ruling originally, on the question of opinion evidence, was purely an opinion as to the matter of conduct itself, as to his opinion of him as a Judge; and not his reputation generally. I did not remember the statement being made. My present idea would be that it would go to credibility and the weight to be given his testimony. I will check that, Senator.

Thereupon,

RICHARD T. BENNISON,

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 Mr. Bennison, if you will, speak directly into the microphone and look toward the microphone and not toward me. Please state your full name, address, and occupation.

A Richard Bennison, 308½ Jeffers Street, Clearwater, Florida. Attorney at law.

Q How long have you been practicing law?

A Three years.

Q Where did you get your degree in law?

A The University of Florida.

Q Mr. Bennison, are you familiar with the file of Pinellas Central Bank & Trust Company?

A I am.

Q The Pasco law file?

A Yes, I am.

Q Do you know Judge Richard Kelly, of the Sixth Judicial Circuit?

A Yes, I do.

Q How long have you known Judge Kelly?

A Approximately two and a half years.

Q Did this particular case that I just related and asked you about, did you appear before Judge Kelly with that particular case?

A Yes, I represented the Defendant, the Pinellas Central Bank & Trust Company, in this case.

Q Do you recall the names of the other attorneys involved in the case?

A The Plaintiff was represented by Frank Wolfe, who was then associated with Judge Barnes of Dade City.

Q Is that W. Kenneth Barnes of Dade City, Pasco County, Florida?

A Yes, it is.

Q Will you relate what occurred in the hearing with Mr. Wolfe and yourself before Judge Kelly, in relation to that particular case?

A I had set down a motion for hearing and I appeared for the Defendant. Mr. Wolfe appeared for the Plaintiff. It was quite a lengthy hearing; but, toward the latter part of the hearing, Judge Kelly instructed Mr. Wolfe to answer a question of law as applied to the facts of the case with a yes or no answer. Mr. Wolfe explained, without heat, that he could not answer the question yes or no, that he would like to explain it. Thereupon, Judge Kelly instructed Mr. Wolfe to answer the question yes or no, or to the effect that he would be held in contempt of court.

Q Was that in Chambers or in the open Court Room?

A That was in Chambers.

Q Was this a Chancery matter or a Law matter?

A These were Law matters.

Q Was it a kind of pre-hearing before Jury time? Before a Jury trial?

A Yes, these were motions.

Q Is Mr. Wolfe now practicing in Dade City, Pasco County, Florida? Or do you know?

A I am not sure where he is practicing. He is no longer practicing in Dade City.

Q Do you know Judge Richard Kelly's reputation among the Bench and Bar or the community in Pinellas County, as to the manner in which he handles his cases in his Court?

A I do.

Q What is that reputation?

A It is bad.

Q What do you base that statement upon?

A Generally, his conduct has led to his being unpredictable and intemperate, and this has passed on to the general public. I myself have had clients that have come in to me and requested that I not set cases before Judge Kelly.

Q What type of question was it that was propounded by Judge Kelly to Mr. Wolfe at the time of the hearing in the case you just related about?

A It has been about two years, and I am not sure as to the exact nature of the question. It was a question of law.

MR. NICHOLS: Excuse me just a minute, please. May I inquire of the Managers if there is a transcript or court file here? We have no file and no information about the matter.

MR. O'NEILL: Mr. Nichols, I think you returned that file to the Board of Managers last night at eight-fifteen, after we offered it to you at six o'clock.

MR. NICHOLS: You are mistaken, Mr. O'Neill. I don't wish to hassle with you about it, but I haven't got the file.

MR. O'NEILL: If it will help counsel, we may be able to find it for you.

MR. NICHOLS: I don't have any recollection of having seen such a file and your statement, I think, is inaccurate. I would like to see it, if you have got a transcript as to what went on during the hearing.

BY MR. O'NEILL:

Q Will you continue, Mr. Bennison?

What was the question propounded to Mr. Wolfe which the Court directed him to answer either yes or no, if you recall?

A I do not recall the exact nature of the question. It was a question of the law of agency as applied to the facts of Mr. Wolfe's case. And that is all I remember about the question.

Q Was this particular proceeding a preliminary motion?

A Yes, it was.

Q Was there a Court Reporter present at the time the hearing was conducted?

A No, there wasn't. It is not customary to have a Court Reporter at a preliminary hearing.

Q Therefore, there could be no transcript of what occurred?

A No, there would be no transcript.

MR. O'NEILL: Your witness.

MR. NICHOLS: No questions. Thank you very much.

CHIEF JUSTICE DREW: Come down.

(witness excused)

MR. O'NEILL: Frances M. Lovelace. For the information of counsel for the Respondent, Mrs. Lovelace's testimony relates to Articles VII and VIII, and such other of the Articles as her testimony might be pertinent to.

MR. NICHOLS: I think we can eliminate these announcements, for the simple reason that he always adds "such others as it may be applicable to." So that covers everything in the whole Articles.

MR. O'NEILL: Mr. Nichols, we adopted that policy because you were asking each one of these witnesses, after they got in here, what Articles it related to.

CHIEF JUSTICE DREW: You may proceed. Let's don't get into arguments between counsel.

Thereupon,

FRANCES M. LOVELACE,

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 profession, please ma'am?

A Frances M. Lovelace, 3396 Coquina Key Drive, St. Petersburg, Florida. I am an attorney.

Q Mrs. Lovelace, are you a member of the Florida Bar?

A Yes sir.

Q Licensed to practice law in the State of Florida?

A Yes sir.

Q How long have you been practicing law in the State of Florida, and how long have you been admitted to so practice?

A I was admitted in 1934. I have been in constant practice since 1946.

Q Where?

A In St. Petersburg.

Q What type of practice do you have?

A A general practice.

Q During the course of your practice, have you had occasion to appear before Judge Richard Kelly, Circuit Judge of the Sixth Judicial Circuit?

A Yes, I have.

Q On how many occasions?

A On one contested matter.

Q Was that the case of Weaver vs. Weaver?

A Yes.

Q What type of case was Weaver vs. Weaver?

A It was a divorce case.

Q Who did you represent in that particular case?

A I represented the Defendant wife.

Q Were there any other pleadings other than the Complaint and an Answer filed in that case?

A A Counterclaim was filed on behalf of the Defendant.

Q And you filed the Counterclaim on behalf of the Defendant and Counterclaimant?

A Yes sir.

Q Were there any children involved in that cause?

A Four children.

Q Was there any question about the youngest of the children?

A Yes, the Plaintiff father had denied paternity of the youngest child.

Q Will you state what occurred at the time of the hearing on this cause?

A In regard to the children?

Q In regard to the proceedings that were had, and then we will get to the question of the children later.

A As far as my memory - - -

Q Would you like to have the file? Would it be of assistance to you?

A I don't think so. I believe that the case started at two o'clock in the afternoon. This was sometime around February or March. And John Hanley of St. Petersburg and James Booth were representing the Plaintiff father - - - the husband. We went from two o'clock until well after dark, probably around seven-thirty or towards eight o'clock that evening, when Mr. Booth - - - who is the senior member of the Pinellas County Bar, having practiced there over fifty years, I believe - - - asked Judge Kelly to adjourn for the day, as his wife had friends in for dinner. Judge Kelly did not want to adjourn at that time, but nevertheless, he did consent to; and he told all of us to come back the next day prepared to stay if it took all night. The next morning Judge Kelly turned to Mr. Hanley and asked him if he was prepared to stay all day, and he said, "Yes."

Q Would you speak just a little louder or closer to the microphone, please ma'm?

A And then he asked me if I was prepared to stay all day if it took all night, and I said, "Yes." And then he looked at Mr. Booth, who is well up in his seventies, and said to Mr. Booth, "Do you think that you are able to make it today?" His tone of voice was that he was picking on Mr. Booth's infirmities. I was embarrassed.

Q Was there any difficulty between the attorney for the Plaintiff, James Weaver, and Judge Kelly, as to the asking of questions and the making of objections to questions which you might have asked witnesses?

A Yes sir.

Q Will you state the nature of those?

A Mr. Hanley could not present his case properly. Whenever he tried to question his witnesses, he was interrupted. If he made objections during the time that I was questioning, he was stopped. It got to be almost an impossible situation. The stopping of Mr. Hanley interfered with all of our trains of thought in the presentation of our respective cases.

Q Now, when you say "stopping," was that the interjecting of the Court into the cause, or was it a stopping because Mr. Hanley was doing something improperly?

A I was not aware of anything that Mr. Hanley was doing that was improper.

Q Have you practiced before other Judges of that Sixth Judicial Circuit?

A Yes sir.

Q Had that ever occurred to you, in your entire practice in that circuit since 1946?

A No sir, it never had.

Q Now, let's get to the children. Was there a final decree entered in this cause?

A Yes.

Q To whom were the children awarded?

A The children were awarded to my client, the mother, the Defendant.

Q Do you know who was granted the divorce in this cause? You had a Complaint, an Answer, a Counterclaim and an Answer to the Counterclaim. Who was granted the divorce?

A Nobody. Judge Kelly said that he was not going to make any decision as to who the prevailing party was. He said, "I am just going to dissolve the marriage." And that is the way he did, as shown by the final decree.

Q Isn't the final decree relatively short? There are about two pages, as it appears in the file?

A Yes sir.

Q Is that the one that was signed by Judge Kelly? Will you check it, please?

A Yes sir.

Q Is that the final decree that was signed in this cause that you have just previously related to and about?

A That is correct.

Q Doesn't it show on its face that no party to this cause was awarded the divorce, whatsoever?

A That is right. Because Judge Kelly said that he was not going to make any determination of who was right or who was wrong, but he merely dissolved the marriage.

Q Will you please read the first two paragraphs of the final decree dated May 21, 1962, I believe?

A I don't think I can. I didn't bring my glasses.

Q Would mine help?

MR. NICHOLS: We have no objection to the Manager reading those paragraphs.

CHIEF JUSTICE DREW: Suppose you read it, Mr. O'Neill.

MR. O'NEILL: "This cause coming on to be heard upon Plaintiff's Complaint, the Defendant's Answer and Counter-claim, Plaintiff's Reply, and upon the testimony adduced by the Plaintiff and witnesses for the Plaintiff, and by the Defendant and witnesses for the Defendant, and the Court having heard arguments by counsel for both Plaintiff and Defendant, and the Court being fully advised in the premises, it is UPON CONSIDERATION, ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between the parties hereto be and they are hereby dissolved, and the parties divorced, one from the other."

Is that the first two paragraphs?

THE WITNESS: That is right.

BY MR. O'NEILL:

Q Now, in relation to attorney's fees, what is the law of the State of Florida for a wife in a divorce action, wherein she alleges and pleads that she has not sufficient funds to pay counsel fees?

A If the husband filed the suit, as he did in this case, and she makes a showing that she has no funds, no income, as she did in this case, then the husband must pay the attorney's fees.

Q What happened in relation to the attorney's fee and the support money for these four children, and how much was the support money for these four children?

A In regard to the support money, you will recall there were four children; Judge Kelly disregarded the youngest child, made no ruling as to the paternity, although that was in issue, and although the husband's income was somewhere between \$85 and \$100 a week, he awarded \$75 a month support for the children, and Mr. Hanley said, "Judge Kelly, how do you divide that?" He said, "How many times can you divide \$75 equally?" Then, as to the attorney's fees, I asked for an order on that, and I would like it understood that I never expected to get it, because this man always ran --- had a long history ---

CHIEF JUSTICE DREW: Get a little closer to the microphone, if you will, please.

THE WITNESS: I said, I never expected to collect it but, as a matter of law, I wanted the order. Judge Kelly said he was not going to award any attorney's fees for the wife's attorney. I told him that it was mandatory, not discretionary. He said, "Where is your law?" I ran down to the law library and got it, came back, showed it to him. He read it. He waved his hand, said, "I'm not going to pay any attention to that." So, he denied the attorney's fees.

BY MR. O'NEILL:

Q What did he do after that?

A He turned to my client ---

Q This is Mrs. Weaver?

A Mrs. Weaver, and he said, "Can you take care of those kids on \$50 a month?" She was startled and shocked, but she said, "Yes, I guess so." He said, "Well, then, you give her" --- referring to me --- "\$25 a month out of the support money to pay her attorney's fees," and I said, "Judge Kelly, I won't accept it." He said, "I'm trying to help you." I said, "I can't be helped like that, because I can't take money away from children." He said, "Well, if you won't let me help you, then I can't do it."

Q Did you ever get an award, or was there any award at any time in this cause for attorney's fees?

A Yes sir, a temporary attorney's fee that was set by Judge Clark when he was in office.

Q This case, then, originally was assigned to Judge Clark, and was filed prior to the time that Judge Kelly became a judge?

A That's right, and it went over a period of months.

Q Now, you mean to state to this Senate that Judge Kelly suggested that Mrs. Weaver pay \$25 of that money to you as an attorney's fee?

A No sir ---

MR. NICHOLS: Judge, I can't even get an objection in.

MR. O'NEILL: Well, let me complete the question, Counsellor.

MR. NICHOLS: No sir, counsel's arguing; he starts out his phrase, "Do you mean to tell." Now, whatever her statement is, and her testimony, I object to any such question ---

MR. O'NEILL: I withdraw the question.

MR. NICHOLS: --- as argumentative.

CHIEF JUSTICE DREW: The question is withdrawn.

SENATOR PRICE: Mr. Chief Justice, may I respectfully ask counsel for the Managers to back off about that far (Indicating) from the microphone? We're getting distortion back here. We'll appreciate it.

MR. O'NEILL: Excuse me, Senator.

BY MR. O'NEILL:

Q Mrs. Lovelace, as a practicing attorney, do you know the reputation of Judge Kelly amongst the Bench and the Bar, and the community in Pinellas County, as to how he conducts his cases and handles his Court?

A Yes sir.

Q What is that reputation?

A It's bad.

Q How do you arrive at that, and what do you base it upon?

A In those cases that - - - the case, particularly, contested case I'm referring to, or I referred to, and in others, the attorneys go in with fear and trepidation. They don't know what to anticipate. Unfortunately, most of the people do not have the - - - money enough to take an appeal; so, regardless of what the Court's ruling is, they must abide by that, whether it's right or wrong, and it has created undue fear, and I believe disrespect from the public.

Q Well, in the case of Weaver vs. Weaver, you previously testified, in effect, that you got the children for the mother, is that correct?

A For the mother.

Q And the divorce was granted, even though no prevailing party was named?

A That is right. In other words, Judge Kelly did not rule against me as such.

Q Have you handled other divorce cases other than this case before other Judges or Judge Kelly?

A Many, many of them.

Q Have you ever, in the entire time of the practice of law had a decree entered in the manner and worded as this final decree was?

A No sir.

MR. O'NEILL: Your witness.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mrs. Lovelace, I only have one or two questions. I am holding in my hand the Florida Statute under divorce, alimony and custody of children, 65.17, relating to attorney's fees, suit money, and so on, and alimony, divorce and similar proceedings, the Statute reads: "Whenever any Court shall make any allowance for attorney's fees," and then goes on down the line. Now, you said it's mandatory that the Judge allow attorney's fees. Doesn't the Statute state, "whenever any Court shall make any allowance," leaves it to the discretion of the Court?

A Not where the husband files a suit and the wife makes a showing that she does not have the funds to pay. If you'll look in Florida Jurisprudence, over there, you will find it there in the case reference.

Q Now, you've only related, I believe, one case that you have testified about, although you have mentioned that you handled a number of cases, divorce cases, in front of Judge Kelly?

A No sir, I didn't say that.

Q You didn't? I must have misunderstood you.

A I said I had one contested case before him.

Q All right.

A I had another one that had been contested that originally reached his calendar, but we settled it. It went before a Master.

Q Well, a number of uncontested divorce cases?

A That weren't - - - that were assigned to Judge Kelly, but were taken before a general Master.

Q Yes ma'am, that's what I'm talking about. Did he treat you courteously throughout those cases?

A I didn't see him. It was taken before a general Master, and the file went to - - - once the testimony was transcribed, the file was taken to Judge Kelly.

Q Yes ma'am.

A I didn't come in contact with him at all.

MR. NICHOLS: We have no further questions. Thank you very much.

CHIEF JUSTICE DREW: I have some questions from some Senators. First, I wish to announce that I have checked the record with reference to the question raised by Senator Mathews. I think the Senate, in one of its closed sessions, held that questions of opinion evidence purely would not be admitted, and I'm going to grant myself a rehearing on the last question, and I'm going to - - - again to rule that questions as to the opinion only, now, the opinion of the witness, as to whether or not certain conduct is impeachable will not be admissible, and I am going to change my ruling, and I thank Senator Mathews for calling it to my attention.

MR. NICHOLS: Well, I appreciate the information, sir, because it was done in executive session, and I had no knowledge of it; otherwise, I wouldn't have asked the question.

CHIEF JUSTICE DREW: Senator Price, of the 36th District, wants to know: "In arriving at your conclusion as to how many" - - - I'll read it again - - - "In arriving at your conclusion as to the reputation of the Judge, how many citizens, exclusive of the Bench and Bar, did you talk to concerning the Judge's reputation?"

THE WITNESS: I wouldn't be able to give an exact figure. I have heard it all the way from around Inglis, Yanketown, Crystal River, South into St. Petersburg, and I haven't brought up the question; it's been brought up to me.

CHIEF JUSTICE DREW: Senator Cross, of the 32nd, asks this question: "Do you now hold or have you ever held an office in any state political organization in Florida? If so, what office and in which organization?"

THE WITNESS: Yes sir, I was State Democratic - - - Democratic Chairman from Pinellas County - - - State Democratic Executive Committee.

CHIEF JUSTICE DREW: Any other questions? You may come down.

SENATOR CONNOR: There's one more question I want to ask, Mr. Chief Justice.

CHIEF JUSTICE DREW: One more question, Mrs. Lovelace, from Senator Connor: "Did you testify that Judge Kelly allowed only \$75 per month for the support of four children, and then wanted the Defendant, the mother, to pay you \$25 per month out of this \$75 per month?"

THE WITNESS: Yes sir, that is absolutely correct. He instructed the mother, he said, "Will you give her \$25 out of the support money?"

CHIEF JUSTICE DREW: You may be excused. You, of course, are subject - - - this witness is subject to call.

MR. NICHOLS: Would this witness be kind enough to remain so that we can check the files?

MR. O'NEILL: I'll ask that Mrs. Lovelace please stay here. I believe she is planning to go back by plane, and it doesn't leave until this afternoon, anyhow.

MR. NICHOLS: Well, I'm sure we'll be able to release her by the recess time, 11 o'clock.

CHIEF JUSTICE DREW: Very well, Mrs. Lovelace, you will please remain.

(Witness excused)

MR. O'NEILL: Call Otto Carlson.

CHIEF JUSTICE DREW: Mr. Witness, so that the Court may fully hear you, hear your testimony, would you speak directly into the microphone? Do not turn your head to either counsel interrogating you, please.

Thereupon,

OTTO CARLSON,

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, please sir, and your address.

A Otto Carlson, Route 2, Box 94, Zephyrhills, Florida.

Q Mr. Carlson, what is your occupation?

A I am a poultry farmer.

Q Beg your pardon?

A Pardon me?

Q What did you say?

A Poultry farmer. I raise chickens.

Q Poultry? All right.

A Eggs.

Q How long have you lived in Pasco County, Mr. Carlson?

A Thirteen years.

Q All right, sir. Where did you live prior to the time that you came to Pasco County?

A Chicago, Illinois.

Q Do you have any official position with any political party in Pasco County.

A Yes.

Q What is that official position?

A I'm the Chairman of the Republican Executive Committee.

Q Did you ever receive any money from Lorraine Kelly, the wife of Richard Kelly, as a contribution to the Republican Party in Pasco County?

A I did.

Q What was the amount of that contribution?

A \$500.

Q What bank was it drawn on, if you remember, sir?

A The Bank of Zephyrhills.

Q Who endorsed the check?

A I did, as Chairman of the Executive Committee, and I deposited that in the Executive Committee account.

MR. O'NEILL: Excuse me, Judge, a minute; I have to get an exhibit.

BY MR. O'NEILL:

Q Mr. Carlson, I have handed you the Board of Managers' Exhibit Number 17-F, and I ask you if you will examine that, please sir, so that I might ask you some questions relating to that exhibit.

A Yes, I recognize this.

Q That appears to be a photostat, does it not sir?

A Yes sir.

Q Was there a time when the original of that was mimeographed, rather than a photostat?

A It was mimeographed.

Q Do you know where it was mimeographed?

A Yes.

Q Where?

A It was mimeographed in the office of Judge Kelly.

Q In the Court House, at Pasco County, Florida?

A Yes it was.

Q Whose mimeograph machine was it that ran that off?

A It was mine.

Q Who took it to Judge Kelly's office?

A I did.

Q What time of day or night was it?

A It was in the afternoon.

Q Was anyone else there?

A Mrs. Kelly.

Q Was Judge Kelly there?

A Yes.

Q Who prepared the stencil?

A Mrs. Kelly did, and I.

Q Who ran the stencil off after it was out and placed upon the machine?

A I did.

Q Was there anyone present other than you at that time?

A No, not at that time. I was in the office by myself.

Q How many copies were run off?

A Oh, about two thousand.

Q Do you know whether or not those were distributed in Pasco County?

A They were.

Q Were they given to different people in different locales in the county?

A That's right.

Q Do you know whether or not Judge Kelly actually took some of these petitions and presented them to people for the purpose of securing signatures?

A He did.

Q Did you actually distribute some of the petitions yourself?

A I did.

Q Were you in the company of Judge Kelly at the time the said petition was distributed?

A Yes.

CHIEF JUSTICE DREW: Would you let me see that exhibit, please sir?

(The Exhibit was handed to the Chief Justice by the Witness)

BY MR. O'NEILL:

Q Do you know whether or not Judge Kelly actually got any signatures upon the petition?

A Not in my presence, he didn't.

Q Was the petition prepared in Judge Kelly's office in the daytime or in the night time?

A The afternoon.

Q What time in the afternoon, sir?

A Oh, about 4 o'clock.

Q Was he there at the time that it was prepared; Judge Kelly, that is?

A Well, yes, he was in the office.

Q Was Judge Kelly's secretary there at that time?

A No.

Q Did she come in at a later time?

A No.

Q When this was being run off?

A No.

MR. O'NEILL: Your witness.

CHIEF JUSTICE DREW: May I ask a question for my own information and the Senators' - - - they may have gotten it: The \$500 that was contributed, was it in connection with this petition or in connection with the general contribution to the party?

THE WITNESS: That contribution was to the campaign in '62.

CHIEF JUSTICE DREW: The campaign in what?

THE WITNESS: In 1962.

CHIEF JUSTICE DREW: The general - - -

THE WITNESS: The general election.

CHIEF JUSTICE DREW: The general election?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: The primary?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: Thank you.

CROSS EXAMINATION

BY MR. McALILEY:

Q Mr. Carlson, I want to ask you just a few questions, and would you kindly speak into the microphone? With regard to your relationship with the Kellys, will you tell the Senate how long you have known the Kellys?

A I have not told them, no.

Q All right, sir, would you tell the Senate now how long you have known the Kelly family?

A I first met Judge Kelly, at that time, Richard Kelly, when he was taking the office as Circuit Judge of Pinellas and Pasco County, in 1960, the general election, 1960.

Q Now, Mr. Carlson, are you a personal friend of Mrs. Kelly?

A Yes.

Q And were you present at the hospital, for example, when Mrs. Kelly's children were born?

A Yes sir, I suffered with Judge Kelly.

Q Your relationship extends this far on a personal basis?

A Yes.

Q Now, with regard to the petitions and their preparation, could you tell us the reason you went to Judge Kelly's office with the mimeograph machine?

A We were at Judge Kelly's home - - -

CHIEF JUSTICE DREW: Mr. Witness, hold your voice just a little back.

THE WITNESS: All right, sir. Is this better?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: We were at Judge Kelly's home, and the phone was out of order. So, in order that - - - we were expecting a call from Tampa in regards to this petition that was just shown here, and being that the phone was out of order, we went up to his office; that was the reason we went up there in the afternoon.

BY MR. McALILEY:

Q And did you later receive this telephone call from Tampa?

A Yes, it came in about 4 o'clock.

Q Now, with regard to the distribution of these petitions, were they distributed by Democrats within the county, as well as Republicans?

A Oh, yes.

Q And what precinct do you live in there?

A The fifth precinct.

Q And where is that located in Pasco County? What community?

A That is located between Zephyrhills and Dade City, a little east of - - - well, it goes 301, 301 and east of 301.

Q Well, is there a name to the community where you live, sir?

A Whitlock.

Q That's where your residence is?

A That's right.

Q All right, sir. Now, among the signatures that you got on the petition, can you tell us about how many of those were Democrats and how many were Republicans?

A Oh, I would say about forty, - - - I got fifty signatures. Out of that, forty was Democrats and about ten of them was Republicans.

Q Now, this petition was mimeographed on your machine?

A That's correct.

Q And with your paper?

A Yes.

Q Now, who did the machine belong to?

A It was mine.

MR. O'NEILL: Excuse me. We object to the question as being repetitious.

CHIEF JUSTICE DREW: He testified that it was his machine in his previous testimony.

MR. McALILEY: All right, sir.

BY MR. McALILEY:

Q Now, Mr. Carlson, isn't it a fact that Judge Kelly told you that anything that was done in regard to contribution would have to be done by Mrs. Kelly, and he would not participate in such a contribution?

A That's true. Judge Kelly said that he could not give any contribution, but whatever Mrs. Kelly wished to do, that was up to her.

Q Now, has Judge Kelly participated in Republican party activities since his election to the Circuit Bench?

MR. O'NEILL: Objection, object to the question as not being in cross of anything brought out on direct.

CHIEF JUSTICE DREW: Overruled. Didn't you introduce the check for \$500?

MR. O'NEILL: No sir. The question that counsel asked was, had he participated in any Republican politics, party activities, and I don't think that is proper cross, Your Honor.

CHIEF JUSTICE DREW: The objection is overruled.

BY MR. McALILEY:

Q Mr. Carlson, has Judge Kelly participated in any Republican party activities since his election as Circuit Judge?

A No, he hasn't. He has repeatedly said that he could not do that as a Circuit Judge.

Q What activity did the Republican Party, as a party organization, take in Pasco County with regard to the circuit change controversy that was going on within the county?

A Well, the Republican Party, of course, felt that it was a movement to remove - - -

MR. O'NEILL: We object to the witness stating what the Republican Party felt.

MR. McALILEY: Well, I will withdraw the question.

BY MR. McALILEY:

Q Mr. Carlson, previously during your residence in Pasco County, there had been another dispute concerning a Civil Court of Record; and, during that dispute, Judge Barnes, a Democrat, spoke out against the Civil Court of Record - - -

MR. O'NEILL: Objected to as not in cross of anything brought out on direct.

CHIEF JUSTICE DREW: At this point I wish you would hold that question a minute. One of the Senators would like the Petition, Number 17-F, read. Would you read it, Mr. Secretary?

MR. McALILEY: That was read by Mr. Luckie, Your Honor.

CHIEF JUSTICE DREW: Well, they want it reread.

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

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

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

"THEREFORE, the undersigned petition the Legislature, the Governor and all persons in authority to prevent the passage of this bill and to prevent this bill from becoming the law."

Then, there is a place for nineteen signatures, but there are no signatures.

BY MR. McALILEY:

Q Mr. Carlson, in that connection, was it after you received the telephone call from Tampa and got information over the telephone that you prepared the petition itself?

A That is correct.

Q And the verbiage that you received over the telephone from Tampa was the verbiage that eventually went into the petition that was prepared and circulated?

MR. O'NEILL: We object to the question unless the witness took the telephone call. That has not been so established by the proper testimony.

CHIEF JUSTICE DREW: This is cross examination. Objection overruled.

BY MR. McALILEY:

Q Go ahead.

A I was present when the phone call came in. Judge Kelly was taking it and asked Mrs. Kelly if she would take it down in shorthand, which she did.

Q All right, sir: And what was transcribed in shorthand was ultimately put into the petition that was circulated?

MR. O'NEILL: We object to the question on the ground that this gentleman has not been qualified as a shorthand expert.

CHIEF JUSTICE DREW: Objection overruled.

BY MR. McALILEY:

Q Go ahead.

A Mrs. Kelly took it down in shorthand, and then Mrs. Kelly and I prepared the stencil.

Q All right, sir. Now, I want to hand you a check and see if you can identify it.

MR. McALILEY: I would like this identified as Respondent's Exhibit Number 7, for identification.

MR. O'NEILL: No objection.

CHIEF JUSTICE DREW: It is so marked.

MR. McALILEY: May I ask the witness one question.

BY MR. McALILEY:

Q Is this the check that you received from Lorraine Kelly?

A That is right.

Q Turn it over on the back. Is that your signature?

A Yes sir. I endorsed this check.

CHIEF JUSTICE DREW: What is the date of that check, please?

MR. McALILEY: February 19, 1962, Your Honor.

BY MR. McALILEY:

Q Where is your residence, Mr. Carlson?

MR. O'NEILL: Objected to, as repetitious.

BY MR. McALILEY:

Q What is the general reputation of Judge Kelly in Pasco County?

A He is very well liked.

Q Has his reputation been improving or declining since ascending the Circuit Bench?

MR. O'NEILL: We object to it as a conclusion.

CHIEF JUSTICE DREW: What was the question?

BY MR. McALILEY:

Q Mr. Carlson, has the reputation of Judge Kelly among the public of Pasco County - - - his good reputation that you testified about - - - been increasing or decreasing since he ascended the Circuit Court Bench?

MR. O'NEILL: I object to the question in its present form.

CHIEF JUSTICE DREW: I sustain the objection. I don't think that is proper.

BY MR. McALILEY:

Q Have you ever served on a Jury in Judge Kelly's Court?

A No, I have not served. I got excused due to the fact that I knew the case too well.

Q Due to the fact of what, sir?

A That I knew both sides of the case. I asked to be excused after I got to the jury box.

Q Who excused you? The lawyers or the Court?

A The Court did - - - and the Judge - - - and the lawyers too.

MR. McALILEY: One moment, if the Court please.

CHIEF JUSTICE DREW: You are confining your cross examination now to the matters of this petition and the contribution of \$500. Don't get outside of that.

MR. McALILEY: That is all we have, Your Honor.

CHIEF JUSTICE DREW: I have some questions from the Senators which I will ask at the present time.

From Senator Barron of the 25th: "How many people signed the petition, if you know?"

THE WITNESS: I don't know the total number.

CHIEF JUSTICE DREW: Would you like to give an estimate?

THE WITNESS: I would estimate that about - - - oh, about three thousand or more.

CHIEF JUSTICE DREW: Senator Askew would like to know: "What position, if any, did the Republican County Executive Committee of Pasco County take in regard to the proposed circuit change?"

THE WITNESS: Well, the Committee took the view that it was a political move to remove a Judge from one circuit to the other, and they were against it in that manner.

CHIEF JUSTICE DREW: Your answer is that the Committee opposed it?

THE WITNESS: The Committee opposed it, yes.

CHIEF JUSTICE DREW: From Senator Askew: "Do you know the reputation among the public of Pasco County, as to how Judge Kelly conducts his office?"

THE WITNESS: His reputation is good. In regard to the public opinion, I have talked to many and they all said that they felt that they got a fair trial and that he was fairly treated; and I have heard a lot of them that have said that if he ever had to stand before a Judge that he wished that Judge Kelly would preside.

CHIEF JUSTICE DREW: Senator Connor would like to know: "Was the contribution of \$500 before Judge Kelly was elected or after he was elected?"

I believe that question has been answered.

The check was dated January, 1962, which was after the election; is that correct?

THE WITNESS: That is correct.

MR. O'NEILL: That is February.

CHIEF JUSTICE DREW: Now, before we go on, are there any further questions?

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Mr. Carlson, were you present at the Zephyrhills speech made by Judge Kelly relating to the matter of the circuit change?

A I was.

Q You heard that speech?

A Yes.

Q Did he mention any attorney by name in that speech?

A I don't recall. I don't remember.

Q Isn't it a fact that he mentioned Charlie Luckie, Jr.'s name in that speech?

MR. McALILEY: I object to that question. He said he didn't remember.

CHIEF JUSTICE DREW: Sustained.

BY MR. O'NEILL:

Q Do you know whether or not, in connection with the check, on or about February 19, 1962, given by Mrs. Kelly and endorsed by you, was written on a joint bank account with her husband, Richard Kelly, the Circuit Judge?

A I don't know.

MR. O'NEILL: You may inquire.

RE-CROSS EXAMINATION

BY MR. McALILEY:

Q With regard to one question asked by one of the Senators: What official action did the Executive Committee of the Republican Party take - - - what official action did they take with regard to the circuit change?

CHIEF JUSTICE DREW: Just state, Mr. Witness, what if any, official action was taken, and don't explain why or anything about it.

THE WITNESS: Well, he asked to participate in this change by - - - to get signatures on these petitions. That is about all.

MR. McALILEY: Now that is all.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Did I understand you to say that Judge Kelly asked the Republican Executive Committee to get signatures?

A No, he did not.

Q What was your statement? I didn't understand you, Mr. Carlson. That is my difficulty, and not yours.

A Well - - -

Q Your previous statement that you answered, in response to Mr. McAliley's question.

CHIEF JUSTICE DREW: You may ask the Reporter to read it.

MR. O'NEILL: Let the Reporter read it.

THE REPORTER: "Well, he asked to participate in this change by - - - to get signatures on these petitions. That is about all."

MR. McALILEY: I believe my question, Mr. O'Neill, was what official action did the Executive Committee of the Republican Party take?

MR. O'NEILL: I wanted the answer; that's all.

CHIEF JUSTICE DREW: Do you have any other questions? Do you desire to retain this witness?

MR. McALILEY: Subject, Your Honor, to recall.

MR. O'NEILL: We will have his telephone number. I would like for him to wait until I take care of the signature on these.

CHIEF JUSTICE DREW: Very well, Mr. Witness, you shall not leave until you get permission or leave of the Court or from the joint action of counsel for both sides.

SENATOR COVINGTON: Your Honor, there seems to be some question about whether the witness said "he" or "we."

CHIEF JUSTICE DREW: Mr. Reporter, would you stand up and read that answer again?

THE REPORTER: "Well, he asked to participate in this change by - - - to get signatures on these petitions. That is about all."

MR. O'NEILL: Read the question. I want to be sure. I have difficulty understanding him and - - -

THE REPORTER: "What official action did the Executive Committee of the Republican Party take - - - what official action did they take with regard to the circuit change?"

"THE WITNESS: Well, he asked to participate in this change by - - - to get signatures on these petitions. That is about all."

RECROSS EXAMINATION

BY MR. McALILEY:

Q Mr. Carlson, did the members of the Republican Executive Committee ask you to participate to get signatures opposed to the circuit change?

A They did.

Q Did Judge Kelly ask or request to the Republican Committee?

A No, not to the Republican Committee. He did not.

MR. McALILEY: That is all.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Who did he make it to, Mr. Carlson?

A Well, I don't know if he did make it to anybody, so far as I know. He asked some - - - to have petitions filled. I wouldn't know exactly who he did ask, if he did.

Q Mr. Carlson, isn't it a fact that Judge Richard Kelly asked you to take it up with the Executive Committee?

MR. McALILEY: Now, Your Honor, I object. This is on direct examination and is a statement of facts by counsel. I have no objection to a proper question.

MR. O'NEILL: I will withdraw the question.

CHIEF JUSTICE DREW: The objection is sustained.

MR. O'NEILL: Judge, that is all we have.

CHIEF JUSTICE DREW: You may come down. Call your next witness.

(witness excused)

MR. O'NEILL: Your Honor, may I respectfully request a recess at this particular point.

CHIEF JUSTICE DREW: We will recess until eleven o'clock.

Whereupon, at 10:52 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 11:00 o'clock A. M.

A quorum present.

MR. DANIEL: Please call Mr. Ronald Mountain.

Thereupon,

RONALD H. MOUNTAIN,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

CHIEF JUSTICE DREW: I'll ask the witness, please, to speak directly into the microphone, not face counsel for either side in his testimony.

DIRECT EXAMINATION

BY MR. DANIEL:

Q Sir, will you state your name, address and occupation or profession, please.

A My name is Ronald H. Mountain. I'm an attorney and counsellor at law, and my home is in Brooksville, Florida.

Q You practice in Brooksville, Florida?

A I do.

Q Where did you obtain your formal education?

A Undergraduate work at the University of Florida at Gainesville; then the law school at the University of Florida at Gainesville.

Q Will you get a little closer to the microphone, please sir, so we can hear you. Would you please repeat your answer?

A I attended undergraduate and law school at the University of Florida, Gainesville.

Q Are you presently engaged in the practice of law?

SENATOR PRICE: Mr. Chief Justice, would you kindly ask the witness to spell his name, please?

BY MR. DANIEL:

Q Will you spell your name, please?

A R-o-n-a-l-d, Ronald, H. initial, M-o-u-n-t-a-i-n, Mountain, just like it sounds.

Q It might be of interest to the Senators to know that your nickname is "Rocky," is that right?

A Yes sir, that's a true fact.

Q You are presently engaged in the practice of law in Brooksville, I believe you said?

A Yes sir.

Q Do you know Judge Richard Kelly?

A Yes sir, I do.

Q Are you familiar with a case styled Cone vs. Cone, Pasco County, Chancery Number 8532?

A Yes sir, I appeared as attorney for the Plaintiff in that matter.

Q What was the nature of that case?

A It was an uncontested divorce case based on the ground of extreme cruelty.

Q Did this matter come on for hearing before Judge Kelly?

A Yes sir, it did.

Q Was there more than one hearing?

A Well, after a fashion, there was.

Q Would you please relate the sequence of hearings and the dates of each, and what transpired at these hearings?

A Right. There was a more or less impromptu hearing, or attempt at a hearing held on October 15, 1962, if my memory serves me properly.

At that hearing Mr. Cone didn't appear. Mr. Cone wasn't represented by counsel. As I said, he did not appear at that hearing. Judge Kelly suggested that we reschedule it for the 24th; this hearing was to be on temporary alimony, suit money and allowances of first - - -

Q May I interrupt you there to get you to explain the procedure of seeking temporary relief and the requirement of notice to the Defendant?

A Well, actually, it's my understanding that where temporary relief is required, and it's of an emergency nature, there need be no notice to the Defendant at that time. I have always gone to the Court and asked that that be granted at that time. Often there are children involved. In this instance there were none, but as I said, on the 15th, Mr. Cone didn't appear. Judge Kelly seemed reluctant to hold a hearing without Mr. Cone's appearance. So, we put it off again until the 24th. I secured notice on Mr. Cone, I believe - - -

Q Would it be of assistance if you had the case file before you?

A Say it again, please?

Q Would it be of assistance if you had the court file before you?

A Yes sir. It would be a lot more assistance if I had my file, but it's at Alligator Point; so - - -

Q I believe you left off with securing the notice to Mr. Cone.

A This was - - - this notice was served on Mr. Cone down at Oviedo Prison Camp, in Oviedo, Florida, through Sheriff Harvey, at Seminole County, I believe it was - - - no. Anyhow, we went on to the hearing on the 24th. Mr. Cone didn't appear again, and he had notice this time, and Judge Kelly was reluctant to do anything again at that hearing, and suggested that we go ahead to final hearing on the 6th, which we scheduled a final hearing on the 6th; and of course, we went to the final hearing on the 6th. After the testimony was taken on the 6th, Judge Kelly asked that I submit him a memorandum brief of the aspects of the law supporting the proposition that a Circuit Court Judge can award the Plaintiff in a divorce suit, as part or all of lump sum alimony the undivided interest of a Defendant in tenancy by the entirety property. This I submitted, oh, on the 12th, I imagine it was - - -

Q Now, you say the 12th. Now, put the month and the year there.

A October, 1962.

SENATOR CROSS: Mr. Chief Justice, will the witness tell us what the man was doing in the Oviedo Prison Camp? I think it would be helpful.

CHIEF JUSTICE DREW: What was the man doing there?

BY MR. DANIEL:

Q Will you answer the question?

A Mr. Cone, the Defendant, the husband, was the Captain of that prison compound down there, sir.

Q In other words, he wasn't a prisoner, he was an employee of the State, is that right?

A That's right, he was the Captain of the prison compound.

Q All right, what transpired after you presented this memorandum brief?

A Subsequent to that time, on approximately the 16th of October, 1960 - - - 16th of November, 1962 - - - pardon - - - I received the final decrees from Judge Kelly. They had been signed, and Mr. Swain had drafted them for Judge Kelly and for myself for his signature.

Q Was there ever an answer filed in this proceeding?

A There was an answer, after a fashion. I received an answer in the mail, which was a carbon copy, ostensibly, of the original that was filed with Mr. Burnside, the Clerk of the Circuit Court, in Dade City, and this answer was drafted rather sloppily; a lot of grammatical errors, a lot of misspelled words, the capitalization was all fouled up, punctuation was fouled up, but it was in essentially the form that an attorney would use. Now, it appeared to me that this answer had been dictated or something of the sort by an attorney to Mr. Cone, and then he was allowed to type it in his own manner, but it connotated legal knowledge that I don't believe Mr. Cone had, from my knowledge of Mr. Cone.

Q Other than the pleadings, was there any correspondence in the court record?

A Yes, Mr. Cone wrote Judge Kelly a letter. After the hearing on the 24th, I went down to the Clerk of the Circuit Court's office and asked to see the file, and the Clerk handed me the file. At the same time he said, "By the way, do you want to see the letter that just came down from Judge Kelly's office?" Or words to this effect, and I said, "I certainly would like to," and there was a letter, which is here in the file, that Mr. Cone had written Judge Kelly,

more or less pleading his case. It wasn't as much pleading his case as asking for mercy. He alleged that if the Judge and myself and Mrs. Cone would get together, that we could save the home and so on and so forth. I questioned Mrs. Cone about this at that time, and Mrs. Cone alleged that Mr. Cone was an habitual bender of the truth, and that there wasn't a shred of truth in it. So, I had only to go on my client's information.

Q Did you attempt to question your client with respect to a reconciliation in response to this letter?

A Yes, I did, and - - -

Q What was the result of that?

A She indicated that there was no possibility of reconciliation, and that Mr. Cone was just up to some more of his tricks; so, I went ahead.

Q With respect to the hearing held before Judge Kelly, did Judge Kelly do any of the questioning in this hearing?

A Yes, he did.

Q Would you, briefly, relate the nature and the result of these questions and, if you recall them, the words of the questions themselves?

A A second to collect my thoughts. Throughout the entire trial Judge Kelly interrupted me frequently. He would, from time to time, take the case completely away from me and question Mrs. Cone on his own. From time to time he would reprimand me before my client, my client's witness and Mr. Swain, the Court Reporter. He alleged to me that the Court was having to prove my case for me. I understood that Judge Kelly was rather stiff in his demands and requirements before I went down to Dade City, so, for that reason, I briefed this case thoroughly. I wrote my questions out. I briefed it against a well-known text used in Florida divorce law, so that I would have everything necessary, and would not be embarrassed in this manner. I prepared myself as though I were going before Dean Finn, in future interest. Anybody that's had Dean Finn knows what I mean.

Q Is Dean Finn a - - -

A At the University of Florida Law School, yes.

Q Did the question of residence arise in the final hearing?

A Yes, it did.

Q What are the requirements as to residence under Florida law as to divorces?

A The requirement of residence under Florida law is that the individual Plaintiff have been a resident of the State of Florida for more than six months next preceding the date of filing of the complaint in the matter. I asked Mrs. Cone how long she had lived in Florida, and she said all her life. I asked her how long she had lived in Zephyrhills, and I forget exactly how long she said, five or six years, something of that nature. I went on to other matters. Judge Kelly at one time or other, either then or later, questioned her again as to how long she had been a resident of the State.

When the daughter, sixteen years old, who was the Plaintiff's witness in the case, came on the stand, Judge Kelly questioned her again as to the residence of the mother. Judge Kelly asked if the daughter had been in the home of the mother. The daughter said, yes. He said, "Has your mother left the State of Florida during the past several years?" The daughter said, "No." Judge Kelly said, "Where do you stay in the house?" And she said, "I live in the house with my mother." He said, "Do you live in the - - - sleep in the same room with your mother at night?" And the girl said, "No, I sleep in the room next to my

mother, the next room down the hall," and he said, "Well, then, your mother could have gone out of this state at some time or other without your knowing it." Now, this doesn't appear in this transcript of the trial, as Mr. Swain took it, but this occurred, because I was there.

Q Did the Court go off the record frequently in this case?

A Yes, frequently.

CHIEF JUSTICE DREW: Will you explain to the Senate and the Court what you mean by "the Court went off the record"? How did that occur?

THE WITNESS: Judge Kelly would look at Mr. Swain and say, "This is off the record, and Mr. Swain would cease to take the transcript of the proceedings at that time. And then, when Judge Kelly wanted to go back on the record, he would say, "On the record," and Mr. Swain would begin to record the transcript of the testimony being taken at that time.

BY MR. DANIEL:

Q What was the result to your client and her daughter of this questioning?

A Mrs. Cone was reduced to tears. She was sitting on Judge Kelly's right, directly across the table from me. She had her arm on the table and her head on her arm, and she was sobbing.

I asked Mrs. Cone, I said, "Mrs. Cone, can I get you a glass of water?" or something or other like that. I was afraid that the woman was going to go into hysterics or pass out or something like that. Now, she was a strong woman; she has got a hard nose and she isn't given to sobbing fits and things of this sort without cause of some type or other. At that time Judge Kelly admonished me for having inquired into the lady's well being, and told me that I was there to prove the case up, and that if anyone inquired into the well being of anyone in the Court Room, the Court would do that. And then he advised Mrs. Cone that the rigors of trial are great, and that if she didn't feel up to it, we could move for a dismissal or continuance until she did feel up to it, and that she should not have come unless she was prepared. Now, this does not appear in the transcript either, but this was said. I felt very sorry for Mrs. Cone. The daughter was crying, as well. This was an uncontested divorce case, and it drug on and on and on and on, until Mrs. Cone was reduced to fits of sobbing.

Q Mrs. Cone's daughter was also crying?

A Yes, she was.

Q Now, there was no contest in this case other than the Answer in proper person filed by the Defendant Cone?

A That is all.

Q For the benefit of those who may not know, would you briefly describe the sequence of events in an uncontested divorce, the pleadings that are normally filed?

A Say that again, please?

Q What do you mean by "an uncontested divorce?"

A An uncontested divorce case - - - you normally come in and file your Complaint, and wait a period of twenty days, and if the Defendant has not replied during that time, you enter a precipe for a decree pro confesso to the Clerk of the Circuit Court. Then a decree pro confesso is entered to the Clerk of the Circuit Court, and you go to a final hearing before the Circuit Court Judge, and sustain your burden of proof - - - that reason-

able men would not doubt the truth of the Plaintiff's allegations in the Complaint; and, if the burden of proof is sufficiently sustained and proved up, the Court will grant a final decree of divorce.

Q If an answer is filed and the matter is set for hearing, and no appearance is made by the Defendant at the final hearing, it is still an uncontested or ex parte divorce, is that correct?

A To the best of my knowlege, yes.

Q And that is the way that this matter came on?

A Yes, sir.

Q How far do you live from Dade City or Pasco County.

A I would say twenty-six - - - twenty-five or twenty-six miles.

Q Have you had the opportunity to take additional cases in Pasco County?

A Yes, I have. Many times.

Q Have you taken additional cases in Pasco County.

A No, I haven't.

Q Why?

A Money is not that scarce and life is not that long, to go down there and put up with that nonsense any more. I just don't take cases in Pasco County.

Q Because of Judge Kelly's conduct?

A Because of Judge Kelly.

MR. DANIEL: You may inquire.

MR. NICHOLS: No questions. Thank you very much.

CHIEF JUSTICE DREW: You may come down.

(witness excused)

MR. O'NEILL: Mr. Charles Whitehead.

CHIEF JUSTICE DREW: Swear the witness.

MR. NICHOLS: In order to save time, I will stipulate that this gentleman is a banker and that these checks that were referred to this morning were drawn on the joint bank account of Judge Kelly and Mrs. Kelly.

MR. O'NEILL: Will counsel also stipulate on the other documents that he has? I will show those to the Court and, when Mr. Nichols sees them, he may agree on that and eliminate this witness.

MR. NICHOLS: I am sure we can. What do you want me to do? Just show me what you want me to do.

CHIEF JUSTICE DREW: Gentlemen, if you will just be at ease a minute and let's see if counsel can agree on this.

(There was an off the record consultation between Mr. Nichols, Mr. O'Neill and the proffered witness, Charles Whitehead, at the conclusion of which the following proceedings were had):

MR. O'NEILL: Will the Secretary swear the witness, please sir?

CHIEF JUSTICE DREW: The Court will come to order.

(At this time the oath was administered to Charles Whitehead by the Secretary.)

CHIEF JUSTICE DREW: Were counsel able to agree on this, or do you desire him to testify?

MR. NICHOLS: On the part of the Respondent, we were willing to stipulate that these records may be introduced and used by the Board of Managers any way they want to.

MR. O'NEILL: Mr. Chief Justice, we appreciate that and we will not go into detail to identify them, but we will simply ask questions of the witness to show what these statements show, since he is a banker and it is much easier for him to read them than for me, as an attorney.

CHIEF JUSTICE DREW: You may proceed.

MR. O'NEILL: Mr. Secretary, will you put a pencil mark on those in some way to identify them and we will go from there. The witness has been sworn, has he not.

SECRETARY FRASER: Yes, sir.

Thereupon,

CHARLES WHITEHEAD,

having been first duly sworn as a witness for and on on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. O'NEILL:

Q State your name and address and occupation, please sir.

A My name is Charles Whitehead.

Q Will you move closer to the microphone and look straight ahead?

A Charles W. Whitehead, Jr. My address is Route Number 2, Box 188, Zephyrhills, Florida; and I am Cashier of the Bank of Zephyrhills.

Q Mr. Whitehead, pursuant to a subpoena duces tecum, did you bring certain documents here with you this morning?

A Yes, sir, I did.

Q Will you pick up the ledger sheet of that Bank of Zephyrhills at the beginning date of January, I believe, 1961; and state the amount of money that was there at that time.

A We have on deposit, of Richard and Lorraine Kelly, December 29, 1961, brought forward on this ledger sheet, an old balance of \$418.40.

Q Is that Judge Richard Kelly, Circuit Judge, and his wife Lorraine Kelly?

A Yes sir, it is.

Q All right. Subsequent to that time, were there deposits made?

A Yes sir, there were.

Q Do you have a photostatic copy of the deposit slips?

A Yes sir, I do.

Q Please state the earliest date that you have from the date that you just testified, and bring it forward as to the amount and what the deposit slip shows.

A Yes sir, we have January 2nd that we have a deposit showing - - -

Q January 2nd of what year?

A 1962.

Q All right.

A We have a deposit of \$1,963.68.

Q Do you have the deposit slip that was made? A photostatic copy of it?

A Yes sir, we do.

Q What does that purport to show?

A Would you like the checks broken down for that period on this deposit slip?

Q Yes sir, if you would.

A We have one from the State of Florida for \$840.51. Another one from the State of Florida for \$206.25. One from the Bank of Clewiston, for \$327.48. The First National Bank of Winter Garden, \$559.34. And one, from the Bank of Zephyrhills, for \$30.10.

Q All right, sir. What is the next deposit, the amount and the date, and what checks are shown?

A On the same ledger sheet we have another deposit made January 29, 1962, of \$330. The deposit slip shows that this was from the Bank of Zephyrhills, Les Bales, \$116.62 --- \$330.

Q All right, sir. What is the next one?

A Carried forward to the next ledger sheet, of the same month, January 31, 1962, there is a deposit of \$4,953.90.

CHIEF JUSTICE DREW: May I inquire, for the benefit of the Court, the purpose of these?

MR. O'NEILL: We are attempting to show, Your Honor, the amount of the beginning balance of \$400, and the \$500 check written to the Republican Executive Committee of Pasco County was in fact Richard Kelly's money and not that of Lorraine Kelly.

CHIEF JUSTICE DREW: Very well.

BY MR. O'NEILL:

Q Is that all of the deposit slips?

A We have the breakdown on that deposit slip.

Q All right, read that, please.

A The First National of Orlando, \$156.40. And the next one, the Production Credit Association, \$4,797.50.

Q Production Credit Association?

A Yes sir. I believe - - - it is abbreviated here. I think that is correct.

Q Now, on the ledger sheet it has been previously shown and there has been introduced a check in the amount of \$500 dated February 19, 1962. What was the amount of money in the bank on or about that date and state whether or not that check cleared through the bank and, if so, on what date?

A This particular check cleared our bank on February 27, and at the time we had - - - if I understand your question correctly - - - a balance on that date.

Q Yes sir?

A A beginning balance of \$2,796.01.

Q All right, sir.

MR. O'NEILL: You may inquire of the witness. I would like to have these introduced in evidence, Mr. Secretary. I have forgotten the next number.

SECRETARY FRASER: J.

MR. O'NEILL: These are introduced not for identification, but introduced.

MR. NICHOLS: Well, I am going to move to strike this testimony and anything relating to this transaction; and, in order to save time, I would like to be able to present a memorandum later on the subject. But the testimony so far clearly shows that this was a joint account of a man and a wife.

Second, the law is that either party to a joint account has an absolute right to withdraw funds anywhere at any time; and, the fact that Mrs. Kelly - - - the Judge's wife - - - withdrew funds has no probative force to show that the other party's funds in the account have anything to do with it. When she withdraws the funds, that is her action and that is her money. That is clearly the law and at a later time we will present it, so that we can move on. We will move to strike this testimony in that regard.

MR. O'NEILL: Mr. Chief Justice, I would simply point out to the Court that Mr. Nichols is moving to strike something which is the matter that the Senate should decide, as to whether or not this is the money of Judge Richard Kelly, as opposed to that of Mrs. Lorraine Kelly, the other joint account holder. And the check, even though it was signed by her in the amount of \$500 on that date, in fact the money belonged to Judge Kelly and he is doing indirectly that which he cannot do directly.

CHIEF JUSTICE DREW: I will not rule on it at this time, as I understand the respondent wishes to submit a memorandum on the question. So we may proceed. I have this question from Senator Pope: "Does Judge Kelly and his wife - - -"

(The Chief Justice did not complete the reading of the question)

We will have to obtain that at a later date, because I doubt if this witness could answer the Senator.

Senator Mapoles asks the question: "Mr. Whitehead, has it been customary for Mrs. Kelly to write checks on this account?"

A Yes sir, it has.

CHIEF JUSTICE DREW: Can either party write a check without the signature of the other?

THE WITNESS: Yes sir, they surely may.

CHIEF JUSTICE DREW: And this is a joint bank account?

THE WITNESS: Yes sir, that is correct.

CHIEF JUSTICE DREW: Was this the first check that Mrs. Kelly had written?

THE WITNESS: No sir, it was not.

CHIEF JUSTICE DREW: You may come down. Call the next witness.

(witness excused)

MR. O'NEILL: Mr. Robert Willis.

CHIEF JUSTICE DREW: The exhibits introduced in evidence by the Managers for the House, concerning which the previous witness testified, have been received in evidence without objection as to competency, and marked Exhibit 21 for the State.

Thereupon,

ROBERT HAROLD WILLIS,

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 and occupation, please sir.

A My name is Robert Harold Willis. My office address is 412 First Federal Building in St. Petersburg, Florida. My occupation or profession is lawyer, attorney.

Q How long have you been engaged in the practice of law, Mr. Willis?

A Since 1951.

Q Has all of that time since 1951 been in Pinellas County?

CHIEF JUSTICE DREW: May I interrupt you to announce that any witnesses who have not been permanently excused from the hearing should not be in the balcony. If any witnesses are in the balcony, they must leave the balcony; those who are still subject to call are not permitted in the Chamber of the Senate until they have been permanently released. Are any of those witnesses in the gallery?

(There was no response from the gallery.)

CHIEF JUSTICE DREW: Very well, proceed.

THE WITNESS: Would you repeat the question, please?

MR. O'NEILL: Mr. Reporter, will you read that question?

“Q How long have you been engaged in the practice of law, Mr. Willis?”

“A Since 1951.

“Q Has all of that time since 1951 been in Pinellas County?”

THE WITNESS: No sir, I have been in Pinellas County since the latter part of 1952 or the first part of 1953. I can't recall exactly.

BY MR. O'NEILL:

Q Where did you practice or what were you engaged in prior to the time you moved to Pinellas County and subsequent to the time that you got your law degree?

A I graduated from law school in 1951, sir; practiced in St. Petersburg - - - which was my home - - - for approximately four months; and then was with the Federal Government in Tampa for one year. And then returned to St. Petersburg and, again, entered the active practice of law.

Q What did you do with the Federal Government, Mr. Willis?

A I was a crier - - - was the classification - - - to the Hon. William J. Barker, the District Court.

Q Where did you receive your law degree?

A The University of Florida.

Q Did you have any undergraduate work at any other place other than the University of Florida?

A No sir.

Q Do you know Judge Richard Kelly?

A Yes sir.

Q Is he a Circuit Judge of the Sixth Judicial Circuit?

A Yes sir.

Q Have you ever had occasion to appear before him for any matters?

A Yes sir.

Q Where and when were these?

A In almost every instance, in St. Petersburg, Florida.

Q Commencing when, now, Mr. Willis? Approximately?

A Shortly after his election to the Bench, sir - - - whatever year that may have been.

Q If that was on or about January, 1961, then that would be the date?

A Yes sir.

Q Have you been in the Court Room in a Jury case, sitting and observing the trial of a case wherein Judge Richard Kelly was presiding?

A Yes sir.

Q Do you recall the style of the case?

A No sir.

Q Do you recall any incident that is fixed in your mind, relating to that case, wherein a Jury trial was taking place?

A I recall that it was a negligence action in the Court room in St. Petersburg. That was the general nature of the case. I don't recall much more about the actual facts themselves.

Q Do you recall what month or year that was, sir?

A No sir. It would have been at least a year and a half ago, sir, but I can't fix the date any more accurately than that.

Q Do you recall who was involved as attorneys in the case?

A Not positively, no sir. My recollection only - - - and it's a vague recollection, would be Mr. Tom Kiernan or Mr. Jim McClure.

Q What happened that makes it stick in your mind on this occasion? State what happened on it.

A The attorney, whoever it was, sir, for one of the parties, proffered into evidence an exhibit, a particular exhibit which had been identified by the witness on the stand, and when the proffer was made the Court, Judge Kelly, instructed the attorney the proffer of this particular exhibit into evidence was not made in proper fashion.

Q You do not think that that's improper for the Court to state to an attorney how to proffer a document into evidence, do you, Mr. Willis?

A No sir. I think the Court has the right and the duty to do so, if the proffer is improperly made.

Q What, then, was - - - what was happening that called it to your attention, then, and made it stick in your mind, at this time and place?

A The chastisement of the attorney before the jury.

Q What sort of chastisement was it, sir, the best that you can recall?

A An instruction by the Court, Judge Kelly, to the attorney that - - - as to how the Court felt exhibits should be marked for identification and then proffered into evidence, and then introduced into evidence, and the procedures that he wanted followed, sir.

Q Was there anything unusual about the Judge's demeanor at that particular time and place, and the tone of his voice?

A I don't recall anything unusual about the tone of his voice, sir. It was, at least, unusual to me for the Bench to discourse more than would be customary to an attorney, as to how he should proceed with the production of evidence and with his case, the making out of his case, sir, before a jury.

Q In the past ten or eleven years, as I understood your testimony, that you've practiced law, have you had occasion to practice law with law cases before a jury?

A Yes sir.

Q Have you had several cases, or many cases?

A I feel the term is relative, sir, but we've had quite a few cases. I can't put on any exact number; two or three a term.

Q If this should have occurred to you in one of those cases in which you were trying a jury trial, in your opinion, would it affect the outcome of the cause before the jury?

MR. NICHOLS: Just a moment, Your Honor. I object to that as speculation and opinion evidence.

MR. O'NEILL: I think this man can testify as to what effect it might have had. He's an officer of the Court, has tried cases before a jury.

CHIEF JUSTICE DREW: I think the Appellate Court was asked to determine that. I don't think he's qualified. I sustain the objection. This Court can determine what effect it would have, if he'll just tell us what happened ---

MR. O'NEILL: All right, sir, very well, sir.

CHIEF JUSTICE DREW: --- to the layman and lawyers of the Court.

BY MR. O'NEILL:

Q Mr. Willis, do you know the reputation of Judge Kelly amongst the Bench and the Bar and the community in Pinellas County, as to how he conducts his cases and handles his court?

A Yes sir, I feel that I do.

Q What is that reputation?

A I believe his reputation as to the handling of his Court would be bad in the community, with the Bench and the Bar.

Q Upon what do you base that, sir?

A I think --- upon what do I base my statement, sir?

Q Yes sir, your statement that it's bad.

A Primarily, sir, just --- it's predicated upon conversation and statements you hear in the community and in the Court House itself. Now, that is his reputation in the community that I'm talking about, not my personal observation.

Q Have you ever heard him classified as being unpredictable?

A I have heard that ---

MR. NICHOLS: Object to that. We're getting into statements ---

CHIEF JUSTICE DREW: He's stating ---

MR. NICHOLS: He's already stated the basis for his

opinion and given it to counsel. Now, if counsel wants to go ahead and make statements to him ---

MR. O'NEILL: May it please the Court, I haven't made any statements.

MR. NICHOLS: --- saying, has he heard this or has he heard that, I think is highly ---

CHIEF JUSTICE DREW: I think it was leading, but I'll let him answer the question.

THE WITNESS: I think I was asked, sir, had I heard that Judge Kelly was unpredictable, and I have ---

BY MR. O'NEILL:

Q Yes sir.

A And I have heard that statement made, yes sir.

Q Do you think that he is unpredictable, sir?

A As far as --- I can only testify as to my personal dealings with him, as to what I actually know, sir.

Q All right, sir.

A And in my actual dealings with him, I have not found him as such.

Q But you have based that reputation upon what someone else has told you?

A Yes sir, and his reputation in the community before the Bench and Bar, yes sir.

MR. O'NEILL: All right, sir. You may inquire.

CHIEF JUSTICE DREW: May I ask a question first? Senator Price, of the 36th District, asks this question --- and you can just look into the microphone, and if you don't hear me, I'll speak louder.

THE WITNESS: All right, sir.

CHIEF JUSTICE DREW: Exclusive of attorneys and the Bench, how many citizens have you talked to personally in arriving at your opinion as to the reputation of Judge Kelly?

THE WITNESS: That would be impossible to answer.

CHIEF JUSTICE DREW: A great many? A few?

THE WITNESS: More than a small number, and by "small" I mean more than --- certainly more than ten people have at least tried to talk to me or to my secretary in my presence, about Judge Kelly. However, that was primarily inquiries because of press coverage or TV coverage or conversations made by friends or clients in the office, or at lunch, or talking about the events of the day. I don't know whether I answered your question, sir, or not, Mr. Chief Justice.

CHIEF JUSTICE DREW: Any other questions?

MR. NICHOLS: In order to speed this trial along, we have no questions of this witness.

CHIEF JUSTICE DREW: You may come down.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. O'NEILL: May we have just a moment, Your Honor? We're trying to locate a witness.

CHIEF JUSTICE DREW: The Senate will be at ease for a few minutes. I would like to suggest that counsel for the House, if they could, arrange to have their next witness handy. I think it would help us.

MR. O'NEILL: Your Honor, I would like to state to the Court that we had some witnesses who were supposed to

be in on a plane this morning, we had them all prepared but, unfortunately, something happened, and we don't know whether they missed the plane or not; that's the reason we are having difficulty at this particular time, and I apologize to the Court.

Whereupon, a short recess was taken.

MR. O'NEILL: If it please the Court, the Board of Managers is ready.

CHIEF JUSTICE DREW: You are ready?

The Court will come to order.

MR. O'NEILL: The next witness is James M. Swain.

CHIEF JUSTICE DREW: Swear the witness, Mr. Secretary.

Thereupon,

JAMES M. SWAIN,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

CHIEF JUSTICE DREW: Speak directly into the microphone, and don't face counsel for either side during the hearing of your testimony.

THE WITNESS: All right, sir.

DIRECT EXAMINATION

BY MR. DANIEL:

Q State your name, please.

A James M. Swain.

Q Where do you live, Mr. Swain?

A Dade City, Florida.

Q How long have you lived there?

A Since January, 1960.

Q What is your occupation or profession?

A Official Court Reporter of Pasco County.

Q In what courts do you serve as Official Court Reporter?

A All the courts in Pasco County: The Circuit Court, County Judge's Court, County Court, Justice of the Peace, Municipal Court.

Q Would you speak either a little louder or more directly into the microphone?

A Yes sir.

Q What has been your experience in Court Reporting?

A Actual Court Reporting, since August 10, 1959, when I started as a Deputy Court Reporter in St. Petersburg. Prior to that time, however, I was with the Atlantic Coast Line Railroad for eighteen years, and did very similar work, investigating accidents and such as that.

MR. DANIEL: Would the Secretary please hand the witness the file of State Road Department vs. Simpson and others?

(The file was handed to the witness by the Secretary)

BY MR. DANIEL:

Q Mr. Swain, that's heretofore been marked as one of the exhibits on the part of the Managers. Would you glance through that and see if you find any of your original reporting work therein, and if so, would you please testify as to what it is?

A Yes sir.

Q What is that?

A I find a photostatic copy of a transcript of a speech made by Mr. Richard Kelly during the campaign for Circuit Judge, on October 15, 1960.

Q Does that appear to be an accurate copy of your own work product?

A Yes sir.

Q Does it appear in the official record of the State Road Department vs. Simpson?

A Yes sir.

Q How did you happen to report that speech?

A I was employed to by an attorney of Dade City, Mr. W. M. Larkin.

Q Were there any consequences in which you were directly affected arising out of your reporting of this speech?

A Yes sir, I was called in by Judge Kelly on February 1, I believe it was, 1961, after a suggestion for disqualification had been filed, and the transcript of the speech had been made a part of the suggestion.

Q What was the nature of the hearing or the conversation with Judge Kelly and you?

A The first day that I was called in, Judge Kelly - - - I think his first remark to me was that this speech had been filed as an exhibit with the suggestion, and wanted to know which side of the fence I was on, and I told him that as far as my duties as a Court Reporter were concerned, that I was completely impartial, I wasn't on either side of the fence; and then he went on into the - - - questioned me concerning why I had reported the speech. I told him that I had been employed to, and he asked me who had employed me, and at that time I told him that I didn't feel that I was at liberty to divulge this information. However, I later did tell him, after I had gotten permission from Mr. Larkin. He wanted to know whether I had been paid by check or cash, and what my party affiliations were, and so forth, and went into considerable length about the fact that I had reported the speech.

Q Now, is it the practice of Official Court Reporters to also do other types of reporting for attorneys, at their request, and upon their employment?

A To the best of my knowledge, all Official Court Reporters do freelance work also, yes.

Q This discussion you had with Judge Kelly, you say was on February 1, 1961?

A I believe that's right, yes sir.

Q Did this occasion you to take any action in your own behalf, such as the preparation of a memorandum on the reporting of that?

A I did, oh, about a week later, I think. In the meantime I had had one or two other discussions with him, and it became apparent to me that Judge Kelly was going to, possibly, take some action against me, and for my own protection, I felt I should prepare a memorandum, giving my best recollection while it was fresh in my mind.

Q What was your next discussion with Judge Kelly, following the February 1 discussion?

A I believe it was February 3.

Q Do you recall the topic of that discussion?

A At that time it dealt primarily with the certificate which I had attached to the transcript, and the fact that I identified myself as an Official Court Reporter in that certificate, and the words, "that I was authorized to report" this case. Judge Kelly took the position that this was not an official duty of mine, and that I - - - the wording of the certificate, "was authorized to," indicated that I had been authorized to report it by the Circuit Court. I, of course, told him that that wasn't the intent at all, that the "official Court Reporter" was put in the certificate merely as identification, and that the "authorized to" was meant to convey that I was employed to, and not there just on my own.

CHIEF JUSTICE DREW: Do the Senators hear the witness?

(No response)

CHIEF JUSTICE DREW: Go ahead.

BY MR. DANIEL:

Q Was there anything different from that certificate than that that you usually append to any of your reporting work, either freelance or official?

A No sir, this was a form of certificate that was furnished to me by the Official Court Reporter in St Petersburg when I first started there, and I have used it as a matter of course on all transcripts.

Q Do you know of your own knowledge whether or not this is the certificate used by all Court Reporters in that Circuit?

A It was at the time I began using it; I don't know whether it is now or not.

Q Do you have other transcripts in that particular file, Mr. Swain?

A I'll look and see.

Q Well, let me direct your attention, instead - - - I'll withdraw that question as to that particular transcript. You believe that, technically, since this arose, that you've looked into it, that it might be better practice not to use this particular certificate?

A Yes sir, after Judge Kelly talked to me about it, I conceded that there is a possibility of a misunderstanding in that respect, and on his instruction, I haven't used it since.

Q Was there any intent on your part to use this to convey any official connotation to either the speech given or to your authorization for reporting the thing?

A No, definitely not.

Q Did you ever attempt to convey this to Judge Kelly?

A Yes sir, I told him that several times.

Q That this was a normal certificate that was used by all Court Reporters at that time, is that correct?

A In the Circuit; that was the standard certificate used, yes sir.

Q Did you have another discussion at a later date with Judge Kelly, on or about February 10?

A Yes sir.

Q What was the topic of that discussion, Mr. Swain?

A As I recall, another suggestion of disqualification had been filed by the firm of Dayton, Dayton & Luckie, in Haymons vs. Groover, I believe it was, and in that suggestion they had made the statement that Judge Kelly had called me in and upbraided me, or words to that effect, because of having reported this previous - - - this Fairgrounds speech.

Q The same speech you referred to a moment ago?

A Yes sir.

Q He took it up with you again?

A Yes sir, he called me in about - - - concerning that. I told him that - - - he asked me if I considered that he had upbraided me in connection with it, and I told him that I wouldn't use those words. He asked me how I would describe it, and I told him that I would describe it as having been called on the carpet to explain my actions in reporting this speech.

Q Now, this particular speech, did this become known by a fairly common name around the Court House in Pasco County?

A Yes sir, it did, the Fairgrounds speech.

Q The Fairgrounds speech?

A Yes sir.

Q And a copy of it appears in that particular file, and I believe, also, the Haymons vs. Groover file, and that's a true and accurate copy of your work on that?

A Yes sir.

Q And it truly reflects the character of the gathering and the speech made at that place, is that correct?

A Yes sir.

MR. DANIEL: Now, the matters have already been offered as exhibits, and I don't want at this time, of course, to ask the witness to go through the tedious process of reading it again; so, if I get out of balance, counsel will please stop me, Mr. Nichols, but I refer the Court to the previous testimony of Mr. Luckie, which he read at length from, these excerpts, and that this speech is the same one referred to by him.

BY MR. DANIEL:

Q Did you have any further discussion with Judge Kelly after that, Mr. Swain, shortly after that?

A Yes sir, a hearing was held on the suggestion for disqualification in the Haymons-Groover case, and I was employed to report that hearing, and during the course of the hearing, the question came up about the statement that Judge Kelly had upbraided me for having reported the speech, and in the course of the hearing I was questioned about it, and it was agreed, between Judge Kelly and the attorneys, that I would file a statement, giving my best recollection of the conversation he had had with me.

Q Did you file such statement?

A Yes sir, I did. There were some other conversations intervening.

Q What was that other conversation?

A Well, immediately after the hearing on the suggestion for disqualification, Judge Kelly came to my office and questioned me about the statement that I was going to file.

I had previously given him a - - - the original memorandum that I wrote, giving my recollection of the conversations we had had on February 1 and 3, I believe and, therefore, he knew what my recollection of those conversations was, and I indicated to him that the statement that I would file in this Haymons-Groover case would go along with the memorandum which I had previously read; and he indicated to me that I should word the statement in such a way as to show my opinions and conclusions of the conversations, and it was apparent to me that he wanted me to word the statement in such a way that it would appear favorable to him; and then, in our conver-

sation on that day, I don't recall the exact day, but it was terminated by a telephone call for Judge Kelly, and then, the next day, either the next day or the following day after that, he again came to my office and brought up the subject again.

In one of our previous discussions, Judge Kelly had told me that - - - he advised me not to discuss this matter at all except in the Court Room with a Court Reporter present, and on this occasion when he came in, I, at the outset, told him that I had decided to follow his advice, and not discuss it except under those circumstances, but Judge Kelly persisted in discussing it; and he asked me if I considered that his actions in calling me in were improper. I told him that I did, after a certain point, that I felt he had a perfect right to call me in and find out why I had reported the speech, but after I had told him that I had been employed to do so in my freelance capacity, I then felt that it was improper for him to continue questioning me as to who hired me and how much I was paid, or how I was paid, and my party affiliation, and so forth.

Q In what file did you file this memorandum, Mr. Swain?

A That was in the Haymons-Groover file.

MR. DANIEL: Would the Secretary hand the witness the Haymons-Groover file.

Q Do you find your statement in there?

A Yes sir.

Q How long is it, please?

A A little over seven pages.

Q I beg your pardon? What was that?

A A little over seven pages - - - was that your question?

Q Yes sir. Now, this was a statement prepared at Judge Kelly's suggestion and at your own initiative?

A I don't remember who suggested it. It was agreed to between Mr. Luckie, Mr. Dayton, and Judge Kelly, during the hearing.

Q And it was agreed that that statement would be placed in the record?

A Yes sir.

Q I don't think it will take long to read it. I will ask you to read that statement so that we can be satisfied exactly on the point of the Fairgrounds speech.

A All right, sir.

(Reading the statement, as requested):

"In accordance with my understanding of understanding reached between the Honorable Richard Kelly and Messrs. George C. Dayton and Charlie Luckie, of the firm Dayton, Dayton & Luckie, in a hearing held on the 14th day of February, A. D., 1961, in Dade City, Pasco County, Florida, in the above-styled cause, I am reciting below my best recollection of conversations held between Judge Kelly and the undersigned on February 1 and 3, 1961.

"On February 1, 1961, Judge Kelly called me into his office and instructed his secretary, Mrs. Pat Brazzel, to remain during our conversation. He opened the conversation by saying that he thought when the election was held that that was the end of it, but that 'the Daytons apparently want to keep the campaign going.' At that time he had before him some papers which I understood constituted a suggestion of disqualification filed in another case by the firm of Dayton, Dayton & Luckie, and attached to the papers was a copy of my transcription of a speech made by Judge Kelly during his campaign at the Pasco County Fairgrounds on October 15, 1960. Judge

Kelly referred to the transcript of the speech, and said that he 'wanted to know just which side of the fence I was on.'

"I informed Judge Kelly that in so far as my duties as court reporter were concerned I was completely impartial, adding that I did, however, have a great deal of respect for Judge Dayton. He said something to the effect that he did not ask me who I had respect for, and went on to say that if I was going to report for him he did not want to have to go over every word of the transcripts to see that I had reported him correctly, and he wanted to find out if I was so politically involved that I would be unable to report for him impartially. I again assured him that I was completely impartial with respect to my duties as a court reporter.

"Judge Kelly then asked me if I had been employed to report his speech, and I told him that I had. He asked if I had been paid, which I answered in the affirmative. He asked if I was paid by check or cash, and I told him that I did not recall. Then he asked who had employed me, and I replied that I did not feel at liberty at that time to furnish him that information. He asked if I was a Republican or Democrat, and I told him I was registered as a Democrat. He pointed out that this was a Republican rally, and I said that I had understood it was a public meeting, and that I had not secreted myself in any way when I reported the speech, and he agreed that it was a public meeting and that I had a right to be there.

"At one point in the conversation, just where I cannot recall, I informed Judge Kelly that the last thing in the world that I wanted was to become involved in politics in any way; that I had never been in the past, but that my business was reporting and that I had been employed to report his speech. I told him that if he had contacted me for the purpose of employing me to report a campaign speech of Judge Dayton, I would have done so. I also told him that if he did not trust me to report his hearings, or if he doubted my veracity or impartiality, I felt sure that we could make some arrangements to have one of the other reporters in the circuit from Clearwater or St. Petersburg come up to Dade City to report for him when he was holding hearings in Dade City. He inquired as to the per diem rate, and remarked that that would be an expense to the taxpayers. I was subsequently excused.

"On February 3, 1961, Judge Kelly's secretary informed me that Judge Kelly wanted to see me in his office, and again Judge Kelly instructed his secretary to remain during our conversation. At the time of our conversation on February 1, the wording of the certificate which I had attached to the transcript of the speech had not been mentioned; however, in this conversation on February 3, the conversation dealt almost entirely with the wording of the certificate. Judge Kelly said that he had not noticed the certificate particularly on the occasion of our first conversation, but at this time he was very critical of the fact that I had identified myself as official court reporter for the Sixth Judicial Circuit of Florida, and has used the words 'was authorized to and did report.' He said this wording clearly indicated that I was there in my official capacity as official court reporter for the circuit court, and was authorized to report the speech by the court. I disagreed with this, and endeavored to explain to Judge Kelly that this certificate was the standard form of certificate that had been furnished me to use when I started court reporting and was, to the best of my knowledge, used by other reporters in the circuit in reporting matters outside the circuit court, and that the only reason I knew of for using the designation 'official court reporter' was to identify the reporter and possibly add some prestige to the transcript. He said that he wasn't interested in any other certificates, only this one, and went on at some length concerning the very serious consequences that could result in using such a certificate and thereby drawing the court into the matter.

"At one point during this discussion, Judge Kelly turned to his secretary and said that she would be an impartial party, and asked her whom she would understand had authorized the reporting of the speech from the wording of the certificate, and she replied that she would understand the court authorized it.

"At one point during this conversation, Judge Kelly asked me if I had anything further to tell him about the situation, and I replied only that he had previously asked me who had employed me to report the speech, and at that time I had told him I did not feel at liberty to divulge this information; however, following our conversation on February 1, I had discussed the matter with the person who had employed me to report the speech, and had been given permission to divulge his name, and at that time furnished Judge Kelly the name of the person. He said that this person certainly had a perfect right to do this.

"After being excused from this conversation, I was subsequently recalled to Judge Kelly's office on the same day, February 3, and again in the presence of his secretary, Judge Kelly informed me that he had called a friend of his who was an official court reporter, but did not otherwise identify him, and informed me that this person had said that he would never use the term official court reporter in reporting anything outside the jurisdiction of the court in which he was official reporter. He went on to say that he did not want to hear of me again using the words 'official court reporter' in any certificate covering anything reported outside the jurisdiction of the circuit court, and that I should use the identifying term 'shorthand reporter' or some other such description to identify myself.

"At one point I asked Judge Kelly if he would give me an order to this effect, and he said that he wanted my assurance that I would not do this, and that if I wanted to consider the matter or check into it further, to do so and let him know what I decided. Later he said that he did not think it was necessary for him and me to be on such a formal basis as to require a formal order.

"I asked Judge Kelly if this applied to other reporters in the circuit as well as me, and he said that it did; that he was not singling me out, but that he did not intend to issue such instructions to each of them, but that if he ever came across such a certificate worded in this manner by another reporter in the circuit, he would handle the matter if and when the occasion arose.

"In order to gain a clear understanding of Judge Kelly's orders, I mentioned the reporting of preliminary hearings in the county judge's court or Justice of the Peace court, and he said that the same would apply there; that I was not to use the term official court reporter in my certificates since they were not before the circuit court. I then pointed out that the statute specifically provided for the official court reporter to report preliminary hearings on the request of the state attorney or circuit judge, and he said in that event it would be proper to use the term official court reporter in the certificate. I then asked what procedure I should follow if I were employed by the attorney for the defendant to report a preliminary hearing, and he instructed me that I not use the term official court reporter under such circumstances, but to use 'shorthand reporter' or some other such designation.

"I also brought up the fact that some of the reporters' stationery was printed with the words 'official court reporter' and he said this was an entirely different matter, mentioning statements (bills) and letters, but I said that I was referring to the paper on which the transcript itself was typed. He said that that was getting very close to the borderline, but left me with the impression that such would not be prohibited.

"He also said at this time that he had decided to permit me to report for him, rather than call one of the other re-

porters from Clearwater or St. Petersburg. I said that if he had any doubts whatever as to my veracity or impartiality, I would prefer not to report for him, but he said that if he had any doubt at all he would not allow me to report for him.

"At one point in our conversation on February 3, Judge Kelly said that I would be considered what was referred to in political terms as a 'spy.' I immediately took exception to this, stating that the word 'spy' to me indicated something done in a surreptitious manner, and certainly there was nothing surreptitious in the manner in which I had reported the speech. He went on to explain that he was using the word as it was used in politics, to mean some person from one party attending a rally or speech of the other party to learn what was said. I told him I was not familiar with the use of the word in political terminology.

"At one point during the first conversation on February 1, Judge Kelly asked me how I was appointed, and I informed him that I had made application, while a deputy reporter at St. Petersburg, to a committee of the Pasco County Bar Association which had been appointed for the purpose of receiving applications and making recommendations on a reporter to fill the position which had been authorized by law a year or so before, and that the committee had recommended me to Judge Dayton, who in turn recommended me to the Governor, who subsequently appointed me, to hold office at the pleasure of the Governor.

"The above and foregoing statement, pages one through seven, inclusive, constitutes my best recollection of the conversations between myself and Judge Richard Kelly on February 1 and 3, 1961, and the statements contained herein are true and correct to the best of my knowledge and belief."

Signed and notarized.

BY MR DANIEL:

Q All this arose over your free lance reporting of the Fairgrounds speech?

A Yes sir.

Q Did you hide or in any way secrete yourself in reporting the Fairgrounds speech?

A No sir, I did not.

Q You accepted the employment and took it openly?

A Yes.

Q Now, did these events of Judge Kelly result in the disruption of your employment as court reporter before his Court?

A Yes sir. During the conversation before I filed this statement, although after Judge Kelly had read my brief memorandum, he - - - after, as I mentioned before, he said - - -

Q I'm sorry, I didn't catch the last.

A I am trying to recall just how the conversation went. After he had asked me if I considered his action improper in calling me in, and I told him that I did after a certain point, then he became very angry and told me that it was apparent that my attitude had changed and that I obviously could not report for him impartially and without bias, and told me that, effective at once, I would not be permitted to report for him and would not be as long as he was on the Bench. Then - - - well, this conversation occurred in my office back of the court room at that time. He then went to the court room door and turned around and came back and said he wanted to make it clear that he was taking this action before I had filed

my statement, that I was filing in this case, and that this action was not taken as a result of that statement.

Q Did this cause you to take any further action in your own behalf, Mr. Swain?

A I intended to. I took the memorandums which I had previously written and prepared a consolidation of all of them, and drafted a letter to the Governor. Because I was in the position of holding a commission to report all judicial proceedings in Pasco County - - - a commission from the Governor - - - and, at the same time, the Circuit Judge had barred me from reporting for him, and it left me in a somewhat untenable position that I thought ought to be clarified. Therefore, I prepared a statement and drafted a letter to the Governor and was going to send it to him so that he could take whatever action he thought necessary.

Q Did you ever send it?

A No sir. I decided to wait a while to see if anything developed. It subsequently did and I never sent the letter.

Q What subsequently developed?

A About two weeks later, Mrs. Maude Clingan, the official court reporter in St. Petersburg, had come to Dade City to report some hearings before Judge Kelly, and she told me that Judge Kelly wanted to see me and her in his office; and we went in and, as a result of that discussion at that time, he allowed me to report for him from then on.

Q Subsequently you did do the reporting in Dade County in the Circuit Court?

A Dade City, yes.

Q I mean Dade City. Excuse me. I call your attention to the matter in which three contempt citations were issued by Judge Kelly against Charles Luckie. Do you recall the style of that particular matter?

A I think it was just "In Re Contempt of Charlie Luckie."

Q I meant the style of the matter in which it arose?

A That was State Road Department vs. Aiken, I believe.

Q Did you, as official court reporter, take any opinions or orders from Judge Kelly with respect to these contempt matters?

A I don't remember whether it was "as official court reporter" or not; but Judge Kelly did call me into his office and told me that his secretary was having trouble keeping up with the work and asked me if I would help him, which I agreed to do.

Q Was this prior to the time that the contempt matters were set for hearing?

A Yes sir. I believe this was March 28, and there were two hearing scheduled for - - - one for 3, and one for 3:30 that afternoon, and the contempt citations against Mr. Charlie Luckie; one for having procured an affidavit from E. B. Larkin, and the other for having procured an affidavit from Mr. Robert E. Clawson.

Q Did the Judge indicate that he wanted to dictate something to you in these matters?

A Yes, he told me - - - this was about 10:30 or 10:40 in the morning - - - he told me that he wanted to have his opinions and orders ready at the time of the hearing. He had previously started dictating an opinion to his secretary, but I think she was nervous or something. And he had her read me her notes, and he completed dictating the opinion to me. This opinion was in the case of having

procured the affidavit from E. B. Larkin, and he told me that the other one, on Clawson, would be exactly the same, except to just change the name "Larkin" to "Clawson."

Q I show you a document and ask you if you can identify it?

A Yes sir.

Q What is it, please?

A This is a copy - - - a transcription of the rough draft which was dictated to me of the opinion; with a memorandum prefacing it, showing the circumstances under which I made it, under which I recorded it.

Q Is that a true and accurate copy of your work product?

A Yes sir. It appears to be a photostatic copy.

Q And you stenographically reported what appears thereon and caused it to be transcribed?

A Yes sir.

Q What is it entitled?

A "Opinion."

Q Would you please read the first paragraph? That is, your statement of what it is?

A My statement?

MR. DANIEL: Just a minute. I first offer this - - - please mark it for identification.

MR. McALILEY: I would like to look at it a minute.

MR. DANIEL: All right, sir.

MR. McALILEY: We have no objection to its big marked.

CHIEF JUSTICE DREW: Admit it, marked State's Exhibit J for identification.

BY MR. DANIEL:

Q Now, Mr. Swain, you testified that this is a true and accurate report of your work product as given to you by Judge Kelly?

A Yes.

Q I believe it is only about three letter-size pages, is it not?

A Four.

Q Would you please read that to the Senators?

A Do you want the memorandum that I wrote at the top?

Q Yes.

A There are some holes punched in it but the time, as I recall it, was 10:40 A. M., March 28, 1963:

"I was called to Judge Kelly's office, and he informed me that his secretary was having difficulty keeping up with the work and he had to get his opinions and orders prepared so he would have them ready when he held hearing that afternoon on charge of contempt against Charlie Luckie for procuring the affidavits. He had already dictated part of his opinion to his secretary, and asked her to read her notes to me, which she did, and he made some corrections as she dictated to me, then he dictated the remainder of the opinion. I then prepared a rough draft of it before noon and gave it to him to check. After making some changes, he returned the draft to me, and I prepared the opinion (one opinion) after lunch, but when I delivered that to him he advised that there was no

hurry on it now as the Court of Appeal had stayed the matter pending hearing there."

Then the Opinion:

"In the opinion of this Court, it is clear that neither party nor attorney should be embarrassed or fearful in filing an affidavit in support of a proceeding under Section 38.10 of the Florida Statutes, (City case 152 So. 616) so long as this section is not misused and contains no uncalled for abuses (8 So. 2d 1 and 244 S. W. 905).

"It is also clear that the purpose of this section is to protect the parties from fear of apprehension that the judge is neither prejudiced nor biased (See 194 So. 613).

"The pertinent portions of this section include the following language:"

I just had "(quote statute)." When I prepared the final opinion, I wrote that from the statute itself.

"It is manifest that the purpose and the privilege of this language is limited in scope. There is nothing in this section which entitles a litigant to select a judge or to obtain a better judge or a more desirable personality than anyone else.

"It would appear that any attempt to show the general nature of the judge sought to be disqualified is beyond the scope and purpose of this section, and any attempt to make such a showing would be irrelevant and 'uncalled for' (See case 8 So. 2d 1 supra.)

"The Supreme Court in the case of *Horne v. Frederick*, 66 So. 2d 823, stated that it is a 'well settled rule that the facts of an affidavit must be stated in a positive and not a qualified manner.' A reading of the affidavit in question executed by E. B. Larkin and made a part of this opinion as Exhibit No. 1 fails to set out any unqualified fact in support of the uncalled for and irrelevant and contemptuous language that the judge of this Court 'is possessed of a vindictive disposition and is unpredictable in his nature' and 'is so biased and prejudiced against the said Charlie Luckie Jr., and his law partner, George C. Dayton, that the said defendants in the above-styled cause will not be given a fair and impartial trial by him.'

"It would appear that any unsolicited and uncalled for announcement that the Court is prejudiced is inconsistent with the dignity of the Court and its impartial character. To further state that a judge is possessed of a vindictive disposition and is unpredictable in his nature could only be expected to weaken the confidence of the public and the Bar in the Court and the judge thereof in his judicial capacity and thus obstruct and interfere with the administration of justice by bringing the judge and the court into contempt, disrespect and shame in the public eye. (See *Sarratt v. Cobb*(?) Supra).

"In considering the contemptuous nature of the contents of the affidavit, it should be considered that the maker of the affidavit was an attorney practicing before the Bar, which would tend to give the affidavit greater weight with the public and other members of the Bar. It should also be considered by its very form it was a cold, considered and calculated statement, as it was written and sworn by a person knowledgeable in the law; that it was uncalled for, as the statement could not have been used in obtaining relief under Section 38.10 of the Florida Statutes, which was the purported reason for having made it. It should also be considered that this affidavit was published and filed in the public records of this Court by another attorney, the person herein charged with contempt who, must be held responsible because of his duty to the bench, to his profession, and the esteem of the public which sustains the very system upon which the Court is founded.

"The joinder of this affidavit with other affidavits of identical or similar character (copies of which are attached hereto and made a part hereof as Exhibit 2) also adds to the grievous impact of the contempt and thereby adds to the guilt of Charlie Luckie, Jr. in his contempt of this Court, as shown by his procurement, compiling, publishing and filing in the public records of this Court the composite which is attached to this opinion as Exhibits 1 and 2.

"This Court is of the opinion that if this section is to have its intended benefit, any affiant should be privileged to set out facts regardless of their import, regardless of any damage or embarrassment that is caused anyone, any judge included, regardless of his rank; but this right should have the corollary responsibility not to misuse it. There is nothing in the language or the spirit of Section 38.10 which gives rise to 'uncalled for' attacks upon the Court or the judge thereof. The privilege should be no broader than the purpose of the provision. Neither a party nor his attorney should be permitted to use a shield offered for protection as an instrument for offense and contempt.

"This Court sitting in Pasco County, has jurisdiction over all felony cases, including capital cases, and all civil jurisdiction on the law side over \$5000.00, and all equity jurisdiction. It would seem that a judge called upon to make the decisions almost on a routine bases affecting the lives and property of the public would have to enjoy the respect and esteem of the public if the administration of justice is not to be interfered with, and that the author of any uncalled for statements which constitute a contempt and would bring or tend to bring the judge of such a court into contempt, disrespect or shame in the public eye should be punished, as should any person who procures, publishes and files in the public records any matter containing such uncalled for and contemptuous statements.

"When the contemner is an attorney, his action should be considered in light of Canon I of the Code of Ethics governing attorneys in Florida: (Quote Canon)

"Attached to this opinion as Exhibit 3 is a copy of an article appearing in the *St. Petersburg Times* dated March 20, 1963, which eloquently expresses the ills that come from the contempt involved in the subject affidavit. It should be noted that there is no response in this article from the Court, and it should be remembered that there appropriately should be none."

Q Now, in dictating this to you, did Judge Kelly indicate that he had any other matters of this type to dictate to you also?

A Yes sir, he told me that he had two opinions and two orders.

SENATOR MAPOLES: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Yes, the Senator from the 1st.

SENATOR MAPOLES: - - - I would like to call a point of order, made on your decision that you announced yesterday.

CHIEF JUSTICE DREW: Senator, we adjourn - - - you mean with reference to adjournment?

SENATOR MAPOLES: Yes sir, it's 12:30.

CHIEF JUSTICE DREW: Well, we adjourn at 1 o'clock under our hours, but I was going to adjourn about a quarter to one. You see, the luncheon is set at 1 o'clock, gentlemen.

SENATOR MAPOLES: It was announced that we would adjourn at 12:30 - - -

(Several Senators said "12:50.")

SENATOR MAPOLES: Oh, 12:50? I'm sorry.

CHIEF JUSTICE DREW: You may proceed.

MR. DANIEL: I'm not sure that my last question and answer was gotten by the Reporter. I believe my question was: Did the Judge indicate that there were any other instruments or orders or opinions he intended to dictate to you in this regard?

THE WITNESS: Yes sir, he told me that there would be two opinions, one on each of these two contempt citations, and two orders, one for each.

BY MR. DANIEL:

Q To whom was the other opinion to be directed, did he say?

A It was - - - would be identical to the one which I just read, except that the name, E. B. Larkin, would be changed to Robert E. Clawson.

Q Do you know of your own knowledge whether or not the contempt citations had been set down for hearing before Judge Kelly?

A They were on the calendar, I know that.

Q And this opinion was dictated to you prior to the time that the contempt citations were set for hearing?

A Yes sir, the opinion was dictated, starting about 10:40 in the morning; the hearings were set for three and three-thirty that afternoon.

Q And the order was to be dictated immediately following the transcribing of the opinion?

A That was my understanding, yes sir. As I said, when I returned the finished opinion, after he had corrected the draft, then after lunch, I typed it, the original and several copies of it, with a place for his signature, and returned it to him, and at that time he told me that there was no hurry about the rest of them then.

Q And did he state the reason that there was no hurry with the rest?

A I don't recall whether he told me why or not. I no doubt learned that the Appellate Court in Lakeland had issued a writ of prohibition.

Q Now, did you discuss this opinion that you had taken from Judge Kelly with anyone else?

A Yes sir, I did. About two weeks later, this thing preyed on my mind quite a bit for quite a while, and I knew that it was set for hearing and argument in Lakeland, in the Appellate Court, and I worried about it, because I felt that an injustice might be done to Mr. Luckie; and the day after the arguments were - - -

Q Let me ask you, was this dictated as an official opinion in these contempt matters by Judge Kelly to you?

A Presumably so. I prepared it that way, yes sir.

Q This was the manner in which you prepared it, as either a Court Reporter or someone doing Judge Kelly a service in transcribing it?

A Yes sir.

Q All right. Now, would you go ahead and relate the circumstances under which you revealed this to someone else?

A I didn't make up my mind until the day after the arguments were held in the Appellate Court on the writ of prohibition at Lakeland, and the day after that, Mr. Luckie happened to be in my office, and I mentioned it to

him in confidence and, as I recall, I read him the opinion from my notes, my shorthand notes, and I asked him not to divulge this information unless it became necessary. He had told me that he thought that he had a pretty good chance of the Appellate Court confirming the writ of prohibition, and I asked him, that if they did so, this be kept in confidence, and it subsequently turned out that the Appellate Court did confirm the writ, and Mr. Luckie, as far as I know, didn't divulge this until the House Committee meeting on the impeachment, sometime later.

Q And that was as a result of a subpoena from the House Committee on impeachment?

A Yes sir.

Q Now, what was giving you trouble, as to whether or not you should divulge this to Mr. Luckie? I believe you testified that this was part of the official proceedings.

A I felt that I owed some confidence to Judge Kelly, and he didn't ask me to hold this in confidence. Only on one occasion did he ever ask me to do anything in confidence, and I never divulged that but, in this case, he didn't. However, I didn't think I should bring it out but, at the same time, I felt that it was wrong. Of course, I just resolved it in my own mind, as a question of right and wrong, and I felt Mr. Luckie might be done an injustice, and I decided that that was the proper thing to do, and I did tell him.

Q You felt that this was, in fact, an official part of any proceedings held in this matter?

A Well, I don't suppose it was an official part of any proceedings until it was docketed in the Clerk's office, which I understand it never was.

Q Did you have any conversation with Judge Kelly after you were subpoenaed to appear before the House Committee on this impeachment?

A Yes sir, I - - -

Q When was that?

A I don't recall the date. It was the Friday, I believe, before I was coming to Tallahassee on Monday. He called me into his office and - - -

Q This was during the session of 1963?

A Yes sir, just a few days before I appeared before the House Committee.

Q What was the nature of the discussion you had with Judge Kelly then?

A He called me in and said that he understood that I had been subpoenaed to appear before the House Committee, and wanted to know what I was going to testify to; went into some length as to what my testimony would be which I, incidentally, resented. I didn't think it was proper for him to do so but, during the course of this conversation he asked me did I like to work in Dade City, would I like to be there, and I told him I did. He asked me - - - he reminded me that I would be under oath when I came up here to testify before the Committee, and told me that it was my duty to tell the whole truth, as well as just the truth, and that if there was anything good about him that I knew of, that I should report that, as well as anything bad; and he asked me did I expect to remain in Dade City after this impeachment hearing was over, and I told him that I didn't know, that I didn't much think so, that I didn't feel that I could continue reporting for him under the circumstances. He asked me did I want to, did I like to stay in Dade City, would I like to, and I told him that I would, and it was apparent to me that Judge Kelly was intimidating me, that if I didn't

testify favorably to him, I couldn't expect to come back, report for him in the future.

MR. DANIEL: Your Honor, we intend to go into interrogation about a murder case at this point, and this would be a natural breaking point, if I might suggest.

CHIEF JUSTICE DREW: I think counsel is correct. We'll be in recess until 2:30.

Whereupon, at 12:45 o'clock P. M., the trial was recessed 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 with all members of the Senate present.

MR. DANIEL: Mr. Secretary, recall the witness Swain to the stand, James M. Swain.

Thereupon,

JAMES M. SWAIN,

resumed the stand and testified further as follows:

CHIEF JUSTICE DREW: You may proceed.

MR. DANIEL: Let the record show that the witness is the same James M. Swain who was on the stand before the luncheon break. He has been previously sworn.

DIRECT EXAMINATION (RESUMED)

BY MR. DANIEL:

Q Mr. Swain, were you present at the Terry Grady murder trial?

A Yes sir.

Q Approximately when did that trial take place?

A I believe it was approximately September, 1961.

Q September, 1961?

A I believe so, yes.

Q Did you stenographically report the proceedings of that case?

A Yes sir.

Q Have you, at the request of the Board of Managers on the part of the House, reviewed your notes in this case with respect to the verbal participation of each of Judge Kelly, Mr. Allgood, the defense attorney, and Mr. Davis, the State Attorney?

A Yes sir.

Q Do you recall how many total pages of testimony there were in this respect?

A 1238, I believe. I have a memorandum. May I refer to it?

Q Refresh your memory from the memorandum, if you will.

A Yes sir. 1238 pages.

Q Now, how many of these pages are attributable to each of the three persons I named - - Judge Kelly, Mr. Allgood and Mr. Davis?

A From going through my shorthand notes, I estimated that the questioning or the colloquy was predomi-

nated by Judge Kelly, 438 pages; by Mr. Allgood, in 408; and by Mr. Davis in 392. That is a rough estimate, of course.

Q So there was more interrogation or colloquy by Judge Kelly than either of the two attorneys involved in the case?

A Yes sir, that is my approximation.

Q That did not include the Instructions to the Jury, did it, sir?

A Yes sir, that included everything.

Q That included the Instructions. How many pages were there of Instructions? Do you recall?

A Well, there were not any Instructions. It was a directed verdict. They were very short.

Q There was a directed verdict. So, over one-third of the total transcript was Judge Kelly's questioning in that particular case?

MR. McALILEY: Your Honor, I object to that. He has gone over it twice now.

MR. DANIEL: I withdraw it. Just for the purpose of identification and not for the purpose of testimony by this witness, I hand you a document and ask you if you can identify it?

THE WITNESS: Yes sir. This is a transcript of excerpts of the proceedings in the Terry Grady murder trial.

MR. DANIEL: We would like that marked simply for identification at this time. We are not going to ask this witness to testify because we do not believe he would be the best witness.

MR. NICHOLS: May I look at it?

CHIEF JUSTICE DREW: It is admitted and marked as State's Exhibit K, for identification.

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

MR. DANIEL: Another witness will testify as to the Terry Grady matter, rather than this witness. He was not an attorney involved in this suit; therefore, we have no further questions of this witness at this time.

CROSS EXAMINATION

BY MR. McALILEY:

Q Mr. Swain, if I may go back very briefly with you: Prior to becoming an official Court Reporter, you were employed by the Atlantic Coast Line Railroad; and, in that capacity, recorded confidential memorandums as part of your daily routine, did you not?

A I don't recall anything of a confidential nature.

Q All right, sir. You recorded hearings in which the Interstate Commerce Commission was present, did you not?

A Yes sir.

Q And statements with regard to personal injury cases, did you not?

A Yes sir.

Q And these statements were taken in regard to the preparation of a case on behalf of your employer, the Atlantic Coast Line Railroad?

A No sir.

Q In what regard were they taken?

A Simply investigation of the railroad to determine what happened and why.

Q Investigation among its own employees?

A Yes.

Q Is that correct?

A That's right.

Q And in this clerical capacity, sir, did you feel that - - - I will withdraw that - - - in this capacity, sir, did you feel that you occupied the confidence and trust of your employers?

MR. DANIEL: Objected to, Your Honor. There is nothing about the Atlantic Coast Line in here except that he worked for them. I don't believe "trust and confidence," either of the railroad or the witness, with respect to his employment by the Atlantic Coast Line, is material to the issues on this point.

CHIEF JUSTICE DREW: What is the purpose?

MR. McALILEY: We want to show bias and prejudice.

CHIEF JUSTICE DREW: Well, connect it up. I will overrule the objection.

BY MR. McALILEY:

Q Later on you left to take a position as an official Court Reporter; is that not correct?

A I was granted a leave of absence by the railroad, to allow me to work as a deputy court reporter in St. Petersburg for a while, to see if I wanted to and could do the work; and, after I found that I did and wanted to, I resigned from the Atlantic Coast Line.

Q And you continued to be a Court Reporter?

A That's right.

Q And as a Court Reporter, are you a member of the National Shorthand Reporters Association?

A I am, yes sir.

Q And in that regard, sir, does that organization have a code of ethics that you are governed by?

A Yes sir.

Q And are you familiar with that code of ethics?

A Generally, yes sir.

Q Let me read part of it to you. That code, in part, provides: "absolute impartiality, as between those who contend for supremacy in the forum where the pen writes the sole and unquestioned record, precluding hint of impropriety or suspicion of lack of integrity attaching to your title." Is that part of the code to govern your own conduct?

A As I recall, it is; yes sir.

Q Now, with regard to the Pasco job, you were interviewed by a committee of the Bar Association, were you not?

A Yes sir.

Q And Mr. Luckie was on that committee, sir?

A Yes sir. However, I was not interviewed by Mr. Luckie, as I recall; it was Mr. William B. Goodson.

Q Mr. Goodson interviewed you, sir?

A Yes sir.

Q And what firm is he with, now?

A Larkin, Larkin & Goodson.

Q All right, sir. Now, after that interview, you were

ultimately appointed, as all Court Reporters are, by the Governor?

A That's right. I made written application to the committee.

Q All right, sir. Now, prior to - - - during the campaign between Judge Richard Kelly and O. L. Dayton, Jr., you contributed to Judge Dayton's campaign, didn't you?

A Yes sir, I did. I felt Judge Dayton was an outstanding judge, and I contributed \$25 toward his campaign.

Q All right, sir. Now, then, on January 1, 1961, Judge Kelly took the Bench?

A Yes sir.

Q Now, I just want to very briefly review the chronology of events that happened there with you. On January 1, 1961, Judge Kelly assumed the Circuit Bench, and you, of course, began to report?

A Yes sir.

MR. DANIEL: Mr. Chief Justice, I will object to the form of the question. Of course, if he wants to ask the witness these questions, of course, I won't object to it, but he seems to be reviewing, and he's testifying himself, other than asking questions of the witness.

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

BY MR. McALILEY:

Q Now, on February 1, 1961, did you have a conference with Judge Kelly at that time?

A Yes sir.

Q All right, and that conference was - - - dealt with a petition for, or suggestion of disqualification that had been filed within that thirty days Judge Kelly had been a judge?

A Yes sir, I assume so. I think so.

MR. DANIEL: Mr. Chief Justice, at the risk of becoming offensive in objecting, if the counsel for Respondent will put a question mark at the end of his remark, so that I can determine whether it's a question or testimony on his part, it would be appreciated. I'm not able to determine.

MR. McALILEY: Your Honor, I'm on cross. I believe I'm entitled to lead the witness.

CHIEF JUSTICE DREW: Yes, you're entitled to lead him, but lead him by asking questions - - -

MR. McALILEY: All right, sir.

CHIEF JUSTICE DREW: - - - not making statements.

BY MR. McALILEY:

Q Now, did Judge Kelly, during this February 1, 1961 conference, tell you that he felt that you had a right to report the Fairgrounds speech?

A Yes sir, I believe it was that day or either February 3. At one time or other he did, yes.

Q All right, sir. And also at that conference - - - well, first of all, this conference that you had with Judge Kelly on February 1, 1961, did it pertain primarily to a petition or suggestion of disqualification that had previously been filed?

A From my standpoint, it pertained primarily to the transcript of the statement - - - of the speech, which had been filed as an exhibit to the suggestion.

Q With the Fairgrounds speech, it was a part of this suggestion for disqualification?

A Yes sir, it was attached as an exhibit.

Q And he was inquiring about your role in that matter?

A In reporting the speech, yes sir.

Q Yes sir.

CHIEF JUSTICE DREW: Will you speak directly into the microphone; don't look at him.

THE WITNESS: Yes sir.

BY MR. McALILEY:

Q Now, on February 1, after - - - 1961 - - - after your conference, you went to Mr. Larkin, is that correct, sir?

A Mister who?

Q Mr. Larkin?

A Larkin? Yes sir.

Q All right, sir. Now, the next conference you had was three days later with Judge Kelly, on February 3, 1961?

A I believe so, yes.

Q Now, at that time you had a discussion, did you not, sir, with reference to the certificate used on the Fairgrounds speech?

A Primarily it was about that, yes.

Q And you have subsequently discontinued to use the certificate you used for the Fairgrounds speech for matters other than on official court business?

A Yes sir, on the instructions of Judge Kelly, I did.

Q Now, on February 8, 1961, sir, did you receive an unsolicited telephone call from Mr. Charles Luckie?

A I don't recall the date. I did receive a call from him about that time.

Q Well, sir, you made contemporaneous memorandums, did you not?

A Yes sir.

Q And let me hand you a memorandum, and see if that doesn't refresh your recollection, or do you have them present before you?

A No, I do not have them.

Q See if that doesn't refresh your recollection, these things (Exhibiting several paper instruments to the witness)?

A Yes sir, that's right, it was February 9, it was 8 or 9 - - - February 8.

Q So, on February - - - on February 8, 1961, some thirty-nine days after Judge Kelly took office, you received this call from Mr. Luckie, is that correct, sir?

A Yes sir.

Q Then, two days later, you prepared the first of a series of memorandums regarding the conversations that you held, or that were held between yourself and Judge Kelly.

A I believe that's correct. I think February 10 is the date of the first memorandum.

Q All right, sir. Now, the first memorandum that you prepared was regarding the conversation between you

and Judge Kelly, was after you had talked to Mr. Larkin, and it was after you had received the unsolicited telephone call from Mr. Luckie?

A The only occasion, only thing I talked to Mr. Larkin about was whether or not he would authorize me to tell Judge Kelly that he was the one who employed me, and he said he would.

Q Excuse me. That wasn't my question. My question was, did you prepare your first memorandum regarding the conversation between yourself and Judge Kelly after you had had this discussion with Mr. Larkin, and after you had received the call from Mr. Luckie?

A I prepared it on February 10; so, it was after that, yes sir.

Q Thank you. Now, this was the first of a series of some ten or eleven memorandums that you prepared after you had those conferences with Judge Kelly?

A I don't remember how many there were.

Q All right, sir, did you prepare these memorandums at the instruction of Mr. Charles Luckie?

A I certainly did not.

Q Now, did - - -

A As a matter of fact, I don't think Mr. Luckie knew I had prepared them until these impeachment proceedings.

Q Sir, didn't you take them over to Mr. Luckie prior to the impeachment proceedings?

A Not that I recall, no sir.

Q Now, the next conference you held was on February 13, where Judge Kelly showed you some additional disqualification papers?

A I believe so. These - - - those memorandums contain my best recollection of it, and - - -

Q All right, sir, I'm asking - - -

A - - - if they say that, that's correct.

Q I'm asking for your recollection here; and again, it was the subject, the conversation was the subject of the second disqualification proceeding that had been filed?

A Yes sir.

Q And again, this disqualification proceeding embodied a conference that you had with Judge Kelly?

A It dealt primarily with the - - -

Q I'm asking you if it's embodied within the conference of February 1, 1961, that you had with Judge Kelly?

A It would amount to that, yes.

Q Now, do you know who filed that suggestion of disqualification?

A I think it was the law firm of Dayton, Dayton & Luckie. I don't know.

Q All right, sir; and this was after your February 8, 1961 conference with Mr. Luckie?

A Yes.

Q Now, did you show Judge Kelly your memorandum of February 10, 1961? In other words, the first memorandum that you wrote concerning your conversations with Judge Kelly, did you eventually show that to Judge Kelly?

A Yes sir. I think there's a pencilled note on the bot-

tom of it, showing when I delivered it to him, or when it was returned to me or something to that effect.

Q Right. And Judge Kelly had his secretary go over there, sir?

A Yes sir, that's right.

Q And you know about that, among other things, because Judge Dayton's secretary saw it on Judge Kelly's desk on February 13, 1961?

MR. DANIEL: Your Honor, again, the nature of the question is - - -

MR. McALILEY: I withdraw that question. I'll rephrase it, Your Honor.

CHIEF JUSTICE DREW: All right.

BY MR. McALILEY:

Q Did Judge Dayton's secretary inform you that your statement was in the possession of Judge Kelly's secretary, and that she had seen it?

A She did but, as a matter of fact, Judge Kelly told me to deliver my memorandum to his secretary to start with.

Q I understand. And was this information reported back to you in this manner that I described?

A She mentioned it to me, yes.

Q Now, again, on February 8, 1961, sir, did you go to Mr. Luckie, to the home of Mr. Luckie, sir?

A If that was the date. I don't recall the date.

Q Well, is that approximately correct?

A Yes sir, after Judge Kelly had barred me from reporting for him, I believe, was the date.

Q Now, with regard to the contempt citations in the Scussel case, the way you related it, Judge Kelly had dictated the opinion to you? Wasn't that your testimony, sir?

A Yes sir.

Q And you characterized that opinion as an official opinion on your direct testimony?

A I don't recall that I did. I simply said he dictated what he said was an opinion to me.

Q All right, sir, didn't Judge Kelly tell you at the outset that this was going to be an opinion - - - didn't he tell you at the outset that he didn't know if this was going to be an opinion, but he wanted to have it ready when he did hold a hearing?

A Yes sir.

Q At the beginning, when he dictated this Scussel opinion to you, he told you that he did not know that this was, in fact, going to be his opinion, didn't he?

A That's correct.

Q Yes sir; and that's what Judge Kelly told you at the time he dictated it to you, gave it to you?

A Yes sir.

Q Now, this opinion that you received was after he had issued a rule to show cause to Mr. Luckie, Clawson and Larkin?

A I presume so.

Q All right. Now - - -

MR. DANIEL: May it please the Chief Justice, I believe that would be leading, in that it assumes a fact not in evidence by this witness.

CHIEF JUSTICE DREW: I think he asked him if it was.

MR. DANIEL: All right, sir.

CHIEF JUSTICE DREW: But I think, if he'll just ask the questions, instead of relating it, it will be better.

BY MR. McALILEY:

Q Well, sir, was this opinion dictated after the rule to show cause was issued to Mr. Larkin, Mr. Clawson, and Mr. Luckie?

A I presume so. I don't think I've ever seen the rule to show cause. He had hearings set that afternoon; so, I couldn't answer that.

Q And have you ever seen an order holding Mr. Luckie in contempt?

A No sir.

Q Have you ever seen an order holding Mr. Larkin in contempt?

A No sir.

Q Have you ever seen an order holding Mr. Clawson in contempt, sir?

A No sir.

Q So, the only thing you have seen, sir, is the opinion that was dictated to you by the Judge, in which he told you that he didn't know whether it would ultimately be his opinion?

A That's correct, sir.

Q And this, of course, was before he held any hearing on the contempt matter?

A Yes sir.

Q Now, sir, did you report a meeting, or make a memorandum of a meeting that you held with Judge Kelly on the stairs?

A On what?

Q On the stairs? Did you hold a conversation with him on the stairwell on one occasion, and then report it?

A Yes sir. This was just before I came up to the House Committee.

Q That's correct, sir, and you reported it, put that in a memorandum within six or seven minutes - - - I'll rephrase it. Did you report, put that into a memorandum within six minutes after that conversation?

A I don't recall exactly how long, but I do know that right after the conversation I went to the typewriter and typed it, yes.

Q You had been doing that beginning back on February 10, and carrying it through to this time?

A Yes sir.

Q All right, sir. Now, during the Terry Grady murder trial, since it has been mentioned, did you make a complaint to Judge Kelly at one time that he had taken testimony for a long period of time without giving you a break?

A I did, yes sir, I - - -

Q Excuse me, sir, did you finish?

A I was just going to say that I reported more testi-

mony per day during that trial than I ever had before; it ran about - - - well, more than half again as much as an ordinary trial.

Q All right, sir; and after you made this complaint to Judge Kelly, did he correct this situation, sir?

A Yes sir. I think we had gone something over three hours without a recess, and I mentioned it to him, and after that, he did grant me recesses.

Q All right, sir; and in his work as a Court, with you as the Court Reporter, sir, did he show you consideration in the performance of your job?

MR. DANIEL: Objected to as not being in cross of anything brought out on direct.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: Yes sir, I would say so.

BY MR. McALILEY:

Q In terms of your official - - - in terms of your capacity as a Court Reporter, reporting for this Judge, sir, do you have any complaints about the way that he handled the work of the Court?

A Not insofar as the actual reporting in the Court Room during the process of a hearing.

Q All right, sir. Now, as a Court Reporter, and with regard to the inquiry about the Grady murder trial, sir, did the conversation, or does the conversation between court and counsel vary with the cases and vary with the legal issues involved?

A Oh, yes.

Q Is there any set pattern, in terms of the amount of testimony that you will find in one case, as opposed to another case?

A I've never made any study of it, but I wouldn't think so.

Q And, as a matter of fact, in the Terry Grady murder trial, there was almost as much conversation by Mr. Altman as there was by the Court?

A Yes sir. I gave the figures. I - - -

Q All right, sir, and what was Mr. Altman's capacity in this trial?

A He was defense counsel.

Q All right, sir, he was the defense counsel who ultimately gained a directed verdict for his client?

A Yes sir.

Q Can you tell this Court approximately how many memorandums you made of your conversations between yourself and Judge Kelly? Just give us an approximation?

A Twelve to fifteen.

Q This was made over a period of two years?

A Or three years. I forget. It may have been three years.

Q To refresh your recollection, sir, you received the telephone call prior to the time you came up to the House Committee hearing from Judge Kelly, did you not? To come over?

A No, as I recall, he came to my office and asked me to come into his office.

Q All right, sir.

A I believe that's the way it was.

Q And how far are the offices apart?

A Probably forty feet.

Q After you were subpoenaed to come up to the House Committee, did you disclose the contents of your memorandums to Mr. Luckie and Mr. Goodson?

A Yes, I did.

Q You testified to that in the House, did you not?

A I don't recall. I believe I did.

MR. McALILEY: No further questions.

CHIEF JUSTICE DREW: I have some questions from Senators.

MR. McALILEY: Your Honor, may I ask one or two questions very briefly?

BY MR. McALILEY:

Q Mr. Swain, how long was it after you received this opinion - - - that Judge Kelly told you he did not know whether it would be his final opinion or not - - - referring to the one in the Scussel matter - - - how long was it after you received it that you took it over to Mr. Luckie?

A I never took it to Mr. Luckie that I recall. He was in my office subsequently, about two weeks after that, and I read it to him from my shorthand notes.

Q You never gave it to him?

A Unless I did prior to the impeachment.

Q All right, sir.

A At the House Committee hearing, I may have then.

Q Now, you mentioned something else and I will cover it very briefly with you. That you feel that, in the last conversation before the House Committee, that Judge Kelly threatened you in some way?

A Yes, I do.

Q Did he ever tell you that you would not have your job as a Court Reporter?

A No, only by implication.

Q And this was after your name had appeared twice in disqualification proceedings, and this was after you had delivered an order to Mr. Luckie and had been to Mr. Luckie's home, that you felt - - - this was after a two year period - - -

MR. DANIEL: If it please the Court, it appears that counsel for Respondent is now summing up and arguing the case with the witness, rather than asking questions. We object on that basis.

MR. McALILEY: I withdraw the question.

CHIEF JUSTICE DREW: These questions are from Senators. From Senator Price of the 36th: "Did I understand you correctly to say that you made your first memorandum thirty-nine days after Judge Kelly was elected?"

THE WITNESS: I don't believe I made that statement. Judge Kelly, I believe, took office January 1, 1961; and I believe the date of my first memorandum was February 10, 1961 - - - thirty-nine days.

CHIEF JUSTICE DREW: Senator Stratton: "Was the testimony that you read, was that from your recollection or memory, in your memorandum to the Judge?" I assume that is what the Senator means.

THE WITNESS: I assume he is referring to the statement which I filed - - - the sworn statement which I filed in the Court file, and that was prepared from the

memorandums which I had previously made, commencing February 10th.

CHIEF JUSTICE DREW: Another question: How can you explain your loss of recollection when asked if you were paid by check or cash?

THE WITNESS: I don't know that I can explain it. Sometimes I am paid by cash and sometimes by check; and I just don't recall.

CHIEF JUSTICE DREW: You don't remember whether you were paid for this transcript of testimony at the park by check or cash?

THE WITNESS: No sir, I do not.

CHIEF JUSTICE DREW: Senator Connor: "Are you a Court Reporter in the County Judge's Court in Pasco County?"

THE WITNESS: Frankly - - - I am rather ashamed to admit it - - - but I frankly don't know what courts I am Court Reporter in. The law authorizing my position says that I will be the official court reporter for all judicial proceedings in Pasco County. Now, I have never gotten clarification of what all that covers.

CHIEF JUSTICE DREW: Another question by Senator Connor: "Does the Justice of the Peace Court have a Court Reporter?"

THE WITNESS: Nothing, only the wording of the law which I just referred to, is all I know. Otherwise, they do not have an official Court Reporter, no.

CHIEF JUSTICE DREW: Another question by Senator Connor: "What is the authorization for a Court Reporter for the Justice of the Peace Court, if you know?"

THE WITNESS: I don't know of any, sir.

CHIEF JUSTICE DREW: Senator Askew of the 2nd asks: "Have you ever been employed, prior to the Zephyrhills speech by Judge Kelly, to report a speech of this type?"

THE WITNESS: I have never been employed by Judge Kelly to report a speech, no sir.

CHIEF JUSTICE DREW: The question is: "Have you ever been employed, prior to Judge Kelly's speech - - - by Judge Kelly - - - that is, a speech he made - - - to report a speech? Not whether you were employed by Judge Kelly, but were you ever employed, prior to that speech that you did report, to report a speech of that type? To make a transcript?"

THE WITNESS: You refer to the Zephyrhills speech - - - I assume you mean the Fairgrounds speech, which is the only speech I have ever reported in a political campaign, of any kind.

CHIEF JUSTICE DREW: That is the only one you have ever reported?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: Senator Cleveland asks this question: "Was it a customary occurrence in cases reported by you before Judge Kelly for him to interrogate the witnesses and instruct you that his interrogatories were off the record?"

THE WITNESS: That happened sometimes, yes sir. I don't know whether you would say it was "customary." I don't think Judge Kelly went off the record in that manner any more than any of the other Judges that I have worked with.

CHIEF JUSTICE DREW: I think what Senator Cleveland wants to know is whether or not the Judge would

ask the witness questions off the record and tell you not to report what he asked them.

THE WITNESS: Occasionally, yes sir. I think all Judges that I have worked with have done that on some occasions. Judge Kelly, however, always instructed me that everything was on the record unless he specifically told me that it was off the record.

CHIEF JUSTICE DREW: Another question by Senator Cleveland: "Approximately how many cases have you reported before Judge Kelly?"

THE WITNESS: That would be very difficult to answer.

CHIEF JUSTICE DREW: Just approximately?

THE WITNESS: Well, I would say several hundred, including the divorce cases and matters of that kind.

CHIEF JUSTICE DREW: Over a period of three or four years?

THE WITNESS: Over the period since he has been in office, yes sir. Two and one-half years.

CHIEF JUSTICE DREW: Senator Blank would like to know: "Did Judge Kelly request or join in a request that you make a memorandum of your conferences with him held on February 1st, 3rd and 10th?"

THE WITNESS: No sir. He did not request that I do so. He knew that I was making it, because I offered it to him and he took it. The first one.

CHIEF JUSTICE DREW: You may examine.

REDIRECT EXAMINATION

By MR. DANIEL:

Q Mr. Swain, with respect to the opinion in the Luckie contempt matter, were there other opinions indicated by Judge Kelly at the time?

A No sir, this one opinion was the only one dictated to me.

Q I didn't say "dictated." I said "indicated"?

A Well, yes; he said that there would be two opinions. One, for Mr. Luckie having procured an affidavit from E. B. Larkin; and another, identical, for having procured an affidavit from Robert E. Clawson.

Q Were orders indicated at the same time?

A He told me that he would have opinions and orders in both cases, yes sir.

Q Well, why did you start keeping these memorandums, Mr. Swain?

A Well, it became apparent, after the first few days, after the first few conferences I had with Judge Kelly, that he was going to possibly take some action against me, and I did it for my own protection; because I don't like to rely on memory for things like that.

Q So that if it was necessary, you could later refresh your memory?

A Yes sir.

Q Have you ever been called upon by attorneys to report matters before Justice of the Peace Courts and County Judge's Courts, or even Municipal Courts?

A Yes sir.

Q And when you do this, do you send them bills?

A Yes sir. Also in the Circuit Court.

Q And also the Circuit Court, of course. Now, do you

keep books on the amounts of money that you receive from your free lance, as well as your official court reporting duties?

A Yes sir.

MR. McALILEY: Objected to. That involves a matter that was not brought out on cross.

MR. DANIEL: Yes, it was, Your Honor. His recollection as to whether cash or checks were received has been brought up; and I am trying to point out that he reports numerous matters for attorneys.

CHIEF JUSTICE DREW: You may bring out any evidence on recross that occurs to you. You may cross examine.

BY MR. DANIEL:

Q Did you always keep in your books whether you were paid by cash or by check, or do you just put whether or not it is paid?

A No, I don't make any distinction. I just show the amount and the date.

Q Would it be possible for you to go back over your books now and determine, in each instance, whether you were paid by cash or by check?

A No sir.

Q Or by money's worth - - - well, I will withdraw that.

MR. DANIEL: That's all.

MR. McALILEY: No further questions.

CHIEF JUSTICE DREW: You may come down.

SENATOR CROSS: Mr. Chief Justice, I have one short question.

CHIEF JUSTICE DREW: Senator Cross of the 32nd asks this question: "If you did not trust Judge Kelly, why didn't you resign as Court Reporter?"

THE WITNESS: I don't know, sir, what you mean by if I did not trust him. Of course I didn't resign because I liked the job.

SENATOR CROSS: You said that you felt he was going to take some action against you.

CHIEF JUSTICE DREW: I don't think we can permit a Senator to ask questions from the floor. You did not resign, though - - - were you suspicious of Judge Kelly?

THE WITNESS: I don't know that I would say I was suspicious, Your Honor. The general tenor of these discussions we had led me to believe that he might take some action to have my position as a Court Reporter revoked. I wanted to - - - I thought it best to prepare these memorandums to give my recollection while it was fresh in my mind.

CHIEF JUSTICE DREW: Do you want to send up another question, Senator Cross? Would you like to send up a question?

SENATOR CROSS: No.

CHIEF JUSTICE DREW: You may come down.

MR. DANIEL: May I ask one further question.

REDIRECT EXAMINATION (RESUMED)

BY MR. DANIEL:

Q As an official appointed Court Reporter, who are you answerable to, with respect to your conduct?

A It is my understanding, to the State of Florida, to the Governor.

Q The Governor of the State of Florida?

A Yes sir. He is the one that appoints me. I hold my appointment at his pleasure.

Q Was it for this purpose that you kept these memorandums of your conduct?

A Yes sir.

Q I wonder, Mr. Swain, if you would explain clearly what gave you the impression that Judge Kelly was - - - I believe, in your words - - - intimidating you before you came up to testify before the House Committee?

A Well, just the way his remarks were worded. The fact that I expected to remain here and that I liked the work in Dade City; and cautioning me to be sure that I told anything good about him, as well as anything bad - - - if there was anything good about him.

Q Those remarks about your desire to remain came right in the same conversation and right on the heels of asking if you were a witness before the impeachment - - -

MR. McALILEY: Your Honor, he is summing up again.

CHIEF JUSTICE DREW: I didn't want to interrupt you, but I think that has been gone over.

MR. DANIEL: All right, sir. Thank you.

MR. McALILEY: Just two questions, Your Honor.

CHIEF JUSTICE DREW: Let me ask a question, counsel. Senator Barron would like to know: "Since you knew there was disagreement between Judge Kelly and Mr. Luckie, do you not feel that it was a breach of confidence or professional ethics to read the unpublished order to Mr. Luckie?"

THE WITNESS: Possibly it was, Senator. I spent several sleepless nights worrying about that, and I finally resolved the question in my mind that it was the proper thing to do, and I did it.

CHIEF JUSTICE DREW: The second question: "Why did you feel compelled to show the order to Mr. Luckie?"

THE WITNESS: Because I felt that an injustice might be done to him by something that I felt was wrong; and, in the event he needed it, to clear himself and take further action; that is why I showed it to him.

MR. McALILEY: We have nothing further.

MR. DANIEL: We have nothing further.

CHIEF JUSTICE DREW: The witness may come down. You are still under the rule unless you are excused by both counsel.

(witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. O'NEILL: Arthur W. Jordan, Jr.

Thereupon,

ARTHUR W. JORDAN, JR.,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

CHIEF JUSTICE DREW: Will you speak directly into the microphone and not face counsel for either party when being interrogated, please sir. Speak as distinctly as you can.

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Please state your full name, address, and occupation - - - occupation or profession, please sir.

A Arthur William Jordan, Jr., Attorney, Clearwater, Florida.

Q Mr. Jordan, how long have you practiced law?

A Since approximately June of 1941.

Q Have you always practiced law in Clearwater, Florida?

A Yes sir.

Q Where did you take your law degree?

A At the University of Florida.

Q Was that in 1941, please?

A That's right.

Q Have you ever had occasion to appear before Circuit Judge Richard Kelly?

A Yes sir.

Q Approximately what month and year was that, sir?

A It was in 1962. I would say in or about the month of April of last year.

Q Did you handle a case called Jackson vs. Luster?

A Yes sir.

Q Was that a mortgage foreclosure suit?

A Yes sir.

Q In what county had it been filed?

A In Pinellas County.

Q Whom did you represent in that cause?

A The Plaintiff.

Q Was this the case where you got personal service upon the Defendant, or constructive service on the Defendant?

A Constructive service.

Q Will you relate to the Court whether or not you did anything prior to the filing of this mortgage foreclosure proceeding?

A One of my associates, Judge Smith, had begun this matter in behalf of Mr. Jackson by directing a letter to the Defendant, Mrs. Luster, in or about October of 1961, calling attention to the fact that she had been - - - was delinquent in her mortgage payments. Copy of the letter is in the office file.

Q Will you refresh your memory from the court file which you have before you, and state whether or not that is the official court file of those proceedings in the mortgage foreclosure matter?

A Yes sir.

Q What date was that suit to foreclose this mortgage filed?

A On March 29, 1962.

Q Did you follow the usual statutory course for the purpose of publication and notice by publication, as provided by law - - -

A Yes.

Q - - - in such matters? Does the file so reflect that you did follow that procedure?

A Yes sir.

Q Did you have more than one hearing in this particular cause, Mr. Jordan?

A Yes sir.

Q State what occurred on the first hearing?

A A decree pro confesso had been taken.

Q On what date, sir?

A It was filed on the 1st day of May, 1962.

Q All right, sir. Did you, thereafter, have a hearing, and who was it before?

A It was an ex parte hearing before Judge Kelly in his Chambers. I brought the Plaintiff, Mr. Jackson. Unfortunately, Mr. Jackson had forgotten to bring in the original of the promissory note which he had in his safe deposit box in one of the local banks. So, of course, the final decree could not be entered on that day but in the course of the constructive service, an affidavit was filed for purposes of constructive service, as required by the statute. Mr. Jackson testified that he had made diligent search and inquiry in the entire neighborhood, in an effort to locate the Defendant, Mrs. Luster; that he had learned from neighbors that she had, quite some time previously, moved to, I believe, Trenton, New Jersey, to live with a daughter, a Mrs. Johnny Braxton. The suit had been - - - when the suit was filed, the Defendant, Alberta Luster's address, or last known address, was given in care of Mrs. J. L. Braxton, P. O. Box 734, Trenton, New Jersey.

Q At the time that you had previously, in October, I believe you testified, mailed a letter to this Defendant in this foreclosure proceeding, what address had you used, sir?

A The previous October Mr. Jackson had advised that he could not find Mrs. Luster, and that she was supposed to have moved to Perry, Florida, with this same daughter, Mrs. Johnny Braxton. A letter was addressed - - - that letter was addressed to Mrs. Luster, the subsequent Defendant, at her home address in Clearwater, and a copy of that letter was sent to her daughter in Perry, in an effort to make sure that the letter reached her.

Q All right, sir. Then did you have any subsequent hearing to the first hearing, where the Plaintiff had forgotten to bring the note?

A We had another hearing because, in the first hearing, why, Judge Kelly was not willing to accept, apparently, Mr. Jackson's sworn testimony, nor the affidavit for constructive service, and he insisted that another letter be written to the Defendant by registered mail, which was done. The white receipt from the Post Office was retained, and in a few days thereafter, the return receipt came back, signed by this Mrs. Johnny Braxton, the daughter of the Defendant, to indicate that the letter had been received. The general gist of that letter was that a mortgage foreclosure had been started because every effort had been made to reach her; that the Plaintiff, Mr. Jackson, was still willing to dismiss the mortgage proceedings if she wanted to redeem her property, and at least, bring her payments up to date, even at that late time; that was the general gist of the letter. We waited quite some time after that for another brief - - - not a hearing so much as a few minutes before Judge Kelly for the presentation of the final decree for his approval and signature.

Q Did you later have to show additional proof, other than what you just testified about, as to the service?

A When I went back in before Judge Kelly with the final decree, I showed him a copy of the letter that had been dictated by my associate, Mr. Smith. I showed him the white post office receipt, and I showed him the pink return receipt, signed by Mrs. Johnny Braxton, in care of whom the letter had been addressed, to show that she had received it.

Quite some time had passed by that time, and we had received no answer from that letter, and I so stated to Judge Kelly. Judge Kelly said that he couldn't see that the return receipt had any connection with the letter, or the letter with the return receipt, and he wanted some proof of that, and to have Mr. Smith to come into court and testify that he had dictated the letter and had seen to its mailing. I advised Judge Kelly that on the evening of July 30, Mr. Smith had suffered a heart attack and was in the hospital; there was no way to get him into court, and I had no intention of bothering him in the hospital for any affidavit. I told Judge Kelly, or reminded him, that everything that the law required had been done in this case, and a good deal more. Judge Kelly's reply was that "this court has ruled otherwise." He asked about the secretary who took the dictation and typed the letter, and I told him that Mrs. Cannon, the secretary, was holding Mr. Smith's office down during his illness, but that if he insisted, I would bring her in court. Judge Kelly said, "Oh, no, that won't be necessary. Just get her affidavit."

Q Did you so get the affidavit?

A I did.

Q Does the file so reflect?

A Yes sir.

Q How much was the unpaid balance on the mortgage on that particular suit?

A \$742.02 on principal and interest, through March 27 of 1962.

MR. O'NEILL: You may inquire of the witness.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Jordan, many of the members of this body are not lawyers, and we've been using terms like "ex parte hearings," "constructive service," and that sort of thing, and I wonder if you and I can, together, explain something about the procedure in these matters, so that the Senate will be fully apprized. Now, when you talk about constructive service in this mortgage foreclosure proceeding, you're talking about, are you not, a statutory procedure whereby we seek to inform the Defendant of the proceedings that have been brought against him, because we haven't been able to serve him personally through the sheriff; that's correct, isn't it?

A Yes sir.

Q And the statute provides that notice shall be published in the newspaper.

CHIEF JUSTICE DREW: Why don't you just ask him what was done?

MR. MASTERSON: I thought it would be quicker the other way, sir. If you prefer it, I'll be glad to - - -

CHIEF JUSTICE DREW: Do you have any objection to the question?

MR. O'NEILL: I object to the speeches, I don't object to him stating what is required in asking the witness, if he thinks it would speed the proceedings.

MR. MASTERSON: Well, I address the Court: Should I lead him, or - - -

CHIEF JUSTICE DREW: Yes, go ahead.

BY MR. MASTERSON:

Q All right, sir, the statute with which we're concerned provides that a notice shall be published in a newspaper that a suit has been filed against this particular Defendant, isn't that true, sir?

A Yes sir.

Q And it must be published for four weeks?

A Once a week for four consecutive weeks, yes sir.

Q And the reason for that is designed to inform an absent Defendant, or a Defendant who can't be located that there are some proceedings that are going forward in court, and that he must do something about them, if he wishes to; that's correct, isn't it?

A Yes sir.

Q And in addition to the publication of notice in the newspaper, the statute further requires that the party, the Plaintiff, or her attorney, make diligent search for this absent Defendant; isn't that correct?

A That's correct.

Q And you must file an affidavit in the proceeding, saying, "I have diligently sought to find this Defendant" - - - that's the effect of it - - - "so he can be placed on notice of the fact that we're trying to take \$750 away from him" in this particular case?

A Yes sir.

Q Now, Mr. Jordan, you and I practice in the same Circuit, don't we, the Sixth Circuit?

A Yes sir.

Q And would you say it's a fair statement, most of our judges don't merely accept the affidavit of diligent search, but they inquire of the attorney, just what did you do to put the Defendant on notice of these proceedings?

A Yes sir, that's why I brought the Plaintiff, Mr. Jackson, to the very first hearing to testify - - -

Q Yes sir.

A - - - as to exactly what he had done.

Q Yes sir, because we go beyond the affidavit; we try to find out exactly what was done, isn't that correct?

A That's right.

Q Would you say that's true, even in proceedings before a General Master, the Master in a divorce proceeding in our Circuit?

MR. O'NEILL: They have raised the question now, may it please the Court - - - I have refrained myself from making objections, but I think that Mr. Masterson is getting out of hand; it looks like we're getting to a field test here.

CHIEF JUSTICE DREW: Well, counsel, I asked you if you had any objection to this line of questioning.

MR. O'NEILL: Well, I'm objecting at this time, Your Honor.

MR. MASTERSON: Your Honor, I'm trying to find out what is customary in our Circuit in constructive notice proceedings; the charge is made here that Judge Kelly is abusing this procedure.

CHIEF JUSTICE DREW: Well, let's save some time; just ask him what the custom is.

BY MR. MASTERSON:

Q I was on the question of General Masters' proceedings, I believe, Mr. Jordan. What is the custom with General Masters in regard to the acceptance of these affidavits of diligent search? Do they accept it, or do they ask you, what did you do to search diligently for this man?

A Mr. Masterson, they ask what was done, but I have never been before a judge or a Master in chancery on a mortgage foreclosure proceeding in all the years I've practiced law where the affidavit and the statements of at least counsel were not accepted.

Q Well, now, Mr. Jordan, the rights of an absent party are being adjudicated in these proceedings, isn't that correct?

A Yes sir.

Q And if the Court doesn't seek to protect the absent party, there is no other way to protect him at all; isn't that true?

MR. O'NEILL: Objected to as argumentative.

CHIEF JUSTICE DREW: Overruled.

BY MR. MASTERSON:

Q Would you answer the question.

A Please restate the question.

Q Is that - - -

MR. O'NEILL: We object to counsel restating the question; the Court Reporter can restate it.

MR. MASTERSON: I'm sorry. Let the Reporter read it.

CHIEF JUSTICE DREW: Will you please restate your question. I overrule the objection.

BY MR. MASTERSON:

Q The question is this: The rights of an absent party, a party who is not available in court to defend himself, are being determined, in these proceedings, and if the court doesn't attempt to protect him, there's no one there to speak for him at all; isn't that true?

A Yes sir.

Q And the court has not only the right but the duty, does it not, to determine that diligent search has, in fact, been made for this absent person?

A Yes sir.

MR. MASTERSON: No further questions.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Mr. Jordan, is the purpose of the statute for constructive service by publication and mail used where people secrete themselves and cannot be found within the boundaries of the State of Florida?

A Yes sir.

Q Is it customary to send out supplemental letters after you have followed the statute in the Sixth Judicial Circuit of Florida?

A No sir.

Q Isn't it a fact that you also had previously notified, at the same address, this Defendant in October of 1961, that a proceeding was about to be commenced?

A Yes sir.

Q Did the delay caused by this, and the amount of money involved injure your client, Mr. Jackson?

A No sir, I don't think financially it particularly injured him. It delayed him in whatever plans he may have had, I would imagine, but I couldn't answer that.

Q In other words, this delay was necessitated by the requirement that Judge Kelly had you go through?

A Yes sir.

MR. MASTERSON: May it please the Court, I think these leading questions are completely out of hand; we ought to hear from the witness.

MR. O'NEILL: Mr. Masterson - - -

CHIEF JUSTICE DREW: The Court has been generous - - -

MR. O'NEILL: I withdraw the question.

CHIEF JUSTICE DREW: Well, I will allow the question if it will expedite the proceedings, if it isn't abused too much.

MR. O'NEILL: I withdraw the question, if it please the Court.

MR. MASTERSON: We have nothing further, Your Honor.

CHIEF JUSTICE DREW: You may come down. You're still under the rule until you are released by counsel for both sides.

MR. O'NEILL: Is there any objection to the gentleman returning to his home, subject to recall, under the previous arrangement, counsel?

MR. MASTERSON: Could we have just a moment, please?

MR. NICHOLS: Your Honor, we will release the witness under the same rule.

CHIEF JUSTICE DREW: You may return home, subject to recall.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. DANIEL: Will the Secretary call Robert Clawson.

SECRETARY FRASER: Robert Clawson?

MR. DANIEL: C-l-a-w-s-o-n.

CHIEF JUSTICE DREW: The witness, gentlemen, is Robert Clawson, C-l-a-w-s-o-n.

The Secretary will swear the witness.

Thereupon,

ROBERT E. CLAWSON,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

CHIEF JUSTICE DREW: I would like to request you, sir, if you will speak directly into the microphone, hold it reasonably close to you, and do not look at counsel for either side when you answer their questions, please.

THE WITNESS: Yes sir.

DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you state your name, occupation or profession and address, please?

A My name is Robert E. Clawson. I am an attorney at law. My present address is Chipley, Florida.

Q Do you practice law in Chipley, Florida?

A Yes, I do.

Q How long have you practiced in Chipley?

A I have been in Chipley since the 25th, I believe, of July.

Q Of this year?

A Yes sir.

Q How long have you been admitted to the Bar and a practicing attorney in Florida?

A Since 1953. I was admitted to the Bar in 1951, but I didn't start practicing until 1953; I was in service.

Q Where did you practice prior to moving to Chipley? Immediately prior?

A Pasco County. Dade City, Pasco County, Florida.

Q How long had you practiced there prior to moving to Chipley?

A Well, since 1953. Approximately ten and a half years.

Q Would you give a brief resume of your legal education, Mr. Clawson?

A Well, I attended the University of Florida, College of Law; graduated from the University with a Law Degree.

Q What year did you graduate?

A 1951, in February.

Q Most of your practice until this year, then, was in Pasco County, I believe you said?

A All of it.

Q That is in the Sixth Judicial Circuit?

A Yes sir.

Q What type of practice did you maintain in Pasco County prior to your removal to Chipley, Florida?

A Well, I think you could say that I engaged in a general practice of law.

Q Do you know Judge Richard Kelly?

A Yes, I do.

Q Did you have occasion to practice before him as an attorney in Pasco County?

A I did, on a very limited scale.

Q Did you hold an elective position in Pasco County?

A I did.

Q What was that position?

A I was County Prosecutor for Pasco County, elected in 1960; and took office in 1961.

Q Did you ever have occasion to try a Jury trial before Judge Kelly?

A I did.

Q I call your attention to the case of Buffeteria vs. Powell, and ask you if you are familiar with that matter?

A Yes, I am.

Q Did you appear as an advocate in that matter?

A Yes sir.

Q On which side?

A Buffeteria, Incorporated.

Q They were the Plaintiffs?

A Yes.

Q Would you state the nature of that cause, please? Mr. O'Neill is handing you the file, in case you need to refresh your memory.

A The case emanated from a lease arrangement wherein one Lawrence N. Powell was the lessor and my client, Buffeteria, Incorporated, was the lessee. The lease provided for the payment of \$500 in addition to a monthly rental stipulation, conditioned upon - - - the \$500 was conditioned upon the payment to the lessor for any damages that the lessor might sustain as a result of a breach of the lease on behalf of the lessee.

Q What was the nature of the case? Did you file a Complaint in this cause?

A Yes, I did.

Q What relief were you seeking in the Complaint?

A We were seeking a return to Buffeteria of certain equipment that the Defendants held - - - air conditioners, adding machines, certain kitchen equipment, - - - and for the return of the \$500 deposit.

Q Did this come on for hearing before Judge Kelly?

A Yes, it did.

Q Would you briefly relate the sequence of events occurring in that hearing?

A Well, to begin with, the case was filed as a Chancery case or an Equity case, because certain accountings were required. We felt we needed possibly to have coercive relief. And it is my opinion that it should have been a Chancery case. However, upon motion to dismiss on behalf of the Defendant, Judge Kelly transferred the cause to the Law side of the Court, thereby making it a very cumbersome case to handle. As a result, nevertheless, we did go to trial before a Jury. We were only seeking the return of certain equipment which was ours. It was not denied that it was ours. And the return of the \$500 which had been deposited under the terms of the lease. Claiming that, even if we admitted that the lease had been breached by Buffeteria, that the lessor had suffered no damage and therefore had no claim to the \$500.

Q Did the case go on to final judgement?

A Yes, it did.

Q Was there anything unusual and peculiar about the final judgment in the matter?

A Yes, there was. The verdict of the Jury came back as an impossible verdict. The verdict awarded to the Plaintiff, as I recall, \$300; and, to the Defendant, \$200. What they decided was that they were just going to split up the \$500 and assess no damages. During the course of the proceedings the Defendant testified under oath, in his own behalf - - - on the stand he testified that he had not been damaged by virtue of any breach of the lease; that he had suffered no damage. Immediately thereafter, or as soon as it was appropriate, I moved the Court to direct a verdict, inasmuch as the Defendant himself said under oath, before the Jury, that there were no damages; and the lease specifically said that the \$500 was conditioned only to pay his damages. If he suffered none we were entitled to have it returned. But the Court denied my motion and thereby sent it to the Jury, and

thereby we came out with a verdict that was impossible. It was a very difficult case. I am not blaming the Jurors; because, as I said before, it should have been an Equity case and not something that they should have to try.

Q Now, away from that for a moment. Do you know Charlie Luckie, an attorney in Dade City?

A Yes, I do.

Q Did you have occasion to sign an affidavit in a motion for disqualification prepared by Mr. Luckie?

A Yes, I did.

Q Would you relate to the Court the basis under which you signed this affidavit, Mr. Clawson?

A Yes sir. It is my recollection that Mr. Luckie was filing a proceeding to ask Judge Kelly to disqualify himself in a given case - - - I can't recall the style of the case at this moment - - - and asked me, as a disinterested person, under and by virtue of the statutes providing for disqualification - - - he asked me to sign an affidavit, which I did do.

Q Do you recall the nature of the affidavit you signed?

A Yes sir.

Q What was the nature of the affidavit?

What were you swearing to in that affidavit?

A In general terms, sir, I swore that - - -

Q Would it be of assistance to you if you had the affidavit to refresh your memory?

A Yes, I believe it would.

MR. DANIEL: Mr. Secretary, would you give it to him? It is State Road Department vs. Aiken, I believe.

THE WITNESS: By and large, the affidavit states, among other things - - - the formal parts, such as my name and age and address, and so forth, and that I am a practicing attorney - - - that I know that - - - that I believe the facts, as stated in the main affidavit, are true; and that I feel that the Defendants could not expect a fair and impartial trial if they were required to have their case tried before Honorable Richard Kelly.

BY MR. DANIEL:

Q Were you representing the Defendants with respect to whom those affidavits were filed?

A No sir.

Q Were you related to the attorney filing the affidavit for the Defendant?

A No sir.

Q Did you file this as a citizen?

A Yes sir.

Q Did anything happen with respect to you subsequent to the filing of this affidavit, Mr. Clawson?

A Yes sir.

Q Would you relate what that was, please?

A At some later date, sir - - - I can't recall the date at this time - - - shortly thereafter, I was served with a Rule to Show Cause issued by Judge Richard Kelly, requiring me to appear before him on a day certain and show cause, if any I could, why I should not be held in contempt of Richard Kelly for the filing of the affidavit which we have just spoken of.

Q Is the filing of a motion for disqualification a statutory procedure?

A Yes, it is.

Q Does it require supporting affidavits?

A Yes, it does.

Q What did you do, if anything, after you received the Rule to Show Cause, Mr. Clawson? What action did you take with respect to the Rule to Show Cause after receiving it?

A Well, the very first thing I did was to ask for a continuance, which was granted. I then, through counsel, filed a Motion to Quash.

Q Did I understand you to say that your motion for continuance was granted?

A Yes sir.

Q And you filed a Motion to Quash?

A Yes sir.

Q What transpired after that?

A Nothing.

Q Is the Rule to Show Cause still pending?

A It is not.

Q How was it dissolved?

A It was subsequently, in or about the month of July, dismissed by the Honorable Judge Hobson.

Q It was dismissed by Judge Hobson?

A Yes sir.

Q Is he a Circuit Judge of the Sixth Judicial Circuit?

A Yes sir, he is.

Q Was it dismissed on your motion?

A It was.

Q Was there an adequate opportunity for all parties to be heard, contained in your motion for dismissal?

A I'm sorry, I didn't understand you.

Q Was adequate opportunity given for all parties to be heard in your motion to dismiss this Rule to Show Cause? You did file a motion to dismiss, did you not?

A No, as I said, we filed a Motion to Quash.

Q To Quash. I'm sorry.

A And possibly later my counsel may have filed a motion to dismiss. At this time I was in the process of moving my office and I can't say whether he did or did not.

Q Who represented you?

A William F. Brewton, an attorney in Dade City.

Q Now, Mr. Clawson, from your nine or ten years practice in Pasco County, - - - am I correct in saying nine or ten?

A Ten and a half, I believe.

Q Ten and a half years practice in Dade County - - -

A Dade City.

Q Dade City, I'm sorry. I keep moving Dade City down to the East Coast - - - in Dade City, in Pasco County - - - and from your experience in the Sixth Judicial Cir-

cuit, with particular reference to Pasco County - - - do you know Judge Kelly's reputation with respect to the conduct of trials and hearings as a Circuit Judge?

A I believe I do.

Q What is that reputation? Good or bad?

A Bad.

Q On what do you base that, Mr. Clawson?

A The public opinion, as expressed to me. The opinions of the other lawyers, not only in Pasco County, but in the surrounding areas. We were what you might call the laughing stock, inasmuch as you might be visiting or talking with another lawyer and, why, almost inevitably, this subject comes up - - - that we are up there practicing before Richard Kelly.

Q Now, did you base this decision, this knowledge of reputation, not only from conversation with attorneys, but with members of the general public, including attorneys, as well?

A Yes sir.

Q How wide a sampling did you take before arriving at this knowledge of reputation? Approximately how many people, other than lawyers, have you had conversation with, with respect to reputation? Your best estimate; I know that you are not keeping score.

A It would be very, very difficult to say.

Q More than one or two?

A Yes sir. I would say more than that. I couldn't give you any estimate, really, no honest estimate of the number; but I do know that various laymen expressed concern over the situation.

Q Now, with respect to the time, in point of time to the impeachment hearings in the House of Representatives of Florida, at the 1963 session of the Legislature, when did you move your office from Dade City to Chipley?

A On July 25th, I believe, I moved; in point of time, with respect to these hearings, it was subsequent to Judge Kelly being impeached in the House, and prior to this trial in the Senate.

Q Why did you move your office to Chipley, Mr. Clawson?

A Specifically to Chipley? Or specifically from Pasco County?

Q Specifically from Pasco County?

MR. MASTERSON: May it please the Court, we are not concerned with why he moved his office. That is far afield from this investigation.

CHIEF JUSTICE DREW: We have allowed other questions along the same line, I think.

BY MR. DANIEL:

Q Will you answer the question?

A I will. I was very apprehensive that Judge Kelly would be returned to Pasco County as a Judge, and I could not practice before him or under him. Life is too short to go through the tortures that we have gone through under him thus far; so I decided that my best course of action was to leave.

MR. DANIEL: You may inquire.

CHIEF JUSTICE DREW: At this time I would like to ask the Senators' questions. Then we are going to recess for about ten minutes.

MR. MASTERSON: All right.

CHIEF JUSTICE DREW: Question by Senator Price - - - was your question answered, Senator?

SENATOR PRICE: Mr. Chief Justice, the question that I posed was posed by counsel for the Managers but I still did not get the conclusion as to how many?

CHIEF JUSTICE DREW: I will ask the question again. "Can you estimate how many people you consulted or talked to, to arrive at your conclusion that Judge Kelly's reputation in the area, among the lawyers and the public, was bad?"

THE WITNESS: Among the lawyers and the public?

CHIEF JUSTICE DREW: Yes, both. Was it a hundred people?

THE WITNESS: No sir. I would say that it was no less than thirty.

SENATOR PRICE: Mr. Chief Justice, he made the statement "a total of thirty." My question stipulated exclusive of the Bench and Bar. I would like for him to answer exclusive of the Bench and Bar.

CHIEF JUSTICE DREW: Exclusive of the Bench and Bar, among persons other than lawyers and Judges, how many people would you say you talked to in gathering that conclusion?

THE WITNESS: Well, based on my prior answer, it would have to be no less than ten, approximately ten. I believe it to be more than that but, to make sure that I have not overestimated it, I would say ten.

CHIEF JUSTICE DREW: By Senator Ryan: "Specifically, what was your complaint about Judge Kelly's handling of the Buffeteria-Powell case?" Specifically, what was your complaint about that case?

THE WITNESS: I never did get to that part of it, Senator Ryan. The part that I objected mostly to, in addition to the Judge's interference that is normal in practicing before Judge Kelly, in the actual file of the case; the actual objectionable part, as far as I was concerned, came after the trial, upon my renewal of my original motion to dismiss, as provided for by the Rules of Civil Procedure. As I indicated, I had a motion for directed verdict at the appropriate time, based on the Defendant's own testimony that he had suffered no damages; and, that motion having been denied, we received an impossible verdict from the Jury.

However, under the rules, I made a motion for a reconsideration of my motion for directed verdict, and this was heard. The motion was argued probably an hour or an hour and a half. I don't recall now. An excessively long time, in my opinion, for that motion. And the Judge finally ruled that he felt that my motion was without merit. He ruled that - - - he said, although without ruling, that he was satisfied that I was entitled to the relief but that he thought my motion was improper, although it was made under the provisions of the appropriate rule; and he directed me to - - - or said that he found implicit in my motion a motion to amend judgment - - - at this time, of course, no judgment had been entered - - - this thing that he found and this thing that he ruled is a nullity and I knew it. But he said that he would grant such a motion, which he considered implied in my motion for directed verdict. I did draw up such a motion, just as nearly to the way he said it as I possibly could, since I had no other thing to go by at that point. It was a completely improper order. So I did draw it and he did sign it; and, as a matter of fact, I did collect for my clients.

CHIEF JUSTICE DREW: Was any appeal taken in that case?

THE WITNESS: There was not.

CHIEF JUSTICE DREW: This is Senator Ryan's question. He wants to know also who were the opposing attorneys in this case.

THE WITNESS: The firm of Larkin, Larkin & Goodson. The actual person was Mr. Goodson. And the reason it was not appealed was because it was only \$500 involved.

CHIEF JUSTICE DREW: The question simply was who were opposing attorneys in the case?

THE WITNESS: I'm sorry. Larkin, Larkin & Goodson.

CHIEF JUSTICE DREW: From Senator Herrell: "Do you have reason to believe that other lawyers will leave Pasco County because they cannot practice before Judge Kelly?"

THE WITNESS: Yes.

CHIEF JUSTICE DREW: Senator Johns asks this question: "How many attorneys and Court Reporters did Judge Kelly hold in contempt, and what was the sentence?"

THE WITNESS: Not any.

CHIEF JUSTICE DREW: How many did he threaten to hold in contempt?

THE WITNESS: Three lawyers, to my knowledge. At least to my knowledge, as far as public records are concerned. I only have specific knowledge of my own, and I have seen public records on the other two, however.

CHIEF JUSTICE DREW: Have you ever evidenced any interest - - - this is from Senator Henderson - - - have you ever evidenced any interest in any Circuit Judgeship which could grow out of either the proposed circuit change involving Pasco County or these impeachment proceedings?

THE WITNESS: I will say to the Senator that I would have been very honored had I been appointed Circuit Judge. This matter was discussed. In almost every instance, however, that it was discussed, the answer was that we were jumping the gun; that that was something that should be taken up when and if a Judgeship - - -

CHIEF JUSTICE DREW: That is not answering the question.

THE WITNESS: I'm sorry.

CHIEF JUSTICE DREW: He wants to know if you evidenced any interest; did you seek it?

THE WITNESS: Yes, I evidenced interest. Yes.

CHIEF JUSTICE DREW: These are the only questions that I have, gentlemen; the only questions the Senators have.

We will now stand in recess until five minutes past four.

Whereupon, at 3:55 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 4:05 o'clock P. M.

A quorum present.

MR. NICHOLS: Your Honor, in order to speed the trial along, we waive cross examination of this witness.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Mr. Secretary, will you call Al Reeves, please.

SECRETARY FRASER: Al Reeves?

MR. JONES: Yes sir.

CHIEF JUSTICE DREW: How do you spell that?

MR. JONES: R-e-e-v-e-s.

CHIEF JUSTICE DREW: Al Reeves, Senators, will be the next witness, Al R-e-e-v-e-s.

Senators, please give your attention.

Thereupon,

ALBERT W. REEVES,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please.

A Albert W. Reeves.

Q Will you please tell us where you reside, and what your occupation or profession is?

A I reside in Dunedin, Florida, and I'm Official Court Reporter for the Sixth Judicial Circuit.

Q How long have you been doing this type of work, Mr. Reeves, and what are your particular qualifications?

A Well, I've been in the Sixth Circuit for thirteen years which is the entire time I've been reporting since I left court reporting school, sir.

Q Do you report for any particular one of the judges, or do you report for all of the judges in the Sixth Judicial Circuit?

A Well, I report for all the judges, but limit my reporting activities to the Court House in Clearwater.

Q And you do report for all the judges?

A Yes sir.

Q Are particular assignments made of Court Reporters, or would you explain that to us, briefly, please?

A No, we have five Court Reporters in Clearwater, and we cover the judge that needs a reporter, however it's convenient for us in our case load for that day.

CHIEF JUSTICE DREW: Mr. Witness, would you please speak directly into the microphone; you do not have to look at counsel.

THE WITNESS: Yes sir.

BY MR. JONES:

Q What type or types of matters do you report, Mr. Reeves?

A Well, I, of course, report all matters that come before the Circuit Court, the lower courts of Pinellas County, the Justice of the Peace Court, right down to the Municipal Court, with the exclusion of the Civil and Criminal Court of Record of Pinellas County, who has its own Official Court Reporter.

Q Mr. Reeves, do you have, or have you ever, in your experience, reported any cases in which Judge Richard Kelly was the judge presiding?

A Yes sir.

Q Do you recall the matter of adoption, in re: The Matter of Patterson?

A Yes sir.

Q I don't state any names to you, for the reason that these files are sealed, and we don't like to reveal the names; you understand that?

A Yes sir.

Q You do recall that matter, in re: Patterson?

A Yes sir, I do.

Q Do you recall whether or not anything unusual occurred, and if so, would you tell us what, in that matter?

A As I recall, the Patterson adoption was a step father adoption. It centered mostly around the diligent search and inquiry of finding the natural father. As I remember, the natural mother had lived with the natural father for some three or four weeks. I'm not sure, but I believe, perhaps, he was in the Service and departed, and that was sort of the end of the marriage. Subsequently, of course, she had remarried, and the stepfather had come in to adopt her child, and the question came up about diligent search and inquiry. I remember, reference was made, of course, by Judge Kelly about the search and inquiry. He inquired of the natural mother of her - - - of the natural father's whereabouts, which she said she hadn't seen him for five or six years, inquired about the natural father's mother or father which, she said, as I remember, that she had never met, and when asked about any brothers or sisters, she said that she had at one time during this three or four weeks that she and her first husband were living together, they had had dinner together with a brother of this natural father, and that was the only contact that she had had, which lasted for one or two hours. When asked if she remembered the name of the brother of the natural father, she said she couldn't remember - - -

Q Excuse me, Mr. Reeves. Who is asking these questions? Who is doing the interrogating, here, when you say "he asked"?

A This was the Court, Judge Kelly.

Q All right, sir. Go ahead, if you will, please.

A He asked about the first name, or the name of this brother, and of course, the last name would be the same, but she couldn't recall the first name. So, the Court tried to refresh her recollection by naming off different names to her - - -

Q Can you give us an example of that, if you can recall the Court's exact language?

A Well, I can't recall the Court's exact names - - -

Q As nearly as possible.

A Was it Richard? Was it Bob? Was it Albert? Was it Robert? And she couldn't recall the brother of the natural father's first name. So, we recessed, and the Court told her to go out and use the phone book and glance through first names and perhaps that would refresh her recollection as to this brother's first name; and we had a recess while she went out to do that.

Q What was the condition, Mr. Reeves, if you recall, at the conclusion of this hearing, of this lady?

A Well, out in the secretary's office, where we were using the phone book, she was crying. The stepfather, he was a little bit beside himself, and we went back in afterwards, and the phone book didn't help at all; she couldn't be sure of the brother's first name.

CHIEF JUSTICE DREW: What is the materiality? What was the part concerning the brother?

THE WITNESS: Well, it was, as I understand, Your Honor, it was on the diligent search and inquiry. It was

my gathering that perhaps, if she could think of the name of some relative of the natural father, or her first husband, perhaps, in that way, they would be able to obtain the whereabouts of the natural father, so he could be notified of this pending adoption.

BY MR. JONES:

Q In other words, Mr. Reeves, there was no relevancy, really, between the brother of the natural father's name and the case at hand?

MR. NICHOLS: Excuse me, Your Honor. I - - - the facts speak for themselves, and I object to that.

MR. JONES: Well, we'll withdraw the question.

BY MR. JONES:

Q Now, Mr. Reeves, approximately - - - excuse me, if you will, please strike that. As I understand it, this was an uncontested matter?

A Yes sir.

Q There was nobody there to contest it on the other side?

A Right, sir.

Q How many of this type of thing do you handle in the course of a year?

A You mean an adoption, sir?

Q Yes sir, uncontested adoptions. Approximately how many matters will you handle in a year, as a Court Reporter?

A Well, I imagine my office will handle - - - and this goes through the Clearwater Court House and the judges that sit there; I would say between, perhaps, two and two hundred fifty in a year.

Q This will be in a year?

A Yes sir.

Q Based on your thirteen years' experience as a Court Reporter, and in handling some two hundred of these matters a year, what is the approximate length of time that it takes to conduct one of these matters?

A Well, from the actual start of the hearing, I would say anywhere from, oh, seven to twelve minutes.

Q If you can, now, recall to us as well as you can, how long this particular hearing took before Judge Kelly?

A I think it was either - - - somewhere between an hour to an hour and a half.

Q Thank you. Mr. Reeves, I refer you, now, to the case in which Attorney Elwood Hogan was practicing, representing one of the parties. Do you recall that matter, when there was some difficulty?

A That had to do with the Patterson adoption, sir.

Q That was the same matter?

A Elwood Hogan was the counsel for the petitioner in that case.

Q All right, sir. Did you yourself have any difficulty with Judge Kelly, or did Judge Kelly have any difference with you in that matter?

A No sir.

Q As to the taking of testimony, or whether testimony would be on or off the record?

A Well, there was some confusion on my part. I was

off the record, and in Judge Kelly's court, he is the only one to direct us when we can go off the record. Counsel can't tell us to go off the record. I don't recall Judge Kelly telling me to go off the record but, anyway, I was off the record, and everything stopped, and he was wondering why I was off the record, and I don't know why I was off the record, but I started taking it again; and then, in about five or six minutes, all of a sudden, he was wondering why I was on the record, which I was a little bit confused about. I didn't know whether I was supposed to be on or off.

Q Mr. Reeves, I'll ask you this question: Again, based on your thirteen years' experience, and handling these matters, which is usually uncontested, either adoption or divorce, would you give us an estimate, sir, of the cost of your services, as it relates in taking this type of a matter before Judge Kelly, as related to taking the same type of matter before other judges in the Sixth Judicial Circuit?

A Well, Judge Kelly's transcripts in ex parte and uncontested matters did run longer, on the average; and of course, we base our charge on the length of the transcript; that is, on the attendance and on a page rate.

MR. JONES: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Reeves, the adoption of children - - -

CHIEF JUSTICE DREW: Pardon me, Mr. Nichols.

MR. NICHOLS: Excuse me.

CHIEF JUSTICE DREW: May I ask this question?

Senator Friday would like to know about when did the in re: Patterson matter take place, the month and year, if you remember?

THE WITNESS: As I recall, it was in December of '61, I believe.

CHIEF JUSTICE DREW: Senator Gibson would like to know: "Has a Circuit Judge ever asked you to help his personal secretary to prepare papers or findings in his Court?"

THE WITNESS: May I have that again, sir?

CHIEF JUSTICE DREW: "Has a Circuit Judge ever asked you to help his personal secretary prepare papers or findings of his Court?"

THE WITNESS: A Circuit Judge?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: Yes sir, yes sir.

CHIEF JUSTICE DREW: If the answer is "yes," do you consider this a duty or convenience, as a stenographer to the judge?

THE WITNESS: I think it's just a comity, Judge; it's a courtesy to them. If they're so busy, and the secretary is so busy, and we can be of help, why, it's just a courtesy; it's not a duty.

CHIEF JUSTICE DREW: Another question, sent in by Senator Edwards: "Did it arouse your suspicions when the lady could not remember the names of any of her first husband's people?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: I would like to ask a question: "In this proceeding, besides - - - in this adoption proceeding, besides the mother and the father, were any state agencies represented at the hearing?" "Adoption agencies, or the welfare?"

THE WITNESS: No, not that I recall, it being a stepfather adoption, just from being around them so many years, ordinarily, there's not a representative of any state agency at a stepfather adoption.

CHIEF JUSTICE DREW: There are in other types of adoption, from homes?

THE WITNESS: Yes, I think, when the child is placed from a child-placing agency, it used to be that there was a representative. In recent years, it seems that in some, they just file a written consent, I guess.

CHIEF JUSTICE DREW: Senator Barron would ask you: "Do you not feel that a judge should take every precaution to try to locate the parent of a child before entering an order taking that child from its natural parent?"

THE WITNESS: Well, of course, anyone, I think, with any consciousness would have to say yes. Of course, you would have to draw the line someplace.

CHIEF JUSTICE DREW: Mr. Nichols.

BY MR. NICHOLS:

Q Mr. Reeves, you work with courts quite a bit, of course, being an Official Court Reporter, don't you?

A Yes sir.

Q And you work with judges, you say, in preparing orders or memorandums, either with a judge or for a judge in matters pertinent to a case?

A I have only - - - really, only with one, sir, and that was Judge Bird. His secretary sometimes had a little bit of difficulty with shorthand.

Q In fact, you and Judge Bird are very great friends; you have great respect for Judge Bird, don't you?

A Yes sir.

Q All right, sir. Now, if Judge Bird had dictated a memorandum to you, and had not signed it yet as an order, would you take it over to the opposing side, in a legal matter, give it to them?

MR. JONES: Excuse me. We'd like to object to this question. It's not in cross - - - the cross is not on anything which went in on direct.

There's no evidence here of a communique or document or anything that was being copied.

MR. NICHOLS: Your Honor - - -

CHIEF JUSTICE DREW: Before you ask it, Mr. Nichols, this man should not be required to answer that question in the form in which you asked it. If you want to ask him the custom, or something of that nature, I think that would be all right, but to ask this man what he would do I think would be an improper question.

BY MR. NICHOLS:

Q Well, in your code of ethics of reporters, when a judge is preparing a memorandum of a proposed order, which has never been signed yet as an official order, you don't go take it to the opposite side before it's signed by the judge, do you?

MR. JONES: Excuse me, Mr. Reeves. I would like again to object to that on the ground that this is in cross of nothing at all that was brought out on direct examination. This witness was examined on his direct as to a factual situation, not on any code of ethics, legal, moral, or otherwise.

Now, the way I understand the law, if Mr. Nichols would like to, at a further proceeding in this matter, make

Mr. Reeves his witness, and examine him on the ethics of Court Reporters, I think it would be proper, but this is not in cross of anything brought out on direct examination.

CHIEF JUSTICE DREW: On that ground I'll sustain the objection.

BY MR. NICHOLS:

Q All right, sir. Now, let's talk about this adoption proceeding for a moment, and you will concede that the taking of a child away from its natural father is a rather serious matter, wouldn't you?

A One of the most serious, yes sir.

Q And Judge Kelly was looking out to see if diligent search had been made to locate the natural father in this proceeding, wasn't he?

A Yes sir.

Q And the proceedings where about to proceed without any service on this father, wasn't it? I mean, by that, any personal service on his person?

MR. JONES: We would like to object to the question as calling for a conclusion of law about which this witness is not qualified to give. This witness is required, in order to answer this question, if the Court please, to interpret whether or not constructive service is legal service under the law. We don't think that he's qualified to give that.

CHIEF JUSTICE DREW: As I remember his testimony, he said it was an uncontested matter, and I think that's broad enough for him to pose the question that was asked. Overruled.

MR. JONES: That was not my objection, if the Court please. My objection was that it called for a conclusion of law, a conclusion which this witness is not qualified on.

CHIEF JUSTICE DREW: Will you restate your question.

BY MR. NICHOLS:

Q There was no personal service on the natural father in this proceeding, was there?

A Well, sir, I couldn't tell you. I didn't look at the file. All I know is, they made reference to the affidavit of diligent search and inquiry, and I just gathered from that, from being around the courts so long, that this was a ---

Q You've reported, I think, hundreds of these cases, haven't you?

A Yes sir.

Q And you know when an inquiry is being made as to diligent search, there hasn't been any personal service made, has there?

A Well, I imagine that that's the way it is.

Q All right, thank you very much. Now, from your dealings with Judge Kelly - - - have you reported many cases in which he has tried the cases?

A No sir.

Q Well, you have reported some, have you not?

A Yes sir, I have.

Q From your observations and experience, is he courteous to the lawyers who are before him?

A Well, sir, I would have to give a qualified yes.

Q All right, sir. Now, is Judge Kelly, from your ob-

servation of his conduct and proceedings, a fairly good judge?

MR. JONES: Your Honor, we would like to object to this, once again, on the ground that this witness is not qualified, we don't believe, to give an opinion as to whether or not this is a qualified Judge. This witness is not an attorney nor a Judge.

MR. NICHOLS: This is a man who has been around the Court House, Your Honor, observing other Judges and everything else.

CHIEF JUSTICE DREW: In the form that it is asked, it calls for an opinion and I will sustain the objection.

MR. NICHOLS: All right, sir.

BY MR. NICHOLS:

Q You have been reporting before many Judges?

A Yes sir.

Q Do all Judges have some peculiarities?

A Well, if you will define "normal," I can tell you.

MR. JONES: If Your Honor please, we object to this line of questioning.

MR. NICHOLS: We are talking about different Judges and different procedures that they have. Well, I will reframe it.

BY MR. NICHOLS:

Q Do different Judges have different procedures that they use in matters?

A Thank you. Yes sir.

Q Sir?

A I said thank you for changing that. And they do.

Q Yes, I don't want to get you in trouble with all the Judges. Does Judge Kelly, just in a general way, run a pretty tight ship, as far as holding matters orderly, procedurally?

A Very tight, yes sir.

Q Have you reported cases before Judge Barker in the Federal Court in Tampa?

A No, I haven't, sir.

Q Does Judge Kelly - - - isn't he one of the strictest Judges that there is about staying on the record and being sure that the record is being made of things?

A Yes sir.

MR. NICHOLS: We have no further questions.

CHIEF JUSTICE DREW: Senator Connor asks this question: "Is it a duty of a Court Reporter to make an order or write an opinion for a Circuit Judge? Or a courtesy to the Judge?"

THE WITNESS: It would be a courtesy, sir.

CHIEF JUSTICE DREW: Senator Askew asks the question: "Do you know the reputation of Judge Kelly among the Bar and the public of Pasco-Pinellas Counties in regard to the conduct of his office? If so, what is it?"

THE WITNESS: Sir, I would feel like answering perhaps in reference to lawyers and Court Reporters. I could not venture about the public. I have never talked to that much public about it.

CHIEF JUSTICE DREW: All right. Any other questions?

MR. NICHOLS: No further questions.

MR. JONES: We have no further questions. Mr. Reeves, you are excused to go home, subject to call by either party. I believe we have your phone number in our office, haven't we?

THE WITNESS: Yes sir, I think so.

CHIEF JUSTICE DREW: That will be the order.

(witness excused)

CHIEF JUSTICE DREW: Call the next witness.

MR. DANIEL: Judge, we have a rather novel situation here on a point of law that we would like to present to the Court at this time. Through no fault of the House Managers, this will, I am quite sure, catch counsel for the Respondent by surprise and I don't intend to press the point of law if he wants time to make an objection. Before the House Committee - - - and in saying this, I will say nothing factually that will be detrimental one way or the other to Judge Kelly - - -

MR. NICHOLS: Excuse me, sir. We agreed, I believe, the other day, that on questions of this nature we would have a pre-trial conference with the Court.

MR. DANIEL: I believe perhaps the Senate might want to decide this one.

MR. NICHOLS: If you will forego this question until we may have a conference with the Court about the matter.

MR. DANIEL: That will be all right with me.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Call your next witness. I will be available, gentlemen.

MR. DANIEL: This has to do with the next witness, Your Honor.

MR. NICHOLS: Then may we have a moment's recess to have a conference with you about it? I don't know what they are talking about.

CHIEF JUSTICE DREW: Gentlemen, it is now 4:30. How long do you gentlemen think it will take?

MR. DANIEL: This is a situation that I am virtually sure the Senate will want to discuss, perhaps in Executive Session, to make a ruling on. If I may be permitted just briefly to say what it is.

CHIEF JUSTICE DREW: Senator Blank?

SENATOR BLANK: I would move, Mr. Chief Justice, that we grant counsel a brief recess for preliminarily taking the question up with the Judge; and, if it will not last more than five or ten minutes, that we reconvene.

CHIEF JUSTICE DREW: Senator Price?

SENATOR PRICE: Sir, it is my understanding, in matters of procedure, that the Presiding Officer would set such procedure for counsel for the Respondent and counsel for the Managers; and if it were a question to be decided by the Court, that the Senators themselves constitute the Court, as Judge and Jury.

CHIEF JUSTICE DREW: Senator Mathews?

SENATOR MATHEWS: Mr. Chief Justice, I think Rule 33 deals with procedural matters of the pre-trial conference; that deals with things that came up before the trial actually started. So that we have no rules with reference to anything in the nature of a pre-trial conference with the Chief Justice after the trial starts.

CHIEF JUSTICE DREW: I think the point of the Senator is well taken. I am merely the Presiding Officer over this Court, and anything from now on will have to be presented to the Court.

MR. NICHOLS: Then, Your Honor, I move the Court to let me have a five or ten minute recess to see what we are talking about. Now, we may agree on the matter. I don't even know. But here is our problem. This Court is sitting both as a Court and Jury, and if a matter is prejudicial and it is argued completely before the Court, I have no way, Your Honor, of saying, "Strike it out"; and that was why, in a conference with you and the Managers, we asked that if something like this might come up that we adjourn and have a preliminary conference with you about the matter.

CHIEF JUSTICE DREW: Senator Herrell?

SENATOR HERRELL: Don't we have a motion properly before this body, offered by the Senator from the 35th?

CHIEF JUSTICE DREW: I have to declare the motion out of order, Senator; because the rules would prohibit me from having any pre-trial conference without the consent of the Court. I will have to rule the motion out of order unless the Senate desires to rule otherwise. I feel, Senators, that if we allow these gentlemen ten minutes to discuss this, it may solve the problem without getting involved in a discussion. I am going to declare a ten minute recess for that purpose.

Whereupon, at 4:36 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 4:46 o'clock P. M.

A quorum present.

MR. DANIEL: Mr. Chief Justice, with respect to the conference just had between the attorneys for the Respondent and the attorneys for the Board of Managers of the House, I join with Mr. Nichols in this report, speaking for both of us. The conference concerned certain testimony adduced at the hearing in the House, the Committee of the House of Representatives, by a witness that the Board of Managers would have here physically, if possible. Mr. Nichols points out that there is a similar situation as to witnesses that he would like to have here, if possible, but cannot. We have therefore stipulated, that, if the Senate would permit us, we will each review the testimony of the witness that the others seek to put on, by way of the testimony adduced before the House of Representatives, and present it in that manner, after each reviewing it and making our objections, each to the other, on any questions that we can stipulate upon that might be admissible before the Senate. I think that by adopting this procedure and doing this overnight, we can probably save some two or three hours of procedure in going through each question and having an objection to it and deciding it. We think that we can probably agree on which questions would not be admissible. So that both of us respectfully ask that the Senate consider adjourning at this time until tomorrow morning to give us the opportunity to do that. I can go further if there is any question from the Senators.

CHIEF JUSTICE DREW: Senator Herrell?

SENATOR HERRELL: This is some of the testimony that was given before the House Committee?

CHIEF JUSTICE DREW: Yes. Do any Senators desire to ask any question concerning this procedure?

SENATOR CROSS: Mr. Chief Justice, this would not prohibit any member of the Senate from asking any question, whether it was within the stipulation or not?

MR. NICHOLS: No sir.

CHIEF JUSTICE DREW: No, that would not preclude that. I assume that, whatever agreement you reach concerning the matter, that the testimony given in the House you would agree on, and that will be read to the Court.

MR. DANIEL: Yes, that is the purpose.

MR. NICHOLS: We will work that out.

SENATOR BARRON: Mr. Chief Justice, we are apparently coming to the end of the witnesses for the day. I wonder if the attorneys could give some indication as to how many more witnesses they will have on behalf of the House.

MR. O'NEILL: Mr. Chief Justice, as far as the Board of Managers, I think we can give the Senators some idea, possibly tomorrow afternoon. We would be hesitant to make an estimate at this time. We are eliminating some, but I would not like to make an estimate at this time.

MR. NICHOLS: I have been working with the Managers in that same regard.

CHIEF JUSTICE DREW: Are there any other questions by any Senator? Any member of the Court?

SENATOR PRICE: Mr. Chief Justice, I move that we adopt the procedure and that the Court adjourn until 9:30 tomorrow morning.

CHIEF JUSTICE DREW: Before putting that motion, I want to commend counsel, both for the State and the Respondent, for their efforts to get together in this respect and save the Senators' time and I am sure that it is a procedure which will be profitable to all of us.

As many as favor the motion of Senator Price that we do now adjourn until tomorrow morning at 9:30, please say "aye". Opposed, "no."

The "ayes" have it. The Senate stands adjourned.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 4:52 o'clock P. M., until 9:30 o'clock A. M., Wednesday, September 18, 1963.