

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Friday, September 20, 1963

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

The Chief Justice presiding.

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

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

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

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

—44.

A quorum present.

At the request of the Presiding Officer, Senator Reubin O'D. Askew of the Second Senatorial District offered the following Prayer:

O God, in whom we trust, and who art the final judge of us all, we acknowledge our complete dependence upon thee.

Grant us thy presence this day, and permeate the air with thy holy spirit, so that we can be fully conscious of the grave responsibility that is ours.

Lend us thy help, O Lord, in making any decisions that we may be faced with in our deliberations today. Suffer us not to be led by any considerations other than those properly before us, and give us thy guidance in this and in all things, for we know that in thy mercy is our hope, in thy goodness, our strength, and in thy love, our perfect life, through Jesus Christ, our Lord. Amen.

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

Hear ye! Hear ye! Hear ye!

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

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Thursday, September 19, 1963, was dispensed with.

The Senate daily Journal of Thursday, September 19, 1963, was corrected and as corrected was approved.

CHIEF JUSTICE DREW: I am sure that counsel for the State and counsel for the Respondent are familiar with the motion yesterday, which was adopted by this Court by a unanimous vote, reading as follows: "That any evidence offered specifically or directly in support of Articles III and IV, which have been stricken, be held to be inadmissible."

Does Mr. O'Neill desire to make any statement? He indicated to me yesterday that he might want to. If he does, he may make it.

MR. O'NEILL: Not at this time, Your Honor.

CHIEF JUSTICE DREW: You may proceed, gentlemen.

MR. O'NEILL: Judge Leavengood, Mr. Secretary.

Thereupon,

JUDGE CHARLES RICHARD LEAVENGOOD

resumed the stand and testified further as follows:

DIRECT EXAMINATION (RESUMED)

BY MR. O'NEILL:

Q Judge Leavengood, at the time we adjourned yesterday, you were on the stand and you have been previously sworn?

A Yes sir.

Q I believe you testified that you have been on the Bench for nine years; is that correct?

A That is correct.

Q How many times have you held attorneys in contempt of Court in the nine years that you have been Circuit Judge?

A I never have.

Q How many times have you threatened to hold attorneys in contempt of Court since you have been Circuit Judge?

A One time.

Q Have you ever had any difficulty with any of the attorneys of the Sixth Judicial Circuit as to their conduct before your Court?

A No.

Q Have you, on occasion, in your nine years' practice sat on the Circuit Bench in Pasco County?

A A number of times, yes.

Q How many weeks or days in the nine year period, approximately, would you say that you have sat on the Bench in Pasco County?

A That would just be an estimate.

Q I realize that.

A I would say probably I have gone up there at least a minimum of - - - oh, forty or fifty days.

Q Judge Leavengood, I am handing a file to you styled Fawcett vs. Fawcett, and I ask you to refresh your memory and state what that case was about, as to what the cause of action was and where it was filed and the circumstances relating to it.

A One reason I remember this particular case - - -

CHIEF JUSTICE DREW: Judge, would you identify - - - are you looking at a file?

THE WITNESS: Yes, I am looking at a file.

CHIEF JUSTICE DREW: Would you identify the file by the style and the case number and the circuit or county?

THE WITNESS: Yes, it is a Pasco County case, Chancery Number 8076; and it is Fawcett vs. Fawcett. Do you want the complete style?

CHIEF JUSTICE DREW: No sir.

THE WITNESS: And it is a divorce case which was uncontested.

BY MR. O'NEILL:

Q Who was the attorney for the Plaintiff in that case?

A Robert Pauley.

Q Did you know Robert Pauley?

A Very well.

Q Do you know where he is at the moment?

A He is deceased.

Q Who was this case assigned to, according to the records that you have in front of you?

A It was assigned to Judge Kelly.

Q Will you now check the file and determine if you signed any paper in that file?

A I signed the final decree.

Q Would you state, sir, the circumstances under which you signed the final decree?

A It is my understanding that the case had come before Judge Collins; and, since it was Judge Kelly's case, he did not sign it. And then Judge Kelly refused to sign the final decree. And I checked it over and it seemed in order to me, and I went ahead and signed the final decree.

Q Who was present at the time you signed the final decree?

A Judge Kelly and - - - Judge Pauley, or Robert Pauley.

Q You say Judge Pauley. Was he a Justice of the Peace of a county? Pinellas County?

A He was Justice of the Peace and he also ran for Circuit Judge. He was defeated.

Q Will you state where you were at the time you signed the final decree?

A Right by the - - - I was in the County Building in St. Petersburg at the elevator door.

Q Do you know whether or not there was appended to the file at the time that you saw it, a note from Judge Collins?

A There was.

Q Do you know or recall what was in the note, sir?

A No, I do not. I think it was just the fact that it was Judge Kelly's case, and Judge Collins didn't think he should sign it.

Q Did you have any conversation with Judge Pauley, or Mr. Pauley and Judge Kelly at the time that you signed the final decree?

A Well, Judge Kelly did not want to sign it because he thought that Bob Pauley had taken it to Judge Collins instead of taking it to Judge Kelly, to whom the case was assigned, and they were in disagreement, and so, that's why I took it. I figured that since the case was all ready for final decree, except that it had been taken before a General Master, that I would go ahead and sign it.

Q Did you sign this final decree in front of Judge Kelly?

A Yes, I did.

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

THE WITNESS: He didn't object.

CROSS EXAMINATION

BY MR. MASTERSON:

Q You say Judge Kelly didn't object to your signing the final decree?

A No.

Q Kelly felt that it had been a case that was in front of - - - Judge Kelly felt that it had been assigned to Judge Collins, and Judge Collins thought it had been assigned to Judge Kelly; was that the problem?

A I'm not sure. I wasn't present when there was any disagreement between Judge Collins and Judge Kelly. I just go by what the case - - - it was just assigned to Judge Kelly, and they didn't want to sign it, either Judge want to sign it; so, I went ahead and signed it.

Q There was no problem connected with it whatsoever, is that correct?

A No. As I say, the only reason I remember this Fawcett vs. Fawcett is that that same week I had Sink vs. Sink and Lettuce vs. Rice, and it just happened. If I had had a John vs. John, I would have had a complete bathroom; so, that's the reason I happened to remember that particular case, and I had Lettuce vs. Rice.

Q Now, Judge, you mentioned that on one occasion you have had to threaten some attorneys with contempt, and that was in connection, I take it, with some disciplinary problem in the administration of your court?

A Well, they were about to get in a fight, and I told them, if they didn't go sit down, that I'd put them in jail.

Q There were three lawyers involved in that, weren't there?

A Yes.

Q And you threatened to put one of the lawyers in jail?

A Well, the one that was going to go fight the other one, I did.

Q Yes, and you threatened to hold all of them in contempt if they didn't stop that sort of contentiousness, I take it?

A I did.

Q There are times that it becomes necessary to discipline attorneys in the court room?

A Very seldom.

Q And you've heard of other judges in the circuit threatening to hold people in contempt, however?

A I have.

Q That includes lawyers, does it not?

A Yes.

Q Now, Judge, I would like to get - - - you say you are the Presiding Judge now, succeeding Judge Bird as the Presiding Judge of the Sixth Circuit, and I would like to explore with you just a moment the average case load of a judge in this circuit. Now, what is your average case load, Judge?

A Well, I know, in June, I had one hundred twenty-eight civil cases assigned to me, myself. I would say it's somewhere between twelve hundred and sixteen hundred civil cases per judge.

Q And that's an average load for every judge in the circuit?

A Yes. We have more or less a blind filing. They file the case and so many cases are given to each judge, and we try to divide them as equally as we can.

Q Now, Judge, you mentioned this blind filing system. How long has that been in effect?

A Oh, for a number of years; I'd say at least six or seven.

Q And that would have predated, by a considerable period, then, the time when Judge Kelly took the Bench?

A It would, yes.

Q Now, Judge, let me inquire with you about the case load and the assignment of cases in Pasco County. Now, you are the Presiding Judge among the judges in Pasco County, too, are you not?

A Yes.

Q Now, isn't it true, Judge, that before Judge Kelly took the Bench, that Judge Dayton was the resident judge in Pasco County?

A That is correct, yes.

Q And he served principally in Pasco County, but he also served frequently with us in Pinellas County?

A He served approximately three days in Pasco and two days a week in Pinellas.

Q So there wasn't really a need for a full time judge in Pasco County?

A No.

Q Now, after Judge Kelly was elected, he became the resident judge, is that correct?

A Yes, that's correct.

Q And for a time there was only one judge in Pasco County, and that was Judge Kelly?

A That's correct, yes.

Q But then, because of the increase in the population, two judges - - -

MR. O'NEILL: Just a minute. May it please the Court, this is not proper cross examination; none of this was brought out on direct. I've let the counsel have pretty wide latitude, thus far, but now I'm objecting.

MR. MASTERSON: May it please the Court, this is the Presiding Judge, and I'm only inquiring into the administration of this circuit; I think it would be very helpful to the members of the Senate.

CHIEF JUSTICE DREW: I think the Senate has indicated their desire to hear from the Presiding Judge with reference to the matter. I'll overrule the objection.

BY MR. MASTERSON:

Q All right, sir. Now, Judge Leavengood, when Judge Dayton was appointed, because of this population increase, did he also serve in Pasco County?

A Yes.

Q So that did we then have a situation where, initially, one judge did not have a full case load in Pasco County, but now we have two judges sitting in Pasco County?

A That is correct, yes.

Q And these two judges were assigned all of the work in Pasco County?

A That's correct, yes.

Q Now, did Judge Kelly, from time to time - - -

A Let me say, actually, when Judge Dayton was in Pasco County, before Judge Kelly defeated him, the only time that we judges from Pinellas actually went to Dade City was when there was a conflict in Judge Dayton's and his brother's law-firm; that's the main reason we would actually go to Dade City.

Q And you, as the junior - - -

A I, as junior judge, generally got that.

Q In other words, you were the low man on the totem pole, and they sent you to Pasco whenever this situation developed?

A Generally, yes.

Q And now you're Presiding Judge, and that's all changed?

A Yes - - - I hope, yes.

Q When was the last time you were in Pasco County, Judge?

A I was there last month, or the month before last.

CHIEF JUSTICE DREW: Counsel, I wish you would confine yourself to the general operation of the court, which I think the Senate is interested in.

MR. MASTERSON: Yes sir. I'm almost through with that phase of it.

BY MR. MASTERSON:

Q Now, Judge, is it true, is it a fact that Judge Kelly didn't have enough work to do in Pasco which brought about some offers to do work for other judges on his part?

A He did, and I thought that was very commendable.

Q He came to you, did he not, and said, "I'll take a jury week from you, any jury week you select"?

A He did, yes.

Q And did he do that with other judges?

A He did, yes.

Q And he would let you select the jury week, if you wished?

A Yes, he did.

Q And did you, in fact, select a jury week for him?

A I did. I selected weeks that the cases that were involved, I had not had special rulings on, that might affect the jury trial.

Q Did he also, Judge, notify you and the other judges that he would take any case you wanted to assign to him, whether it was controversial or not, that he wanted to go to work?

A He certainly did.

Q Now, Judge, did he also, when the docket was sounded - - - and for the benefit of this body, would you tell them what the sounding of the docket is in our circuit, and in any circuit?

A It's actually setting jury trials for a specific time or a specific week, and each judge will set any - - - I would say between six and twelve cases per week, hoping that they'll get settled, and Judge Kelly was always willing to take his share, and then some.

Q And this docket is sounded twice a year, is it not?

A That is correct, yes.

Q And Judge, do you recall that at the recent sounding of the docket, Judge Kelly got up and said in the court room that if any lawyer there had not had his case sounded, and wished it set, he would be happy to accommodate that lawyer?

A He did, yes.

Q Judge, you're here under subpoena, are you not?

A I certainly am. I had to cancel a jury trial yesterday to be here.

Q Now, Judge, let me ask you a question about your practice, with reference to - - - and I'm talking about your practice, with reference to what you do when an order is signed by you. Do you have the lawyer take it out of your office and file it, or do you arrange to have that filed?

A I generally have my secretary, unless there's some special reason that the lawyer wishes the order to be taken downstairs and filed immediately, my secretary actually takes all the orders and the files, and keeps a record of the cases that - - - or the orders that I sign, so that if a lawyer wants to call up and find out the date that it was signed and filed, he can do so.

Q And she takes it down and files it?

A Yes.

Q At the end of the work day?

A Yes, that's correct.

Q And there's another reason for that, because sometimes lawyers inadvertently take the order home with them?

MR. O'NEILL: May it please the Court - - -

CHIEF JUSTICE DREW: Don't testify, now, just ask him questions.

MR. MASTERSON: All right, sir.

BY MR. MASTERSON:

Q Now, Judge, was - - -

A I might say, sometimes I lose orders too.

CHIEF JUSTICE DREW: What was that answer, Judge? I didn't hear it.

THE WITNESS: I say, sometimes I lose orders or misplace them; so, I'm not saying that the lawyers are the only ones that make mistakes.

BY MR. MASTERSON:

Q Judge, is it part of your job to keep the court records in orderly fashion?

A Yes, it is.

Q Now, let me ask you another question, Judge, and that has to do with the practice of the Plaintiffs' lawyers, particularly in divorce cases, filing an answer on behalf of the Defendant. Is there ever any discussion of that among the judges in this Sixth Circuit?

A Yes. Actually, we consider it not proper practice to prepare both the complaint and the answer, and represent both sides, and, in fact, we have more or less made it a rule that we will not sign a final decree if that appears to have been done.

CHIEF JUSTICE DREW: You say you more or less made it a rule, Judge. Did you have a rule?

THE WITNESS: We actually have a rule, yes. We have a rule that we will not sign a final decree if the lawyer has prepared both the Complaint and the Answer.

BY MR. MASTERSON:

Q If you have reason to suspect that this has been done, do you inquire into it?

MR. O'NEILL: We object to counsel testifying.

CHIEF JUSTICE DREW: I think, counsel, you have been allowed great latitude in your cross examination.

MR. MASTERSON: I will withdraw the question, Judge. I will try not to lead any more than is proper.

BY MR. MASTERSON:

Q Now, Judge, when we adjourned yesterday, you had mentioned that you had had some conversation with Judge Kelly some time shortly after his election. Will you tell me approximately when that conversation took place?

A You are talking about the criminal trials?

Q Yes sir. You had had a general conversation which you testified about yesterday.

A Well, I would say it was approximately three months after Judge Kelly became a Circuit Judge. That was in 1961. I would say March or April. He wanted criminal cases and I told him to wait a while and he would probably get them.

Q Now, in and about that same time, did you tell Judge Kelly that if he continued to disagree with Judge Bird that the Democratic lawyers of this circuit would try to impeach him?

A Now, wait. You are getting me mixed up. That happened the day he was elected.

Q The day he was elected?

A The day he actually took his oath of office.

Q You told him then?

A I actually told him that if he had had the same type of campaign that I had had, I think, when I was elected to the Court of Records - - - that had one of these secret polls; and two of the lawyers in town said I was qualified and two hundred said I was not. And it kind of hurt my feelings. And so I told him that he had had a rough campaign and I thought the best thing he could do was to work hard and do as I had done and forget about - - - let bygones be bygones, and let the campaign be behind him, and do a good job; and I thought he would be all right. And I told him he had - - - I am not knocking any of you Democrats - - - I told him he

had a Democratic Senate; he had a Democratic House; and he had a - - - excuse me, Judge - - - he had a Democratic Supreme Court. And I said, "If you don't toe the line, you are liable to be impeached." And he said that was good advice.

Q Did you tell him he had a Democratic Circuit too? The lawyers?

A Not exactly. We didn't have a Democratic Circuit.

Q I mean the lawyers?

A Oh, the lawyers. Yes.

Q Now, Judge, you mentioned that you told him to work hard. Do you think he worked hard?

A Yes, he did.

Q Does he still word hard - - - at least until the time he was removed?

A Yes.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Counsel for the State, you are entitled to go into any matters which have been gone into on cross examination.

MR. O'NEILL: Yes sir. I thought maybe you had some Senators' questions that might clarify what I have; and I will come back on redirect.

CHIEF JUSTICE DREW: I will ask the questions from the Senators. Senator Campbell of the 39th - - - Judge, these are questions that have been sent up to the desk under the rule.

THE WITNESS: Yes.

CHIEF JUSTICE DREW: To be asked you by the Senate. "Do you know of any lawyers in your circuit holding out final decrees in divorce cases for the purpose of collecting the balance due on attorney fees?"

THE WITNESS: No, I do not. I think they used to do that, but I do not believe they do it now.

CHIEF JUSTICE DREW: I imagine the Senator would like to ask you when they discontinued that practice, if you know?

THE WITNESS: It hasn't been done since I have been a Circuit Judge, that I recall. I haven't had any complaints.

CHIEF JUSTICE DREW: Senator Gibson of the 10th inquires: "Is it proper for Judge Kelly to stand up in open court during sounding of the docket day and announce that he will take a case to accommodate any attorney?"

THE WITNESS: It is all right. It just shows that he wants to work. It does more or less - - - I have to set up specific weeks, and we do have trouble having court room space in Pinellas County, and sometimes it does kind of mess up my calendar, but it is all right. I have never objected to it.

CHIEF JUSTICE DREW: Senator Galloway asks this question: "Had you ever known of the Florida Senate influencing a Circuit Judge? If not, why would you give such advice?"

THE WITNESS: Well, I think we are all politicians, and the facts are the facts. No, I do not know of any influence.

CHIEF JUSTICE DREW: Senator Campbell of the 39th: "Judge, do you intend to install some system in the Sixth Judicial Circuit of rotating one or more of the Circuit Judges from Pinellas to Pasco County?"

THE WITNESS: Yes, if it is necessary. In fact, we are doing that now. We have not had a Judge appointed to fill Judge Kelly's vacancy - - - or the fact that he is not there; and we have been going to Pasco County.

CHIEF JUSTICE DREW: Senator Gibson of the 10th asks this question: "What is the judicial temperament of Judge Kelly?"

THE WITNESS: I have never actually been in Court when Judge Kelly has been conducting a trial, except just briefly. I personally could not answer that question.

CHIEF JUSTICE DREW: Senator Herrell would like to know: "Do you have fear of being impeached because the Senate and the Court are heavily weighted in favor of the Democrats?"

THE WITNESS: No, I do not.

CHIEF JUSTICE DREW: Senator Johns asks this question: "Did Judge Kelly take your advice and get along with the Democratic lawyers?"

THE WITNESS: I hate to answer that question. I wouldn't be here now and neither would Judge Kelly if that had happened.

CHIEF JUSTICE DREW: Senator Connor asks this question: "Don't you think any man who is charged with impeachment proceedings will receive a fair and impartial trial regardless of the party affiliations of this body?"

THE WITNESS: I absolutely do.

CHIEF JUSTICE DREW: Gentlemen, are there any other questions? Hearing none, the State may cover any ground that has been covered by counsel for the Respondent, or any other proper grounds.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Judge, do the Circuit Judges of the Sixth Judicial Circuit have conferences or meetings periodically?

A Yes.

Q Of those Judges?

A Yes, we do.

Q How often are they held?

A Approximately every three months. We had one in July and we plan to have another one in October.

Q Did you have more than the usual number in the early part of 1961 and as late as 1962?

A Yes, we did.

Q What was that relating to?

A Well, mainly about the assignment of the criminal cases.

Q Now, you have testified on cross examination that Judge Kelly asked that several weeks of jury trials be assigned to him. Were those civil or criminal trials?

A Those were civil.

Q Excuse me.

A Go ahead.

Q What Judges did he ask that he be assigned cases from?

A Not any particular Judge. He just would take any cases that the Judge wished to relinquish.

Q Isn't it a fact that there were three separate weeks by three separate Judges relinquished to Judge Kelly?

A Yes, there were.

Q Did he try any cases during those three weeks? Jury trials, now?

A Well, I know that I had the same weeks that he had and I settled - - - I had all my cases settled; and it was at the time of this petition that Mr. Luckie had filed, about having him disqualified in cases, and he was upset about that so I took the case or the cases. I think I got most of those settled.

Q Did he actually try any cases during the three weeks that he had specifically requested?

A I only know of the two weeks that I helped out on. Now, whether he had another three weeks that he did not try, I do not know. I think one of them was in Clearwater and I don't think he tried it, but I could not definitely say yes or no on that.

Q You alluded to an election when you were elected to the Court of Record of Pinellas County. Was that in the year 1954?

A 1952.

Q 1952. Did you actually serve in that capacity, sir?

A Yes sir, for two years.

Q Did you ever have any difficulty with those two hundred lawyers who did not support you?

A No sir.

Q Isn't it a fact, Judge Leavengood, that in 1954 when you ran for Circuit Judge - - - is that the year you ran, sir?

A Yes.

Q You ran against a Democratic incumbent?

A I did.

Q Was that Victor O. Wehle?

A It was.

Q Have you ever had any difficulty with any of the lawyers that supported Judge Wehle, as opposed to those that supported you?

A None. In fact, the case I had to cancel yesterday was Judge Wehle's case.

MR O'NEILL: That's all.

CHIEF JUSTICE DREW: I have these further questions and you may desire to ask some more after they are asked, which will be your privilege if they arise out of these questions.

From Senator Blank: "Do you know the reputation of Judge Kelly among the members of the Bar and the public of the Sixth Circuit as to the manner of his conducting his Court and office? If the answer is yes, what is that reputation?"

THE WITNESS: Actually, the only thing that I know would be the complaints of the lawyers, such as Mr. Rives - - - he actually talked to me about his problem; but, outside of that, that is the only reputation I would know. I have not talked to the general public or too many lawyers, actually, about Judge Kelly. But they have made their complaints where there was friction between the lawyers and the Court, and they have come to me since I was Senior Judge - - - or, actually, they are friends of mine.

CHIEF JUSTICE DREW: From Senator Friday of the 24th District: "Is it possible, by rule in your circuit, to provide some protection or protective device for those attorneys and parties who have participated in this or

other impeachment proceedings, whereby they may have their cases, any cases of theirs, assigned to another Circuit Judge?"

THE WITNESS: We will have to set up a system such as that. Actually, any time a lawyer asks a Judge to recuse himself, generally they do it.

CHIEF JUSTICE DREW: Senator Barron of the 25th: "Do you consider it the duty of a Judge to assure himself that the statutes have been complied with with regard to diligent search and inquiry in constructive service cases?"

THE WITNESS: Yes.

CHIEF JUSTICE DREW: I think he would like to ask particularly with reference to adoption and divorce proceedings.

THE WITNESS: Actually, that is the whole basis for your jurisdiction and it should be actually inquired into.

CHIEF JUSTICE DREW: Inquired into, I imagine the Senator would like to know, by the Presiding Judge?

THE WITNESS: No, no. Actually, it is up to the individual Judge whose case - - - who tries the case.

CHIEF JUSTICE DREW: I meant that. I am sorry, Judge. I meant by the Judge trying the case.

THE WITNESS: Yes, the Judge trying the case would be the one to determine that.

CHIEF JUSTICE DREW: Any other questions, Senators?

Senator Ryan of the 30th inquires: "Do you know if Judge Kelly treated differently those lawyers who supported him in his campaign and those who opposed him?"

THE WITNESS: No, I do not.

CHIEF JUSTICE DREW: Senator Campbell of the 39th inquires: "Can the Plaintiff and Defendant agree on the settlement of a damage suit without the consent of the Court or Judge, where injuries to minors are not involved?"

THE WITNESS: Yes. They can go ahead and settle the case, and I am always glad when they do. I sign the order dismissing the case.

CHIEF JUSTICE DREW: Do you desire to inquire further?

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Do you desire to inquire further?

MR. O'NEILL: I understand that one of the Senators has a question.

CHIEF JUSTICE DREW: Yes, I am sorry, Senator.

Senator Connor inquires: "Don't you think any Judge should disqualify himself if he thinks that there are charges that he does not think can get a fair trial before him? If any person charges or states that he doesn't feel he can get a fair trial before the Judge, that the Judge should disqualify himself?" Is that the question?

THE WITNESS: Absolutely.

CHIEF JUSTICE DREW: Even without any formal motion?

THE WITNESS: Well, you have to have a formal motion to complete the file - - - or there should be, at least, in my opinion, you should have a formal motion and an order recusing the particular Judge and reassigning the case.

CHIEF JUSTICE DREW: Judge - - - if I am not correct, counsel can advise me - - - you may return to St. Petersburg and to your duties.

MR. MASTERSON: It is agreeable with us.

CHIEF JUSTICE DREW: Is that agreeable?

You may return, Judge, with the thanks of the Court for coming up here and testifying.

THE WITNESS: Thank you. It has gotten to be almost like home.

SENATOR FRIDAY: Mr. Chief Justice, has the Judge been advised that he is under the Rule?

CHIEF JUSTICE DREW: No, he has not been advised. As I understand, he is released from being under the Rule, is that correct?

SENATOR FRIDAY: I just wanted to inquire.

CHIEF JUSTICE DREW: Do you agree that he is not under the Rule?

MR. O'NEILL: No, may it please the Court, we would like to have him excused subject to recall; and therefore, he would not be released from the Rule.

MR. MASTERSON: That is our understanding too.

CHIEF JUSTICE DREW: I would not presume to tell Judge Leavengood what that means.

SENATOR FRIDAY: I think he has gone outside, Judge. He didn't hear you.

(witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Mr. Secretary, if you would call Milton D. Jones.

Thereupon,

MILTON D. JONES,

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

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please.

A My name is Milton D. Jones.

Q What is your occupation, Mr. Jones?

A I am an attorney.

Q Where do you practice?

A I practice in Clearwater, Florida.

Q Would you please, sir, give us a brief resume of your education and qualification?

A I was graduated from the University of Florida in 1949 and began my law practice in Clearwater in 1950, and have been practicing since that time.

Q If you will look straight ahead into the microphone at the Judges. You have been practicing in Clearwater for thirteen years?

A Yes sir.

Q During the term of that practice, have you had occasion to know Judge Richard Kelly?

A I have, sir.

Q What is the nature and type of your law practice, principally?

A My law practice is civil practice, general civil practice.

Q I believe you stated you did know Judge Kelly. Have you ever had occasion to practice before Judge Kelly?

A Yes sir, I have.

Q Do you recall the case of Brewster vs. Kilpatrick?

A I do, sir.

Q What type of case was that, Mr. Jones?

A That case was a mortgage foreclosure.

Q Did anything unusual occur during the proceedings in that case; and, if they did, would you please relate them to the Court?

A I first explained the type of proceeding it was. It was a mortgage foreclosure, in which I was representing the Plaintiff, the holder of the mortgage. It had a balance of around \$50,000.

I brought a suit to foreclose the mortgage and joined the holder of a second mortgage on that property. Mr. James Earle, of St. Petersburg, represented the second mortgage holder and Mr. B. J. Masterson, of St. Petersburg, represented the owner of the property and the mortgagor. The case was contested hotly by both Defendants, on the ground that they claimed that my client had conveyed the property and had, therefore, satisfied the mortgage, which I disputed. Prior to the final hearing, numerous conferences were held between the attorneys; each insisting they would contest the case at the final hearing, with witnesses and documents. At the final hearing, which was held on December 12, 1962, I appeared with my client, the Plaintiff, and my witnesses; and Mr. Masterson and Mr. Earle, representing the Defendants, also appeared without witnesses.

Q Mr. Jones, if I may interrupt you here, would you tell us approximately how many persons were present in the Court Room or in Chambers?

A My client was present, Mr. Masterson was present, Mr. Earle was present, Judge Kelly was present, and the Court Reporter.

Q I believe you stated that there were some witnesses?

A There were witnesses out in the hall, sir.

Q All right, sir, if you will, continue.

A I had not anticipated that it would be anything but a contested hearing, and it was impossible to anticipate the way the testimony would go, according to what I had been informed by opposing counsel. However, when we appeared, counsel for the Defendants stated that they had no defense, had no witnesses, and would not oppose the case, which was a complete surprise to me. At that point we agreed on a reasonable attorney's fee, and Judge Kelly asked me if I had a final decree, so that he could sign it, to which I replied that I did not, inasmuch as I could not anticipate the decision of the Court on contested facts. It seemed to me that the facts could be - - - turn many ways, according to the testimony of the witnesses. When I said I had not, Judge Kelly then announced to me that I had been negligent in not preparing the final decree in advance of the hearing. Having no decree, I had nothing to do but leave the room and go back to my office and prepare one.

Q Mr. Jones, were your clients present when Judge Kelly said that - - - what he did?

A Yes sir, he was. Mr. Brewster was my client, the Plaintiff.

Q Did this conduct have any effect on you?

A It was quite embarrassing, of course, and I was, of course, concerned that the Judge had made an accusation of negligence, in implying that my competency, professionally, was called into question.

Q Mr. Jones, have your clients ever mentioned the fact that - - -

A I was questioned later, and asked to explain what the Judge meant by that.

Q Have you been talked to by your clients more than one time since then, about this specific instance?

A Once after the hearing; I'm not sure whether he was satisfied with my explanation or not.

Q Upon going back to your office, Mr. Jones, did you subsequently prepare a final decree?

A I did, sir. It was a six-page final decree.

Q Six legal - or letter-size?

A Six legal pages to - - - containing all the findings of fact and the necessary orders to prepare for a foreclosure sale.

Q Tell us, sir, if you find it to be the practice in contested cases, the attorneys for either side can anticipate what the final decree will be, in order that they may draft it prior to going to the final hearing?

A It's not the practice where I have been. The - - - you can't anticipate, on contested testimony, what the Judge would find. Frankly, in many cases, it's presumptuous on the part of an attorney to try to outguess the Judge. I've never done it. There are many occasions where you can; a simple motion, you can anticipate that the Judge will rule either one way or the other, and you can prepare orders accordingly, but in this type of a case, where several defendants are involved, you couldn't anticipate exactly how the Court would hold.

Q Mr. Jones, you say you've been practicing in Clearwater, Florida, for thirteen years. Do you have an opinion as to Judge Richard Kelly's reputation, in the manner in which he conducts his Court?

A Yes sir, I do.

Q What is that opinion, sir?

A Judge Kelly's reputation in Clearwater is extremely bad.

Q If you will, now, explain to the Court what you mean by "extremely bad"?

A Judge Kelly has a reputation for being erratic, temperamental, unpredictable, and the worst thing about it is that it instills fear and apprehension in the minds of most lawyers and, I apprehend, many litigants. It's mostly in two aspects. Many of the lawyers that I have talked to, reputable attorneys, in whom I have confidence, have personal fear of being embarrassed or humiliated in the presence of their clients in court; and there is also a form of apprehension on what will happen to their cases if they are taken before Judge Kelly, because of his unpredictable nature. They feel that valuable cases and the rights of their clients might be severely jeopardized before a judge whose temperament and erraticism cannot be predicted or counted upon.

MR. JONES: Thank you, Mr. Jones. You may inquire.

MR. NICHOLS: No questions. Thank you very much, Mr. Jones.

CHIEF JUSTICE DREW: Come down, Mr. Witness, you understand, you're under the rule, and you are not to appear in the gallery or - - -

MR. JONES: I believe there's a question, if the Court please, or if the Presiding Officer please.

CHIEF JUSTICE DREW: Just a minute, Mr. Witness, there is a question. You may resume your seat, sir.

THE WITNESS: Thank you.

CHIEF JUSTICE DREW: These are questions which are propounded under the rule by the Presiding Officer, from the members of the Court. Senator Gibson inquires: Has any other judge reprimanded you for not having a final decree prepared?

THE WITNESS: No sir.

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

MR. NICHOLS: Just a minute, sir. Mr. Jones, Mr. Masterson, who is sitting to my left here, was present at that hearing, was he not?

THE WITNESS: That is correct.

MR. NICHOLS: Thank you very much.

MR. JONES: Mr. Jones, I would like to state to you that you can go home, but you're still under subpoena, and I believe we have your name and phone number, where we can contact you.

THE WITNESS: Yes sir.

MR. NICHOLS: Just a minute, Your Honor.

CROSS EXAMINATION

BY MR. NICHOLS:

Q You won your matter, you got your final decree, didn't you?

A With no opposition, of course.

Q Well, but you got your decree that you wanted?

A Oh, yes, of course.

MR. NICHOLS: Thank you.

MR. JONES: If I may have one question on redirect.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mr. Jones, you are not here, complaining about the fact that you didn't win your case, or you did win it?

A No, no, not at all, no. My complaint is that Judge Kelly - - -

MR. NICHOLS: Now, let's not go all over this, repeating the matter that we've already heard.

CHIEF JUSTICE DREW: Please keep your seat just a minute, Mr. Witness. Is everybody through with this witness?

MR. NICHOLS: Yes sir.

CHIEF JUSTICE DREW: Now, Mr. Jones, you may be excused.

THE WITNESS: Thank you, sir.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Mr. Secretary, if you will, please, call Ronald Cribbs.

SECRETARY FRASER: Ronald Cribbs?

MR. JONES: Roland - - - excuse me, Roland Cribbs.

SECRETARY FRASER: Roland Cribbs.

MR. JONES: Yes sir.

Thereupon,

ROLAND F. CRIBBS,

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

CHIEF JUSTICE DREW: The witness is before you.

DIRECT EXAMINATION

BY MR. JONES:

Q Will you state your name, please?

A My name is Roland Cribbs.

Q Mr. Cribbs, what is your occupation?

A I am an attorney at law.

Q Will you please give us a brief resume of your educational qualifications?

A I am - - -

MR. NICHOLS: In order to save time, we'll admit his qualifications.

MR. JONES: I don't think it will take too much time, Mr. Nichols.

THE WITNESS: Graduate of the University of Florida. I'm admitted to the Tampa and Hillsborough County Bar, the integrated Bar of the State of Florida. I've practiced for twelve years, principally in Hillsborough County.

BY MR. JONES:

Q Mr. Cribbs, during the course of your practice, have you had an opportunity to appear before Judge Richard Kelly?

A Yes, I have.

Q How many times have you appeared before him, and where did you so appear?

A On just one occasion, in Pasco County.

Q What was the style of that case, if you recall, sir?

A There were two cases, two companion cases; the principal one was Barron Harris vs. Fletcher and Waterson; the other was Brunson vs. Fletcher and Waterson.

Q Which of the parties did you represent?

A I represented the plaintiff in both cases.

Q What type of a case was it?

A This was a libel case.

Q If you will, sir, relate to the Court any unusual circumstances which occurred in this case?

A The complaint had been filed, and a motion to strike had been filed by the - - -

Q By "the complaint," sir, if I may interrupt you, you mean the original pleading of the suit?

A The original pleading, the basis for the suit itself, had been filed in Pinellas County, and a motion to strike had been filed by attorney for the adverse party. The matter was set down for argument; and I went to Dade City to argue the case.

Q At this point, sir, based on your experience as a lawyer, would you explain to the Court, briefly, how these hearings are usually held, and usually, what transpires at this type of a hearing on the original suit?

A In connection with a motion of this sort, the moving party normally is the person who makes argument first; the one who is defending the motion usually makes argument after that time.

Q In other words, in this case, you had filed a suit; the opposing counsel had filed a petition or - - - to strike part of that suit?

A That's right.

Q Therefore, it would be up to him to make the first argument?

A That is correct.

Q And you would argue next?

A That is correct.

Q Where is this hearing usually held?

A Normally in chambers of the particular judge hearing the matter.

Q All right, sir. Now, if you will, please, sir, just relate what transpired at this hearing?

A When I arrived at the hearing chambers the attorney for the adverse parties and the judge were already present. Without any particular preliminaries, Judge Kelly started questioning me concerning why my pleadings should not be stricken. In other words, there was no argument made by the adverse attorney in the normal course, but I found myself almost immediately in the midst of a partisan attack on my pleadings being carried on by the Judge.

The particular portion of my pleading which was being attacked was the portion which alleged good reputation of my clients. The Judge wanted to know why it was necessary that that be pleaded; this was a libel case, and I pointed out that good reputation was necessary, in that it was one of the yardsticks by which to measure how much a person had been damaged, if a libel had been committed. Judge Kelly used a simile that even a prostitute could be libelled; so, why was it necessary for my man to plead and prove good reputation; and I simply could not make any point beyond the fact that there was no necessity to plead good reputation, he just simply would not permit the pleading of it, and it, just frankly, cut the guts out of the pleading.

Q Mr. Cribbs, did you object to his ruling of law, or did you object to the way that this hearing was - - -

A Well, I've been ruled against on the law many times, and even though, in this particular case, my pleadings were drawn directly from the cited Supreme Court case, that was not what upset me. Very frankly, I was lectured on the way my pleadings were drawn, and I was not left much dignity.

Q Tell us, sir, if it actually happened, were any aspersions cast against you on your ability to draw pleadings?

A Well, the - - - it's difficult to describe, but I didn't feel that I had much dignity left by the time the judge had gotten through discussing my pleadings and cutting it to ribbons. I became so upset; I got up to leave, and I was informed that if I left at that time, that all of my pleadings would be stricken.

Q Mr. Cribbs, did you take an appeal from this order of the court?

A As a practical matter, my clients were not financially in a position to do so. We did not.

Q Would you explain "as a practical matter," you did not take an appeal?

A Well, an appeal is something that costs additional court costs and attorney's fees, and my people were working people, my particular clients, one of the principal clients was a salesman. He had been in politics in the small town of Oldsmar, and was not financially able to carry an appeal.

Q What had you done in an effort to represent these people?

A Well, we filed - - - I went ahead and filed an amended pleading, leaving out the allegation of good reputation. Also, the judge struck my allegation of malice, but they were - - - without those two principal allegations, the pleadings had no real value.

Q Tell us, sir - - -

CHIEF JUSTICE DREW: May I, just for the sake of clarity, may I inquire how soon - - - this was a common law case?

THE WITNESS: Yes sir.

BY MR. JONES:

Q Could you tell us, Mr. Cribbs, when the case was originally filed?

A It was filed some time in either the late fall of 1960 or the early spring of 1961.

Q Have you as yet had an opportunity to plead this case?

A Well, the case has died a natural death, as a practical matter.

MR. JONES: You may inquire.

CHIEF JUSTICE DREW: I have one question, Mr. Nichols, from a Senator, Senator Gibson, of the 10th: Have you ever - - - this is a question from one of the Senators.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Have you ever been treated in such a manner by a judge before or since?

THE WITNESS: No sir.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Cribbs - - -

A Yes sir.

Q - - - this matter that you had was a libel suit against individuals?

A Against individuals, doing business as a newspaper.

Q Who was that newspaper? What was it?

A That was the Tampa Bay News.

Q The old Tampa Bay News?

A Printed in Oldsmar.

Q And - - -

A Excuse me, I didn't hear you.

Q - - - did the - - - what was the original basis of the libel?

A The original basis was a published newspaper article which had alleged that my clients had gone about like unleashed, rabid animals, biting everybody in view.

Q These newspapers - - -

A Pardon?

Q These newspapers are pretty rough at times, aren't they?

A Well - - -

MR. NICHOLS: I withdraw the question. Let's go on.

THE WITNESS: I have some good friends who are in the newspaper business.

BY MR. NICHOLS:

Q Who was the attorney on the other side?

A That was one of the Kickliters; I'm not sure whether it was George or Paul. I think they were both involved.

Q This matter was being heard in Pasco County?

A Actually, the suit was filed in Pinellas, the suit was filed in Pinellas County, against Pinellas residents.

Q Were there any Pasco County attorneys on the other side?

A I don't believe so, no sir.

Q It was being heard, however, in Dade City, I believe I heard you say?

A It was being heard in Dade City.

Q Now, your chief complaint is that the - - - there was a motion filed to strike the libel suit, or your complaint, and I guess the lawyers on the other side were insisting that this was not legally sufficient, and the court granted their motion to strike your pleading?

MR. JONES: If the Court please, we would like to simply object to the question as being leading and arguing on this thing. If he would just ask questions, we would have no objection.

CHIEF JUSTICE DREW: Counsel, I think, unquestionably, you can lead the witness - - - what was your other objection?

MR. JONES: We said it was argumentative, if the Court please. Mr. Nichols was making a statement, and at the end of it, simply asking the witness to say "yes" or "no" to his long statement.

MR. NICHOLS: I'm not arguing. I thought the Court explained that when we were on cross examination, we had the right to lead, and that on direct, that you don't. Then, when we start out, it will shift - - -

CHIEF JUSTICE DREW: Well, there's no need to get into a discussion between each other; that was the ruling yesterday, and that is the ruling in every court, and you may proceed, and just, again, Mr. Nichols, please don't be argumentative, but you have a right to lead the witness and suggest what he did, and then ask him whether he did or not, but, in the form of the question - - - you shouldn't be argumentative.

MR. NICHOLS: All right, sir. I'll rephrase it.

BY MR. NICHOLS:

Q In the lawsuit that you filed, which was a libel suit, I presume there was a motion, I believe you said, to strike, is that correct?

A That's correct.

Q By the other side. Now, the lawyers on the other side were presenting their matter to have your pleadings stricken, is that right?

A A motion had been so filed.

Q Now, you had served notice of this hearing ahead of time, and set it down before the judge, had you not?

A Yes sir, I had.

Q And the notice - - - you also notified the judge as to what matter was coming up, did you not?

A I notified what?

Q The notice also goes to the court, and you receive a time for that hearing?

A In this particular matter the information I had was that it had been set before another judge. I received word by telephone that it had been reset before Judge Kelly.

Q Yes sir. All right, but the point I'm making is, the judge knows what matters are coming before him on these motions, doesn't he?

A I can only assume that that's true.

Q Well, you have been before him many times, have you not?

A Not this particular judge. I can only assume that the judge has the time to go over each one of these.

Q Well, you served notice on the opponent that the matter was going to be heard here?

A I served notice on the opponent that it would be heard in St. Petersburg, before Judge Dayton.

Q All right, sir. Now, the judge, however, has an opportunity to get the file and study the file prior to the lawyers getting there, does he not?

A I think that that is correct.

Q And any studious judge does that, doesn't he?

A I cannot say. I would assume that that's true.

Q You quite frequently have had hearings before on motions, that the judge had already studied the pleadings and read them, studied them, haven't you?

A I would assume that that is correct.

Q And that's helpful to the parties, for the judge to study the pleadings, in order to know what they're talking about, isn't that right?

A I agree.

Q Now, then, the judge did strike your libel suit, or your complaint in this case, the pleading?

A Struck the portion alleging good reputation of my clients, and struck the words that dealt with malice of the defendants.

Q Now, you, as a lawyer, of course, could file amended pleadings, couldn't you?

A That is correct.

Q Did you file any amended complaint or amended pleadings in this regard?

A I did.

Q You did?

A Yes.

Q Now, did you ever have any hearing on that?

A I don't recall any further hearing being had.

Q So then, you had filed amended pleadings, and it's still laying in the file?

A Yes sir.

Q Well, then, the judge hasn't had anything further to do with it, one way or the other, has he?

A In that particular instance, no.

Q So you said it died a natural death?

A That's right.

Q That's as a result of your actions, not Kelly's, is it?

A No, I can't agree with that.

Q Well, - - -

A Once the pleadings were refiled, they were refiled pursuant to the order of the court, omitting the allegation concerning good reputation, and omitting the allegation concerning malice, which were essential parts, if the suit was to amount to anything other than just a nominal amount of damages.

Q Now, if you felt, however, that the judge had made a legal error, you could have appealed to the District Court of Appeal, could you not?

A I have already stated that that was a course of action possible.

Q And that is the place to correct errors of law, is it not, of a judge's errors?

A It's the place to correct errors of law. The error of law is not what upset me, Mr. Nichols.

Q Who was your party Plaintiff?

A I had two of them. A Mr. Baron Harris and a Mr. Homer Brunson.

Q And did this grow out of a political campaign?

A No, both of the parties, as I recall, were city councilmen in the City of Oldsmar, and there were some allegations of some statements that had been published in the newspapers concerning their conduct as councilmen and as individuals.

Q They haven't asked you to pursue this matter one way or the other?

A I have so stated, that they have not.

Q Let's see. That was back, I believe you said - - - when was this suit filed?

A I would assume it was filed either in early 1961 or the latter part of 1960.

Q And neither of your clients has asked you to pursue the matter further?

A No sir.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: Any further questions?

MR. JONES: Just briefly, Your Honor. I was going to wait for any Senator's question.

CHIEF JUSTICE DREW: I haven't any questions on my desk. Has any Senator sent up a question which I have not seen? Very well.

REDIRECT EXAMINATION

BY MR. JONES:

Q Let me ask you, Mr. Cribbs: With regard to the Court's studying a case prior to trial, what is the practice, if you know, when a Court has studied the file to

familiarize himself? What is the practice when two attorneys appear before him? Does he allow each one to present his argument?

A That is what has always occurred in the hearings that I have been involved in. The Court would permit the moving party to present argument first and to present any law which he might wish to cite; and then the person defending the motion would present his argument and his law, and possibly they would each have a short rebuttal. And then the Judge would make comment and question concerning the position of either of them and bring out what his own research might have revealed concerning the law and the facts.

Q In other words, this is so that if the attorneys have any points and case citations, they can present those to the Judge there in his Chambers?

A Well, it permits the Court to have both sides of the particular matter, if he has made a study, to compare what his study has revealed and better equip him, I would assume, to make a judgment in a particular situation.

Q In other words, even though he may have prejudged pleadings, he still is - - -

MR. NICHOLS: Objected to - - -

MR. JONES: Will you let me finish it?

MR. NICHOLS: Go ahead.

BY MR. JONES:

Q - - - he still hears from both sides to determine if he has missed any law?

A I think that that is a fair statement.

MR. NICHOLS: I object to that on the ground that it is repetitious.

MR. JONES: We will withdraw the question.

MR. NICHOLS: He is going back over the same thing again.

BY MR. JONES:

Q Now, Mr. Cribbs, were the parties on the other side required or requested, or did they make an argument to the Court?

A I recall no argument made to the Court by attorneys for the opposing parties at all.

Q Were you allowed to make an argument to the Court?

A If it can be called an argument. It was more a cross examination.

Q Of you?

A Of me.

MR. JONES: Thank you. We have no more questions.

MR. NICHOLS: No cross.

CHIEF JUSTICE DREW: You may be excused, Mr. Witness. You are under the Rule and you will not appear in the gallery nor anywhere in the Court Room without the joint consent of counsel.

(witness excused)

Senator Williams (27th) was excused from further attendance upon the Session after the hour of 11:00 A. M., because of illness in his family.

CHIEF JUSTICE DREW: Gentlemen, right at this point, without objection of counsel on either side - - -

and I would like that consent first - - - we have had much testimony concerning appeals and the cost of appeals.

Do counsel for the State object to my stating - - - not the cost - - - but what the procedure is on an appeal?

MR. NICHOLS: I think it would be helpful, Your Honor.

MR. O'NEILL: We agree that the Presiding Officer should explain, and we would like to have the opportunity to bring up other points that might inadvertently be overlooked.

CHIEF JUSTICE DREW: I will be glad to do it.

Gentlemen, ordinarily - - - I am just speaking of appeals now, from trial courts - - - ordinarily, except in certain rare instances, with which I am sure some of you are acquainted - - - such as capital cases and cases construing the Constitution or statutes, and cases affecting state offices - - - all of those cases go to the District Courts of Appeal, which are Courts of final jurisdiction within their sphere, except for certain instances where there is a conflict of decisions or other circumstances.

The procedure involves - - - it requires that the original record in the cause - - - the old procedure might be confusing, and that is why I bring this up. Under the old procedure, copies had to be made of all records in an appeal, and it had to be sent to the Appellate Court.

Under the present procedure, established some years ago, the original record is indexed - - - or such parts of it as are necessary - - - and is sent to the District Court. And the attorneys file their briefs and certain other documents, and the matter is argued in the District Court, which sits in Miami, in Lakeland, and in Tallahassee. That is the general scheme of things.

In other types of cases, of course, they can come directly to the Supreme Court, and in most of those instances, only in the instance of bond validations, are certified copies of records required.

The rest we review on the original record. The Clerk of the lower Court sends it to the Supreme Court.

Is there any statement now which the Court has overlooked?

MR. NICHOLS: None that I know of.

CHIEF JUSTICE DREW: Is that a fair statement, satisfactory to both counsel? Call the next witness.

SENATOR ASKEW: Mr. Chief Justice, since we are adjourning at twelve o'clock today, I wonder if we might have a brief recess.

CHIEF JUSTICE DREW: There will be a recess of ten minutes, gentlemen.

Whereupon, at 10:43 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 10:53 o'clock A. M.

CHIEF JUSTICE DREW: The Presiding Officer observes and declares a quorum to be present. The Court will come to order. Call your next witness.

MR. DANIEL: I have advised the Secretary to call A. T. Cooper, Jr.

Thereupon,

A. T. COOPER, JR.,

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

CHIEF JUSTICE DREW: Mr. Witness, will you speak

directly into the microphone and don't face either counsel when you are testifying. And, when you have concluded, you are still under the Rule, which requires that you do not appear in the gallery or any other part of the Chamber or within hearing of these proceedings until you are excused by the consent of both parties.

THE WITNESS: Yes sir.

MR. NICHOLS: Excuse me. May I ask Mr. Daniel one question, quickly?

(There was a short off the record consultation between Mr. Nichols and Mr. Daniel.)

MR. DANIEL: By way of clarification, may it please the Court, the transcript about which I will question Mr. Cooper in a moment was the file that was brought to Tallahassee from Lakeland by the Marshal from Lakeland, of the Appellate Court there. Copies, as I believe the Court will recall, were made at the time, two copies; one was at that time given to counsel for the Respondent, and I believe the Court indicated yesterday that that would be a compliance with the motion that was granted to counsel for Respondent on yesterday.

CHIEF JUSTICE DREW: That is correct.

DIRECT EXAMINATION

BY MR. DANIEL:

Q All right, sir, will you state your name, occupation or profession, and residence?

A My name is A. T. Cooper, Jr. I am an attorney, Clearwater, Florida.

Q You practice in Clearwater?

A I do.

Q How long have you been practicing law?

A I have been practicing law since 1945. I was admitted to the Bar in 1940.

Q I presume the lapse was in the war years?

A It was.

Q Where did you take your law degree?

A The University of Florida.

Q Do you know Judge Richard Kelly?

A Yes, I do.

Q Are you familiar with the case styled James vs. Anderson, regarding the Pinellas County tax roll?

A Yes sir, I am.

Q Was that matter heard by Judge Kelly?

A It was heard by Judge Kelly.

Q Were you in attendance at that hearing?

A I was in attendance at two of the hearings; one, a motion for summary judgment, and the final hearing.

Q In what capacity were you attending those hearings?

A The case was brought by my law firm. One of my partners, Mr. Howard Rives, was handling it. Against the Tax Assessor of Pinellas County and members of the County Commission as County Commissioners.

Q Did anything of an unusual nature occur at any of these hearings which you were attending?

A Yes. Two circumstances arose which I consider to be unusual.

Q Would you describe the room and the attendance at which these occurrences happened?

A Would you repeat that?

Q The number of people present, where was the hearing held?

A The hearing was held in one of the Court Rooms in the Court House at Clearwater. There were, I would say, fifty to seventy-five people present. It was a small Court Room and it was, I think, packed to capacity. The case involved a great deal of public interest, inasmuch as it involved the validity of the entire tax roll of Pinellas County for 1962.

Q Your law firm was attacking the validity of the tax roll?

A That is correct.

Q All right, sir. I believe that you said that there were two incidents that occurred. Would you relate the first one, please?

A Well, the first one took place in November of 1962, on a motion for summary judgment. The Court Room in which this hearing was held - - - where this motion was heard - - - has anterooms and Chambers around it. We went in to attend the motion - - - the hearing on the motion. We had filed with our motion for summary judgment, various and sundry affidavits and exhibits to substantiate the affidavits of the witnesses whose affidavits were presented. Among those things were census reports, United States Department of Commerce information, and data which the expert witnesses giving testimony through affidavits had attached to their affidavits. Of course, to the motion itself, for the summary judgment - - - which was directed to the Court - - - these affidavits and their attachments were all filed.

Now, as we went into the Court Room - - - and, as I say, it was a matter involving great public interest - - - we had approximately - - - I think there were five clients who brought suit as individuals and as representatives of a class; the class being the taxpayers of Pinellas County - - - land owners and other people. As we went into the Court Room that morning, upon the Bench I noticed a pile of papers that came up very high. You could see them above the Judge's desk. The Judge opened the proceedings, as I recall, with the statement that, "Now we must first consider the propriety of the form in which the motion for summary judgment has been presented to the Court." And the Judge asked Mr. Rives, my partner - - - and, incidentally, I was not active in the case, except there to help my partner. It was his case and he had prepared it and was trying it. So, he said, "Mr. Rives, will you come up and put the file" - - - this was the Court file - - - "Will you put the file in order?" And the Clerk helped my partner put the Court file in order, in chronological sequence, in which it had been originally filed.

Judge Kelly explained that he had taken the file to his home over the weekend in order to examine it prior to the hearing; that he had found it necessary to take it apart, and he said, "I can't put it back together."

And I might explain that when these affidavits were filed and their attachments were filed, some of them, some of the attachments were stapled with a wire staple. Others, where we had the thick exhibits, were attached by putting holes in the paper and sliding through it an Acco slide fastener. You put a little clip on the top and fold it down and lock it.

Once those papers, the original papers, are filed in the Clerk's Office, they are filed in a big manila folder, a heavy manila folder with a clip there that is difficult to unlock and open. It is purposely made that way. You can do it. But with the admonition that you can't take those

papers apart. So I explained that once those papers were filed in the Court, they become permanently fixed in the chronological order, and if someone goes and destroys that order, they are separated.

So, after about fifteen minutes of putting the file back together, I thought we would proceed with the hearing. And the next thing, he said, "Now, Mr. Rives," - - - the Court said, "Mr. Rives - - -"

Q Was this in the open hearing where the seventy-five people were?

A Yes.

Q There were other Chambers available, however, that could have been used?

A Yes.

Q Proceed.

A He said, "Mr. Rives, once again" - - - in effect - - - "once again, I wish to point out to you that when you say a paper is attached, that it will be permanently attached, so that it cannot be taken apart." He said, "Now, if you have no other means of attaching these papers" - - - and I would add that the motions and the affidavits were cross-referenced in the text to each so that they could be identified. The motions which we filed described the exhibits, and so forth. He said, "If you can't find any other way to do it, then you just get an ice pick, Mr. Rives, and a ball of string, punch holes in the papers and run the string through the papers, and then get some sealing wax and seal the string, so that you can't take that apart."

Q Now, was this following the court's admission that he himself had taken the file apart?

A Yes sir.

Now, I don't know how Judge Kelly got the papers back that morning, unless he took them in a bushel basket, but when I walked in there, they were stacked, oh, I would say, eight inches, ten inches high on his desk, in one unassorted pile.

Q I overlooked asking you one question with respect to your profession: Are you also a member of the Board of Governors of the Florida Bar?

A I am.

Q How long have you been a member of that Board, Mr. Cooper?

A Six years.

Q Mr. Cooper, did anything else of an unusual nature happen at this particular hearing?

A Not at this particular hearing.

Q Or at any subsequent hearing to which - - -

A A subsequent hearing, the final hearing, was held on January 3, 1963.

Q Could you refer to the transcript of that hearing and point out any unusual incidents that occurred?

MR. DANIEL: Your Honor, this is the transcript that we have previously furnished a copy of to counsel for the Respondent.

BY MR. DANIEL:

Q Identify the pages which you will refer to, please, Mr. Cooper.

A Yes sir. I refer to Page 34 of the transcript of testimony taken in the case of R. H. James, et al. vs. A. L. Anderson, et al., in the Circuit Court of Pinellas

County, Docket Number 64445, record of the transcript of the final hearing, held January 3, 1963.

Q Is that transcript duly attested by the Official Court Reporter?

A Yes sir, this is a carbon copy attested by the Court Reporter.

Q I see. Now, will you proceed.

A And I refer to Page 34. Might I explain the preliminaries here, that led up to - - -

Q Yes, would you please explain the preliminaries leading up to this page 34, which you were going to quote from.

A As I explained, this suit was brought, attacking the validity of the entire tax roll. The question arose several times, in settling the pleadings, as to whether we were attempting to, in effect, obtain a re-equalization of the tax assessment of our particular clients, or whether we were attacking the entire tax roll.

Q Well, what difference, from a practical point of view, would this have made, Mr. Cooper, this distinction?

A Because, I think that if it had been on an individual basis that we were attacking the assessment as to these particular clients, that the - - - we would have had a different procedure. We had been before the Board of Equalization on that, and that applied to the individual parcels, and not to the tax roll as a whole.

Q This suit was attacking the tax roll as a whole?

A That was the theory of our suit, and that was the question that the judge raised at this time, and had been raised several other times, and, I thought, answered it.

Q All right, sir, would you refer to the page that you - - -

A This is Page 34, and I read from the transcript.

"THE COURT:" - - - Judge Kelly - - - "Is it your position, Mr. Rives, that we are here now to re-equalize that which the Board of Equalization did not equalize when they were in session; in other words, to reconsider the tax on individual parcels of land?"

"MR. RIVES: May I ask the Court to reserve its ruling on materiality and allow me to present the case and then you can rule on the testimony. This witness will testify also - - -" And this was an incomplete sentence.

"THE COURT: I ask, sir, that you please answer that question, are we going to deal with individual parcels, or is it as Mr. Jackson has stated, that the purpose of this case is to determine the validity of the entire roll?"

"MR. RIVES: This is going to go to the entire roll."

Then he explains it: "If you will please let me present the case, I will show by this witness he has attended practically every session of the Board of Equalization; that this type of testimony was presented by himself and others; there was a routine rubber stamp on the Honeycutt appraisal and that the Board of County Commissioners would not let a witness get his mouth open before Mr. Chadwick, or one of the members, would move to affirm the Honeycutt assessment and move on. I proffer for the purpose of the record to show this witness can and will testify to these points and will show not only this type of testimony by himself, but by other competent, substantial recognized appraisers of land value, including people who work for condemning agencies, the county itself, were routinely ignored.

"THE COURT: Mr. Rives, the Court wants an answer to its question." The Court said that. Then, Mr. Rives said: "I am incapable of giving it if this does not.

"THE COURT: He doesn't know whether we are dealing with individual evaluation of taxable property or the validity of the entire assessment."

Q Let me stop you right there.

Who was he making this statement to, "he doesn't know," and in what manner did he make it?

A Well, on this occasion, too, we had the court room, I think, loaded to capacity; it was the same case, and while it was directed to Mr. Rives, it was also directed to the general audience in the court room, and he made it - - - why, he doesn't know whether it's directed to the entire tax roll or to the individual pieces.

Q All right, sir. Will you proceed.

A "MR. RIVES: That is not fair.

"THE COURT: I put a question to you and you said you couldn't answer. Now the matter is closed; either you answer the question or stand on your answer that you can't answer it. I will tell you one other thing; you don't make the record, sir, just on the basis of the way you want to and admit what you want into evidence. All that is admitted into evidence before this Court is admitted on the basis of the law, not on the basis of what you, as an individual, want. We are now dealing with admissibility. There is an objection before the Court. The Court must rule on its admissibility according to law. Now, your tender and your proffer is in the record. Let's stick to the questions as they appear. Now I asked you a question. You have said you don't know the answer. Do you stand on that, or do you wish to revise your answer?"

At that point I intervened, and I said - - - the record shows:

"MR. COOPER: Your Honor, could we have just a second?"

Q What was the purpose of that intervention, Mr. Cooper?

A As a result of the exchange, Mr. Rives was very visibly affected, I could sense that he was angry, and I thought, in the interests of keeping things calm and possibly preventing a bad situation from going further, that a little breathing spell would help everybody.

Q What did you do during this breathing spell?

A Sir?

Q What did you do during this breathing spell?

A I made a suggestion to Mr. Rives, as to what he should say to the Court.

Q All right, sir.

Now, let me review a moment now - - -

A Well, now, I think there's a little bit more.

Q Yes sir, but I want to review a moment on what you have read thus far. Would you go back and state to me, what was the question the Court was determining, or seeking an answer to?

A The Court asked Mr. Rives, "Does this testimony - - - are you attacking the entire tax roll, or are you working on this case purely on the basis of protecting the assessments made on the individual properties of your clients?"

Q All right, now, that was the question. Now, would you look in the transcript, prior to the time that Judge Kelly says that he doesn't know - - - I think it would be on the top of Page 35 - - - and read the first line of Mr. Rives' answer to the Court.

A "MR. RIVES:" - - - and I read - - -

MR. MASTERSON: May it please the Court, this has been read once, just a moment ago.

MR. DANIEL: I think he's entitled to clarify. I just asked him to read the first line, so that we can determine if this question was answered.

MR. MASTERSON: It was also read, may it please the Court, by Mr. Rives, this gentleman's partner.

CHIEF JUSTICE DREW: I realize that it's repetitious, but I am a little confused myself, as to what it was about; so, I'll let him answer it again.

BY MR. DANIEL:

Q All right, sir, will you read that first line again, before Judge Kelly says that he doesn't know?

A Judge Kelly said, in effect - - - asked the question, "Does this go to attack the entire tax roll, or are you contesting the individual assessments?" That was the question; and Mr. Rives, in the first sentence, said:

"MR. RIVES:" - - - and I read from Page 35 - - - "This is going to the entire roll."

Q All right, sir. Now, will you take up where you left off after the brief recess.

A And I might say that the Judge's question was answered categorically, affirmatively, and - - -

MR. MASTERSON: May it please the Court, may the witness please be instructed to be responsive to the question, and to not volunteer any gratuitous statements?

CHIEF JUSTICE DREW: Yes, you should answer the question directly, if you will, and then, if you want to explain, I will give you permission.

THE WITNESS: Yes sir. Reading on from the transcript, after I asked for a minute's recess and talked to my partner - - - as I say, I made a suggestion; then the transcript picks up:

"MR. RIVES: May it please the Court; we again state we are attacking the validity of the entire roll, but in order to show that it is necessary to demonstrate the individual cases that go to establish the allegation and I certainly do not contend this is a case to review the specific assessments, nor, do I ask your Honor to submit this individually, but this goes to an attack on the roll as a whole.

"THE COURT: Thank you. It is the answer to the question you have raised. In light of that answer, what say you with regard to your objection?"

And that last question was addressed to the County Attorney.

BY MR. DANIEL:

Q Who was the County Attorney? Mr. Jackson?

A Mr. Page Jackson.

Q All right, sir. Did you then proceed on with the hearing, as previously planned by Mr. Rives and by your law firm?

A Yes sir, we then completed the hearing; I think the whole thing took three days.

Q Did Judge Kelly make any comment at the end of this hearing, with respect to the manner in which the case was conducted by Mr. Rives?

A Yes sir.

Q Would you refer to the transcript and that comment?

A I refer to Page 222, after the conclusion of the testimony and the arguments:

"THE COURT: First the Court wants to say this: in this case certainly there is no question but what the matter was timely filed in the opinion of the Court. And the Court certainly wishes to commend the plaintiffs' counsel for a very well prepared case and a very well prepared and presented matter before the Court."

Q And was plaintiffs' counsel, Mr. Rives, the same one that the colloquy had been engaged in between the judge and plaintiffs' counsel?-

A The same.

Q All right, sir.

A Continuing: "You have certainly seemed well informed, Mr. Rives, and seemed to have a good grasp of the authorities you have cited and have been articulate with them; but, the problem in this case is whether or not the facts as they were presented in this particular case, narrow confinement of the case, entitles the plaintiffs to the relief that they seek."

Q Did this appear to you, as a lawyer, to be rather inconsistent with the previous statement?

A It did.

MR. MASTERSON: Objected to, Your Honor, as immaterial.

CHIEF JUSTICE DREW: Overruled.

MR. DANIEL: Your Honor, this gentleman is an attorney who participated in this hearing, and at least - - -

MR. MASTERSON: The facts speak for themselves, Your Honor, and this body can determine the extent of - - -

CHIEF JUSTICE DREW: I think the point is well taken. I think the Court will have to reverse itself.

BY MR. DANIEL:

Q Did this particular hearing have any effect on - - - you testified it did on Mr. Rives, and also your clients?

A Yes, it did.

Q What was that effect, Mr. Cooper?

A Well, with reference to the last episode, in discussing it with the clients, the clients understood fully the import of the question and the fact that it was answered, and they were resentful of the fact that Mr. Rives was, in effect, admonished before people for - - - by the Court, before the Court there, for supposedly failing to answer the question that he answered categorically and honestly and fairly.

Q Did the ice pick and sealing wax episode also have any effect on Mr. Rives and/or his clients?

A I might add that in the - - -

MR. MASTERSON: May it please the Court, will you please instruct the witness to be responsive to the question?

CHIEF JUSTICE DREW: Mr. Witness, would you please be responsive to the question?

THE WITNESS: Yes sir.

BY MR. DANIEL:

Q Were you fixing to answer with respect to the final hearing?

A No. Would you repeat the question, please?

Q Did the ice pick and sealing wax episode have any effect on either Mr. Rives or your clients?

A It had an effect on both.

MR. MASTERSON: May we enter an objection, Your Honor? Mr. Rives has fully expressed his feelings about that to this Court, and that's the best witness, the best evidence.

MR. DANIEL: Well, this man is an attorney, he was there; his law firm partner, Mr. Rives, was there; he observed it and can testify to it.

MR. MASTERSON: Mr. Rives has testified to it, Your Honor, and told this body precisely how it affected him, and to now have Mr. Cooper tell his observations of how Mr. Cooper - - - Mr. Rives reacted is repetitious and immaterial.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: It affected not only Mr. Rives, but it affected me, because he is a member of my law firm.

BY MR. DANIEL:

Q What was that effect, Mr. Cooper?

A Well, among lawyers who knew the practice - - -

CHIEF JUSTICE DREW: What was the effect, Mr. Cooper? The question is, what was the effect?

THE WITNESS: The effect was a great deal of public ridicule, an article in the - - -

MR. MASTERSON: We object to that. Your Honor, you have ruled on that previously, that Judge Kelly could not control what occurred in the press, and the question is directed to the effect upon Mr. Rives himself in the court room that day, as I understand it.

CHIEF JUSTICE DREW: What was the effect on Mr. Rives, I think, is what the question is.

MR. DANIEL: And I said, "And you and/or your clients," Your Honor; I made it an all-inclusive question.

CHIEF JUSTICE DREW: What was the effect on Mr. Rives and/or the clients. Now, that's a simple question. You can answer it. Then, if you want to explain, we will then allow it.

THE WITNESS: The effect on Mr. Rives, Your Honor, was - - - the effect and the fact that he was embarrassed and humiliated by being admonished by the judge in such fashion.

BY MR. DANIEL:

Q Would you explain why he was embarrassed and humiliated?

MR. MASTERSON: May it please the Court, that calls for a conclusion of this witness.

CHIEF JUSTICE DREW: I think that calls for a conclusion; I agree, counsel.

BY MR. DANIEL:

Q All right, did it have any effect on you, Mr. Cooper?

A It did.

Q All right, sir, what was the effect on you?

A The same effect. I was a member of the law firm. We have a good law firm, and our firm was - - - I was embarrassed by it, I was humiliated by the public admonishment, and - - -

Q What was the reason for this embarrassment and humiliation to you?

A Because it was done in an open hearing, with the newspaper reporters present, the general public present, and the practice that we had followed was not contrary, it was entirely in keeping with the practice followed in that circuit, and all over the state, as far as I know. I have never yet seen a motion for summary judgment come back with red ribbon and wax on it.

Q Did this matter become a topic of conversation that you heard?

MR. MASTERSON: Objected to as immaterial and irrelevant, hearsay, and something that Judge Kelly could not possibly control.

MR. DANIEL: With respect to the hearsay, I'm not asking him to repeat any conversation. With respect to the rest, certainly, we have alleged in the Articles the conduct of Judge Kelly.

CHIEF JUSTICE DREW: I assume you're asking - - - now leading up to the question of the Judge's reputation, and so forth?

MR. DANIEL: Yes sir, of course, the reputation of the court.

CHIEF JUSTICE DREW: Overruled.

BY MR. DANIEL:

Q Did you get the question?

A Repeat it, please.

MR. DANIEL: Would the Court Reporter repeat that question, please?

(Last question read).

THE WITNESS: Yes, it became a topic which was widely discussed among the lawyers and the general public in the community.

BY MR. DANIEL:

Q Now, you say "among the lawyers and the general public." Can you give us an estimate of approximately how many lawyers you know that this became a topic of conversation with?

MR. MASTERSON: The same objection, Your Honor, and I won't renew it again, but I do feel that this inquiry is directed at Judge Kelly's reputation. The witness should be asked what his reputation is, and not - - -

MR. DANIEL: I'm trying to lay a predicate for it.

MR. MASTERSON: It needs no predicate. If he wants to know what the reputation is, he can ask that question.

MR. DANIEL: Well, I'll withdraw it, and I'll ask it in this way: Mr. Cooper, do you know Judge Kelly's reputation, as to the manner in which he conducts his court?

THE WITNESS: I do.

BY MR. DANIEL:

Q What is that reputation?

A In the Clearwater community it's bad.

MR. MASTERSON: May it please the Court, the answer should be "good" or "bad."

BY MR. DANIEL:

Q Is it good or bad?

A Bad.

Q Upon what do you base that answer?

A I base my answer upon my discussions of that par-

ticular matter with my fellow members of the Bar Association in Clearwater, and upon my conversation with members of the general public, with reference to that particular topic.

Q Were other situations besides the sealing wax situation also discussed in your conversations with members of the public and the Bar?

A Yes. Many of such similar occasions were discussed.

Q How many members of the Bar are there in Clearwater?

A I think that there are 104 or 105.

Q You have been practicing since 1945. Do you know most of them?

A I know all except five or six who have recently moved there.

Q Approximately how many of these 104 or 105 have engaged in discussions with respect to Judge Kelly's reputation, upon which you have based your answer, "bad"?

A At least seventy-five. Not less than seventy-five.

Q Now, with respect to the general public - - - that is, exclusive of members of the Bar - - - approximately how many have you engaged in discussion with or heard discussing Judge Kelly's reputation, upon which you base your answer, "Bad"?

A I would estimate at least a hundred people.

Q Was this prior to the impeachment proceeding? The initiation of the impeachment proceeding?

A Long prior to that, and continuing right up to the present.

Q And also prior to the petition to remove Pasco County from the Sixth Judicial Circuit?

A Yes sir. Long prior to that.

Q Have you also engaged in discussion or have you been present when discussion of Judge Kelly's reputation was taking place by any other Pinellas County lawyers; in St. Petersburg, particularly?

A Yes, I have.

Q Are these discussions also reason for your answer, "Bad," with respect to reputation?

A Yes.

MR. DANIEL: You may inquire.

CHIEF JUSTICE DREW: I have one question from Senator Mapoles of the 1st:

"Mr. Cooper, do you believe the general reputation of lawyers in the Sixth District is beyond reproach?"

THE WITNESS: The general reputation of the lawyers in the Sixth Circuit? Whether or not it is beyond reproach?

CHIEF JUSTICE DREW: That is the question asked by the Senator.

THE WITNESS: Your Honor, and Senators, I would not say that it is in all cases beyond reproach, but I can say that the reputation of the lawyers in the Sixth Judicial Circuit is good.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Cooper, did you ever talk to anybody who had a kind word to say about Judge Kelly?

A Mr. Masterson, I have anticipated that question, and I have searched my memory and I can honestly say that, among the lawyers that I have talked to, I haven't talked to one.

Q Not a soul?

A Now, there might be some that are that I have not talked to, that would feel - - -

Q Not a single solitary lawyer in the Sixth Circuit that you have talked to has had a kind word to say about Judge Kelly?

CHIEF JUSTICE DREW: That you talked to, Mr. Cooper.

THE WITNESS: Not that I can recall, Mr. Masterson.
BY MR. MASTERSON:

Q Now, you talked to lots of members of the public, I gather; and have you found anybody in the whole population that you have talked to who had a kind word to say about Judge Kelly?

A There unquestionably are some. I understand that they have given money. But I haven't talked to any that felt that Judge Kelly was a good Judge or that felt that his reputation as such, was good.

Q So, without exception, every single solitary individual you have ever discussed Judge Kelly with thinks he is a bad Judge?

MR. DANIEL: Objected to as argumentative.

CHIEF JUSTICE DREW: He has answered it once, Mr. Masterson.

MR. MASTERSON: Well, I withdraw the question.

THE WITNESS: I might clarify it and say that some people - - -

CHIEF JUSTICE DREW: Don't volunteer any answer, please sir.

BY MR. MASTERSON:

Q Now, when you discussed Judge Kelly in your coffee breaks here and talked about him, did you hear him criticized for calling George Routh a dunce?

A You mean here in Tallahassee?

Q No, I mean anywhere. Did you hear that criticism made of him?

A No, I didn't hear that specific criticism - - - any comment made that he called George a dunce.

MR. DANIEL: May it please the Court, the Board of Managers concedes that Mr. Routh denied that Judge Kelly called him a "dunce."

MR. MASTERSON: If I may proceed, Mr. Daniel.

BY MR. MASTERSON:

Q Did you hear any criticism of Judge Kelly based on the fact that he has been condoning the falsification of public records?

A Yes sir, I have heard it.

Q That affected his reputation rather badly, I imagine, didn't it?

A I heard it and I read it.

Q And you didn't like it, did you? Isn't that true? Didn't that affect his reputation, Mr. Cooper?

A If it is so, it certainly would have.

Q Whether it was so or not, it certainly would have. You were talking about, it, apparently?

A That's right.

Q And accepting it as true. Where did you hear about it?

A Well, I read about it in the newspapers, mainly.

Q Did you hear any criticism among the general public, among you lawyers over your coffee, about the way Judge Kelly talked to the clients of lawyers?

MR. DANIEL: I object to one portion of that as assuming a fact not in evidence. I don't believe that any testimony has been adduced about lawyers "over coffee," which is nothing but a sly attempt of Mr. Masterson to slip in an insidious remark - - -

MR. MASTERSON: May I be heard on that, Your Honor?

CHIEF JUSTICE DREW: Yes.

MR. MASTERSON: The charge was made that Judge Kelly talked to clients outside the presence of their attorneys. I want to see if that charge formed any part of the reason for the reputation of Judge Kelly.

CHIEF JUSTICE DREW: Eliminate the "coffee" part and ask the question again.

BY MR. MASTERSON:

Q Well, wherever you talked to these attorneys, Mr. Cooper, did you find them discussing the shameful manner in which Judge Kelly talked to the clients of attorneys out of the presence of the attorneys?

A Mr. Masterson, I don't believe I heard it said - - - or if it was said, that I recall - - - that I heard any complaint that he had discussed the case with the client outside the presence of the attorney.

MR. MASTERSON: I have no further questions.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Cooper, Mr. Masterson's questions were apparently related to matters in the Articles of Impeachment. Was it your testimony that you - - -

MR. MASTERSON: Mr. Chief Justice, I object to counsel restating the testimony and questioning the witness as to whether or not that was his testimony.

MR. DANIEL: I withdraw the question.

BY MR. DANIEL:

Q When did these discussions primarily take place?

MR. MASTERSON: That was not touched upon in the cross examination, Your Honor.

MR. DANIEL: He certainly brought in conversations and time elements, Your Honor.

CHIEF JUSTICE DREW: Overruled. Go ahead and answer the question.

THE WITNESS: The conversations with reference to Judge Kelly's behavior and the criticisms that I heard of him took place, I would say - - - that they had their original a year or a year and a half ago, right on down to the present time.

BY MR. DANIEL:

Q You answered a Senator's question with reference to the reputation of the attorneys in the Sixth Judicial Circuit. Were you answering that in your capacity as a

lawyer or in your capacity as a member of the Board of Governors, or both?

MR. MASTERSON: Your Honor, that is a manifestly prejudicial remark by counsel, to influence the members of the body, of this body, in weighing the attorney's opinion. I object to the question.

MR. DANIEL: It goes to his qualification as an expert to give an opinion on the point asked by the Senator.

CHIEF JUSTICE DREW: We have held that we will have no expert opinions about the matter.

He testified, as I understand it, that he was a member of the Board of Governors and a member of the Bar; and I assume that the Court clearly understands that he is testifying as an individual in that capacity.

MR. DANIEL: That is all.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Senator Cross asks the witness this question: "Mr. Cooper, did you ever hear any other Judge in the Sixth Circuit say anything good about Judge Kelly?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: The witness may be excused. Call your next witness.

Mr. Witness, I think I told you about the Rule, didn't I?

THE WITNESS: Yes sir. May I be excused to go home?

MR. DANIEL: Subject to recall.

CHIEF JUSTICE DREW: You may go subject to recall.

MR. DANIEL: You are still under the Rule.

(witness excused).

MR. O'NEILL: May it please the Court, our next witness will be a lengthy witness, and I regret to say that I don't have one that could be concluded in the length of time before the hour of adjournment. I would respectfully request the Court that it now consider a motion to adjourn.

CHIEF JUSTICE DREW: What is the pleasure of the Court with respect to the matter?

SENATOR PRICE: I move that we do now adjourn.

CHIEF JUSTICE DREW: It has been moved that we adjourn. As many as favor the motion, say aye; opposed, no.

The ayes have it. We will recess until Monday morning at ten o'clock.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 11:43 o'clock A. M., until 10:00 o'clock A. M., Monday, September 23, 1963.