

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Wednesday, September 18, 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:

Asked	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 Tuesday, September 17, 1963, was dispensed with.

The Senate daily Journal of Tuesday, September 17, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Henderson of the Twenty-second Senatorial District offered the following Prayer:

Almighty God, King of kings and Lord of lords, from whom proceedeth power and dominion in heaven and earth: most heartily we beseech thee to look with favor upon thy servants who exercise authority in our nation

and in this state. Imbue us as we meet here with the spirit of wisdom, goodness, and truth; and so rule our hearts and bless our endeavors that law and order, justice and peace may everywhere prevail.

Preserve us from public calamities: from pestilence and famine: from war and conspiracy; but especially from sins and corruption. Make us strong and great in the fear of God and in the love of righteousness so that, being blessed of thee, we may become a blessing to all others, to the praise and the glory of thy holy name, through Jesus Christ. Amen.

CHIEF JUSTICE DREW: Is the State ready to proceed?

MR. DANIEL: Yes, Your Honor.

The Senate will recall that on yesterday Mr. Nichols and I jointly requested time to go over the testimony of a witness in the transcript to determine if a stipulation could be arrived. The testimony alluded to was that of Clair Davis, the State Attorney of the Sixth Judicial Circuit, who testified before the House Committee.

We have had him under subpoena but he is confined to the hospital as a result of the formation of blood clots. Certainly, we don't want to jeopardize his health and certainly we don't want to delay this matter by going down there to take a deposition.

Mr. Nichols and I, therefore, have arrived at a stipulation under the terms of which we will read into the record certain portions of the testimony of Clair Davis, as adduced before the House Committee. Am I correct in stating that, Mr. Nichols?

MR. NICHOLS: That is correct, Mr. Daniel. I have no objection to your just reading both questions and answers, if you like.

CHIEF JUSTICE DREW: Do you want to read it, or do you wish the Secretary to read it?

MR. NICHOLS: Well, there are certain things that we have agreed are inadmissible, and we have marked our copy, so I think it would probably be best for Mr. Daniel to.

CHIEF JUSTICE DREW: Pursuant to the stipulation, Mr. Daniel will read into the record the evidence on which counsel have agreed.

You may proceed, Mr. Daniel.

MR. DANIEL: This was the testimony of Clair A. Davis, adduced before the Select Committee of the House of Representatives at the hearing held May 13th, 1963.

"CLAIR A. DAVIS,

a witness called by the committee, being first duly sworn, testified on his oath as follows:"

The questions were by Mr. Richardson, the counsel for the committee.

"Q Will you please state your full name?

A Clair A. Davis.

Q Mr. Davis, what position or positions of public trust have you held or do you now hold?

A I have held the position of County Prosecuting Attorney in Pinellas County, Florida from 1929 to 1933. I was attorney for the Board of County Commissioners of Pinellas County, Florida from 1951 to 1953. I was elected State Attorney for the Sixth Judicial Circuit of Florida, comprising Pinellas and Pasco Counties. I was elected in 1952. I served a four year term and I am on my third term now as State Attorney for the Sixth Judicial Circuit.

Q What is your party affiliation?

A Republican.

Q Mr. Davis, in connection with your duties as State Attorney, have you had occasion to deal in actual litigation of a criminal case before Judge Kelly?

A Yes sir.

Q I will draw your attention particularly to the case of State v. Terry Grady and ask you the circumstances of that case and if anything occurred in that case, to your mind, which is unusual?

A Well, there are many things that occur in most any case that are unusual. I do specifically recall the Terry Grady case was a murder case where Grady had been indicted, charged with the murder of a woman in Zephyrhills. She had been found to have been stabbed, I think, thirty-one times. I personally prosecuted that case before Judge Kelly. There were several difficulties that arose throughout the trial of that case. If I'm not mistaken, it was the first major case that Judge Kelly tried after he assumed the bench as circuit judge. There were quite a few difficulties experienced between us in the trial of the case. Some, I was rather inclined to believe, were attributable to his lack of experience in presiding over cases of that importance. Of course, it's entirely possible that in many instances I was wrong, too. It was a case that started on a Tuesday morning, I believe. It was my thinking that the case could ordinarily have been tried in a day and a half or two days, including selection of a jury, and I think we went through until Saturday afternoon and there was some suggestion of adjourning Saturday afternoon and coming back Monday. I think it was at that time that I advised Judge Kelly that I would not be there Monday. It precipitated the state resting its case, and the case was concluded Monday afternoon into the evening, I think possibly five or six o'clock in the evening. There were some things - - - you say 'unusual' - - - what are you referring to, sir?

Q I will ask you specifically now if, in the course of that trial, you proffered into evidence a certain knife and if you would describe the circumstances of that for us?

A That isn't exactly my experience. The state had recovered the handle of a knife in a grove right near the home of this woman who had been killed. The blade had been broken from the handle. It was the handle of a knife commonly designated, I believe, 'grapefruit knife.' You buy them at the stores for a dollar. We proffered the handle of that knife into evidence. The question really arose - - - the difficult question that we had to contend with wasn't so much the handle of that knife, it was the fact as to whether the defendant had had a knife in his possession at the time this murder was committed. The testimony of the expert was, as I recall, this woman had been stabbed thirty-one times, part of it in the chest and part in the back. The defendant had made a statement in which he stated that he had not had a knife in his possession for two weeks immediately preceding this killing. Most of the testimony throughout the trial of that case, following the court's ruling, most of the evidence was proffered in the absence of the jury until the court could pass upon its

admissibility and, if admissible, then it was presented to the jury. I think the greater portion of the evidence was so handled. In this particular instance, with regard to the question of the knife, following the defendant's statement that he had not had a knife in his possession for two weeks, we proffered the testimony of his girl friend with whom he had had a date the night before the killing. She told us, and she testified in the absence of the jury, as I recall it, at least that's the best of my recollection, that at the time of that date the defendant who, I believe, was on parole or for some reason or other was not permitted to carry a weapon, he produced from his pocket a knife which this girl stated had a handle that looked very much - - - looked almost exactly like the handle that we had in evidence. He pulled that knife from his pocket and she asked him to let her keep that knife so he wouldn't get into trouble. She said he refused to let her have it and he put it back in his pocket. On the basis of that, whether I was right or wrong and I am many times right and many times wrong - - - the court rules on that - - - but Judge Kelly refused to permit me to use the testimony of that girl that she had seen a knife in his possession the night before the killing, notwithstanding the fact he had said he hadn't had a knife in his possession for two weeks. I don't recall the basis upon which Judge Kelly based his ruling, but it is my recollection that that was the ruling. Naturally it presented a difficult problem of proving the defendant had committed a lot of stabbing when we couldn't even show he had a knife. I think that's what you are referring to.

Q Did your investigation reveal to whom the knife had ultimately belonged, if that was the knife?

A No sir. I don't think we actually had it established at trial. I think I know what you are referring to. In this defendant's statement and, after all, a lot of this is hazy - - - I didn't know what you were going to ask me and this is back in September of '61, I believe that trial was held.

* * *

Q Do you know what eventually happened to that knife or the handle after you proffered it?

A No sir. I am inclined to think it was admitted. I am not certain. The record would reflect that. It was a handle. The blade had been twisted loose from the handle when it was found out in the woods. I don't think the blade was ever found.

Q What was the final outcome of that case again?

A In the Terry Grady case?

Q Yes sir.

A The court directed a verdict of not guilty.

Q Mr. Davis, are there any other things that occurred at that trial that you would specifically name as being unusual, had it been an experienced judge, other than the time element?

A I think, sir, regardless of experience or lack of experience that judges can be wrong and so can state attorneys.

Q I know I am asking you a difficult question because of the nature of litigation.

A Well, there was an unusual incident there, however, it was rectified to an extent. When it appeared that we were going to be called back after the weekend and I had refused to come back after having spent practically the whole week, I don't think I had then rested my case, but I advised the court that the state would rest then. That was Saturday afternoon, I believe. Defense counsel was court appointed counsel, Mr. Allgood and Mr. McPherson. They immediately read a motion for a directed

verdict. Mr. Allgood offered to argue the motion then and the Judge suggested that he was going to take the - - - to reserve ruling on the motion and he didn't want Mr. Allgood to argue it. He suggested that he would reserve his ruling and that Mr. Allgood could proceed with the defense. Mr. Allgood conducted some argument with him over that and the court reminded him that he had suggested he was going to reserve his ruling on the motion for directed verdict. I think the record will then reflect that I arose and addressed the court in this fashion - - - that although it was a controversy between the court and defense counsel, nevertheless, as an officer of the court I conceived it to be my duty, if I felt that the court was heading into error, to advise the court my thinking in that regard and I suggested to Judge Kelly that the Supreme Court of Florida on more than one occasion had ruled that it was reversible error for the court to reserve ruling on a motion for directed verdict at the close of the state's case because it was tantamount to forcing the defendant to put on his defense. However, he reserved his ruling and granted a recess and, upon coming back following the recess, the court changed his position and suggested to Mr. Allgood that he would hear his argument on the motion for directed verdict. Mr. Allgood didn't want to argue it. There was a lengthy discussion that is reflected by the record. I don't recall it all. There was an indication that the court would deny the motion. He was - - - I think he actually stated that he did deny the motion. I'm not certain, but I think so. But then he insisted that I state my opinion as to whether the evidence was sufficient to go to the jury and I didn't state my opinion. I suggested that that was the court's prerogative and not the state attorney's. It was my job to produce the case and it was the court's job, as a matter of law, to rule as to whether the evidence was sufficient to go to the jury. There was considerable argument between me and the court in that respect, until it reached the point where I actually refused to express an opinion, and the court suggested that he hadn't heard of that attitude being shown by a prosecutor in the past. But I didn't express my opinion. Then he said that the motion would be granted and he directed a verdict. I think the record will reflect that. That's unusual but I don't know if there's anything wrong with it.

Q Was this a long discussion about whether or not you would state your opinion?

A Quite lengthy. I think it covered several pages of the transcript.

Q Was there an insistence on Judge Kelly's part that you state your position on that question?

A There wasn't any insistence that amounted to a demand, no sir. He was quite persistent, but it wasn't a demand.

Q I would ask you now about the Sinclair murder case, and specifically whether or not in a hearing on habeas corpus before Judge Kelly you received notice of that hearing.

A May I make a comment leading up to that?

Q If you would, please.

A I took the Sinclair case before the Grand Jury. Judge Bird empanelled the Grand Jury. Judge Bird was handling the criminal cases in Pinellas County in the circuit court. He has for a good many years. I don't recall any of them being handled by any other circuit judge except Judge Dayton when he was circuit judge. I am speaking of Pinellas County now, not Pasco. The Grand Jury returned an indictment against Sinclair and the indictment was returned to Judge Bird in open court. While we were waiting to dispose of the Sinclair case, it appeared that - - - I believe Mr. Wilson was defense coun-

sel - - - and notwithstanding the fact that Judge Bird was available, or at least he was in the county, a habeas corpus proceeding was filed before Judge Kelly. I was served with no notice either by Mr. Wilson or by Judge Kelly and I have inquired and haven't been able to learn if any member of my staff had been notified by anybody. Yet, nevertheless, the habeas corpus proceeding was entertained and I read about it in the press. I thereupon prepared a very, very lengthy petition for a rehearing on that and I think I recited about all of the facts in detail from the Grand Jury right through to the last thing I had read in the newspaper and went before Judge Kelly. What he did in that, as I recall, he fixed bond. The Grand Jury had indicted on first degree murder and Judge Kelly had fixed bond or had arranged to fix bond. I think that was the question involved, in any event. Then Judge Kelly received me and considered that petition that I filed for rehearing on it. We had a hearing on that and I think the end of the hearing, as I recall now, Judge Kelly decided to appoint some psychiatrists to examine Sinclair. I had already filed a suggestion with Judge Bird and Judge Bird was appointing psychiatrists to inspect Sinclair so we had two sets of psychiatrists, one to report to Judge Kelly and one to report to Judge Bird, and I think that's when it finally came out, sir.

Q Which Mr. Wilson is that?

A He is a Clearwater attorney.

Q Do you know his full name?

A I don't recall his first name, I believe he is the only Wilson in Clearwater, however. He is a Clearwater attorney. He defended Sinclair at trial.

Q Do I understand your testimony that at the time of this habeas corpus hearing before Judge Kelly there was an indictment and he was in custody under the indictment?

A He was in jail, yes, sir. He was in custody in the Clearwater jail. As a matter of fact, although I believe bond was eventually set, he never did make bond. He stood trial and was convicted. Judge Bird presided at the trial.

Q Do you know whether or not Judge Kelly knew at the time that Judge Bird was appointing psychiatrists?

A No, sir, I don't know that Judge Kelly knew it. I believe, however, I believe I did at that hearing suggest or state that I had suggested to Judge Bird that he appoint a committee. I can't say positively. I think I did and I think he had already appointed a committee, but I can't be certain of that, but I know there were two committees appointed. Judge Bird appointed one set and Judge Kelly appointed another and I had the benefit of the reports of both sets of psychiatrists and they found Sinclair to be sane. I think both sets found him to be sane.

* * *

I said that I would not personally conduct the trial of another important criminal case before Judge Kelly unless and until I was convinced that he was experienced enough to know how to preside over a case of that magnitude. Words to that effect.

* * *

“Q I was a little bit confused. Apparently you were still on the state's case in chief at the time when Saturday arrived?

A I think so, yes, sir.

Q So the defendant himself had not taken the stand?

A That's right.

Q He had not made any statement to the effect that he had not had a knife or that he had had a knife?"

I might say here that these are questions by Mr. Lacy Mahon, an attorney in Jacksonville, who was representing Judge Kelly here.

MR. NICHOLS: Right.

MR. DANIEL: And so that we'll get it back in context, I'll start right at the top of that page, where Mr. Mahon started out, "I was a little bit confused."

MR. NICHOLS: All right.

MR. DANIEL: By Mr. Mahon:

"Q I was a little bit confused. Apparently you were still on the state's case in chief at the time when Saturday arrived?"

A I think so, yes, sir.

Q So the defendant himself had not taken the stand?

A That's right.

Q He had not made any statement to the effect that he had not had a knife or that he had had a knife?

A Oh, yes he had. Yes, sir.

Q In statements prior to the time of trial?

A He made a statement and a written statement to the investigating officers. It's my recollection that the matter of that knife, the statement he made that he hadn't had a knife in his possession for two weeks, together with the statement that Judge Kelly had previously loaned him a knife, it's my recollection that those things were contained in a written statement that he had given to the deputy sheriffs when they were conferring with him. This was a long time prior to trial. Those statements were contained in that written statement.

Q Were they admitted in evidence?

A I think so. I am not positive, but I think so. They were proffered, in any event. I think they were proffered by Deputy Smith.

Q You don't remember whether they were in evidence or not?

A No, sir, I'm not positive. My thinking was that it had been received, but I'm not positive, sir."

Question, still by Mr. Mahon ---

MR. NICHOLS: What page is that?

MR. DANIEL: 61.

Question by Mr. Mahon:

"Q (Exhibiting knife) Is this a grapefruit knife?

A Something of that nature.

Q Isn't that commonly referred to as a citrus knife, I believe?

A I think so.

Q They are pretty prevalent down in that area, aren't they?

A Yes, sir. You buy them for a dollar at the stores.

Q So what you had was, in essence, a statement that a knife similar to the one that Chairman Mitchell is holding was found there which was not identified as having positively been the knife in the defendant's possession or as positively being the murder weapon when it came down to the question of the admissibility of that particular

knife and the Judge ruled against you for that reason?

A No, sir. No, sir. The Judge emphatically called us into chambers and emphatically admonished me that under no circumstances was I to introduce the testimony of that girl that her boy friend had a knife in his possession the night before the murder.

Q Well, then that was the essence of what happened?

A That was the essence of his ruling. He admonished me in chambers and certainly I wasn't going to violate it out in open court.

Q That's what I mean, that it came down to a ruling as to the admissibility of evidence.

A Wait a minute. The discussion I had with the court wasn't so much a question of identity of the particular knife handle. It was on the proposition of defendant having a knife in his possession the night before the murder when he was giving the statement that he hadn't had a knife in his possession for two weeks prior to the murder. Judge Kelly would not permit me to let his girl friend testify that he had had a knife in his possession the night before the murder and that the handle on the knife looked almost identical to the handle that we had recovered along his footprints in the grove. They had been dug out of the sand where his footprints which we contended were his had gone going through the grove and here were different objects that were dug up along those footprints that we had there at the trial, and the knife handle was one of them.

Q Well, the point I am trying to get in my mind is, assuming that defendant had not been on the stand and his statement had not been admitted in evidence, I can see where probably on rebuttal to rebut a statement that he had never had a knife that, perhaps, the testimony might have been admissible on rebuttal but on direct examination doesn't it come down to a legal question as to when you have a knife that can't be identified as the murder weapon or as being a knife in the possession of defendant was, in truth and in fact, material or admissible in evidence, Mr. Davis?

A I think it's proper for the state to show, even though nothing else has been entered, upon a proposition of a woman being stabbed in the morning hours of a certain day that the defendant, among other things, actually had a knife in his possession the night before the stabbing. I think that would be proper regardless of the other questions at hand.

Q And you think that's a clearcut proposition as to the admissibility of the knife or the testimony?

A Of that testimony I think so.

Q I wish I had you as my judge sometimes.

A Well, I'd like to be your judge sometime.

Q The essence of the matter was that you disagreed with his ruling, is that correct?

A That's right. Sometimes I have been right and sometimes the court has been right. I admitted that at the outset today, sir.

Q You don't feel that there was any question of actual impropriety?

A No, sir. No, sir, I don't impute that to Judge Kelly in that or anything else, as a matter of fact.

Q Thank you. Now on the Sinclair case, sir, concerning a writ of habeas corpus, actually, a defendant has a right to file a writ and it's the most extraordinary writ, isn't that correct?

A Yes.

Q Whoever you can find that you can take it to from the circuit court on up, practically, is that correct?

A I think under the Constitution any circuit judge can entertain a writ of habeas corpus, however, in the circuit down there, there has been a certain custom followed, and particularly in Clearwater. Judge Bird lives there, his chambers are there, he presides over the trial of cases there. It's customary that unless Judge Bird is away on a trip or something of that sort that no other circuit judge will assume jurisdiction until they have exhausted an effort to obtain Judge Bird.

Q Actually, if I, as an attorney for a defendant take a petition for a writ of habeas corpus to a circuit judge, can he turn it down or refuse to hear it under any circumstances under the Constitution? Doesn't he have to give me a hearing on it if I present it to him?

A I think if you insisted on it, unless he had a very good excuse he would have to; however, it is customary down there that they will try to reason with the applicant and suggest to him that ordinarily Judge Bird handles them and they're usually handled that way. Judge Bird takes them over. I don't know what transpired between Mr. Wilson and Judge Kelly.

Q Did you have any knowledge of the fact that hearing was going to be held or have a conference with anyone else?

A No sir.

Q You didn't discuss the matter with the sheriff that a hearing was to be held in this particular case?

A The sheriff called me on the telephone and wanted to know what he was to do on a writ of habeas corpus, what he was to do. I told him he was to file a reply to the writ and he wanted to know what that was, what did it consist of. I told him just merely to file a reply in the same case and to suggest that he is holding the prisoner by reason or by virtue of a commitment or a Grand Jury indictment or something of that sort, whatever the circumstance happened to be, explain by what authority he was holding the prisoner, and sign his name.

Q Did he tell you what case it involved?

A I am not certain, sir, whether he did or not. He might have.

Q That would seem to be awfully material in this, because the point of that seems to be as to whether or not you had any knowledge of this hearing and certainly if the sheriff told you that he was filing a reply in the Sinclair case - - -

A I don't conceive it, sir, to be my duty to run around following circuit judges to find out if people are bringing habeas corpus proceedings before them when the Statute provides that the state attorney shall be given notice, and the rules further provide that copies of pleadings shall be served on the adverse party, none of which was done in this particular instance.

Q Am I to understand, Mr. Davis, that in a case of the magnitude, apparently, of the Sinclair case and you found out from some other source that petition for writ of habeas corpus has been filed and that it had been set for hearing and nobody had served you but you still had knowledge of these facts from a reliable source such as the sheriff, you would say, 'well, I just won't appear unless he serves me and I am not going to go there at all.'?

A No sir, I didn't take that position. I don't recall that I had any information as to when there would be a hearing. The only information I had, as I recall, was the sheriff's telephone call wondering what he should do to a writ and I told him. I would tell him again today if he asked me.

Q There is a possibility that though you might not have been given notice, you might have had knowledge of the fact that the Sinclair habeas corpus hearing was going to be held.

A It might have been going to be held but we had other things to do except just - - - there were other things of equal magnitude to the Sinclair case going on there at the same time. I think your perusal of the statute would show what should have been done as far as the state attorney is concerned or some member of his staff. I don't recall that anybody on my staff was notified of the hearing. I made inquiry and I couldn't find anyone that had been notified of the hearing.

Q I know what the statute provides. I have, I think, and probably you have had similar experience, and you can tell me if you have, had a circuit judge bring me a letter which had been written by some person and the circuit judge just tell me, 'I think this is a petition for a writ of habeas corpus and you'd better do something about it.'

A Yes sir, I have had that experience and the Supreme Court of Florida has said so many times.

Q I have never told a circuit judge, 'Well, nobody served me with notice,' and I'm sure you haven't either.

A Yes sir, and if a circuit judge had told me that at such and such a time we would have a hearing, if I could possibly make it I would be there, but the circuit judge in this instance didn't tell me so.

Q May I ask you this, sir. I believe Judge Bird or yourself has testified that you filed a subsequent motion. Was it to set the bond aside?

A No sir, That motion I filed on a petition was filed in the cause addressed to Judge Bird whom I considered at the time to have jurisdiction of the case rather than Judge Kelly. I set up all the facts as I knew them from the indictment on through and I asked Judge Bird to set aside Judge Kelly's order fixing bond for this defendant charging first degree murder or, in the alternative, enter such order and initiate such procedure or proceedings as would enable Judge Kelly to set aside his order and grant a re-hearing on the question. I don't recall exactly the wording of the prayer of that petition but, in effect, that's what it was.

Q Did you thereafter have a hearing before Judge Kelly in the matter?

A Yes sir.

Q Did he hear you out fully on it?

A I think so, as far as I wanted to go.

Q Was that prior to the time the defendant had made bond?

A The defendant hasn't made bond yet.

Q It was prior to the time that he made bond that you had the hearing?

A Yes sir. As I say, he never did make bond before or after.

Q So, actually, as far as his relief or anything such as that, nothing ever occurred along that line other than the order was entered?

A No, just a Pyrrhic victory for someone.

MR. MAHON: No further questions.

(The reading of the testimony was resumed as follows):

“QUESTIONS BY THE CHAIRMAN:

Q Mr. Davis, before we release you I would like to

know to what do you attribute the unusual length of the Grady trial?

A Well, I don't know whether it is an opinion that would be a reasonable subject of criticism. It was my thinking, after all, we are quite busy and we want to give any case all the time it requires but we don't want to unnecessarily expend a lot of time because there are other things to be handled - - it was my thinking then and it's my thinking now that at that time, and that was in the early stages of the Judge's experience on the bench, I thought there were many hundreds of thousands of words used by the court that weren't actually necessary to the disposition of the case and possibly consumed a lot of time.

Q Do you mean to indicate by this statement that the court unduly interfered with the conduct of the trial?

A No, I don't mean that. I don't mean that he interfered as far as I was concerned. I don't mean that his talking interfered with my work in getting before the jury what I thought should get there, but I thought it was unreasonably time consuming and unnecessary.

THE CHAIRMAN: That's all.

QUESTIONS BY MR. MAHON:

Q Grady, I think, was later tried by Judge Kelly and convicted for another offense, wasn't he?

A Yes sir. That was larceny of an automobile we had contended that Grady used at the time of the murder and then when the verdict was directed for him in the murder case Judge Kelly convicted him, and I think, sentenced him on the larceny of the automobile. I wasn't concerned about that question influencing Judge Kelly at the trial of the murder case."

MR. DANIEL: That concludes the reading of the testimony.

CHIEF JUSTICE DREW: Does that conclude the reading of all the testimony that you have agreed on?

MR. NICHOLS: Yes, Your Honor.

CHIEF JUSTICE DREW: You may call the next witness.

MR. DANIEL: May I have just a moment, sir?

CHIEF JUSTICE DREW: The Court will be at ease for a few moments.

Whereupon, beginning at 10:04 o'clock A. M., the Senate was in informal recess until 10:08 o'clock A. M.

MR. DANIEL: At this time I will call Richard W. Carr.

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

Thereupon,

RICHARD W. CARR,

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

DIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Carr, will you state your name, residence, occupation and profession, please sir?

A Richard W. Carr, attorney at law, 3556 Twenty-Seventh Avenue South, St. Petersburg, Florida.

Q Do you practice law in St. Petersburg?

A Yes sir.

Q Pinellas County?

A Yes sir.

Q How long have you practiced law?

A I will have practiced law in St. Petersburg three years in March.

Q Where did you obtain your law degree?

A Stetson University, College of Law.

Q In what courts are you admitted to practice?

A All the Courts of the State of Florida.

Q What type of practice do you maintain generally?

A I have a general practice, with emphasis on criminal work and personal injury.

Q Are you familiar with the Code of Ethics governing lawyers and judges of the State of Florida?

A Yes sir.

Q Are you familiar with the rules of procedure of the various courts in various types of proceedings?

A Yes sir.

Q Do you know Judge Richard Kelly?

A Yes sir.

Q How many Circuit Judges are there in the Sixth Judicial Circuit?

A I believe there are eight.

Q Of those eight Circuit Judges, how many have you appeared before as an advocate?

A All except Judge Phillips.

Q Now, are you familiar with a file entitled Nicholas vs. Nicholas, Chancery Number 6112?

A Yes sir, I am.

Q Is that the file you have with you?

A Yes sir.

Q Is that the original Court file?

A Yes sir.

Q Did you participate as an advocate in this cause?

A Not in the original cause, but in a cause arising after the final decree was entered.

Q What was the nature of the cause? What were you seeking to do?

A Do you want me to go into the - - -

Q Just tell me what you were seeking to do.

A I was seeking to remove, in this case, the Defendant's wife from a house that she was ordered not to live in.

Q Was this pursuant to a formal final decree entered?

A Yes sir.

Q Was her removal ordered in the former final decree before you entered the case?

A Yes sir.

Q Were you seeking to enforce the terms of the former final decree?

A Yes sir.

Q Did you take this before Judge Kelly?

A Yes sir.

Q Had he signed the former final decree?

A No sir.

Q What is the usual practice in the Sixth Circuit with respect to enforcing final decrees?

A We file a petition for Rule Nisi and Order to show Cause; take the petition and order before the Judge signing the final decree, if possible.

If the Judge signing the final decree is not available, we take the Judge who is standing in for him; and if he is not available, we take whatever Judge we can get.

Q Who had signed the original final decree?

A The final decree was signed by Judge Leavengood.

Q Was Judge Leavengood available on this date?

A No sir. Judge Leavengood was not available and Judge Hobson was handling his cases.

Q Was Judge Hobson available for you to appear before?

A No sir, Judge Hobson was not available either.

Q Then Judge Kelly was available in Pinellas County on that date?

A Judge Kissinger had signed some of the prior orders in the file, so I went to his office and he was not available, but Judge Kelly was sitting for Judge Kissinger.

Q You had attempted to go through four - - - Judge Hobson, Judge Leavengood, and Judge Kissinger, and arrived at Judge Kelly?

A Yes sir.

Q What transpired when you went into Judge Kelly's office, please?

A Well, I always feel that it is necessary, when you appear before a Judge for the first time, that you should introduce yourself to the Judge.

I have the highest respect for the Judges of our Circuit.

I had never personally met Judge Kelly; and when I went into his office, I introduced myself. I told him that I was Dick Carr, a practicing attorney in St. Petersburg.

And Judge Kelly looked at me and he said, "I know who you are, and I am a Republican."

Q Did you present the petition to Judge Kelly, and the proposed order?

A Yes, I did.

Q What happened?

A Well, Judge Kelly - - - to back up a little bit: I made some remark to Judge Kelly about I hoped that this wouldn't make any difference and sort of brushed it aside.

And he said, "Well, let me see what you have got."

And I presented the petition, which outlined the cause, and the order, to Judge Kelly, and Judge Kelly read it over. And he said there was some question in his mind whether he should sign it or not.

And I said, "Well, Your Honor, I feel that it would

be all right to sign the Order to Show Cause"; that this would give the Defendant, or the Plaintiff in this case, the opportunity to return at a return date and explain her side of the action.

Q Was this an order summarily putting the Defendant out, or was it an order to show cause why she should not be put out?

A No, the order that I had drawn was actually putting the woman out of the house, and assigning a return date to show cause why she was not to be found in contempt for violating the provisions of the final decree prior to the order to show cause, prior to our hearing.

Q Actually, that final decree signed by Judge Leavengood had already put the woman out, so to speak?

A Yes, it had.

Q She had not complied with that order?

A She had left the property and remained away for a period of a year or so, and then had moved back into the property in direct contradiction to the order and the final decree entered in the cause.

Q All right, what transpired then, with relation to Judge Kelly and your request of him, Mr. Carr?

A Judge Kelly said - - - I pointed out, as I stated before, that I felt that this was a case of dire importance, that there were children involved, that the woman was living in open adultery - - - or was thought to be living in open adultery, and was an excessive user of alcoholics, and that this thing was a real morbid situation and, to me, was an emergency situation; and I felt that the woman should be displaced and given the opportunity to return at a later date to determine the rights - - - her rights - - - if any she might have. The Judge said that this was contrary to public policy, he felt.

He said, "Frankly, I will be the first to admit that I don't know the law in this area, and, before I get into anything like this, I want to have a case on point.

And I said, "Finding a case on point in a situation like this would be rather difficult."

I said, "Do you mean you would have to have a case on all-fours?"

And he said, "Yes, a case on all-fours."

Q So what did you do then?

A So I went to the library, which is on the same floor, and I asked four other law clerks - - - they were fellows who worked for larger firms in there - - - I asked these boys if they would help me, because I was in a big hurry; I had to get this thing done, and would they help me find a case on point. And we spent approximately two hours researching and could not find a case.

Q Did you then return to Judge Kelly's office?

A I returned to Judge Kelly's office, and by that time, of course, he was interviewing some other clients. His secretary told me that - - -

Q Were they litigants or clients?

A I'm sorry. Litigants. He was having another hearing, and the secretary told me it would be some time before he could be able to get back to me.

So I said, "In that case, I will run down the hall to see if I can find another Judge to sign the order."

And I went down the hall to Judge Collins' office.

Q Were you backed with any authority under the law to seek another Judge after having spoken to Judge Kelly?

A I had come across a case, while during the recess, during that two hour period, that said that if one Judge refused to sign an order that another Judge could sign the order without the attorney being found in contempt by the first Judge.

Q All right, sir. You proceeded to where?

A So I proceeded to Judge Collins' office to see if Judge Collins would sign the order.

And, when I got to Judge Collins' office, the phone was ringing and, from the other end of the conversation, Judge Collins asked me in, it was indicated that Judge Kelly was talking to Judge Collins on the phone about my case.

Q What happened then? Did you take it up with Judge Collins?

A Judge Collins told me that Judge Kelly had a good point there; but he said he would like to read the petition and the order and hear something about it. So I went over basically - - - he read the petition and the order - - - and I went over basically the same set of facts; the fact that I felt this was a case of dire emergency, something that should be handled right away without any hesitancy. And he read the order and he asked me to change a couple of words in the order.

Q Do you have the order there in the file?

A Yes sir.

Q What were the words that were changed?

A I took the order back to my office. I can't recall whether I returned early the next morning. It seems to me it was a Saturday morning. I just don't recall.

The Judge asked me to come in, anyway, early the next morning and have the order signed, after I had changed the words. The words that I changed were substantially - - - the order read the same. My secretary typed the last page. The last paragraph, if I might read it, reads - - -

Q All right.

A In the file, "ordered, adjudged and decreed that said Anna M. Nicholas, the Plaintiff, be and she is hereby ordered to appear before this Court on the 12th day of September, A.D. 1962, at 9:30 o'clock, A.M., in Chambers at St. Petersburg, Florida, to show cause, if any she can, why she is in wilful violation of the order of this Court dated December 1, 1961, and specifically why she refuses to abide by the terms of the above mentioned final decree in this cause, as ordered."

The words I changed in the original order - - - I had written "show cause, if any she can, why she is in contempt of the order of this Court dated December," and I changed the word "contempt" to "why she is in wilful violation of the order of this Court"; and Judge Collins signed it.

Q Upon the change of the word "contempt" to "wilful violation," Judge Collins signed the order?

A Yes sir.

Q Now, Mr. Carr, do you know of the system in the Clerk's office - - - that would be the Clerk of the Circuit Court's office - - - in Pinellas County, with respect to the assigning of cases to the Circuit Judges?

A Yes sir. They assign them on a rotation basis. I am not sure, but I think that the only time Judge Kelly was ever assigned cases in St. Petersburg where I practiced, was during the vacation of other judges, or on special matters.

Q Do you know the custom of you attorneys with respect to the assignment of cases to Judge Kelly, as it pertains to this system of assignment in Pinellas County?

A Well, the attorneys that I am familiar with try to avoid coming before Judge Kelly.

Q How do they accomplish this, if it is an automatic rotation system?

A Well, they will call the Clerk of the office, or call someone over there, and ask what Judge there is. Sometimes they will take the case right over to Clearwater and will wait until another case is filed, and then file their case.

Q This has happened with other attorneys other than yourself?

A Yes sir.

Q Mr. Carr, do you know, from your practice and from these incidents, Judge Kelly's reputation in Pinellas County and the Sixth Judicial Circuit, among the bar, as to the manner in which he conducts trials of cases before him?

A Yes sir.

CHIEF JUSTICE DREW: State whether it is good or bad.

BY MR. DANIEL:

Q What is that reputation?

A Well, his general reputation, or the idea that I get from the members of the Bar is that they'd rather not practice in front of him.

Q Would you say that reputation was good or bad?

A Bad.

Q And that's based upon these conversations and ideas that you get from other attorneys that practice before him?

A Yes.

Q Would you state to what extent or to what number of attorneys?

A Well, the attorneys, with very few exceptions, that I practice with generally, the ones that I know personally, feel the same as I do.

Q Could you give us an estimate of the number?

A No sir, I couldn't estimate it. I know the - - - I would say forty or fifty that I am in constant touch with, communication with in St. Petersburg, the general feeling is the same.

MR. DANIEL: You may inquire.

MR. NICHOLS: We waive our cross examination. Thank you very much.

CHIEF JUSTICE DREW: I would like to ask one or two questions.

When were you - - - when did the fact come before you on which your petition for this rule to show cause was based?

THE WITNESS: Your Honor, I don't remember the exact date. It was some two or three days, maybe - - - in fact, it might have been just the day before I presented the petition, because I know that I felt it was a matter of real importance and urgency.

CHIEF JUSTICE DREW: How long did it take you to prepare the petition?

THE WITNESS: It was drawn that day, one day in the office, the day that I presented the petition.

CHIEF JUSTICE DREW: Well, do you know whether you got the facts the day you did this, or the day before?

THE WITNESS: I think it was the day before, because the man that I represented, the husband that I represented, worked for the city, driving a bus, and he generally came into my office after 3 o'clock; so, I'm sure it was probably after 3 o'clock the day before I presented the petition.

CHIEF JUSTICE DREW: Senator Cleveland would like to ask:

He wants to know the date of the Nicholas hearing.

THE WITNESS: Could I refer to the - - -

CHIEF JUSTICE DREW: Yes, you may.

THE WITNESS: The order was signed the 13th day of August, 1962, and the hearing - - - this was the day following, I'm almost positive this was the day following the hearing, which would have been the 12th day of August.

CHIEF JUSTICE DREW: Senator Cleveland also would like to know, was a stipulation or agreement signed by the Plaintiff and Defendant, as to occupancy of the house prior to the entry of the final decree of divorce?

THE WITNESS: Yes, there was. There was a property settlement agreement entered into, which was made a part of the final decree for divorce.

CHIEF JUSTICE DREW: Was it - - -

SENATOR CLEVELAND: That answers the second question, Your Honor.

CHIEF JUSTICE DREW: All right, sir.

Senator Johns asks do you have any trouble with any other judge in your circuit?

THE WITNESS: No sir, I've never had any - - - I've been called down by one of the judges, but - - - for something that was - - - but I've never had any trouble, as such, with another judge.

CHIEF JUSTICE DREW: In your telephone conversation, or in the conversation you overheard, did Judge Kelly object or make any statement concerning removing the matter over to Judge Collins?

THE WITNESS: I can't say, sir. I don't have any knowledge of what the conversation - - - what conversation took place.

CHIEF JUSTICE DREW: He didn't say anything to you about it?

THE WITNESS: No sir, he did not.

MR. NICHOLS: Now, sir, in view of the last questions, I have a question I would like to ask Mr. Carr.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Carr, did you not run for the Legislature on the Democratic ticket, and were defeated in your county?

A Yes sir.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: You may come down, Mr. Carr.

MR. DANIEL: Mr. Nichols, I had called this witness now only as a matter of accommodation to him. If you

have no objection, he can return home, subject to the same stipulation that we've entered into.

MR. NICHOLS: Very well. Thank you.

CHIEF JUSTICE DREW: That will be the order.

(Witness excused)

MR. O'NEILL: Call Sam Y. Allgood.

SECRETARY FRASER: Allgood?

MR. O'NEILL: Sam Allgood.

CHIEF JUSTICE DREW: Swear the witness.

Thereupon,

SAM Y. ALLGOOD,

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 name, where you live, and your profession, please sir?

A Sam Y. Allgood, Jr., 122 West Main Street, New Port Richey, Florida. I'm a lawyer.

Q Mr. Allgood, do you have a law office in New Port Richey?

A Yes sir, I do.

Q Do you have any other law offices in any other place?

A Yes sir, in Safety Harbor, Florida.

Q What county is New Port Richey in?

A Pasco County.

Q What county is Safety Harbor in?

A Pinellas County, sir.

Q How long have you practiced law, sir?

A January, this coming year, fifteen years.

Q Where did you receive your education to become a lawyer?

A University of Florida.

Q When did you graduate from that school?

A 1949.

Q What official positions, if any, have you held in the Sixth Judicial Circuit?

A I was Assistant State Attorney for the Sixth Circuit, Pinellas and Pasco County, from June of 1949 through July of 1958.

Q Have you served in any other capacity in that county?

A I represented both the city of New Port Richey and Port Richey, the West Pasco County Mosquito Control Administration, been President of the Bar Association, member of the Grievance Committee for over five years.

BY MR. O'NEILL:

Q Have you ever heard of a person by the name of Terry Grady?

A Yes sir, I have.

Q What type of case was that?

A That was a first degree murder case.

Q Did you represent the Defendant in that case?

A Yes sir, I was court-appointed counsel for the Defendant in that trial in Pasco County, in the Sixth Circuit.

Q Who appointed you to that, sir?

A Judge Richard Kelly.

Q What year was this that you were appointed to defend Terry Grady?

A June 8, 1961.

Q Who, at that time, was the State's Attorney of the Sixth Judicial Circuit?

A Clair A. Davis, of St. Petersburg, Florida.

Q On or about when was the case tried?

A It was tried in September of 1961.

Q Who was the case tried before?

A Judge Richard Kelly.

Q Will you state, in your own words - - - or let me ask you this question:

Have you reviewed the transcript of testimony in that particular case?

A Yes sir, I have reviewed the transcript of testimony of that taking place on Saturday, the last day of the trial, in the afternoon.

Q You are familiar with that transcript?

A Yes sir.

Q Will you state, in your own words, what occurred on that particular day in connection with this Terry Grady murder case trial?

A On Saturday, shortly after lunch, the state rested its case.

At that time, my associate, Jack McPherson, of my law firm, and I moved both for - - - to suppress certain evidence, and for a directed verdict. The judge at that time denied the motion to suppress and advised that he was withholding his ruling on the motion for a directed verdict.

We argued for some time on the propriety of the - - - withholding the ruling. The State Attorney at that time advised the court that he did not feel that it was proper for such a ruling to be withheld, and I did. Also, at that time, the judge directed me to put on the defense case, which I felt was quite improper prior to the ruling of the court. When the court refused to make its ruling at that time, and would not let us argue the motion, I asked for a recess, to determine what we were going to do with the case.

When we returned after about thirty minutes, the court announced that he had reconsidered the matter, and that he thought that he was now prepared to either rule on the motion, or that he would allow us to argue, in the event that we wanted to.

Now, this was after some thirty minutes more discussion; so, of course, we did argue the motion for the directed verdict.

Mr. McPherson argued first, and then I argued it, then Mr. Davis argued it. After the arguments were complete - - - of course, the jury was out during this time - - - Judge Kelly started asking the State Attorney whether or not, in his opinion, the Defendant was guilty, whether

or not he had proved him guilty beyond and to the exclusion of every reasonable doubt, and this continued, according to the transcript, and to my memory, for some forty-five minutes. During this time Mr. Davis became quite upset, and at one time Judge Kelly made the statement, inadvertently, I feel sure, for he apologized for it later, to the effect that the fact that Clair Davis was the State Attorney kept him from being a fair and just advocate, saying that he was prejudiced in the office, and Mr. Davis did make some remarks about that.

After continuing the questioning of Mr. Davis, and after Mr. Davis' refusal to give a personal opinion, which he felt was in violation of the Canons, the Judge made the remark that he had never seen a case where the prosecuting attorney would not give a personal opinion of the guilt or the innocence of the Defendant in the case.

The argument, or discussion, became so heated that at one time I interposed myself into the discussion between the Judge and the State's Attorney, and I told the court at that time that I didn't feel that he had the right to require the State Attorney to give a personal opinion after he had argued the case.

The net result of all of this was that, finally, a directed verdict was granted to Terry Grady in this case. The case was one of largely circumstantial evidence; it was a five - - - five and a half-day trial there in Pasco County.

BY MR. O'NEILL:

Q You mentioned Mr. Davis. That's Mr. Clair Davis, the State's Attorney for the Sixth Judicial Circuit?

A Yes sir.

Q You also mentioned a Mr. McPherson. Is he associated in the practice of law with you?

A Yes sir, he is.

Q Mr. Allgood, you previously stated that you had been Assistant State's Attorney for some eight years. Are you familiar with that body of the law of the Supreme Court of the State of Florida as to whether or not a State's Attorney should comment upon the guilt or innocence of a person on trial for any crime?

A Yes sir, I know that he should not give his personal opinion as to the guilt or the innocence of the Defendant.

Q Isn't it a fact that it's reversible error for such State's Attorney or prosecuting attorney to so state?

A It is my understanding that it is, yes.

Q Was there any other attorney participating in the trial of that case, save and except the three you have mentioned?

A No sir, there were two special investigators from the State's Attorney's office who were within the Bar at the time.

Q Now, have you considered, or have you handled an adoption case, the Bulcher adoption case, before Judge Kelly?

A Yes sir, I did handle such case in December of 1961.

Q What type of adoption case was this, sir?

A It was a matter of service by publication on two natural fathers, who were individual parents of the two children which were - - - wished to be adopted by the man, Bulcher, who was married to the mother of the two children.

Q These were children by separate marriages - - -

A Yes sir.

Q - - - to the natural mother, and who had become Mrs. Bulcher?

A That's right.

Q What was the financial condition of these individuals?

A Very strained.

Q Where was one of the natural fathers living at the time, according to your best information, after diligent search and inquiry?

A On the Island of Greece.

Q Where was the other, according to the best information that you could find out?

A In the Atlanta, Georgia, area.

Q Was there any evidence that the one that was living in Atlanta, Georgia was in jail, or otherwise incarcerated?

A It was known that he had been in jail. It was not believed that he was at that time.

Q What type of jail was that, sir?

A That was in the county or city jail in Atlanta.

Q What, if any comments were made by Judge Kelly at the hearing, on or about December, 1961, in connection with this case?

A At the time that the petitions were presented to the court, and the clients were brought into Chambers, Judge Kelly looked at the file and noted the affidavits that were made in the service for publication, which were drawn, I believe, according to Florida Law; and he made a comment that the service by publication certainly was not sufficient; that the attorneys in Pasco County and the Sixth Circuit had been getting away with improper procedures long enough, that he was going to put a stop to it.

He told Mr. McPherson, and me also, that although we were not guilty of it, but the dress in the circuit had not been up to standard, and he didn't expect any more sloppiness in the Court Room of the Sixth Circuit.

Of course - - -

Q Did you - - - go ahead.

A - - - the clients were there, and they were somewhat confused at this particular discussion.

We continued, however, with the case, and testimony was taken, and within two days after that, Judge Kelly did enter the final decree of adoption in both cases, and went out of his way to do it, I might add, by coming by New Port Richey to sign the order.

Q All right, sir.

Were you involved in the case of Norwood vs. Le Dante?

A Yes sir, we were Plaintiff's attorneys in that case; that was a case that was tried in February of 1962, in the Circuit Court in Pinellas County, Florida.

Q Where was the trial conducted, sir?

A In Clearwater.

Q What were the age of the two Plaintiffs in this case?

A They were retired folks, in their early sixties.

Q What, if anything occurred on the trial of this case - - - or first, was this a jury case?

A Yes sir, this was a jury trial, held before Judge Kelly in Clearwater.

Q Was the jury in the box?

A Yes sir, the jury had been empanelled, and testimony had been taken for more than one day.

Q All right, sir, state what, if anything, occurred in this case?

A On Friday afternoon Judge Kelly advised the attorneys that, if necessary, we would go into Friday night to complete the case or, if it were required, we would come back on Saturday morning to complete it. Soon after - - -

Q Did he later change that, sir?

A Yes sir, not too long after that, he called us into Chambers and told us that he had received a message that there was to be a meeting in St. Petersburg at 5 o'clock, and he was going to have to go to St. Petersburg, and leave at about 4 o'clock, from this trial.

A little bit later in the afternoon, he called us into Chambers again and indicated that he was going to give this ruling.

The case involved a tractor that was being driven on the highway, on the state road - - - on the Pasco-Hillsborough County boundary. The young fellow driving the tractor had moved from one field out into the highway, had proceeded about half a mile, and had turned the tractor across the road into the car of the Plaintiffs, severely injuring two of the Plaintiffs and damaging the vehicle of the Plaintiffs to a great extent.

Of course, we were proceeding under the dangerous instrumentality theory, that a motor vehicle is a dangerous instrumentality, in and of itself.

The ruling that Judge Kelly indicated he was going to give at that time was that this gas propelled four wheel tractor being driven on the highway was not a motor vehicle. He gave as his reason for that that it was not licensed; it didn't have a motor vehicle tag as an automobile does.

Q Is the law contrary to that point, by decisions of the Supreme Court and the District Appellate Courts?

A We believed that it was, sir, and we argued that to the Court at that time, citing cases.

Q All right, sir. What was the financial condition of these two Plaintiffs of yours, the retired couple?

A Well, they were not in good financial condition. The lady, Mrs. Norwood, was quite ill. She was the one injured most seriously.

We had our choice at this time of either taking a voluntary nonsuit or appealing the decision of the Court.

Q What, if anything, occurred after that as to the disposition of this cause?

A Rather than go through the six to twelve month period, either on the nonsuit or on the appeal, I contacted the defense counsel and their representatives and we managed to settle the case for several hundred dollars less than we were offered before the trial even commenced.

Q All right, sir. Now, were you involved in the case of Doster vs. Doster; and, if so, state the nature of that case.

A Yes sir, I was the Plaintiff's attorney. George Doster was the Plaintiff in a divorce action brought in Pasco County in the Circuit Court in 1962. It was tried December 19, 1962, there in New Port Richey, at the branch court house.

It was a rather simple case, as far as extreme cruelty was concerned. That is, the Plaintiff and his parents both testified as to finding the Defendant in *pari delicto*; that is, committing acts with men other than her husband. She had gone off and admitted that she had stayed off for weekends in the company of other men. The men were named.

The reason that the mother and step-father were brought down from Jacksonville was because the young man, Doster, was a recent arrival in New Port Richey and he had lived in the Jacksonville area prior to that time.

However, she had lived with him in New Port Richey and there was no question as to the propriety of the case being brought in Pasco County. She had returned just a few days before the trial with the man with whom she was living and had talked to the Plaintiff at great length.

As I say, the case seemed to me to be a simple one. However, Judge Kelly took over the questioning in that particular case and the record, the transcript, ran to thirty dollars, rather than the seven and a half to ten dollars that we ordinarily have in a case of this type.

Q Was there an answer on behalf of the Defendant in this case?

A There was an answer filed, sir, but it was withdrawn.

Q The Defendant had had counsel in the cause subsequent to the time that it had been filed?

A Yes sir, Mr. Hammond, of Pinellas Park, represented the Defendant.

Q Have you handled other cases before Judge Kelly, other than the ones that we have mentioned thus far?

A Yes sir. Many of them.

Q Now, Mr. Allgood, you have testified that you live in New Port Richey. Did you sign the petition to ask the Legislative delegation of Pasco County to remove Pasco County from the Sixth Judicial Circuit and connect it to the Fifth Judicial Circuit?

A Yes sir, I did.

Q Will you state the circumstances and why you signed such a petition?

A Because I felt that Pasco County, in general - - - not our West Coast area, but most of Pasco County is more closely allied to the counties in the Fifth Circuit.

Q Where is New Port Richey in relation to Dade City? The distance, sir?

A Forty-two miles.

Q How many lawyers practice law in the New Port Richey area, as opposed to the other areas, Zephyrhills and the Dade City area?

A We have seven attorneys in the New Port Richey area, and there are sixteen on the other side of the county, in addition to the Judge.

Q Since you have an office in Safety Harbor, in Pinellas County, did you particularly care whether Pasco County belonged to the Sixth or the Fifth Circuit?

A No.

Q Personally?

A Of course, as far as the Safety Harbor office was concerned, it would have stayed in the Sixth Circuit.

Q Now, there was a petition filed with the Speaker of the House of Representatives of the State of Florida asking that a committee be appointed.

Did you sign that petition, sir?

A Yes sir, I did.

Q Did you sign the petition at first, when it was first presented to you, or was it some time later?

A It was some time later.

Q Will you state the circumstances as to why you signed it later?

A Yes sir, I signed the petition after I had gotten the results of a hearing at Lakeland on the Rule to Show Cause issued against Judge Kelly on his contempt citation.

I had also heard that there was a direct removal of an attorney from his office in Dade City and the bringing of him to Chambers in Dade City, of Judge Kelly, on a matter not connected with anything having to do with Mr. Luckie's clients or anything before the Court at that time.

I had also read a certified copy of a speech made by Judge Kelly before the Republican Woman's Club in Zephyrhills, Florida, in which he stated that, among other things, - - - not in so many words, but indicating that thievery was condoned among the bar of Pasco County before he became Circuit Judge.

Q Now then, after these three events, you then signed the petition to the Speaker of the House for the appointment of a committee to investigate the matter?

A Yes sir, I did.

Q Mr. Allgood, have you ever had an opportunity and been offered the appointment of a Circuit Judgeship in the Sixth Judicial Circuit?

A Yes sir.

Q If so, state the year.

A About 1951 or 1952.

Q Did you decline that appointment?

A Yes sir, I did.

Q Have you at any time subsequent to that date sought to be a Circuit Judge in any respect, of that Circuit?

A No sir, I have not.

Q Do you know the political affiliation of the other judges in the Sixth Judicial Circuit?

A Yes sir, I do.

Q Would you name those who run upon the Republican Party ticket?

A Judge Collins - - - Judge Leavengood - - - Judge Kissinger - - - Judge Kelly - - - and Judge McNulty, are all Republicans.

Q Will you name those on the Democratic side?

A There are three of those. Judge Driver, who just replaced Judge Bird; Judge Hobson and Judge Phillips.

Q Have you at any time, in the practice of law since on or about 1949 or 1948, as you previously testified, had any difficulty getting along with any of the Judges of the Sixth Judicial Circuit, other than Judge Kelly?

A No sir, I have not.

Q Mr. Allgood, do you know the reputation of Judge Kelly, among the members of the bench and the bar and the community, as to how the said Judge Kelly conducts his cases and his Court?

A Yes sir, I do.

Q What is that reputation, sir?

A Generally bad.

Q Upon what do you base that, sir?

A From comments made by the other attorneys and the - - - well, many people after, particularly, the Sinclair case in Pinellas County, and other cases having to do with this matter on which we are here met, in this county - - - in Pasco County.

Q You mentioned the Sinclair case? Was that a murder case of some notoriety?

A Yes sir, that was the torso killing in Clearwater, outside of Clearwater.

Q I believe you stated "many people." Will you give some approximation of the number of persons, other than members of the bench and the bar, who have expressed concern to you, and upon which you base your opinion?

A I have not discussed the matter of the Judge with any members of the bench, Mr. O'Neill. I have discussed this matter with members of the bar. I would say ninety per cent, in Pasco County; and approximately twenty-five per cent of those in Pinellas County. I have probably talked with or been talked to by some forty or fifty individual lay people.

MR. O'NEILL: You may inquire.

CHIEF JUSTICE DREW: Mr. Nichols, I will ask some questions of the Senators.

Senator Johns asks this question:

"Did you say that Judge Kelly made the statement in open court that, because Mr. Clair Davis was the Prosecutor in the case, that that made him, the Judge, prejudiced for the Defendant in the case?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: I would like to ask you, for the Court's information, as to the colloquy at this trial between the Prosecuting Attorney or the State Attorney and the Judge; whether that occurred principally out of the presence of the jury or in the presence of the jury?

THE WITNESS: This last one I referred to, on the last day of the trial, was Saturday - - - it was all in the absence of the jury.

MR. NICHOLS: Your Honor, it is now five minutes of eleven. May we take our break at this time?

CHIEF JUSTICE DREW: The Court is adjourned for ten minutes.

Whereupon, at 10:53 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 11:07 o'clock A. M.

A quorum present.

MR. O'NEILL: Mr. Chief Justice.

CHIEF JUSTICE DREW: Mr. O'Neill.

MR. O'NEILL: One of the Senators asked a question as to this witness' testimony, where something was said, and I would like to ask a couple of questions with relation to that, so that he might read it, it might be clearly understood, there would be no misunderstanding about it.

CHIEF JUSTICE DREW: You may proceed.

BY MR. O'NEILL:

Q Mr. Allgood, just before we recessed, there were some quotes that you were quoting, and a Senator asked a question about it. Have you marked, in the excerpt of the

transcript there, the particular point, and if so, will you read it, please, so that it might be clarified?

A Yes sir, I have, on Page 4 of the transcript, duly certified by Mr. James Swain, this part of Judge Kelly's statement is read:

"Now, Mr. McPherson, in answer to that, it might be as an advocate that prevents Mr. Davis from being an impartial and reasonable man. He can be a reasonable man and still not be impartial, because he has a job to do here, but, Mr. Davis - - -"

"Mr. Davis: Yes sir.

"The Court: It is the State's position, the Court understands, that the State resists this motion.

"Mr. Davis: If the Court please, I could make a statement, but I - - -"

"The Court: Just do you resist the motion? Do you join with the defense in the motion?"

"Mr. Davis: I haven't made any motions or joined in with them. The decision is entirely up to the Court."

CHIEF JUSTICE DREW: Let me ask, now, is this a part of the testimony that was agreed to, that was read this morning?

MR. O'NEILL: It was introduced, I think, by Mr. Swain earlier, and - - -"

MR. NICHOLS: We have no objection to it.

CHIEF JUSTICE DREW: Very well, you may proceed.

BY MR. O'NEILL:

Q Will you get down to the comments made by Mr. Davis in reference to the previous remarks about the reasonable and impartiality?

A Yes sir. Continuing on Page 4 of the same transcript - - -"

MR. MASTERSON: On Page what? I'm sorry.

BY MR. O'NEILL:

Q On that same page.

A Page 4:

"Mr. Davis: There was one statement made I would like to have clarified now. I might have misunderstood, and possibly I did. I'm satisfied the Court didn't mean it the way I understood, but the Court said as an advocate and as State Attorney, kept me from being impartial."

Q All right, sir. Now, is that the portion that the Senator asked the question about - - -"

A Yes sir.

Q - - - that he did not understand?

A That's correct.

Q All right, sir. Now, Mr. Allgood, have you recently accepted an appointment for the Sixth Judicial Circuit?

A Yes sir, I have.

Q What is that appointment?

A As a Member of the Census Commission.

Q What is that Census Commission considering at this time?

A Considering whether or not the Sixth Judicial Circuit, comprising Pinellas and Pasco County, requires additional circuit judges.

Q In your official position on that Census Commission,

is it your feeling that you would be qualified to accept an appointment to the Bench as a circuit judge?

A I would consider it to be highly improper.

MR. O'NEILL: You may inquire of the witness.

CHIEF JUSTICE DREW: Before you do so, counsel, I want to ask one or two questions from the Senators.

Senator Johns asks this question:

Can Judge Kelly's attitude toward the attorneys of the Sixth Judicial Circuit affect their clients that they represent, and in what way?

THE WITNESS: Yes sir, very definitely, it can. It can put the attorneys in the position of losing their clients in cases - - - that they can't properly present a case before him, or it could, of course, embarrass and make the attorneys look as if they were entirely inefficient.

CHIEF JUSTICE DREW: Senator Johns would also - - -

MR. O'NEILL: Excuse me, Mr. Chief Justice, I don't believe the witness got the question. I'm not sure. I think it was with reference to clients.

I respectfully ask the Court to re-read the first question of Senator Johns.

MR. NICHOLS: I believe he answered the question, Your Honor.

CHIEF JUSTICE DREW: I will read the question again:

Can Judge Kelly's attitude toward the attorneys of the Sixth Judicial Circuit affect their clients that they represent, and in what way?

Did you answer - - - did you understand the question?

THE WITNESS: I believe I did, sir. I believe I answered it.

CHIEF JUSTICE DREW: I thought he answered the question.

Senator Johns would also like for you to explain again the statement you made as to the prejudice of Senator Davis - - - of State's Attorney Clair Davis, whether it was in the presence of the jury.

THE WITNESS: No sir, that part that I read was during the motion for the directed verdict, and the jury was not present.

CHIEF JUSTICE DREW: The jury was not present at that time?

THE WITNESS: At that time, no sir.

CHIEF JUSTICE DREW: Senator Askew would like to know, in the Grady case, what was your legal position, why the testimony of Grady's girl friend in regard to her having seen Grady with a knife the night before the crime should not be admitted and, two, why the knife itself should not be admitted in evidence? What was your legal position on the first question, that is, why the testimony of the girl friend in regard to her having seen Grady with a knife the night before should not be admitted.

THE WITNESS: Well, it shouldn't have been admitted at that time, because there was no knife in evidence; that had not even been proffered by the State at the time that the girl was put on the stand.

On the second part of the question, the knife itself was not a knife, it was a handle of a knife, that had been found the day after the crime had been committed, in an area where it should have been found the day the crime was committed, if it was going to be found.

Now, we objected strenuously to any testimony about this particular knife handle, and also showed, by the chief pathologist of the Tampa General Hospital, that the stab wounds which killed the person who was killed did not enter or engage any cartilage or bone. Each of the wounds was probed, and was clean; therefore, the knife blade could not have been broken from the handle of the knife in the commission of the crime. It was not proper for that to be received, in our opinion, of course, and we argued that to the court.

CHIEF JUSTICE DREW: Senator Askew would also ask this question:

Do you take the position that Mr. Davis - - - that if Mr. Davis had given Judge Kelly his personal opinion as to the guilt or innocence of Grady outside of the presence of the jury, it would have constituted reversible error?

THE WITNESS: It certainly would have as far as we were concerned.

CHIEF JUSTICE DREW: Now, so that the Court may understand it, it is your position that if he had given his personal opinion as to the guilt or innocence of the Defendant outside the presence of the jury, it would have, in your judgment, been reversible error?

THE WITNESS: Yes sir. Of course, continuing with the thought that the judge would use his personal opinion to base his ruling in denying the motion.

CHIEF JUSTICE DREW: And Senator Stratton asks:

What is your batting average in Judge Kelly's court, as to won or lost cases?

THE WITNESS: I don't think I've ever lost a case.

CHIEF JUSTICE DREW: Were your clients happy as to the results in the cases that you tried before Judge Kelly?

THE WITNESS: With the exception of those that I have noted, and none of those clients were happy, even with the results.

CHIEF JUSTICE DREW: The last question I asked you was from Senator Stratton.

You may examine - - - just a minute, please.

Senator Connor wants to know, what is your political affiliation?

THE WITNESS: I am a Democrat.

CHIEF JUSTICE DREW: You may examine - - - just one minute, Mr. Masterson.

Senator Connor would also like to know, if the Defendant had said he had no knife for many weeks before the murder, why was not the testimony from his girl friend, that he had a knife the night before, not admitted, should this not be impeachable testimony?

THE WITNESS: Terry Grady never took the stand in this case, Your Honor.

CHIEF JUSTICE DREW: I didn't understand the answer.

THE WITNESS: I say, Terry Grady, the Defendant, never took the stand in this case. This case was concluded on the motion for directed verdict. He did not testify in court that he had a knife, or that he had anything to do with the knife.

CHIEF JUSTICE DREW: Mr. Masterson, you may cross examine.

MR. MASTERSON: May it please the Court.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Allgood, in other words, with reference to this knife handle which was offered in evidence, you were vigorously offering law and opposition to the admission of that knife handle into evidence, is that not correct?

A Yes sir.

Q And Mr. Davis, on the other hand, was trying to get it in, quite naturally?

A He proffered it, yes sir.

Q So, the Court - - -

A Let me rephrase that. He started to make the proffer, and then withdrew the proffer of that particular knife handle.

Q So, the Court never even had to make a ruling; the proffer was withdrawn?

A That is correct.

Q Now, Mr. Allgood, in order that the jury - - - this jury (Indicating the Senate) - - - can understand what was going on in this murder trial which, incidentally, you won, is that correct, the Grady trial?

A Yes sir.

Q The State had concluded its evidence, and you had filed a motion for a directed verdict, is that right, sir?

A And a motion to suppress.

Q A motion to strike?

A To suppress.

Q Suppress, that's right; and what the Court was seeking was to know Mr. Davis' position with reference to your motion, isn't that right?

MR. O'NEILL: We object to what the Court was seeking. This witness doesn't know what was in the Court's mind.

MR. MASTERSON: May I have a ruling?

CHIEF JUSTICE DREW: I think it's proper cross examination. Overruled.

THE WITNESS: The Judge asked Mr. Davis, time and time again, to give his personal opinion as to the guilt or the innocence, of whether or not Mr. Davis felt that he had proved the Defendant guilty beyond and to the exclusion of every reasonable doubt, and stated, on two different occasions, that he had never seen a case where a prosecutor wouldn't give his personal opinion on the guilt or the innocence.

BY MR. MASTERSON:

Q Let me direct your attention to the portion of the transcript - - - are you reading from the court file?

A I'm not reading from anything right now, sir.

Q Well, I mean when you have been reading previously?

A Yes sir, this is an excerpt of that particular case.

Q Now, to be sure that we correspond, I'm reading from House Exhibit 42, Page 4. Would you see if that corresponds with Page 4 of your transcript when I read to you, sir?

A Yes sir.

Q In the court proceedings the Court said this:

"THE COURT: Mr. Davis, just one thing.

"MR. DAVIS: Yes sir.

"THE COURT: In your willingness to assist the Court, the Court now is faced with a decision to make" - - - are you able to follow me?

A No sir.

Q I want to be sure that you can.

A That's not on Page 4, Mr. Masterson.

Q Are you able to pick it up?

MR. O'NEILL: Would it help counsel to see where these numbered pages are - - - or get the official exhibit; he is not looking at the official exhibit. Maybe that would be helpful.

CHIEF JUSTICE DREW: Counsel, suppose you stand by the witness and let him look at it as you read it.

MR. MASTERSON: All right, sir.

BY MR. MASTERSON:

Q "THE COURT: Mr. Davis, just one thing.

"MR. DAVIS: Yes sir.

"THE COURT: In your willingness to assist the Court, the Court now is faced with a decision to make. I do not intend to ask you is this Defendant guilty because" - - - and there's a break.

"MR. DAVIS: If the Court please, I mentioned that because Mr. Allgood expressed an opinion. I don't care to express one. I have one.

"THE COURT: What the Court is really, in essence, asking you is, do you think that the State has proven whether he is guilty, not whether he is or isn't, but do you think the State has proven he is guilty beyond and to the exclusion of a reasonable doubt, and if you do, why? How do you meet Mr. Allgood's argument?"

A Would you repeat the question, sir?

Q The question that I asked, I believe, was what the Court inquired about the nature of Mr. Davis' argument relative to your motion for a directed verdict?

A Yes sir, it was that; and it was also as I have testified here.

Q But, in essence, you had made a motion and he wanted to hear the State Attorney's position relative to your motion?

A Yes, the State Attorney argued the motion.

Q Now, you mentioned a case called the Norwood case, I believe, which involved a tractor, in which the Court held, I believe you stated, that this particular tractor was not a motor vehicle within the meaning of the particular statute defining motor vehicles?

A No sir, I made no such statement.

Q I'm sorry. Would you clarify your statement for me?

A I said the ruling of the Court - - - the indicated ruling of the Court was that the gas propelled four-wheel engine-driven tractor was not a motor vehicle.

Q Well, the Court's ruling was that it was not a motor vehicle. I presume the Court referred to some statutory definition of "motor vehicle"?

A Yes sir, he was relying on the fact that it was not licensed as a truck or a passenger automobile was.

Q Now, sir, who was counsel for the defense in that case?

A Mike Kinney was chief counsel and one of the other members of the firm was on the case.

Q Was that Mike Kinney, of the firm of Fowler, White - - - no, Shackelford, Farrior?

A No sir.

Q It was Fowler, White?

A That's right. Fowler, White.

Q As a matter of fact Mike Kinney was the lawyer who defended you this year, or last year when you were involved personally, as a Defendant, in a motor vehicle accident, wasn't he?

A No sir.

Q It was Jimmy Thompson, of his firm?

A Jimmy Thompson.

Q The same firm was involved in the defense of a suit which was brought against you, arising out of an accident?

A Yes sir.

Q So that you don't question the competency of these people, do you?

A I have not been asked to comment on the competency of any attorney, that I know of.

Q Would you agree with me that Mr. Kinney is a very capable and a thoroughly experienced defense attorney in the trial of motor vehicle cases?

MR. O'NEILL: We object to the question as argumentative. He can ask the witness what his opinion of Mr. Kinney is without editorializing in that fashion, and then asking him if he would agree.

MR. MASTERSON: Mr. Chief Justice, I am going to pursue this for just a moment. I would ask the Court's leave.

CHIEF JUSTICE DREW: I think he is entitled to ask the question. He employed the man, so he must have thought he was a good lawyer.

BY MR. MASTERSON:

Q Would you answer the question?

A I think that Mr. Kinney is a competent attorney, yes.

Q Now, Mr. Kinney, in this Norwood case, was urging the Court to take the position which he ultimately took; isn't that true?

A He had mentioned that, along with many other things, the previous day.

There was no urging at the time that the Court took his final position, that I was aware of.

Q Mr. Kinney was not urging, in defense of this suit, that this car was not a motor vehicle?

A No sir. I say the last time that we went to Chambers was at the direction of the Court, and it wasn't at the request of anyone to argue.

Q What was Mr. Kinney's position?

A Mr. Kinney's position, of course, was that this was not a motor vehicle.

Q He, in other words, was in opposition to your position?

A Yes, exactly.

Q The Court ruled against you?

A Yes sir, that is true.

Q Did you appeal the ruling?

A No sir. I explained that, Mr. Masterson.

Q Now, you say that you talked to twenty-five per cent of the attorneys in Pasco County?

CHIEF JUSTICE DREW: May I ask a question for the information of the Court. When you speak of the contention that it was not a motor vehicle, you are speaking of it as a motor vehicle from the standpoint of being a dangerous instrumentality, under the law?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: All right. You don't mean to leave the impression that it was not a vehicle driven by a motor.

THE WITNESS: No sir.

CHIEF JUSTICE DREW: All right.

THE WITNESS: I have always argued on the other side.

BY MR. MASTERSON:

Q Now, there are two sides to many of these legal questions, aren't there, Mr. Allgood?

A Yes sir, there are sides to every question.

Q And the Court must rule in favor of one lawyer and against another in every one of them?

A No sir, I don't think that. I think the Court should rule as to the law.

Q But it has to be for one party or against the other, when there is opposition?

A That would be the ultimate result, yes.

Q Now, you mentioned that you talked to twenty-five per cent of the Pinellas County lawyers. How many lawyers are there in Pinellas County?

A Between 250 and 300, as a guess.

Q You are guessing?

A Yes sir.

Q As to how many lawyers?

A Yes sir.

Q It is twenty-five per cent of the 250. Is that right? Or so?

A Yes.

Q Now, sir, you don't live in Pasco County?

A Yes sir, I do. I live in New Port Richey.

Q You live in New Port Richey?

A Yes sir.

Q And is that just over the county line?

A Yes sir, about eight miles from the Pinellas County line.

Q You have seven lawyers in New Port Richey?

A And Port Richey.

Q And Port Richey. And where do you mean that you discussed it, when you were talking about twenty-five per cent of the Pinellas County lawyers?

A I am in and out of Pinellas County quite a bit, Mr. Masterson.

Having an office in Safety Harbor, we do have trials in Clearwater and hearings at St. Petersburg, as well.

Q You were involved in this circuit change, proposed circuit change?

A I don't understand the question.

Q I believe that you said that you filed a petition seeking the transfer of Pasco County to the Fifth Circuit?

A Yes sir, I signed the petition.

Q Although you lived in Pinellas County you wanted to help determine where Pasco County's circuit should be?

A Let me correct you, Mr. Masterson. I live in Pasco County. New Port Richey is in Pasco County.

Q I'm sorry. I thought you told us you lived in Pinellas County.

A No sir.

Q So you went from Pasco County to Pinellas County to sample the opinion of lawyers there?

A I have never gone anywhere to sample opinions.

Q Now, you did sign a petition to change the circuit, transferring Pasco County to the Fifth Judicial Circuit?

A Yes sir, I signed the petition.

Q Did you ask that that bill for that transfer contain a referendum clause?

A There was some discussion of a referendum there, and it was decided, so far as I remember, that it was almost impossible to have a referendum involving all of the people who might be involved, both in the Fifth and Sixth Circuits.

Q Were you opposed to a referendum or in favor of a referendum?

A No sir, I was not opposed to a referendum.

Q You were not opposed to it?

A No sir.

MR. MASTERSON: That's all.

CHIEF JUSTICE DREW: I have one further question from Senator Connor, who asks:

"Should not a Circuit Judge know better than to ask the State Attorney a question that, if answered by the State Attorney, would be grounds for reversible error?"

THE WITNESS: In my opinion, he should.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Mr. Allgood, you didn't go around in Pasco and Pinellas County making a sampling of opinion?

A No sir, I did not.

Q These were attorneys that you came in contact with in the daily operation of your law practice?

A Yes sir.

Q In the ultimate result of the Norwood case, Mr. Kinney settled that case with you, notwithstanding his position relative to a motor vehicle being a tractor?

A Yes sir.

MR. MASTERSON: May it please the Court, I am going to object to this continual leading of the witness. I think the witness should testify.

CHIEF JUSTICE DREW: I think the objection is well taken. Sustained.

BY MR. O'NEILL:

Q Now, Mr. Allgood, will you clarify your position as to the petition relating to the circuit change?

Did you particularly desire to remove Pasco County to the Fifth Circuit?

A It was not a matter of the greatest importance to us, because we had offices in both towns. However, I did want to join with the vast majority of the Bar Association in Pasco County, because they had considered all of the probabilities and possibilities, and had decided, by a vast majority vote, to petition for such a change. I did join the petition. All four members of the firm, of which I was the head at that time, did sign the petition.

MR. O'NEILL: That is all.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Come down, Mr. Witness.

You will be excused subject to being called, I assume, under the rule which you have agreed on.

MR. NICHOLS: Correct.

MR. O'NEILL: That is agreeable, Your Honor.

(witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. NICHOLS: If Your Honor please, may we deliver to the Court and to the other members of the Court the four or five page legal memorandum on the question that we raised yesterday concerning the bank account.

May we have them passed out?

MR. DANIEL: I would like to see that first, Mr. Chief Justice.

MR. NICHOLS: We delivered a copy this morning to opposing counsel.

MR. DANIEL: We would still like an opportunity to look at it. Would you defer that until after lunch?

MR. NICHOLS: Yes.

MR. DANIEL: So that we will have an opportunity to look at it.

MR. O'NEILL: It is true that counsel has furnished us a copy of it. However, he did so early this morning and we were in the process of getting it reproduced at his request, and we have had no opportunity to read it.

MR. NICHOLS: I have no objection to your filing any reply or response that you want to. I simply wanted to pass it out.

MR. DANIEL: I know that you "simply want to pass it out"; that is why I want to read it first, Mr. Nichols.

MR. NICHOLS: All right. We will take it up after lunch, after they have had an opportunity to read it.

MR. DANIEL: Call Mr. James J. Altman.

CHIEF JUSTICE DREW: Mr. Nichols, you may hand those to the Secretary and, after lunch, unless there is some material objection, they will be distributed.

For the record, as I understand it, these briefs are relative to a motion made yesterday and the statement that you would furnish a brief.

MR. NICHOLS: That is right. I made the statement yesterday that we moved to strike certain portions of the testimony; and this brief is a short memorandum brief in support of that motion which we requested leave to deliver to His Honor, the Chief Justice, and the other members of the Court.

Thereupon,

JAMES J. ALTMAN,

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 state your name, address and occupation or profession, please?

A James J. Altman, 200 West Main Street, New Port Richey, Florida. And I am a lawyer.

Q You practice law in New Port Richey?

A Yes sir.

Q That is in Pasco County, Florida?

A Yes sir.

Q Do you also practice before the Courts of Pinellas County, Florida?

A Yes sir.

Q How long have you been practicing law?

A I have been practicing law since June, 1950.

Q Will you briefly describe your formal education leading to the degree in law?

A Yes, sir. I was educated at the University of Florida and graduated from the University of Florida College of Law, in June, 1950.

Q In pursuing that, have you studied both Florida and Federal law and procedure?

A Yes sir, I did.

Q In what Courts are you admitted to practice?

A I am admitted to practice in all of the Courts of the State of Florida and in the District Court of the Federal Government.

Q The Federal District Court?

A Yes sir.

Q In what type of practice do you primarily engage?

A General practice, primarily.

Q Are you City Attorney for the City of New Port Richey, Florida?

A Yes sir, I have been City Attorney for New Port Richey since sometime during the latter part of 1957.

Q In what Courts have you actually tried cases?

A In the J. P. Court, the County Judge's Court, and the Circuit Court, where I have actually had trials.

Q Have you filed appearances in other Courts?

A Yes, I have filed appearances in the District Court of Appeal and also in the Supreme Court of the State of Florida.

Q Would you give an approximation of how many cases you have tried altogether in your thirteen years of practice?

A I would say it would be several hundred.

Q You are familiar with the Canons of Ethics governing the conduct of both lawyers and judges in the State of Florida?

A Yes sir, I believe that I am.

Q Do you know Judge Richard Kelly?

A Yes sir, I do.

Q Have you had occasion to practice as an advocate before Judge Kelly?

A Yes sir, I have.

Q Would you give an approximation of on how many occasions you have appeared before Judge Kelly as an advocate?

A I would say approximately six times.

Q I want to hand you a file and see if you can identify it, please. Can you identify that file, sir?

A Yes sir. This is the original case file of the City of New Port Richey vs. the State of Florida, filed in the Sixth Judicial Circuit of the State of Florida, in and for Pasco County.

It is in two volumes, Case Number 8622.

Q Is this the official Court file?

A This is the official Court file.

MR. DANIEL: Would the Secretary advise me what is the next letter of the Board of Managers' exhibit?

SECRETARY FRASER: An identification exhibit?

MR. DANIEL: Identification.

SECRETARY FRASER: Number 24.

CHIEF JUSTICE DREW: And the letter?

SECRETARY FRASER: L.

MR. DANIEL: Would you place the letter "L" in the corner of each of those files so that they can be identified, if necessary, Mr. Altman?

MR. DANIEL: I beg your pardon, Mr. Masterson. I also offer it for identification as L.

MR. MASTERSON: I have no objection.

CHIEF JUSTICE DREW: It may be so identified.

BY MR. DANIEL:

Q I believe you stated that is in two volumes?

A Yes, sir.

Q Did you appear as an advocate in this cause?

A Yes sir, I represented the City of New Port Richey.

Q What was the nature of the proceedings in this case?

A It was a bond validation proceeding.

Q What is a bond validation proceeding, Mr. Altman? Would you explain that, please? The authority for it and how it is handled?

A It is a statutory proceeding under Chapter 75 of the Florida Statutes, which permitted, in this instance, the City of New Port Richey to appear in front of the Circuit Court to have determined its authority to issue bonds for the making of improvements in the city.

Q As a statutory proceeding, is there any proceeding making it an adversary proceeding; is there any provision for anyone to represent someone other than the city?

A Yes sir, there is a provision in the statute requiring an Order to Show Cause to be issued in the matter, directed to and served upon the State's Attorney, with the State Attorney required to file his answer - - - answer to the proceeding - - - if he has any opinion that there may be anything in it that may be irregular, or if he wants to test the validity of the city's action, or the procedure of the city in following that action.

Q Is the State Attorney required by law to file an appearance in the matter?

A Yes, I believe he is required by law to file an answer, if any of these items appear, when he is served.

Q This would be in any bond validation proceeding?

A Yes sir.

Q So that to this extent, then, every bond validation proceeding is contested?

A That is correct.

Q What was the purpose for which the City of New Port Richey proposed to issue these bonds?

A Well, the city wanted to obtain funds with which to finance a sewer expansion program in the city.

CHIEF JUSTICE DREW: Now, may I - - - for the full information of the Court, would you bring out the fact that all citizens of the county and taxpayers are also defendants under the publication, have to be?

MR. DANIEL: I think I did neglect to bring that out.

BY MR. DANIEL:

Q Is that the nature of the proceedings, then, that all citizens and taxpayers in the county, or in the area in which these bonds are to be repaid from, are parties-defendant to an action of that type?

A That is exactly correct, and the State's Attorney is considered as having been delegated as their representative in that matter.

They, of course, would have the right to have their own attorney, or make their own appearances also.

Q And this is because, of course, that any bonds that might be issued must be paid back out of tax money or money earmarked for that purpose - - -

A That's correct.

Q - - - public money, at any rate?

Now, did this bond validation proceeding come on before Judge Kelly for hearing?

A Yes sir, it did.

Q Where did this hearing take place?

A It took place in Dade City, Florida.

Q In the Court House?

A In the Court House.

Q Was it in the Court Room?

A No, actually, it was not in the Court Room, it was in a hearing room next to the Judge's office, oh, approximately ten feet by twenty feet in dimension.

Q Who was present at these hearings?

A At this particular hearing, which was held February 5, 1963, and it was at 8 P. M. in the evening, there was present the Mayor of the City of New Port Richey and his wife and, I believe, three members of the City Council, with their respective wives, the consulting engineer for the city, Dr. Fred C. Eidsness, of Gainesville; a man from Goodbody & Company, who was the fiscal agent for the city; the city's - - - their own city engineer, Mr. Walter Casson; the superintendent of public works, Mr. Lewis; and the city clerk and my own wife. I believe that was all.

Q And of course, the State Attorney, I believe you testified?

A Yes, the State Attorney was there too, Mr. T. H. Getzen, who represented the State.

Q Was he an Assistant State's Attorney for the Sixth Judicial Circuit?

A Yes sir.

Q Was there a Court Reporter present?

A Yes sir, the Court Reporter was Mr. James Swain.

Q Now, in your capacity as City Attorney, the Mayor and the three members of the Council that were present were, in effect, your bosses, or your clients, is that correct?

A That's correct, I was an employee of the city, and am an employee of the city.

Q And you still have that position?

A Yes sir.

Q Did you experience any difficulty in presenting this matter to Judge Kelly?

A Yes sir, immediately and continuously through the proceedings.

Q Do you have the official court file in front of you?

A Yes sir, I do.

Q Does that file reflect any of the specific instances that you refer to in support of your statement that you had difficulty?

A Yes sir, it does.

Q Would you please read those areas of that file and the transcript that does reflect any difficulty?

A Yes sir. If I may, I would like to state first what the difficulty was that I did have, so that - - -

Q Please proceed.

A The difficulty that I encountered in this was - - -

MR. MASTERSON: May it please the Court, I believe the witness has stated that he's going to read from the record, as to what the difficulty was, and I believe that's the best evidence.

MR. DANIEL: Well, also, he stated that he wanted to state the nature of the difficulty, may it please the Court, and I don't think that would be - - -

MR. MASTERSON: He was going to read from the record to evidence to this jury what that difficulty was.

CHIEF JUSTICE DREW: Overruled. I think it's proper, it's all right.

BY MR. DANIEL:

Q Please state the nature of the difficulty?

A The nature of the difficulty was in proving to the satisfaction of the Court that the City of New Port Richey actually existed, and that it had authority to go into a proceeding of this nature; and also, during the proceedings, in trying to prove that, the conduct of the Court became such that it caused great humiliation and embarrassment to me and one witness, in particular, who was harassed by the Court in his questioning, and I think I can cite some specific passages from the actual transcript of the record that will indicate this, although a transcript is, perforce, kind of cold when it's done in writing, and can't show any demeanor or attitude, of course.

Q Before you start on that, that is the official transcript, certified by James Swain, Official Court Reporter of the Sixth Judicial Circuit?

A Yes sir, and that is in Volume 2 of the Court File, 8622, in Pasco County, Florida.

Q Will you proceed, then with your specific instances, if you please?

A I'll try to just pick a few out of these, and be as brief as possible because I know reading from a transcript is a very boring thing for everybody. Starting right out on Page 5, we had filed the complaint, or the petition for the bond validation, and this is from the Court:

"All right. All right, let's start out with this first paragraph. You had reference to the Court taking judicial knowledge of the fact that New Port Richey exists.

"MR. ALTMAN: Yes, if the Court please.

"MR. GETZEN:" - - - he's the attorney representing the state - - - "May it please the Court, I think the State admits that paragraph first" - - -

Q Let me interrupt you.

You said Mr. Getzen was the attorney representing the city. Were you in error there?

A The state, I meant the State.

Q The state?

A Yes. Mr. Getzen states:

"May it please the Court, I think the State admits that paragraph first, that New Port Richey is a municipality."

Then, by the Court:

"All right. Now, your position in this, Mr. Getzen, is you are a bona fide party in interest an advocate in these proceedings, is that right?"

That was when Mr. Getzen had admitted, and their answer had admitted that there was a city of New Port Richey, and there was no controversy in the pleadings on that.

MR. MASTERSON: May it please the Court, I'm going to ask that the witness be instructed not to editorialize, to simply read what went on in this hearing.

MR. DANIEL: May it please the Court, I have asked the witness to pick instances to further indicate to the Court what he's testified to. I think that he can identify these instances and the people speaking.

MR. MASTERSON: There's no objection to his reading the transcript. I think the transcript speaks for itself, Your Honor.

CHIEF JUSTICE DREW: Sustained. I think if he would confine his remarks to the transcript, who said something,

and who answered it, that's the only way, and I'm going to rule the Court can judge what happened. You can identify who it was, that sort of thing, but do not go outside of it.

THE WITNESS: All right, Your Honor.

And the Court was saying this: "All right. Now, your position in this, Mr. Getzen, is you are a bona fide party in interest, an advocate in these proceedings, is that right?"

"MR. GETZEN: Yes sir.

"THE COURT: And you are opposed to the City of New Port Richey?

"MR. GETZEN: Yes sir, State's Attorney's office.

"THE COURT: All right. Well, that's you, isn't it?

"MR. GETZEN: Yes sir.

"THE COURT: Now, they have admitted it, and you have indicated. - - - What was your basis for that?

"MR. ALTMAN: Chapter 21419 of the Laws of Florida, Acts of 1941. There was an act previous of the" - - -

Then, the Court:

"What did it say?

"MR. ALTMAN: It's the city charter, that is the city charter.

"THE COURT: Oh, I see.

"MR. ALTMAN: I think that the State has also admitted the second paragraph in the petition.

"THE COURT: And your proposition there is that the Court does take judicial knowledge of the status of the city, is that correct?"

Then, later, on that same page:

"THE COURT: Well, the proposition here is that they are empowered to, not that they have been. The basis for that is in the charter, isn't it?

"MR. ALTMAN: Yes, and in Chapter 184 of the Statutes of the State of Florida, which is Municipal Sewer Financing, which is the way that it's entitled, which I would also request this Court to take judicial knowledge of.

"THE COURT: And it says?

"MR. ALTMAN: It empowers any municipality in the State to own and operate its system, to finance it - - -

"THE COURT: Do you have that right there?

"MR. ALTMAN: Yes, sir. I think we have it on Chapter 184. I think it would be under .03, General Grant of Powers. I think I also have the charter here. We have provisions in four different places in the charter.

"THE COURT: All right. Well, if it's in here and you know it's there, then I need not read it. You can show it to me.

"MR. ALTMAN: It's in the first paragraph.

"THE COURT: All right.

"MR. ALTMAN: Right here, 184.03. That recites 'any municipality.'"

Then the Court comes in:

"To construct, and to improve, extend . . . authorized and empowered to construct, improve, extend, enlarge, maintain, equip, repair, operate - - - a municipal water works, create a sewage disposal system. Where does it say about the water works?"

"MR. ALTMAN: This is particularly sewer here, Your Honor.

"THE COURT: All right. This says that the 'city is now and at all times hereinafter stated has been empowered to operate a municipal water works system and sewer system.' Now, is the fact that you are empowered to operate a water works system germane to this matter?

"MR. ALTMAN: Yes sir, to this extent - - -

"THE COURT: OK, just yes is good enough. So now where are you authorized to do that?

"MR. ALTMAN: We are authorized under Section 19 of the City charter.

"THE COURT: Do you have - - -

"MR. ALTMAN: Here's a copy of it, Your Honor. I haven't got the original copy.

"THE COURT: Is this one authenticated?

"MR. ALTMAN: It's not authenticated by the clerk.

"THE COURT: All right, do you have - - - are the Statutes of 1941 available? Are they in the library?

"MR. ALTMAN: I think I saw the General Acts of 1941 in there, but I don't believe I saw the Special Acts. It's not set up very systematically. It would be hard for her or anyone to find anything.

"THE COURT: Margaret, what about this room over here, this other hearing room, is that open or do you have a key for it?

"MRS. THOMPSON: I think it's open.

"THE COURT: Well, is this important to you that we establish that the City is empowered to own and operate? As I view this, there's no magic about it. The charter says it or it doesn't say it.

"MR. ALTMAN: That's right, and I think" - - -

Then the Court comes in:

"And if it does say it, then I can read it, and if it doesn't say it, I can't, and I should know that that is the situation. I mean, this business about my taking judicial knowledge of the fact that it exists should at least impose upon me the responsibility to see the law, wouldn't you say?"

Then, again, the Court:

"Let me ask you this. What provision, what paragraph, section, line, article, and what laws and in what book am I going to find this? Do you know that?

"MR. ALTMAN: Yes, it will be in."

Then, the Court came in:

"All right, tell me.

"MR. ALTMAN: I don't know what paragraph or what line, but it's Chapter 21419 of the Laws - - -"

Then, the Court:

"21419.

"MR. ALTMAN: Of the Laws of Florida, 1941.

"THE COURT: 1941.

"MR. ALTMAN: That's a special act.

"THE COURT: Special Act.

"MR. ALTMAN: But we may be able to attack that from a different point, if you want to, your Honor.

"THE COURT: I want to. I want to get it done, but I just need to do it. How do you suggest?

"MR. ALTMAN: Under the general case law of the State of Florida, there have been numerous decisions that any municipality - - -"

The Court interrupts:

"Tell me one of them.

"MR. ALTMAN: All right. The last one, which reverses a prior case, is the City of New Smyrna Beach, Florida, versus the State of Florida, which is reported in 132 So. 2d - - -

"THE COURT: What does it say?"

Later on, in that same page:

"THE COURT: Well, either you're misunderstanding me or I'm misunderstanding you. All that I'm interested in is this second statement in the proposed decree that says 'That said city is now and at all times hereinafter stated has been empowered to own and operate a municipal waterworks system and sewer system in order to supply water and sewage services.' Now, all I want to know is what is the - - - how do I know that they are empowered to own and operate a municipal waterworks system. I have every reason to assume that they are empowered to do so, but it would seem to me as though this would be a logical time to establish as a matter of fact that that is true if it's important. Is it important, and is this the time - - -"

Again, on Page 12:

"THE COURT: All right, then. Well, do you want to pass over this point now? I'm sure that the City is empowered to own and operate the waterworks and the sewer system and then another time we can - - - conceivably it would be more convenient to get this Chapter 21419 you referred to and resolve it that way.

"MR. ALTMAN: All right, sir."

Then, in connection with the questioning of a witness - - - this is on Page 13 of the transcript, direct examination of Paul F. Cheney:

"BY MR. ALTMAN:

"Q Will you please state your name and address.

"A Paul F. Cheney, 309 North Polk Street.

"Q What is your occupation, Mr. Cheney?

"A City Clerk.

"Q How long have you been city clerk?

"A Seven years.

"Q What are some of your duties as city clerk?

"A Well, one of the main duties is custodian of the records of the City."

There's other testimony there that I won't read.

On Page 15, question by me:

"Q As custodian of the City's records, I hand you an instrument dated December 3, 1962, and ask you if you can identify it.

"THE COURT: Wait just a moment. Are you going to have several exhibits of this type?

"MR. ALTMAN: Yes sir.

"THE COURT: All right, I ask that you take a moment at this time, get them altogether, and let the reporter mark each of them for identification, and that way we can build a record, in a way that it will be useful. Mr. Swain, while

you're doing that, you need not record anything that is said. I'm going to ask this man from Peabody some questions about general procedure" - - -

Q Pardon me a minute, there. Who was the man from Peabody, Mr. Altman, if you know?

A Well - - -

Q What was his responsibility, if you don't recall his name?

A Donald Burk. He was the representative of Goodbody & Company, and he was representing the city as fiscal agent. This Mr. Burk, when the record was stopped at this point, Judge Kelly asked Mr. Burk, in this crowded room, with my wife present and all of my employers, asked him if we were proceeding legally.

Q Asked the - - -

A He asked the fiscal agent if we were proceeding legally.

Q Was he an attorney?

A He was not an attorney.

Q Was he an advocate in this proceeding?

A He was not an advocate in the proceeding.

Q Was he a witness in the proceedings?

A He was not a witness in the proceeding.

Q Go ahead.

A And that was - - -

CHIEF JUSTICE DREW: What do you mean by fiscal agent? What was the fiscal agent's responsibility, or why was he in the picture? Can you explain that to the Court?

THE WITNESS: The fiscal agent was in the picture, Your Honor, because we had to finance this sewer program by the issuance of bonds, and Goodbody & Company had been retained to work up the brochure and also to advise the City in the sale of the bonds. It was a very important part of our project. Mr. Burk was there at the particular time because I did not know whether or not anybody would be there who would be contesting some of the fiscal aspects of the program, and if they were, he would be available to comment on the fiscal end of it.

CHIEF JUSTICE DREW: Did the fiscal agent give you a firm bid, a minimum bid, that they would buy the bonds?

THE WITNESS: Not at this time. This fiscal agent - - -

CHIEF JUSTICE DREW: I mean at this time.

THE WITNESS: No sir.

CHIEF JUSTICE DREW: All right.

BY MR. DANIEL:

Q Will you proceed where you left off before the interruption?

A Well, at that time this caused great humiliation and embarrassment to me, as being the attorney representing the city, and having a question like that asked to somebody who's not a lawyer, and who is not completely involved in the matter, completely overlooking the fact that the City Attorney was there and also an attorney representing the state.

Q What was the question that was asked by the Court in the transcript there? I interrupted you, and I'm not sure I let you complete the answer.

A The Court said: All right, I ask that you take a moment at this time, get them altogether, and let the reporter mark each of them for identification, and that way we can build a record, in a way that it will be useful. Mr. Swain, while you're doing that, you need not record anything that is said. I'm going to ask this man from Peabody some questions about general procedure, and if there's any request by anyone that you pick the remarks up, then you can quit doing what you're doing and pick them up."

Q Did you go back on the record then?

A Yes sir, then we went back on the record, and these are my questions to Mr. Cheney:

"Q Mr. Cheney, I hand you Petitioner's Exhibit No. 2 for identification and ask you if you can identify it, please.

"A Yes, I can identify it."

Q Now, Mr. Cheney is the City Clerk, I believe you previously testified?

A He is the City Clerk, yes.

Q All right,

A "Q What is it, Mr. Cheney?

"A It's the grant offer from the Finance Agency, \$348,450 offered to the City of New Port Richey.

"Q What is it for, Mr. Cheney?

"A It's for the extensions to the sewage collection system.

"Q Is that a copy of the grant offer?

"A Yes, that's a copy of the original.

"Q Do you have the original grant offer?

"A I do have.

"Q I would like to ask you to examine the copy with the original."

Then, the Court comes in:

"Wait just a minute. Let me ask you this. Are you getting ready to offer Petitioner's Exhibit No. 1 into evidence?

"MR. ALTMAN: This is Petitioner's Exhibit No. 2.

"THE COURT: No. 2 into evidence?

"MR. ALTMAN: Yes sir.

"THE COURT: What is the explanation for why we're not using the original?

"MR. ALTMAN: Well, the original is a record of the City as a part of the official city records. The only thing I'm trying to do here is to establish that the copy I handed him is an exact copy and then offer the original into evidence with the request to have leave of court to substitute the copy for the original.

"THE COURT: I see. All right, then let me ask you this. Shouldn't we mark the original and deal with the original, and then we will entertain the motion about substituting a copy for it.

"MR. ALTMAN: All right, sir.

"THE COURT: I mean, that will oil the works tonight.

"MR. ALTMAN: All right.

"THE COURT: So let's do it that way, and have him give you the original copy now. We'll treat it as Peti-

tioner's Exhibit No. 2 for identification and work with that."

And then a question to Mr. Cheney:

"Q Mr. Cheney, is this the original copy of the Federal grant?"

"A Yes, this is the original copy.

"Q That is, the offer of the Federal grant.

"A That's correct.

"MR. ALTMAN: All right, at this time, if the Court please, I would like to submit that in evidence as Petitioner's Exhibit No. 2, with leave to substitute a copy of the grant, since that is an official record of the City.

"MR. GETZEN: The State has no objection, Your Honor, to substituting a true and correct copy for the original.

"THE COURT: All right, now what is this witness' name again, please?"

"MR. ALTMAN: P. F. Cheney."

Question by the Court:

"Mr. Cheney, let me ask you this. Your testimony was that Petitioner's Exhibit No. 2 for identification is the original grant offer. Now, it appears quite likely that this original that you have referred to is itself a copy and not an original. Now, what do you mean by original?"

"A Well, I mean it is original as far as our records are concerned."

Question by the Court:

"In other words, this is - - - by original you mean that this is the grant offer that you received from the United States of America, is that right?"

"A That's right, yes. In all probability the first copy, which, of course, is the actual original, in all probability that had to be mailed back, I imagine, with our acceptance. I imagine, now, I'm not sure of that.

"MR. GETZEN: It might be possible, Your Honor, that that is a duplicate original."

Question by the Court:

"Well, let me ask you this, Mr. Cheney. Whether it is a copy, an original or a duplicate original, in either event is it your testimony, now, under oath, that this grant offer is that upon which the City is proceeding?"

I mean, this is the basis upon which the City is proceeding in its dealings with the United States of America in connection with this sewer expansion program?"

A That is correct.

Q Any equivocation about that?

A Well, we could refer to the minutes of the meeting in which that was---

Q No, no, I don't want the minutes, I'm asking you, and if you know say you know, and if you don't know say you don't know. Do you know?

A Well, I really don't know on that, Your Honor.

Q All right.

A I mean, that's - - -

Q Then do you know? Do you know whether this is the original grant offer or not? You said something about that one was sent back. Do you know that this is the

same as the one that was sent back? Now, there are several pages here."

Then the Court turned to me.

"THE COURT: Mr. Altman, don't let me interfere with your developing this matter, but the problem is that Mr. Cheney doesn't seem to be quite sure about this. What - - - I presume that you intend by your Exhibit 2 to establish that an offer to give a grant was made by the United States of America.

MR. ALTMAN: Yes sir.

THE COURT: And that you are proffering this exhibit to establish that.

MR. ALTMAN: Yes sir.

THE COURT: All right, then we need to establish the authenticity of the document.

MR. ALTMAN: All right, sir.

THE COURT: Go ahead."

MR. DANIEL: May I interrupt. Had any objection to the authenticity of the document been interposed by the State Attorney?

THE WITNESS: None whatsoever.

MR. DANIEL: All right. Would you proceed.

THE WITNESS: These are questions by me:

"Q Mr. Cheney, are you the custodian of the City's records?"

A That's right, yes.

Q On the date this offer was received, December 3, 1962, were you active as the city clerk?

A I wasn't active at the time, on that date.

Q Who was acting as city clerk at that time?

A Mrs. Johnson, my deputy clerk.

Q Is she responsible directly to you?

A Yes, that's right.

Q Is she the one that received this offer as the actual city clerk at that time?

A Yes, yes, she did.

Q At all times since this grant came in, you have been the city clerk, is that correct?

A I have been the city clerk.

Q And as such, any deputy clerk is responsible to you for any act they do?

A That is right.

Q Do you have any reason to believe that this was falsified by the deputy clerk?

A No, I have no reason whatsoever to believe it was falsified.

Q Do you in truth and fact believe that this was the same document as that received by the deputy clerk?

A It was the same document that was in the records when I came back after being sick."

Then the Court steps in:

"THE COURT: Mr. Altman, let me ask you this - - - Now, Mr. Getzen, the Court asked you if you are an advocate in these proceedings, and it seems to me as though there are an awful lot of leading questions in there, and

I would like to ask - - - You asked him if she received it. Now, Mr. Cheney, do you know whether she received it or not?

THE WITNESS: Yes - - - whether she actually received it, I couldn't say, but it was in the records.

THE COURT: Well, you just got through testifying you knew, under oath that you knew she received it.

MR. ALTMAN: If the Court please, I think he testified he is the custodian of the records. They are a part of the City records. She was the deputy clerk at the time that came in. I think the only logical explanation he could have is that it came in to her while he was absent. I don't think he's trying to falsify it.

THE COURT: Mr. Altman, here's the thing. Please don't try and put the Court in a position of accusing anyone of falsifying anything, and please don't let's embroil ourselves in a lot of useless discussion. You know as well as I do that no witness to any circumstances can testify to something that he doesn't know anything about, and that includes people that were not present at the time something happened. Now, if this man here is making an argument to the Court, or making a statement to the Court, I will accept it as such; but if he's going to testify about facts, he has got to know what he's testifying about. You know that. Is that correct?

MR. ALTMAN: Yes sir.

THE COURT: Do you wish to present any argument to the contrary?

MR. ALTMAN: Well, the only thing is what I have already said. As custodian of the records, I think it speaks for itself. As custodian of the records, I think that would be sufficient to entitle it into evidence. If it please the Court, in the running of the clerk's office, it covers a considerable amount of business, different things that come in, and it would be pretty hard for anybody to have personal knowledge of everything that came in regardless of how important it might be.

THE COURT: Mr. Altman, now we're going to have to get this thing. It's going to get late, and get late rapidly. If we handle this thing according to law and according to the rules of evidence, it won't take us long. But now you just got through asking this man did she receive it, and that was 'A', it was leading, which is improper, and 'B', I trust based on what he says here that he doesn't know whether she received it or not. Now, we're getting things into the record that have no place here. Now, whether or not this constitutes a part of the record, conceivably he can testify to that; but with regard to these other things, he can't testify. He said he doesn't know. Now, you are leading this witness. Don't do that. Let him testify."

MR. DANIEL: May I interrupt again? Did Mr. Getzen object to any leading questions?

THE WITNESS: No. Here Mr. Getzen hadn't objected to any questions, and the only reason I interjected myself back there, saying that I didn't think he was trying to falsify was because at this stage the Clerk was so confused and scared that I think he might have said just about anything that the Court wanted him to say.

MR. DANIEL: Had Mr. Getzen interposed any objection of any type up to this point?

THE WITNESS: Up to this point, he had not interposed any objection.

MR. DANIEL: All right. Go ahead.

THE WITNESS: The Court is questioning. He says:

"What are the points that you wish this witness to establish?"

MR. ALTMAN: Just the fact that the City has received this grant offer. That's the only thing I'm trying to establish.

THE COURT: All right. And this - - - let me ask you this, Mr. Cheney.

Mr. Cheney, have you negotiated personally in your capacity as Clerk, have you personally negotiated, joined in the negotiations with the Housing and Home Finance Agency?

A I'm afraid I don't fully understand that question, Your Honor.

Q All right. Now, in your capacity as clerk, Mr. Cheney, you are here as a witness for the purpose of establishing - - - now, factually, under oath, things that you know of your own personal knowledge - - - that the United States of America through the Housing and Home Finance Agency has made a grant offer to the City of New Port Richey. Do you understand that?

A Yes. I understand that.

Q Now, I want to find out, do you know that in fact that has transpired, of your own knowledge?

A Yes, I do know that has transpired.

Q How do you know that?

A Well, I have attested to the signatures of the mayor on resolutions that have been adopted by the City council.

Q All right.

A As a matter of fact, a number of them.

Q Now, those resolutions dealt with what?

A With the application for a grant.

Q For the grant?

A From the Federal Government.

Q All right. Then - - - Now, do you know whether or not a grant was issued in response to those applications?

A I do know that we have received response in reference to those grants.

Q Now, is that - - - And in what form is that?

A Well, I do know that we have a resolution accepting the grant offer. It has not been presented as yet.

Q All right. Do you know anything about whether the grant was offered other than by the fact that this resolution accepting it was passed?

A I'm sorry, Judge Kelly, I didn't fully understand the question.

Q You are here for the purpose of testifying and establishing that a grant offer has been made.

A That is right.

Q Now, you say that you know a resolution has been passed of your own knowledge by the City council accepting the grant offer. Is that correct?

A That is correct.

Q Now, that implies that in fact a grant offer has been made. Is that correct?

A That's correct.

Q Now, the question is, do you know whether or not the grant offered in fact was made to the City by the United States of America?

A (Witness hesitates).

Q Now, you will be entitled, of course, to explain your answer, whatever it is, if you care to.

A Well, unfortunately that grant offer came in while I was away.

Q All right. Well, the question is, do you know. Can you testify under oath with regard to any facts in this regard?

A I'm afraid I can't. If it came in while I was away, I cannot.

Q All right. Now, with regard to Petitioner's Exhibit No. 2 which has been identified here, what do you know about that of your own knowledge; what do you know about it?

A Of my own personal knowledge, I know nothing about it.

THE COURT: All right. Now, Mr. Altman, I would suggest if you want to deal with this, that you get a witness that knows about it, because this witness under oath does not."

MR. DANIEL: Did this concern one of the things Mr. Getzen had acceded to or admitted in Paragraph 2 of the Complaint?

THE WITNESS: Yes. Right at the start, Mr. Getzen said he had no objection to it and neither did he have any objection to our substituting a true copy for that. But despite that, the Court continued to question Mr. Cheney on it, to where he said he knew about it because it was in the public record, he finally had him admitting, on Page 25 of the transcript, when he asked him, "Do you know of your own knowledge, do you know personally about it?" he said he didn't know anything about it.

Again the Court, while Mr. Cheney was checking for something under cross examination from Mr. Getzen, the Court:

"Now, while he's taking a moment to look at that, Mr. Altman, I want to give you an explanation. You suggested and we, I think, should straighten this out, that certainly I am not suggesting that Mr. Cheney was falsifying. Certainly not. I have every reason to believe that this matter is all in order and that everyone who has touched it is blessed with every human virtue without limit, but I can see my obligation now with what intelligence is available to me to know that this is a fact because it has been established in this Court.

Now, if that is inconsistent with my obligation, this is the time for you to tell me and get me straight, and if it is my obligation, then, I announce that your obligation is to see that this is done according to the rules of evidence and all laws attending applicable to these proceedings. Now, is there anything that is amiss about that statement of the situation?

MR. DANIEL: Did you reply to that, Mr. Altman?

THE WITNESS: No, I did not reply to that. When I had replied the last time he asked me if I had anything to say, is when he really let me have it, about leading the witness and not following the rules of evidence - - - and, remember, this was in a crowded room with my wife there and all my employers there - - - people that I had worked with for a number of years.

MR. MASTERSON: May it please the Court, I believe the witness has been instructed to confine his remarks to the record.

MR. DANIEL: But I interrupted and asked a specific question, Your Honor.

CHIEF JUSTICE DREW: He said that two or three times, that he was there; there is no use to repeat it.

MR. DANIEL: All right, would you continue with such excerpts from the record as pertain to what you previously testified to?

CHIEF JUSTICE DREW: While we are interrupting, may I ask whether the document concerning this - - - for information - - - was it a signed copy?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Was it signed by all the parties?

THE WITNESS: No sir, it was signed by the agency of the Federal Government that had submitted the grant offer to the city.

CHIEF JUSTICE DREW: Thank you.

MR. DANIEL: Proceed, Mr. Altman, with such examples as you might have.

THE WITNESS: Well, then, I said to the Court:

No, I think it's all right, Judge.

THE COURT: Fine. No deviations; that is my obligation and that is yours, precisely, is that correct?

MR. ALTMAN: That's correct.

THE COURT: All right. Now, that's the way it's going to have to be, step by step, plod by plod. No one is going to be permitted to testify if he doesn't know; no one. And it doesn't have anything to do with me mistrusting anyone. Mr. Cheney was in good faith in his answers; I'm sure he was. And I'm sure that this lady received it just like he indicated she did. It's all very logical, but none of it is very legal, and it's important that it all be quite legal."

This is another question by the Court to me:

"THE COURT: Now, Mr. Altman, let me ask you this. It appears as though you may have several instances of this. Do you object to this procedure? Having the clerk of this court at Dade City prepare appropriate copies of it for purposes of substitution and charging as a cost of the action, that reproduction."

This is in connection with the request to substitute a copy for an original record.

"MR. ALTMAN: We have already prepared copies, Your Honor, that are certified to by the city clerk as a true and correct copy. That we would like to substitute; however, if the Court would prefer it, we have no objection to the Court Reporter making them.

THE COURT: Here's the reason that I suggest that. You will see that this comes in two parts."

The exhibit was in two parts.

"MR. ALTMAN: Yes sir.

THE COURT: With the certificate in one part and the rest of it in another, and I think that to avoid any possible difficulty about that - - - It will cost fifty cents."

And my questioning of Mr. Cheney again, Page 32:

"Q Mr. Cheney, I hand you Petitioner's Exhibit No. 4 for identification and ask if you can identify it.

A Yes, I can identify this.

Q What is that, Mr. Cheney?

A Letter from the Housing and Home Finance Agency addressed to Mayor Kohler reference to Project APW-Fla-70G sewer facility.

Q How did you obtain that letter?

A Obtained it by mail from the Housing and Home Finance Agency.

Q Did that come to the city hall?

A That came to the city hall, yes, sir.

Q Is this a part of the official public records of the City of New Port Richey now?

A Yes sir.

MR. ALTMAN: If it please the Court, I would like to offer into evidence Exhibit - - -

THE COURT: Four.

MR. ALTMAN: Four, for the Petitioner; what has been identified as Petitioner's Exhibit No. 4 for identification.

MR. GETZEN: No objection.

BY THE COURT:

Q All right, let me ask you, Mr. Cheney, you testified that this was received in the office of the clerk of the City of New Port Richey and was received through the United States mail. How do you know?

A It was delivered by the postman.

Q How do you know?

A Well, I just assumed that anything that is delivered by the postman comes through the mail.

Q Sure. What I'm asking was, were you in the office on February 1, 1963?

A Not February 1, no, but I was on the 2nd.

Q All right, were you there when this letter was delivered.

A Yes, sir.

Q To your office. Well, that's what I wanted to know.

A I'm sorry.

Q You see, nothing spooky about it. I just want to know how you know. Is that unreasonable?

A No. I'm sorry if I gave the Court that impression.

Q Mr. Cheney, please just answer the question. I have a reason for asking you that."

And then again, on Page 35 of the transcript, my questioning of Mr. Cheney:

"Q Mr. Cheney, I hand you Petitioner's Exhibit 5 for identification and ask if you can identify it?

A Yes, I identify this as a resolution.

Q When was it adopted?

A It was adopted February - - - December 28, 1962.

Q Do you know whether or not that is a part of the official public records of the City of New Port Richey?

A I do know that it is in the minutes of the meeting of December 28.

Q Do you know whether or not that is an original or a copy?

A That's an original.

MR. ALTMAN: Thank you sir. If it please the Court, I would like to offer into evidence as Petitioner's Exhibit No. 5 what was Petitioner's Exhibit No. 5 for identification.

BY THE COURT:

Q Mr. Cheney, you have testified that this was adopted on the 28th day of December, 1962, is that correct?

A That is correct.

Q How do you know?

A By the minutes.

Q You don't know of your own personal knowledge, do you?

A No sir, I do not.

THE COURT: Then it is a fact, isn't it, Mr. Altman, that the best evidence of when that was done is the books and records themselves, or the resolution itself?

MR. ALTMAN: That is the resolution itself, Your Honor.

THE COURT: Yes. Well, isn't the best evidence of when it was adopted the instrument itself?

MR. ALTMAN: Yes.

THE COURT: All right, not Mr. Cheney.

BY THE COURT:

Q Mr. Cheney, were you present at the time this Petitioner's Exhibit No. 5 was adopted on the 28th day of December.

A No sir.

Q All right, then you don't know when it was passed, do you?

A Well, I merely - - - when I said it was passed on the 28th of December, I was reading from the minutes.

THE COURT: All right. The best evidence, I think, requires that the Court do its own reading. So I just wanted to clear that up."

Now, there are other statements in here that I am going to skip. I would like to read, if I may, some transcript starting on Page 49 of the transcript in connection with the direct examination of the Mayor of the city. It is my examination of the Mayor.

"BY MR. ALTMAN:

Q Would you please tell the Court your name and address?

A Clair E. Kohler, 111 East Illinois Avenue, New Port Richey.

Q Do you have any official position with the City of New Port Richey?

A Mayor of the City.

Q As Mayor, what are some of your duties?

A I preside over the city council at all council meetings.

Q How long have you been mayor?

A About six years.

Q Did you preside at the council meetings of December 13 and December 28 of 1962, and January 15 of the year 1963?

A I did, yes.

Q I hand you Petitioner's Exhibit No. 3 and ask if that was adopted at that meeting as shown?

A Yes.

Q The same question as to Petitioner's Exhibit No. 5.

A Yes.

Q The same question as to Petitioner's Exhibit No. 7?

A Yes.

Q At the time these resolutions were adopted, were there any dissenting votes?

A No.

Q Mayor, did - - -

THE COURT: Hand those three to me, please. Go ahead.

Q Mayor, I hand you Petitioner's Exhibit No. 2 for identification and ask if you can identify it.

A Yes.

Q What is that, Mayor?

A That is the offer of a grant from the Housing and Home Finance Agency.

Q Do you know whether or not that was received by the City of New Port Richey, Florida?

A Yes.

Q Are you personally familiar with the offer being received?

A Yes.

Q Do you know whether this is the original that the City received or a duplicate copy of the original?

A I can't say if that's the original or not, but that is either the original or a duplicate copy. It looks like a duplicate copy of it.

Q Do you know whether or not this is a part of the public records of the City of New Port Richey, Florida, now?

A The city clerk would have to answer that.

Q You do know that this came into - - -

A (Interposing) Yes.

"MR. ALTMAN: If the Court please, I would like to offer as Petitioner's Exhibit No. 2 the grant offer. It was previously identified as Petitioner's Exhibit No. 2 for identification.

THE COURT: All right. We'll take a five-minute recess, and if the gentleman from Goodbody would give me just a minute, I would appreciate it."

MR. DANIEL: The gentleman from Goodbody, was he the fiscal agent that you testified about a few minutes ago?

THE WITNESS: Yes, he was the fiscal agent at this time. At this time, during this recess, the Court again asked the fiscal agent in everybody's presence, if we were proceeding properly, and if this was all being done regularly; and then, after some discussion - - - which, again, gave me considerable embarrassment - - - the Court now, back on the record.

These are questions by the Court, after the recess, of Mayor Kohler:

"Mayor Kohler, has the City of New Port Richey through its city council been transacting business or ne-

gotiations with the Housing and Home Finance Agency of the United States of America?

"A Yes."

Question by the Court:

"Now, how do you know?

"A Because I have written several letters to them. I have received letters from them, and offer of a grant from that agency.

"Q Now, who for the City has been carrying on these negotiations?

"A I have."

Question by the Court:

"So that's how you know?

"A That's how I know."

Question by the Court:

"All right.

"A I have sent the letters and signed them."

Question by the Court:

"Now, what negotiations have been carried - - - official negotiations that have been carried on by the City with the Housing and Home Finance Agency? Who has been carrying on these negotiations, whatever they have been?

"A Now, what do you mean now, by those negotiations? You mean the letters, the correspondence?

"Q Well, whatever negotiations have transpired with regard to the sewer extension program for the City of New Port Richey.

"A I have been carrying on some of it; the city attorney has been carrying on some of it."

Question by the Court:

"All right, has the city attorney been - - - on what basis has the City attorney been carrying on the negotiations?

"A Through the engineers there.

"Q I mean who is he representing?

"A The City.

"Q And under whose authority is he carrying on these negotiations?

"A The city council."

Question by the Court:

"All right. Now, I hand you Petitioner's Exhibit No. 2 for identification and ask you if you can identify that. Just yes or no.

"A Yes, I can identify that.

"Q All right. Now, what is that?

"A That's the grant offer."

Question by the Court:

"All right, and have you been - - - what have you been - - - have you been using Petitioner's Exhibit No. 2 for any purpose?

"A Is this No. 2?"

Question by the Court:

"Yes.

"A We have used this for the purpose of entering into a contract to extend the sewer system in the City of New Port Richey with our engineering and fiscal agents."

Question by the Court:

"All right. Then, you have been using this as a basis of negotiations?"

"A That's correct."

Question by the Court:

"And you have been using that as a basis of negotiation with whom?"

"A With the engineers and the - - -"

"Q What engineers is that?"

"A Black and Associates - - - Black, White - - - what is the full title?"

"MR. ALTMAN: Black, Crow and Eidsness, Gainesville."

"Q All right. Now, have you been using it in your negotiation with the Federal Government?"

"A That is right. Of course, with the Housing and Home Finance Agency."

"Q All right. Now, as I understand, the Housing and Home Finance Agency has made an offer of a grant to the City of New Port Richey for the extension of its sewer system on the terms as they appear in Petitioner's Exhibit No. 2, is that correct?"

"A That's correct."

"Q And it is on the basis of these terms and provisions as contained in Petitioner's Exhibit No. 2 that you have been carrying on these negotiations?"

CHIEF JUSTICE DREW: Mr. Witness, we're going to take about a four- or five-minute recess, just so the Senators can move around and get a little rest.

THE WITNESS: All right, sir, thank you.

MR. DANIEL: I apologize, Mr. Chief Justice, but that's the only way we can present this evidence.

Whereupon, at 12:35 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 12:43 o'clock P. M.

A quorum present.

CHIEF JUSTICE DREW: You may proceed.

BY MR. DANIEL:

Q Mr. Altman, had you completed reading these examples from the transcript?

A I'll make this brief, I'll just finish this one more, and then I will be finished. I apologize for it being boring.

Q Please take it up in logical sequence, right where you left off.

A All right. I was reading the questions by the Court to the Mayor in connection with this Exhibit Number 2, which was the grant offer which the city had obtained from the Housing and Home Finance Agency of the Federal Government.

Question by the Court:

"Now, is there any other grant involved in connection with your sewer extension program other than the grant that is designated and referred to in Petitioner's Exhibit No. 2?"

"A Not at this time, no."

"THE COURT" - - - looking to me - - - "All right, do you have any further questions?"

"MR. ALTMAN: No sir."

"THE COURT:" - - - looking to Mr. Getzen - - - "Do you have any further questions?"

"MR. GETZEN: (negative indication)."

"THE COURT: All right, what do you say?"

"MR. ALTMAN: We would like to offer this into evidence as Petitioner's Exhibit No. 2."

"THE COURT: All right, the same will then be received into evidence for what value it may have."

Q This is the same exhibit that you had been trying to get in with the witness, Cheney, from the beginning of this hearing?

A That's the same exhibit only, in this instance, the Court did all the questioning and then asked me if I had any further questions, and asked the State's Attorney if he had any further questions. The Court was handling the case at that point, and so indicated to my employers and everyone present, that he was handling it.

Q Who is statutorily charged with representing the taxpayers and citizens of the State of Florida, or any city or county seeking a bond validation?

A The State's Attorney's Office.

Q Had you formally served copies of pleadings and notices on the State Attorney's office of every hearing, or of every pleading in this matter?

A Yes sir, I had.

Q And he was personally present at this hearing?

A Yes sir, he was personally present.

Q Did he at any time interpose any objections, or make any admissions with respect to evidence.

A Well, he admitted that the city existed, and that it had the right and power to own and operate a water and sewer system, and he didn't object to any - - - the admission into evidence of any of the exhibits. There was one - - - if I can find it quickly here - - - there was one - - - there is one objection that he did make, I believe.

Q If you recall what the objection was about, I believe it would be proper for you to relate it.

A Yes, I had offered into evidence as Exhibit Number 8, I believe it was. It had been admitted into evidence, and I asked the Clerk what it was, and the State's Attorney objected to it, and the Court asked him what his objection was, and he objected to it on the basis that the resolution itself was the best evidence, and then, before I said anything, the Court said, "Objection sustained," and there's a reference to, "Mr. Altman, you indicate that you've withdrawn your question. If you hadn't, I might not have sustained the objection."

Q And that is the only time that the statutorily-designated attorney for the taxpayers and citizens of the City of New Port Richey ever interposed any objection in this matter?

A That's the only one that I can recall on it.

Q Now, how long did this hearing take? What time did it begin and what time did it end?

A Well, the hearing began at 8 P. M. in the evening, and the formal part of it lasted until approximately 10:30.

Q The formal part of it? You mean there was more?

A Yes. After the hearing concluded at 10:30, the reporter was dismissed, and there was still a question of whether or not there was a city of New Port Richey, and some other matters - - -

Q A question in whose mind?

A In the Court's mind.

Q Well, was there further testimony or further proceedings that ensued that same night?

A Yes. We went from the hearing room into the Court's private chambers. By "we" - - -

Q Who do you mean by "we"?

A By "we" I mean the State's Attorney, Mr. Getzen, and myself, and the fiscal agent, Mr. Donald Burk, and Dr. Fred Eidsness, the consulting engineer for the city.

When we got into the Judge's office he said that he hadn't had a chance to look at the resolutions and the other items that had gone into evidence, and there again told me, in their presence, that he wanted me to start from the beginning and show him the statute, the chapter, the section, the paragraph and the line on the validation proceedings to show that I had complied completely with everything in it, and also, the chapter, the section, the paragraph and line in this Chapter 184, the sewer financing act.

So, from 10:30 till about midnight, we went through that, point by point, pointing out the requirements of the Chapter 75, as to the validation proceedings, even so far as ticking off the days on our fingers to make sure that the proper number of days had elapsed until the rule to show cause; and then, during that time we were in there, the Court asked me the question as to when this file was checked out of the clerk's office, and I told him I thought, as best I could recall, that it was checked out about 3:30 in the afternoon.

Q Of that day?

A Of that day.

Q Continue.

A The hearing was that evening; and he said, "Well, what if somebody has filed an answer with the Clerk subsequent to the time this file was checked out?" And I told him, well, I assumed that if an answer had been filed, that the Clerk would have advised us of it, knowing that there was a hearing this evening, and that if anybody had enough interest in the matter to contest it or to file an answer, they would know that the hearing was tonight, and I would have expected that they would have been present.

Incidentally, when the hearing terminated, with the testimony, the State's Attorney went out into the hall and called to see if there was anybody who might want to raise any objection to it.

Q Did he do this at the suggestion of the Court?

A No, he did it himself, and then the Court himself asked all those present if there was anybody who wanted to make any statement, or wanted to contest the matter, after the State's Attorney had gone out in the hall.

Q Was there further colloquy in the chambers of the court, apart from the formal part of the hearing?

A Yes. I had mentioned to the court that I felt that if anybody was that interested in it, that they would have appeared at the hearing.

So then he said, "Well, what if somebody filed an answer to it after 5 o'clock, after the Clerk's office was closed, and slipped it under the door?"

Well, these things are probably very small to anybody who isn't an attorney, and probably very small to the gentlemen that are listening to it but, in view of what had transpired before, it was very upsetting to me. It showed the complete distrust he had for me.

MR. MASTERSON: May it please the Court, may we have an instruction that the witness confine himself to what happened, and not his opinion about it, his reaction to it?

CHIEF JUSTICE DREW: I think that would be better procedure, Mr. Witness.

THE WITNESS: All right, sir.

BY MR. DANIEL:

Q Now, did any further proceedings transpire in the chambers of the court that evening?

A Yes. During that same hearing - - - and we were there about an hour and a half, as I say, after the formal hearing was closed. The Court had the original case file, and he had it open on his desk. I was sitting right across from him, and he had one instrument, and he had been going up and down, just like this (Indicating) and he said, "I don't see the proof of publication in here."

This is the proof of publication (Indicating). And he mentioned that several times, and I told the Court that I had personally filed the proof of publication with the Clerk of the Circuit Court, and that the State's Attorney was with me at the time, because the State Attorney had the original case file checked out, and we had to get him from his office to come over to the Court House so I could file the proof of publication; and the State's Attorney said, "Yes, that's correct," said, that he was with me when it was filed, and the Clerk took the original to make a copy of it for the chancery orders, to photograph it for the chancery orders, had put in a Xerox copy of it; and he said, "Well, I don't see the original copy in here" and of course, the original copy wasn't in there, it was just a Xerox copy.

And also, before the decree was entered, the Judge said, "I'm going to sign this decree and I'll hold it, but I want it understood that it's being signed on the condition that it's proved," and that this law that I had given him and asked to take judicial notice of, actually showed that the City of New Port Richey existed, and that it did have the right and authority to own and operate a water and sewer works; and, further, that the proof of publication was actually filed.

Q Did this, then, conclude the formal and informal hearing in this matter?

A Yes, that about concludes it.

I tried to make it brief. I know I have not succeeded too much in that, because there was a lot that went on.

Q What was the importance, in point of time, to the City of New Port Richey on this bond validation matter, Mr. Altman?

A Well, we had - - - after considerable work being done by Black, Crow & Eidsness, the City's engineers - - - the consulting engineers - - - as well as the city engineers; we had obtained a grant offer, under the accelerated public works program of the Federal Government, whereby we could receive close to \$350,000 toward our sewer program, provided we could comply with certain things and take certain steps within a certain period of time. One of the steps that was required was that, within sixty days from the date that we accepted the grant offer, to have tangible evidence showing that the city was able to finance its share, the balance of the cost.

The entire program was figured to run a million and a half. The city was putting in \$50,000 cash that it had, and approximately \$350,000 coming from the grant. The only way the city could go into the improvement program was by getting that grant from the Federal Government.

Q Where was the balance coming from?

A The million, one hundred thousand dollars was going to come from the validation and sale of the bonds that we had the proceeding for in front of the Court.

Q The repayment of this would have been by the taxpayers of New Port Richey?

A It would have been payable really solely from the revenue derived from the operation of the water and sewer system, which would be used by the citizens and taxpayers of the City of New Port Richey. But the acceptance was dated, to the best of my recollection, December 3rd; and we only had until February 3rd to get tangible evidence of us meeting our end of the bargain - - - being able to show that we had the finances to carry our own end.

Q Was this the reason, if you know, for the entrance and attendance of the mayor and three members of the council?

A Yes. Everybody was quite interested in the project - - - which, incidentally, has gone through and is in the process of being constructed in the city now. But we had a very close time schedule. As a matter of fact, we were supposed to have the evidence by February 3rd. And the earliest hearing that we could get and comply with the provisions of the Florida law was February 5th.

But I had cleared that with the appropriate agency in Atlanta, explaining to them that the Chapter 184 that we were proceeding under required that we had to have certain public hearings in connection with the establishment of rates, and determining that the system was needed, and so forth and so on; and that there was a required time lapse in all those hearings; and that there were certain time requirements to the validation proceeding; and that the earliest we could do it would be by February 5th.

Q What was the date of the hearing?

A February 5th.

Q February 5th. Which was actually two days after the deadline?

A That's right.

Q So, in point of time, you were a bit between a rock and a hard place?

A That's right.

Actually, the agency sent us a letter, late in January - - - I think it was dated January 26 - - - which is in evidence in the official transcript; stating that if we did not have evidence of meeting our obligations by the time limit, that the offer would be withdrawn. And we sent telegrams back and forth, and telephone calls; and I think one went up to Atlanta. And we finally got them to agree to hold up, because we were doing everything as rapidly as we could.

And we got the fiscal agent for the city, Goodbody and Company, to submit an offer to them showing that they would purchase the bonds.

MR. DANIEL: I think the Chief Justice wants to ask some questions.

CHIEF JUSTICE DREW: We are going to adjourn in just a minute, and I thought that before adjourning we would ask these two questions.

MR. DANIEL: Yes sir. I will conclude my direct after lunch.

CHIEF JUSTICE DREW: Edwards of the 20th, Senator Edwards of the 20th, asks:

"Did you get the bond issue validated?"

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Was the decree entered that night?

THE WITNESS: The decree was signed that night, but it was not delivered until the following day.

CHIEF JUSTICE DREW: Senator Johns of the 15th asks:

"Have you ever seen any other Judge in the Sixth Circuit conduct himself as Judge Kelly did in that case or in any similar case of this kind?"

THE WITNESS: No sir, nor in any other case.

CHIEF JUSTICE DREW: The Court will be in recess until 2:30 this afternoon.

Whereupon, at 1:00 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.

Thereupon,

JAMES J. ALTMAN

resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

CHIEF JUSTICE DREW: Senators, before the recess, I overlooked one question which I had on the table. I will now ask the witness, for Senator Pope, this question:

"When the Judge asked Mr. Burk 'if we were proceeding legally,' to whom did the word 'we' refer?"

THE WITNESS: Well, I took it that he meant me, as the City Attorney; he, as the Judge and the Court; and the State Attorney - - - to see if we were going at it correctly.

CHIEF JUSTICE DREW: At this time, out of order, Mr. Nichols would like to make some motion or say something about the brief.

MR. NICHOLS: Judge, if you want to wait. Would you have any objection to passing out the brief?

MR. DANIEL: Mr. O'Neill is out of the room. We would appreciate it if you would wait until he comes back.

CHIEF JUSTICE DREW: When Mr. O'Neill gets back, Mr. Nichols, I will recognize you for that purpose.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: You may proceed.

MR. DANIEL: This is still on direct, is that correct?

CHIEF JUSTICE DREW: Still on direct, as I remember it.

BY MR. DANIEL:

Q For the record, you are the Mr. Altman who has been sworn and testified prior to the luncheon break?

A Yes sir.

Q Mr. Altman, you have testified and quoted from the transcript in the New Port Richey bond validation matter

rather extensively. Did this particular hearing have any effect on you, in any way?

A Yes sir. It was extremely embarrassing and humiliating to me to go through that particular matter; to have it appear to my employers and my wife and other dignitaries that were there that the Court did not trust me and did not feel I knew what I was doing and had to step in and handle it itself.

And I was also rather ashamed for the treatment that was accorded by the Court to the City Clerk, and apologized to him for it later.

Q Prior to this proceeding had you ever participated in a bond validation before?

A Yes sir.

Q Was its nature about the same as this one?

A Yes sir.

Q Had you experienced any difficulty in that bond validation proceeding?

A No sir. None of this nature. It was a rather hotly contested bond validation proceeding at that time, but nothing of the conduct that was experienced in this one.

Q That particular proceeding was not one before Judge Kelly?

A No sir.

Q You mentioned proof of publication a few moments ago, with respect to the file. What is this "proof of publication" you were talking about?

A Proof of publication is an affidavit by the publisher of a newspaper that he published this order to show cause that was directed to the State Attorney or to the State of Florida, including all the citizens, property-owners, giving them until the date of the hearing to file any defenses, objections, or any pleadings that they might want to. In other words, to show cause to the Court why the bond validation proceeding should not be successfully concluded.

Q This was a legal notice in a newspaper of general circulation in Pasco County?

A That is correct.

Q Was that newspaper circulated also in New Port Richey?

A Yes sir, that is correct. It was in the New Port Richey Press that the publication was.

Q How many times was it printed and run?

A Three times, I believe.

Q And there was no objection. No person appeared objecting, or anything of that nature?

A No sir. There was nobody who objected to it and no defensive pleadings filed, in the entire proceeding, except that that was filed on behalf of the people and the State by the State Attorney's Office.

Q As required by the statute?

A As required.

Q Prior to this hearing, which I believe you testified was on February 5, 1962 - - -

A 1963.

Q - - - 1963, had you in any way participated in any move to remove Pasco County from the Sixth Judicial Circuit and place it in the Fifth Judicial Circuit?

A I am hazy about the dates. There may have been some discussion on it between some of the lawyers prior to that time.

I don't believe there was anything that was publicly stated or any petition or letters or anything that were signed in connection with that, prior to that hearing.

Q Had you, in any active manner, participated in the election of Judge Kelly, or his appointment?

A I contributed to the campaign fund of Judge O. L. Dayton, Jr. And Judge Kelly had discussed with me that he was going to run, but I had not contributed anything to him.

Q Will you state the nature of the discussion you had with Judge Kelly?

MR. MASTERSON: This is a discussion that occurred before Judge Kelly was elected to office?

MR. DANIEL: It occurred, I think, during the campaign.

MR. MASTERSON: I think it is outside the scope of this inquiry.

CHIEF JUSTICE DREW: What was the question?

MR. DANIEL: The witness testified that he discussed the fact, with Judge Kelly, that Judge Kelly was running for office; and I asked him the nature of that discussion.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: Judge Kelly asked me if I would support him in the matter; and I told him no, I would not; I was going to support O. L. Dayton, Jr., because I felt that he was an extremely qualified Judge and was recognized throughout the State, and that I frankly did not feel that he was qualified.

BY MR. DANIEL:

Q Did you take any active participation in the election other than contributing to Judge Dayton's campaign?

A Only to the extent that, when persons asked me concerning it - - - or my friends, or clients - - - I advised them that I felt that Judge O. L. Dayton was qualified.

During the discussion with Judge Kelly he asked me if I would refrain from making any public statements against him or in favor of Judge Dayton, even if I would not support him; and I told him that it was not my policy to make any - - - as best I can recall - - - that it wasn't my policy to make any public statements in behalf of anybody for any office. And, to the best of my knowledge and belief, I never did make any public statements or appearance for Judge Kelly or Judge Dayton.

Q Had you ever had other hearings before Judge Kelly besides this bond validation matter?

A Yes sir. I have had several other hearings in front of him. One, involving the City of New Port Richey.

Q Have you appeared before other Circuit Judges in the Sixth Judicial Circuit?

A Yes. I have appeared, I believe, in front of all of them at one time or another, with the possible exception of Judge Collins.

Q Now, I believe there are eight Circuit Judges in the Sixth Circuit?

A Yes.

Q Have you ever experienced any difficulty approaching the difficulty you had in the New Port Richey bond validation matter before any of the other Circuit Judges?

A No sir, I never have.

Q Now, from your experience before the other Circuit Judges and as a practicing attorney for thirteen years, and from your knowledge gained in the area, do you have any knowledge as to the reputation of Judge Kelly, with respect to the manner in which he conducts his Court and may I say, do you have any knowledge of the reputation, among the bench and the bar and the public, with respect to the manner in which he handles his Court?

A Yes sir, I do.

Q What is that reputation?

A Bad.

Q What do you mean by "Bad"? What do you base that on?

A Well, I base it on not only my own experience but other attorneys have mentioned to me difficulties that they have had. And word that has come back to me from persons who have heard about the bond validation proceeding and other trials that he has been in, saying that he is tyrannical and that he is erratic.

MR. MASTERSON: May it please the Court, this is hearsay of the grossest kind.

CHIEF JUSTICE DREW: Sustained.

BY MR. DANIEL:

Q Is the knowledge based also upon knowledge you have gained from the general public, outside of the bench and bar?

A Yes sir, it is.

Q Will you give us an approximation of how many persons have been involved in this knowledge, as far as you are concerned, other than the bench and bar?

A That is rather hard to do. I would estimate it would be approximately fifty.

Q Has this been in both Pasco and Pinellas Counties?

A Yes, but mainly in Pasco County.

Q Have you initiated any of these discussions with any of these people, or was it initiated to you?

A No sir, I have not initiated any of it; I have tried to, as best I could, keep quiet on the whole situation.

It was usually brought up in a conversation to me, as having been City Attorney, or having heard something about what went on in that case or other cases.

MR. DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Altman, I wonder if you'd just share with the members of the Senate here some background information that I'm sure you have, with reference to this bond validation statute under which you were proceeding on this night that these bonds were validated.

In the first place, isn't it true, Mr. Altman, that the reason the statute was passed was because, in years past, before it was passed, before this statute was passed, many municipalities were defaulting on their bonds because of technical errors in the issuance of the bonds?

MR. DANIEL: Your Honor, we object to the form of that question, isn't it true that. Besides that, it's argumentative and leading, in a sense that it would not be permitted on cross, in that it assumes a fact that's not in evidence.

CHIEF JUSTICE DREW: I'll overrule the objection. Go ahead.

THE WITNESS: Well, I don't know what the intention was in passing that act. I know that it served to enable municipalities to finance their sewer improvement programs since that act has been passed.

BY MR. MASTERSON:

Q And isn't it the purpose, the obvious purpose of this act is to cure technical errors before the bonds are issued?

CHIEF JUSTICE DREW: I think you can frame your questions a little bit different, Mr. Masterson. You say the obvious purpose was to cure - - - to save objection, why don't you just ask him what his opinion was.

MR. MASTERSON: Very well, sir.

BY MR. MASTERSON:

Q What, in your opinion, Mr. Altman, was the purpose of the bond validation act?

A Well - - -

MR. DANIEL: Your Honor, hasn't there been a previous ruling with respect to opinions of the witness?

CHIEF JUSTICE DREW: Not at this time.

MR. DANIEL: All right, sir.

THE WITNESS: Are you talking, now, about Chapter 75, the validation proceedings itself?

BY MR. MASTERSON:

Q Yes sir.

A Yes, I think that the whole act in connection with the validation proceedings was to set up a procedure whereby that after someone had gone through the motions, whether it be the city, the county or any other agency, after they had gone through the motion of validating the bonds, that there would be no further question that could come to light in connection with those bonds.

In other words, so that there would be negotiable paper available that any bond company would be willing to buy.

Q So that the general public, in buying those bonds, could buy them with confidence, that there were no technical defects in the issuance of the bonds?

A Not so much the general public, I would think, as the bonding houses that buy them, but it would have the same result. They would be looking out for, of course, the general public.

Q And it would tend, if these proceedings were conducted properly, to support the price of the bonds; people would buy them with confidence?

A That's exactly correct.

Q All right, sir; so that the Legislature passed an act which was designed to correct any technical errors before the bonds entered the market?

MR. DANIEL: Mr. Chief Justice, I don't think this witness is qualified as a member of the Legislature. I don't believe he's testified that he was a member of that body.

MR. MASTERSON: I'll await the Court's ruling.

MR. DANIEL: I'm now prepared for your ruling.

CHIEF JUSTICE DREW: I'll overrule it.

THE WITNESS: What was that question again, please?

Will you read that question back? (Addressing the Court Reporter)

CHIEF JUSTICE DREW: You may answer that question.

(Last question read)

THE WITNESS: I don't know that it was passed to correct any technical errors before it got in the market. It passed an act to set up the procedure which you should follow to keep from having any errors in a market.

BY MR. MASTERSON:

Q All right, sir.

And that act is a technical act, isn't it? It sets up the precise technical requirements which are imposed upon municipalities in the issuance of bonds?

A Yes, it is.

Q And it's an act which must be strictly complied with, isn't that correct?

A Yes, it is, but it's not a complicated act.

Q It's an act which must be precisely and strictly complied with? Let me read to you a section from the Supreme Court 109 So. 318:

"Before a municipal corporation is authorized to issue its bonds, it must be shown affirmatively that all those things which the Legislature shall have required to be done as a prerequisite to such authority have been done in the manner prescribed by the Legislature, if a particular manner has been prescribed by the Legislature."

Would you agree with that?

MR. DANIEL: Now, Your Honor, I'm probably going to read some law myself, but I interpose an objection at this time that that's not material, and it's improper cross.

MR. MASTERSON: May it please the Court ---

CHIEF JUSTICE DREW: Overruled.

I think you can test --- he can express an opinion --- you can test his ability to express an opinion on the value to be placed on it.

BY MR. MASTERSON:

Q You agree, do you not, with the pronouncement of the Supreme Court that this must be, this validation must be done precisely as prescribed by the Legislature?

A That's right, but the Legislature, in that act, insofar as the city is concerned, the matters that are to be checked in a validation procedure, is whether the city followed the proper procedure in exercise of its power to issue bonds, whether the proposed issue and obligations to be created are authorized by statute, and whether the issuance violates the Constitution; those are the three items.

Q All right, sir. And among other things, you must publish notice to all that's going on in the newspaper, isn't that right?

A Under that act there is a rule to show cause that has to be executed by the Court, giving at least eighteen days from the date of the first publication of notice to the State's Attorney and the whole world, in general, you might say, so that they would have the opportunity to come in and contest the matter, if they want to; that is imperative in the act.

Q Yes, and you publish notice of it in a newspaper, is that correct?

A That's correct, and you serve notice of it by personal service upon the State's Attorney.

Q Yes sir; and then, this proof of publication that the Judge was talking about, that was not in the file, was the proof that publication had been made in a newspaper, as required by the statute, isn't that correct?

A At the time he had the file a Xerox copy of the proof of publication was in the file.

Q But the proof of publication was not in the file?

A The original was not in the file, that's correct.

Q Now, sir, isn't it a basic element, with reference to whether or not the bonds can be validated, that the city be shown to have the power to issue those particular type bonds?

A Yes sir.

Q So the court, in inquiring whether New Port Richey had this power, was carrying out the terms of the statute, was it not?

MR. DANIEL: Your Honor, that's objected to. This witness doesn't know what was the intent of the Court or what was in the mind of the Court.

MR. MASTERSON: He's been testifying about the intent of the Court.

MR. DANIEL: He can testify what the Court said, Your Honor, not what was in his mind.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: I don't know what the intent of the Court was as to that particular thing.

I had asked him to take judicial notice of Chapter 184, which was the authorization of the city to issue those bonds.

BY MR. MASTERSON:

Q And he had told you that he wanted to see the statute and the line and the verse which gave the city the authority to do what you were seeking to have done?

A That's right. He didn't take judicial notice of it.

Q Well, don't you feel that he has a right to look at the statute and see what authority the city has?

A Yes sir, I think he does.

Q All right, sir. As a matter of fact, it's his duty, is it not?

A I don't know whether it's his duty or not. I think he is entitled to, under our system of jurisprudence, to take judicial knowledge of whatever statutes and general laws there may be of the State of Florida. Anything that he would do and by virtue of taking judicial knowledge of it would be subject to the statute actually permitting it.

Q But surely, it didn't embarrass you to have him say, "Mr. Altman, let me see the statute which gives the city of New Port Richey the power to issue a sewer bond"?

A Not the way you worded it there, but the way he worded it, and in the presence of all of these people, it was embarrassing as could be, particularly when it came after the State's Attorney having admitted that there was a city of New Port Richey.

Q The purpose of the inquiry was not to determine the existence of the city of New Port Richey, but the power of the city of New Port Richey to issue these bonds, wasn't that the problem?

A No sir, it was both.

MR. DANIEL: Your Honor, we're running again into the same problem that's - - - we've been against all the way through on cross examination by Mr. Masterson and Mr. Nichols, in that they're testifying, and then say, "Do you agree?"

MR. MASTERSON: Your Honor, this is proper and legitimate cross examination.

CHIEF JUSTICE DREW: I think it is. Go ahead.

BY MR. MASTERSON:

Q All right, sir. Now, this bond issue that you were dealing with was in what amount?

A One million one hundred thousand.

Q So that this was one million one hundred thousand dollars worth of municipal bonds, and the Court wanted to see the precise authority of the city to issue bonds of that type, isn't that correct?

A That's correct, I assume.

Q All right, sir. Now, you mentioned that there was a fiscal agent there with whom the Court consulted from time to time. This was the fiscal agent for the underwriters who were putting up the money, isn't that right?

A No sir, this is the fiscal agent who was under contract with the city of New Port Richey. There was no money put up at that time at all.

Q What was his function? Why was he there at all?

A Well, he was called in, and he was under contract with the city, to help line up the fiscal program to determine, in conjunction with the engineers, if the system, the water and sewer system of the city would actually be able to take in enough revenue to pay off the bonds.

Q Well, he works for Goodbody & Company, doesn't he, and they were the underwriters?

A That's right.

Q And he was looking out for their interests, isn't that right?

A No, he was supposed to be looking out for the interests of the city of New Port Richey. Goodbody & Company were under contract to the city of New Port Richey.

Q Yes sir, but they were going to put up the million dollars that was involved?

A No sir, not at that time. This was to be - - - an issue to be opened, or put out to the public for bids, and it was actually done that way.

Q Well, the fiscal agent was there, was employed by Goodbody & Company for the purpose of determining that there was no error in the proceedings; that was his purpose, wasn't it?

A No sir, it was not.

MR. DANIEL: Mr. Chief Justice, in view of the ruling on wide latitude in cross, with which I agree, I'm reluctant to rise again, but it certainly appears that counsel is arguing with the witness at this point.

MR. MASTERSON: I'm trying to - - -

CHIEF JUSTICE DREW: Overruled. I think he's got a right to ask these questions; they were brought out on direct examination, and I think he's got a right to interrogate the witness concerning this very matter with Judge Kelly.

MR. DANIEL: May it please the Court, I don't question his right to interrogate him on anything brought out

on direct; my point was as to the argumentative nature he assumes.

CHIEF JUSTICE DREW: Well, I will admonish him not to argue with the witness.

MR. MASTERSON: I'll certainly try not to, Your Honor.

BY MR. MASTERSON:

Q Mr. Altman, is it true that this fiscal agent was a very experienced individual in bond validation procedure?

A No, I don't believe he was.

Q You don't believe he was?

A He was there at my request.

Q Goodbody & Company fiscal agent was not experienced in this procedure?

A I don't think he was in the bond validation proceeding.

Q You think he was inexperienced in those proceedings?

A Yes sir.

Q As a matter of fact, as far as experience goes, this was Judge Kelly's first bond validation proceeding, was it not?

A I don't know.

Q How many have you had, sir?

A This was my second.

Q And the fiscal agent, Judge Kelly, assumed, so far as he could see, was experienced in these matters, is that correct?

A I didn't understand your question.

MR. MASTERSON: Well, I withdraw the question.

BY MR. MASTERSON:

Q Now, Mr. Altman, these proceedings that we're talking about occurred at approximately 8 o'clock at night, isn't that right?

A Yes sir.

Q And how did you notify Judge Kelly that you wished to have such a proceeding?

A Well, at the time the petition was filed, and we had the rule to show cause executed by him, I had explained the seriousness of the situation to him.

Q And when was this, relative to the time of the hearing?

A It would have been nineteen days, I guess, before February 5, because there had to be an eighteen-day period elapse from the date that the rule to show cause was executed and served.

Q And you discussed the bond validation proceedings that were pending with Judge Kelly at that time?

A Yes sir.

Q Now, when did you set down notices that there was to be a hearing?

A We set the notice right then, at that time.

Q With the Court?

A That's right, for February 5, 1963.

Q At what time?

A At 8 P. M.

Q Now, why was it set in the evening?

A Because he said that that was the only time that he could handle it, since he had trials in St. Petersburg, or Clearwater, I believe.

Q Is it fair to say, then, that he was working there in the evening as an accommodation to you and to the taxpayers of New Port Richey?

A You could put it that way, yes sir, I think so.

Q Well, is there any other way to put it? He was there, working in the evening for this purpose?

A Yes.

Q And he had been trying a case in Pinellas County throughout the entire day, had he not?

A That I don't know, Mr. Masterson.

Q But his calendar, at any rate, was filled up, so that he couldn't see you at any time other than in the evening?

A That's correct.

Q Now, how late did the hearing last?

A The formal hearing before the Court Reporter lasted until about 10:30; and then, the balance of the hearing took place in his office, and that lasted until midnight, or maybe a little after.

Q And that was an informal hearing?

A Yes.

Q Now, during that hearing there was a good bit of informal conversation, even some story telling, was there not?

A I don't recall any story telling at that time. He was rather formal toward me, and I was going through Chapter 75, step by step, and Chapter 184, step by step with him.

Q So he was still going forward with the validation proceedings, but informally?

A Informally, to the extent that there was no court reporter present, taking down anything that was said. We were discussing - - - he was asking, how did you do this? And is this correct? And show me where you did this, and so forth.

Q Now, in all, you were there from 8 o'clock until 12:30, or 12 o'clock, or how long?

A It was somewhere around midnight, I don't recall exactly, Mr. Masterson.

Q So, you spent - - - the Court spent about four hours with you on the approval of the bond validation issue, and that bond issue involved over a million dollars of the taxpayers' money?

A That was not approved at that time.

Q Well, it was ultimately approved, wasn't it?

A Yes sir.

Q And a decree was entered that night, conditioned upon your showing proof of service?

A Not upon my showing proof of service, upon him being able to ascertain that the special acts I gave him did show that there was a city, and that it had the authority to do it, and upon his being able to ascertain that the actual proof of publication was on file.

Q So, he was painstakingly checking the procedures involved, and he gave you a final decree that night, but

said, if we find some imperfection Monday, we will have to reconsider the matter, isn't that the fact?

A No sir. He told me that he had signed it, and I saw him sign it in my presence, and he said, "I am going to hold this until tomorrow, till I determine that" and so forth and so on.

Q Until he could check further?

A That's right.

Q "Until I can check further"?

A Yes.

Q "Read the statute myself"?

A Well, he didn't say that, but I assume that is what he wanted to do.

Q Now, isn't it true, Mr. Altman, that in many of the cases of bond validations an appeal is taken for the purpose of making certain that the matters that went on in the Circuit Court were done correctly?

A No sir, I don't think so, in our circuit, anyway; because immediately prior to this hearing, I think I checked about six other cases, just to refresh my own memory of what had happened, because it had been several years since I had handled the other bond validations.

Q You are not familiar with cases where an appeal was taken for the purpose of making certain that the proceedings in the lower court were sufficient?

A I feel sure that appeals have probably been taken in those cases, but in the ones that I checked, there happened not to be any appeals.

Q No appeal was taken in this case?

A No sir.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: I have some questions to ask. From Senator Barron:

"Explain in detail what was your reason for having the fiscal agent at the hearing?"

THE WITNESS: Well, if it please the Court, I did not know just how many objectors there might be at that hearing. This was a short notice affair, strictly in accordance with the statute. No one was required to serve an answer on me until the night of that hearing at eight o'clock p.m. I didn't know what to expect.

I didn't know but what there might be some other answers filed or there might be some person who would question the possibility of whether or not, from a financial standpoint, if the bonds were validated, the city would have sufficient revenue with which to pay off those bonds without having to fall back on its ad valorem taxing power.

The consulting engineers, particularly Dr. Eidsness, had projected the growth and the revenue from the water and sewer system in the city over a period of years, and this was used by the fiscal agents, particularly Mr. Burk and his company, to determine whether or not the city could, in effect, be safe in floating a revenue bond or a revenue certificate issue of that size. The way that it came out was that I believe we had a coverage of something like 1.8 to 1, which is considered very good and conducive to getting a low interest rate - - - which means that we had more than sufficient estimated income from the water and sewer system than would be necessary to pay off these bonds and the interest on them as they came by.

He knew that. He had worked it out with Dr. Eidsness. And if it became necessary to establish the fact that it was financially feasible for the city to go into this project, he would be there ready to testify.

CHIEF JUSTICE DREW: Senator Stratton asks:

"Did Charles Luckie contact you to support the change of Pasco County to the Fifth Judicial Circuit?"

THE WITNESS: I don't remember whether or not Mr. Luckie contacted me. I know that I was contacted by somebody. In fact we discussed it. But I believe that was subsequent to this hearing.

But, to answer that question, I had discussed that possibility, and Mr. Luckie was one that I discussed it with, although I don't know that he was the one that initiated it.

CHIEF JUSTICE DREW: A second question from Senator Stratton:

"How much money did you or your firm contribute to Judge Dayton's campaign, and did you participate and did you actively solicit votes and aid to Judge Dayton?"

THE WITNESS: I believe that I contributed \$200. I believe Mr. Williams, who is with me, made a contribution too. I don't think it was that large. I don't recall what amount it was.

I didn't make any public speeches or public appearances in behalf of Judge Dayton. I did tell my own family and my friends and my clients, and anybody who asked me my opinion in connection with the matter, what I thought of Judge Dayton and why I felt it would be wise for them to vote for him.

I don't recall whether I answered the question.

CHIEF JUSTICE DREW: Well, Senator Pope asks this question?

"Who bought the bonds ultimately?"

THE WITNESS: The bonds ultimately were purchased by Goodbody and Company as one of seven bidders, I believe. I think their break was the lowest bid; it averaged a little under three and three-quarters per cent.

CHIEF JUSTICE DREW: Under your contract with Goodbody or the fiscal agent representing Goodbody, had they guaranteed to purchase the bonds at a fixed price in case you didn't have any other bids?

THE WITNESS: No sir. Except to this extent: We ran into difficulty in connection with the time element on this federal grant. As I mentioned before, we were supposed to have tangible evidence of our ability to finance the project within sixty days of the acceptance of the grant, which would have taken it on February 3rd.

In order to get by the regulations of the government, we had to have Goodbody and Company send them a letter or a statement indicating that they would bid on the bonds when they came up for public sale.

CHIEF JUSTICE DREW: There was no upset price?

THE WITNESS: No sir, there was no upset price on them.

CHIEF JUSTICE DREW: Senator Mapoles asks this question:

"Mr. Altman, have you ever contributed to any other campaign of a Circuit Judge, other than Judge Dayton?"

THE WITNESS: I don't recall.

CHIEF JUSTICE DREW: If you recall.

THE WITNESS: I don't recall for sure. He is the only one - - he and Judge Kelly are the only two that have been running from our county. And I may have contributed to some of the Judges in Pinellas County, but if I did, I don't recall it.

CHIEF JUSTICE DREW: At the hearing did you present the form of final decree that you wanted entered, validating the bonds, before the hearing commenced or at the beginning of the hearing?

THE WITNESS: Yes. That was one thing that surprised me a little bit about the hearing, the way we got started off.

I had left a copy of the proposed final decree with the Judge's secretary, and then in the evening before the validation proceeding started, he called both the State Attorney and myself into his office to find out what it was all about; and at that time I told them briefly what it was all about and also mentioned to them that I was going to ask him to take judicial notice of these particular items.

CHIEF JUSTICE DREW: Did any of the paragraphs of the decree, or the decree which you proposed, directly say that the undersigned finds that the city has authority to issue said bonds under the charter, or was there a definite finding of the Court that it had power to issue these bonds, either under the charter or under Chapter 184?

THE WITNESS: Yes sir, that is in the final decree.

CHIEF JUSTICE DREW: You may proceed with the redirect examination.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Altman, I believe you testified on cross that you had to refresh your knowledge of the procedure in these matters and checked some six or seven other bond validation suits?

A Yes sir.

Q Where did you check these?

A I checked those in Pinellas County.

Q Were you able to determine from checking these the approximate duration of the final hearing in each?

A Yes.

MR. MASTERSON: May it please the Court, unless he can estimate from the transcript the length of the hearing, I think it would be ridiculous.

MR. DANIEL: I asked him if he was able to determine.

CHIEF JUSTICE DREW: What is the purpose, counsel, of the question?

MR. DANIEL: To compare the time in the others with the time of the one that has been testified to.

CHIEF JUSTICE DREW: Well, unless you show the nature of the others, the questions involved in the others, and whether they were contested or not, I will sustain the objection or motion.

MR. DANIEL: All right, sir.

BY MR. DANIEL:

Q Now, the evening before the bond validation hearing, when you testified that you appeared, you previously left a copy of the final decree, and you testified that Judge Kelly called you in.

Now, you were there with the State Attorney. Did the State Attorney enter any objection to the form of the final decree to Judge Kelly at that time?

A No sir.

Q And did you advise Judge Kelly specifically of what laws you wanted him to take judicial knowledge the following night?

A Well, this was actually the same day, the same night. I did advise him of the specific laws that I wanted him to take judicial notice of.

Q For the information of the Court, what do you mean by the Court's taking "judicial knowledge" of something?

A Well, when you ask a Court to take judicial knowledge of something, it is like asking them to admit that a certain thing does exist because there is a specific reference to it or a specific provision saying that it exists, in this instance, somewhere in the statutes of the State of Florida.

And when you ask for a Court to take judicial notice, you usually give him the statute section number so that it can be recorded right in the final decree and can be checked if he wants to check it.

Q What is the law of Florida with respect to judicial knowledge?

A Judicial knowledge, in the State of Florida, permits every Judge to take judicial knowledge of any public act or statute, and actually to take judicial knowledge of any public fact that is of great and general common knowledge.

But this was particularly - - - the judicial knowledge that I had asked him to take was of actual statutes of the State of Florida.

Q You testified that the fiscal agent at the hearing was inexperienced. Did you mean experienced in the legal procedures or inexperienced in fiscal matters?

A No, inexperienced in the legal procedures. I thought I had mentioned that; I am sorry if I didn't.

Q Was the fiscal agent called by you to be a legal advisor to the Court?

A No sir. It was quite a shock.

Q Now, Mr. Masterson, on cross examination alluded to the - - - to use his words - - - "precise technical requirements of the Legislative Act," that you have been testifying to. Did you follow the precise technical requirements of the Legislative Act?

A Yes sir, I did.

Q To the letter?

A Yes sir. Actually, it was not too difficult, really.

Q Was the Act particularly difficult to follow?

A No sir, it isn't.

Q The State Attorney, with respect to the proof of publication admitted to Judge Kelly, in the informal portion of the hearing that you are referring to, that he was with you when the original proof of publication was filed?

A Yes sir.

MR. MASTERSON: May it please the Court, may counsel be instructed to stop leading the witness. He is testifying.

CHIEF JUSTICE DREW: I think your objection is well taken.

MR. DANIEL: I will leave that to the province of Mr. Masterson.

BY MR. DANIEL:

Q Did the State Attorney make any statement with reference to the proof of publication, in the presence of Judge Kelly?

A Yes, he did. When Judge Kelly mentioned, during this latter part of the hearing, that he did not see the proof of publication, the State Attorney stated that he was with me at the time that I filed it and he saw me file it; and that the Clerk took the original, as is their general procedure, for photostating and copying into the chancery orders, that a Xerox copy of it was made and placed in the file in place of it; but that the proof of publication was actually filed.

Actually, if it was not filed, I don't know how the Xerox copy could have gotten into the Court file anyway.

Q Was the State Attorney acting, in this informal portion of the proceedings, in the same capacity that he was in the formal portion of the proceeding?

A Yes, he was.

Q What was that capacity?

A As representing the State and all the people, the property owners and citizens of New Port Richey, and anybody else who might be interested in the proceedings.

Q And, as such, he was the only adverse party there?

A That is correct. He should have been the only adverse party there.

Q Did the State Attorney file a formal pleading in this matter?

A Yes, he did. The State Attorney filed an answer in the matter.

MR. MASTERSON: May it please the Court, this is highly repetitious. We have been over it.

MR. DANIEL: I withdraw the question. That is all the questions we have.

CHIEF JUSTICE DREW: Is there any further cross examination?

RE-CROSS EXAMINATION

BY MR. MASTERSON:

Q Now, Mr. Altman, when you say that this decree that was ultimately entered specifically found that the City of New Port Richey had statutory authority to issue bonds - - -

A No, I didn't say "statutory authority," I don't believe. That they had authority.

Q They had authority. I won't quibble about the words. He specifically found that it had the authority to issue the bonds?

CHIEF JUSTICE DREW: To save time, why don't you just read the paragraph with reference to the matter. It should be quite short.

THE WITNESS: Paragraph 5, I think it is:

"That the said water and sewer revenue bonds proposed to be issued by said City of New Port Richey are of the character and the said proceedings preliminary to the issuance thereof are of the nature as entitle the Petitioner to proceed under the provisions of Chapter 75 of the Florida Statutes for the purpose of having the right of said city and said mayor and council, as the governing authority thereof, to issue said revenue bonds."

And then it goes on. That is the fifth paragraph. I am going to skip 6 and 7 - - - well, maybe I may as well read it all.

MR. MASTERSON: It is not necessary on my account.

THE WITNESS: Well, this all has to do with reference to - - -

CHIEF JUSTICE DREW: Just eliminate that, that's all right.

MR. MASTERSON: My point is just this, Mr. Altman.

CHIEF JUSTICE DREW: Unless you desire to read it to explain some point.

THE WITNESS: Well, I think it would probably be well if I read 6, 7, 8, 9 and 10 - - - the tenth paragraph is the one that finally says.

CHIEF JUSTICE DREW: Well, read the 10th paragraph, then.

THE WITNESS: Number 10: "It has been established to the satisfaction of the Court that the issuance of said water and sewer revenue bonds has been duly authorized and that all proceedings preliminary to and in connection therewith are lawfully authorized and permitted by law."

BY MR. MASTERSON:

Q That is the decree that the Judge signed?

A Yes sir.

Q Before making that finding, he wanted to read the special act which gave the city the authority?

A Yes sir.

Q That special act was not available to the Court the night of the hearing?

A It was available but it was not a certified copy, and he didn't want to see my copy of the charter.

MR. MASTERSON: I see. That's all.

CHIEF JUSTICE DREW: Some other questions from the Senators.

From the Senator from the 39th:

"Did you have a copy of the Florida Statutes available for Judge Kelly at the hearing?"

THE WITNESS: I did not have a copy available. I had some photostatic copies of the act that I had in my own file, in my own preparation of the case; but there were - - - the Florida Statutes were available at that time, the general laws of the State of Florida. They were there at the hearing and they were made available to the Judge.

CHIEF JUSTICE DREW: The second question, "I assume that you did not have a copy of the applicable special acts available and apparently Judge Kelly did not have a copy of the special act, is this true?"

THE WITNESS: No, that is not true. I had a copy of the special act, which was the City Charter, available there; and mentioned, during the hearing, that there were four provisions - - - four places in the charter that provided for this particular thing.

But it was not a duly authenticated copy of the charter, so the Judge would not - - - did not consider it.

CHIEF JUSTICE DREW: For the Court's information, what do you mean by "authenticated"? Wasn't this the official statute?

THE WITNESS: It was the official charter of the city, but it did not have the seal of the Secretary of State on it, I suppose is what he meant by "duly authenticated."

CHIEF JUSTICE DREW: And it was not in a bound volume of the Special Acts?

THE WITNESS: No sir, it was in the bound form that we used in our city.

CHIEF JUSTICE DREW: Senator Clarke would like to ask this question:

"After validation of the bonds, in the State Court, was there an approving opinion of any New York bond attorneys obtained by the city prior to the sale of the bonds?"

THE WITNESS: Yes sir. That was by Marshall, Caldwell & Trimble, of New York.

CHIEF JUSTICE DREW: This is a question from the Presiding Officer on the question of judicial notice:

By "judicial notice," do you mean that where a Court takes judicial notice of any act or proceeding or statute, that it avoids and dispenses with the necessity of making formal proof of the existence of the act or statute?

THE WITNESS: That is correct.

CHIEF JUSTICE DREW: Come down. Call the next witness.

(Witness excused)

MR. DANIEL: Mr. Leonard Lubin.

May it please the Court, we are calling this witness out of order, in view of the fact that he has a matter of great importance to attend at his home.

CHIEF JUSTICE DREW: Gentlemen, we are going to adjourn at four o'clock, so we will take a five minute recess.

Whereupon, at 3:21 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 3:30 o'clock P. M.

A quorum present.

CHIEF JUSTICE DREW: You may swear the witness, Mr. Secretary.

Thereupon,

LEONARD LUBIN,

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

CHIEF JUSTICE DREW: Before the witness starts testifying, I have distributed to each of the Senators all of the amendments to the rules and additional pleadings, copies of which may be inserted in the pocket in the back of your desk books.

At this time I will now recognize Mr. Nichols, with reference to his brief.

MR. O'NEILL: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Mr. O'Neill.

MR. O'NEILL: - - - I talked with Mr. Schwartz while we were taking a break, and I asked him if they would wait on the distribution of that brief. We have our brief to prepare; we have not yet had an opportunity to prepare it, but I would like to wait and pass them both out at the same time.

MR. NICHOLS: Well, Your Honor, I don't think that's necessary. I'd like to pass them out now. We've had it

prepared; I made a motion yesterday, and opposing counsel knows it, and I think we've taken up enough time about it.

CHIEF JUSTICE DREW: The Chair will recognize the right to file the briefs and distribute them among the Court. Will you have yours ready this afternoon?

MR. O'NEILL: That I can't tell, Your Honor. We're working on it, but, when we're down here, we can't be working on it up there.

CHIEF JUSTICE DREW: We will not rule on the question until you have distributed your brief. The Court will not consider it until you have distributed your brief and the Court has had an opportunity to read both of them.

So, the Secretary may distribute the brief of Mr. Nichols.

MR. NICHOLS: Thank you, sir.

CHIEF JUSTICE DREW: You may proceed.

MR. NICHOLS: Does Your Honor wish us to go ahead? I think the Court said for you to go ahead, Mr. O'Neill.

MR. O'NEILL: I think it might be confusing - - - I'm willing to go ahead if that's the desire of the Senate, Your Honor.

MR. NICHOLS: Well, I don't wish to argue the matter, I don't want to take it up now.

MR. O'NEILL: Well, this distribution is what I have reference to, not the argument, Counsellor.

CHIEF JUSTICE DREW: What is your point, Mr. O'Neill?

MR. O'NEILL: I am willing to go ahead but I - - - during the distribution of it, I just don't want to interrupt the Senators, but I don't think we ought to go on with it, on the examination of a witness.

CHIEF JUSTICE DREW: We will wait until they have been distributed.

Senators, the reason that we've had these distributed is so that you may have an opportunity to study them tonight or tomorrow. Of course, you will give your attention to the witnesses while they are testifying and not - - - I would suggest that you not be bothered with the brief until we finish the afternoon session.

You may proceed.

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your name, and where you live, and your profession, please sir?

A Leonard Lubin. I live in St. Petersburg, Florida. I'm an attorney at law.

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

A For fourteen years, since August, 1949.

Q Where have you practiced?

A I practiced from 1949 until 1954, in Miami, Dade County, the Eleventh Judicial Circuit; and from 1954 onward to the present date in St. Petersburg, Pinellas County.

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

A I do.

Q Have you ever been before him?

A I have, upon one occasion.

Q Will you state the time and the approximate date, and what occurred?

A I'm unable to give the date with any reasonable degree of certainty, but my appearance before Judge Kelly was in the first week of his assumption of duties at the County Building in Pinellas County, in St. Petersburg, after his election to office.

Q All right, sir, what time of day was it?

A It was quite early in the morning. I had been informed that Judge Kelly would be in his office at about 8 o'clock in the morning. I had an uncontested matter, a simple matter, which required his signature.

I was not accustomed to appearing that early, but felt it was a good opportunity to get the task accomplished. So, before going into my office, I went to see him there in chambers at just a few moments after 8 o'clock in the morning. There was no one else present. I walked in. The door was open. I introduced myself. He was a total stranger to me; I had never seen him before. He then began to speak to me about the fact that I appeared before him without a coat and a tie.

Q All right, sir, what occurred then?

A Well, I apologized for appearing without a coat and tie, and I told Judge Kelly that I appreciated that it was incorrect attire, that I was not accustomed to appearing that early in the morning, that it would not happen again. If he wished, I could go get a coat and tie, which I had in my car.

I tried to explain that the informality of the matter, and the earliness of the hour, and the fact that no one else was present was what induced this, but Judge Kelly persisted in a long and extended criticism of remarks about my attire, much of his remarks posed in the form of questions, but which really did not solicit or call for an answer.

He initiated the conversation by saying, "What's a fine young lawyer like you doing here without a coat and a tie?" And I made my explanation.

He then said, his words were, "I'm a country boy, but I always wear a coat and tie wherever I go." I said, "Yes sir."

He said that "It creates a poor image of the law and of the courts in the minds of the layman if we appear - - - if we don't set the example, if we appear without coats and ties," and I think I made no comment to that.

And Judge Kelly then persisted in this manner for a length of time, an uncomfortably long length of time, it seemed to me. I wanted to leave. I tried to offer to leave, but the manner and demeanor and tone of the man indicated to me, with no uncertainty, that I was expected to remain until he would have finished his monologue, and until he would have satisfied himself in expressing himself.

This continued for, as I say, an uncomfortable length of time until, finally, his manner and tone indicated that he was ready to allow me to present to him the matter about which I came to see him, which I did, which he then signed, and I left, quite upset, quite agitated, not having experienced that kind of treatment before, and with the resolution in my mind that I would not appear again before him.

I returned to my office immediately, and instructed my office staff and my partner to notify me immediately if any more cases fell into his division, that I wished to withdraw or nonsuit those cases, that I felt that an insurmountable gap had been created, which would render it impossible for me to advocate a cause in his presence and, in fact ---

Q All right, Mr. Lubin, have you ever had any occasion, before or subsequent to that date, to handle anything before Judge Kelly?

A No cases have, in fact, been assigned to me before Judge Kelly since that date, but I have avoided taking non-contested or ex parte matters before him when he was in St. Petersburg in the County Building. None had been assigned to me before that day.

Q All right, sir. Do you know the reputation of Judge Kelly, among the Bar and Bench and the community, as to the manner in which he conducts his court?

A I do.

Q What is that reputation?

A His reputation in that direction is bad.

Q What do you base that opinion upon?

A I base that opinion upon conversations, exchanges with lawyers and other persons, those who had experience before him, in articulating my experience before him, and in exchanging such experiences in conversation among lawyers, when one - - - when one has to practice before a new judge, one is concerned with his habits and his manners, and his likes and dislikes, and in an effort to elicit such information or attitude to render you best able to present the cause, one engages in such conversations. It's upon this basis that I make that judgment.

Q Do you agree with Judge Kelly that attorneys at law should wear their coats and their ties in appearances before the court formally?

A I certainly do.

MR. O'NEILL: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Lubin, did you have on a short sleeve sport shirt?

A I did.

Q With an open neck?

A I did.

Q And the Judge was down there working at 8 o'clock?

A A few moments after 8 o'clock.

Q All right, sir.

Did he have on his coat and tie?

A My best recollection, sir, is that he had on, at least, a formal shirt, that is to say, a long sleeve shirt, with a tie. I have no recollection as to whether he had a coat.

Q You contributed to Judge Dayton's campaign, did you not?

A I did, sir, as I have to many other - - -

Q And you supported him, did you not?

A No sir, I did not.

My office is in the habit of making contributions to political campaigns, which we feel, in our judgment, will serve the best public interests. In this case, we made a nominal contribution, and did nothing else.

Q And the only time that you've been before him is on this one occasion, and the only complaint you've got is because he spoke with you about wearing a sport shirt, or open, short sleeve sport shirt - - -

MR. O'NEILL: We object to counsel editorializing.

CHIEF JUSTICE DREW: Overruled.

BY MR. NICHOLS:

Q Now, tell us, is that the only occasion?

A That is the only occasion upon which I appeared before him.

I do not object over his requirement of a coat and tie; I think he's quite correct. I felt sincerely sorry that I had so appeared before him. I objected to him soliloquizing, I objected to the deprecatory manner in which he made the point; he had already made it. My real objection was not with the subject matter of his ruling, which I felt was quite adequate and correct; my apology was sincere. I objected to the atmosphere, the impossible atmosphere which he created in his manner and demeanor, which I thought was extreme and difficult.

Q Well, there wasn't any client or anybody else in there except you and him, I think I heard you say?

A That's correct.

MR. NICHOLS: We have no further questions, Your Honor.

MR. O'NEILL: You may be excused, subject to recall within the stipulation. We have your phone number.

THE WITNESS: Thank you.

(Witness excused)

MR. O'NEILL: Will the Secretary please call Mr. Frank Wolfe.

Thereupon,

FRANK M. WOLFE,

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, where you live, and your profession, please sir.

A Frank M. Wolfe, attorney at law. I live in Cocoa Beach, Florida.

Q Mr. Wolfe, how long have you been practicing law?

A Approximately twenty-eight months.

Q In Cocoa Beach?

A No sir, I practiced my first four months, from June '61, through October 15 of '61 in Dade City.

Q I have placed upon the desk there two official court files, and I'll ask you to refer to File Number 7962.

Is that the cause of Chaney vs. Chaney?

A Yes sir, this is Carl Leroy Chaney vs. Mary Alice Chaney.

Q Did you represent any person in that suit, or in that cause?

A Not in this cause, sir. I did represent Carl Leroy Chaney in a subsequent suit, which arose, basically, out of this suit.

Q Now, in this particular suit, 7962, is your client - - - that later became your client, was he the Plaintiff in that cause?

A Yes sir, he was, Carl Leroy Chaney.

Q And his wife was the Defendant?

A Yes sir, Mary Alice Chaney.

Q I ask you to refer, now, to Court File Number 8083, and ask you, who is the Plaintiff and the Defendant in that cause?

A This is the cause of Mary Alice Chaney vs. Carl L. Chaney, and there was also a countersuit in this - - - arising from this, wherein Carl L. Chaney was versing Mary Alice Chaney.

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

A Yes sir, I do.

Q How long had you know him at the time this last case came before him?

A At the time I represented Carl L. Chaney in this action I had been in Pasco County approximately a month.

Q State what, if anything occurred at the time of the Chaney hearing?

A Well, sir, this was actually my first full case, so to speak, and Mary Alice Chaney had filed her complaint for divorce against Carl Chaney, and as you have pointed out, suit had once been filed prior to that, wherein Carl had sought to divorce Mary Chaney, and at that time the case had been assigned to O. L. Dayton, and there was a hearing on the temporary custody of the children at which time, because of the evidence that was available, Mary Alice Chaney stipulated that her husband could take custody of the children.

She subsequently went back with Carl Chaney, and this action was then commenced. The purpose - - - and there was testimony to the effect - - - that she went back with him was that so she could gain her children back and get rid of the grounds that she had once had - - - that he had once had for the divorce.

Q What was that ground, sir?

A Mary Alice Chaney had been committing adultery, she had been abusing the children, she had not been taking proper care of them; and at this hearing, the first hearing that was filed in the cause, there was a motion for temporary custody of the children. We were trying to take the children from the home of Mary Alice Chaney on the grounds that she was an unfit mother, and was not a proper person to have control and custody of the children.

Q What occurred in that hearing, the Chaney hearing?

A Well, during that hearing we had as a witness the county health nurse, who appeared under subpoena. We had four or five neighbors, and we had - - - we had been set up for a rather lengthy hearing.

However, as soon as we walked into the hearing, Judge Kelly made it quite clear that his feelings were opposed to taking children away from the mother. I believe he said something to the effect that he didn't believe in summarily taking children from the mother, and at that time I explained that I felt that I had, certainly, adequate evidence, under the law, to present to the Court, and reluctantly, he allowed me to commence with the case.

Q You were permitted to put on evidence after that?

A Yes, but, for example, if I may be permitted to point out one incident.

It is true that I was new in the field of practice. I had practiced once or twice before Judge Dayton. And Judge Kelly had a particular way that things had to be done. For example, it becomes a custom to hand a document to the Clerk and the Clerk would write a number on it and mark it for exhibit, and then you would have it identified by the witness. And perhaps I was nervous or perhaps I just didn't know. I had a particular document marked for exhibit by merely handing it to the Reporter and it was marked. And Judge Kelly, in a rather sharp, loud voice, told me to take the paper back and hand it to the Clerk or hand it to the Court Reporter and say these words, "I herewith hand to you a document to be marked Exhibit A" - - - and, as he finished saying it, telling me, the paper had been given back to me - - - I took the paper and I handed it back to the girl, and this time - - -

Q You say, "girl." You mean the Court Reporter?

A The Court Reporter.

Q Oh.

A But I did not quote the words that he had just said. Judge Kelly was sitting three feet from me. This time, in a very loud and sharp voice, he said, "I told you to say those words."

So I did take the paper back and this time I handed it to the girl and I said, "I herewith hand to you a document to be marked Plaintiff's Exhibit A."

So I took the paper, being over the first hurdle of the trial, and I presented it to the witness, and I said, "Will you identify this exhibit, please?"

And we went through the whole bit again.

He said, "Take that back, because there is a particular way that I want you to say to the witness, 'I hand you herewith document marked Plaintiff's Exhibit A, and I ask if you can identify this.'"

And again, perhaps this time I realized what was going to happen - - - I don't know - - - but, again, I just handed it to the witness. And again, Judge Kelly came close to climbing off the bench to have me take it back and, again, say these particular words. And this went on throughout the hearing. To be quite candid about it, after stumbling through this amount - - - not knowing perhaps, as well as I should have the formalities of the litigation, I was somewhat harassed and upset.

I put a witness on, a nurse, the County Health nurse, who came in and reluctantly testified - - - as a matter of fact, she claimed privilege; but the Court properly instructed her to testify. And she testified to the fact that the home, that she observed, was so unruly and so dirty, with the stench of dirty diapers that have been around for quite a period of time, that the home was not a fit and proper place for children to be reared in.

And Judge Kelly then took over the cross examination. And I might add that this woman was represented by counsel.

And after lengthy questioning by Judge Kelly, I believe Judge Kelly's question was to the effect, "Are you saying that this home was so much like a pig sty that a child could not live in it?"

And she said, "No."

And he said, "No further questions."

And this went on and on and on. This hearing started, I am not sure - - - it was around - - - anyway, the hearing

went until some six-thirty or so. And after the hearing, Judge Kelly had me stay in his Chambers and lectured to me at great length, although my clients left. And I might say, of course, that my clients at that time were as upset as I was, if not more.

Q Now, on what date was this hearing? Did you establish that date?

A This hearing was on July 5th, sir.

Q July 5th of what year?

A 1961.

Q How long had you been practicing law at that time, Mr. Wolfe?

A I had served - - - I was sworn in on the 2nd of June, and I was with the Attorney General's Office. I left right after the close of the 1961 session. I think I had been practicing, maybe three or four weeks.

Q Now, did this have any effect on your client, Mr. Chaney?

A Yes sir. I think that this hearing had a very strong effect, and I think it was one of the contributing factors that caused Carl Chaney to take his own life, the night before the final hearing.

MR. MASTERSON: May it please the Court, I think that remark is grossly improper, and I would like to ask that the witness be instructed not to make remarks like that.

MR. NICHOLS: I move to strike the statement.

CHIEF JUSTICE DREW: The motion is granted. And members of the Court should not give any weight whatsoever to the statement of the witness that this contributed to this man's taking his life.

Mr. Witness, if you will just answer questions instead of volunteering, we will get along much faster.

THE WITNESS: My apologies, Your Honor. I thought that the question was did I think it had any effect on my client. I apologize to the Court.

MR. O'NEILL: If it please the Court, the Court has already ruled - - - I would like to call the attention of the Court - - - that lay people can give opinions as to the competency or incompetency of individuals and can likewise express opinions as to their thoughts as to the effect of certain matters. I believe that is the law of the State of Florida, as contained in many Florida cases.

However, I will not pursue the question further and will simply ask this witness one further question.

BY MR. O'NEILL:

Q Mr. Wolfe, you stated that you are now practicing in Cocoa Beach, I believe?

A Yes sir, I am.

Q How long after this hearing was it that you removed your residence and your practice from Dade City, Florida to Cocoa Beach, Florida?

A The night after this hearing I went to Judge Barnes' home, and I might say I was - - -

Q Was that your law partner or the man that you were associated with?

A The man I was associated with. And I told him at that time - - -

MR. NICHOLS: We object to what he told somebody else in somebody's home.

MR. O'NEILL: There is nothing hearsay about that, what this man said, Your Honor.

CHIEF JUSTICE DREW: Was Judge Kelly present?

THE WITNESS: No sir.

MR. O'NEILL: It is not something that he said to this witness, if it please the Court. It is something that he said to Judge Barnes, his partner or associate.

MR. NICHOLS: Well, it was just conversation, Your Honor.

CHIEF JUSTICE DREW: Overruled. Go ahead.

THE WITNESS: I told Judge Barnes that I did not feel that I could practice law in Dade City, and I left Dade City on October 15, 1961, and I have been in Cocoa Beach for the last two years.

MR. NICHOLS: Now, Your Honor, I move to strike the witness' answer. Because he goes to somebody else and makes a statement and now relates the statement.

CHIEF JUSTICE DREW: I think the motion is well taken, and I sustain it; and it is stricken.

MR. O'NEILL: Counsel for the Respondent may inquire.

MR. McALILEY: Mr. Chief Justice, in view of the fact that we have four minutes until adjournment, if counsel desires to consider that, we can examine him later. I would appreciate the time.

CHIEF JUSTICE DREW: If you can finish your cross in four minutes, we will proceed. Otherwise, we will adjourn until tomorrow morning.

MR. McALILEY: Your Honor, I respectfully request that we finish our cross examination of this witness in the morning.

MR. O'NEILL: May it please the Court, this witness, as I pointed out and explained to the Court - - - that I was taking the witness out of direct order, and I would like for him to cross him at this time; not to go out and think of ways to get at this. This has happened several times, and I think he should be crossed at this time.

CHIEF JUSTICE DREW: We will run until four o'clock, and if you are not through cross examining at that time, we will see what else we can do about it.

MR. McALILEY: Your Honor, I will proceed. And my request was primarily to have time to do some work on this matter.

CROSS EXAMINATION

BY MR. McALILEY:

Q You were practicing with Judge Barnes in Dade City, Florida?

A Yes sir, Kenneth Barnes.

Q And when you left Dade City, sir, did you tell Judge Kelly that the reason you left was because you were not making enough money there in Dade City?

A No sir, I told Judge Kelly that I would see him one more time, when I went back to campaign against him. That was my only statement to Judge Kelly prior to leaving.

Q All right, sir. Now, when was this statement made?

A The day before I left.

Q And where was it made?

A In Judge Kelly's Chambers.

- Q And was anyone present?
- A No sir.
- Q Just you and he, alone?
- A Yes sir.
- Q Now, in this hearing of Chaney vs. Chaney, was there a Court Reporter present?
- A Yes sir.
- Q Do you recall the name of that Court Reporter?
- A No, I don't. It was a Court Reporter from Clearwater.
- Q Was Mrs. Chaney present?
- A Yes sir.
- Q Do you have any idea where she is now?
- A No sir, I do not.
- Q Who represented Mrs. Chaney?
- A Charles Fitzpatrick.
- Q And where does he practice law?
- A Inverness, to the best of my knowledge, and belief.
- Q Now, would you tell me, as best you can recall, the name of every other person that was present?
- A There was a Mr. and Mrs. Carl Ford - - - that was Carl's mother and father. I don't know where they are located.
- There was a nurse.
- Q Pardon me. Were Mr. and Mrs. Ford from Dade City, Florida, or Pasco County?
- A Clearwater, I believe.
- Q All right, go ahead.
- A Or Vero Beach, possibly.
- There was the nurse, the County nurse, and her name, I believe, is in the record. There were some neighbors.
- Q Excuse me. Would the County Nurse be the Pasco County Nurse?
- A Pasco County, yes. And I believe there were some neighbors also.
- Q Was anyone else present?
- A Judge Kelly and the Court Reporter and myself and Mr. Fitzpatrick are the only people I can think of.
- Q Are you familiar, sir, with the body of Florida law that provides that the fact that a mother is an adultress does not necessarily bar her from custody of the children?
- A Yes sir, that is my understanding; that you must prove her to be unfit.
- Q And this is an established body of law in our state?
- A That is correct.
- Q And it necessarily requires a judicial determination?
- A Yes sir, that is correct.
- Q And it is based on the issues of fact presented to the Court?
- A That is correct.
- Q Was Mrs. Chaney contesting the removal of the children from her custody?
- A Yes sir, she was.
- Q And did she have evidence or witnesses there that you know about?
- A I'm sorry?
- Q Did she have any witnesses?
- A No sir, she did not.
- SENATOR POPE: A point of order, Mr. Chief Justice.
- CHIEF JUSTICE DREW: The point is well taken.
- I will recognize the Senator from the 9th, who is the Chairman of the Committee which is to meet at four o'clock. I feel that the Chair is bound by the order of the Court of yesterday that we adjourn at four o'clock, unless some appropriate action is taken to change the time.
- I will recognize the Senator from the 9th first.
- SENATOR CONNOR: Mr. Chief Justice, as Chairman of the Council, I certainly have no objection to using ten more minutes, if that will get through with the witness.
- SENATOR FRIDAY: Mr. Chief Justice, may I inquire? Did I understand counsel to say a while ago that this witness had a hearing or a trial in the morning somewhere else?
- MR. O'NEILL: Senator, he did not tell me directly. I understand, through my staff, that he has an urgent appointment in the morning. It may be that the witness should tell what it is. He did not tell me personally.
- SENATOR FRIDAY: Will the Chair inquire of the witness?
- CHIEF JUSTICE DREW: Will it work a great inconvenience on you to continue your testimony in the morning, Mr. Witness?
- THE WITNESS: Yes sir, it would. I am the City Attorney for Cocoa Beach, and we have a Commission meeting in the evening.
- MR. McALILEY: We don't want to work an inconvenience on this witness, Your Honor.
- MR. NICHOLS: We will waive the rest of it.
- MR. McALILEY: We will waive the rest of cross examination, with the possibility of recalling him later.
- MR. O'NEILL: We have his telephone number.
- CHIEF JUSTICE DREW: We will be in recess until tomorrow morning at nine-thirty.
- Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 4:00 o'clock P. M., pursuant to the motion made by Senator Pearce on Tuesday, September 17, 1963, until 9:30 o'clock A. M., Thursday, September 19, 1963.