

**SITTING AS COURT OF IMPEACHMENT**  
**JOURNAL OF THE SENATE**

**Wednesday, September 11, 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	Johnson (19th)	Roberts
Barber	Cross	Johnson (6th)	Ryan
Barron	Davis	Kelly	Spottswood
Blank	Edwards	McCarty	Stratton
Boyd	Friday	Mapoles	Tucker
Bronson	Galloway	Mathews	Usher
Campbell	Gautier	Melton	Williams (27th)
Carraway	Henderson	Parrish	Williams (4th)
Clarke	Herrell	Pearce	Young
Cleveland	Hollahan	Pope	
Connor	Johns	Price	

—42.

A quorum present.

Senator Whitaker was excused from attendance upon the first twenty minutes of the Morning Session.

Senator Gibson was excused from attendance upon the Morning Session in order to answer a summons to appear before the Taylor County Grand Jury at 10:00 o'clock A. M., this day.

At the request of the Presiding Officer, Senator Ryan of the Thirtieth Senatorial District offered the following Prayer:

Our Father, as we assemble here today in the process of judging one of our fellow men, aware as we all are of our own sins and shortcomings, we look to thee as the final judge of all mankind for the wisdom and understanding necessary to enable us to seek diligently for the truth so that our decision will be made in honor and justice. All of this we ask in thy name. 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 Tuesday, September 10, 1963, was dispensed with.

The Senate daily Journal of Tuesday, September 10, 1963, was corrected and as corrected was approved.

CHIEF JUSTICE DREW: Are we ready to proceed, gentlemen?

MR. NICHOLS: We are, Mr. Chief Justice.

CHIEF JUSTICE DREW: Managers of the House?

(Managers of the House of Representatives indicated in the affirmative.)

CHIEF JUSTICE DREW: Do you have any motions to make?

MR. NICHOLS: Mr. Chief Justice, we were in the middle of making a very important motion yesterday at the conclusion of the Senate. I did so immediately, having given some study and thought legally to the proposition that I was making. I wanted to present it immediately so that the members of this Court would not think that this was something that was just thought up overnight and that we brought in here this morning as some particularly legal maneuver.

Yesterday this Senate - - - which, according to the Constitutional provision is sitting as a Court of Impeachment - - - the Constitutional provisions provide that no person shall be convicted without the concurrence of two-thirds of the Senate present.

Now, our motion yesterday to dismiss was on the basis of the fact that the Articles, even if taken as true, did not state a misdemeanor in office or an impeachable offense.

Now, the vote shows that one-third of this Senate considered that, even if everything that these Articles say is proven beyond and to the exclusion of every reasonable doubt, that Judge Kelly would not be guilty of a misdemeanor or an impeachable offense in office.

Now, reversing that the other way: Less than two-thirds of this Senate have concurred that the Articles state such an impeachable offense. Therefore, under the Constitution he must be acquitted and we ask that the Senate enter an acquittal. Now, may I briefly discuss with you - - - and if you will turn to Page 4 of your handbook that you have before you - - - we think there is a serious legal Constitutional right that is involved and that Judge Kelly has.

CHIEF JUSTICE DREW: I assume now, Mr. Nichols, you are arguing a motion to discharge the Respondent?

MR. NICHOLS: I am merely discussing it as to the reason for it at the moment, and I will continue with my position.

CHIEF JUSTICE DREW: I think it would be better if you were to state your motion and then argue it.

MR. NICHOLS: We are going to ask, if there is any question about - - - we are going to move for an acquittal, based on this Constitutional provision; and, if there is any question about it, we are going to ask this Court for leave

to secure a Writ of Prohibition in the Supreme Court, testing the question of the constitutionality of the position.

Now, we think there is a very, very serious question of constitutionality involved; and we think of course, that any court wants to give any man who has been accused, such as Judge Kelly has, a fair opportunity to test the legal position.

SENATOR CROSS: Mr. Chief Justice, I think that counsel for Respondent ought, as he says, to make the motion before he argues it. I think he ought to make a formal motion on the record and give both sides an opportunity to argue it.

CHIEF JUSTICE DREW: That will be the order of the Chair, Mr. Nichols. I think, under the rules, your motion should be made so that we will have something before the Senate to consider.

MR. NICHOLS: We move that the Senate enter an order of acquittal of Judge Kelly.

CHIEF JUSTICE DREW: The motion has been made that the Senate enter an order of acquittal of Judge Kelly.

Senator Cross?

SENATOR CROSS: Mr. Chief Justice, I think he ought to state some reason, as he previously did, on the grounds that constitutionally they have discharged him; and put that in the motion.

MR. NICHOLS: As grounds for the motion: The Court yesterday, sitting as a Court of Impeachment, voted on our Motion to Dismiss - - - which is like unto a Demurrer - - - to challenge the jurisdiction of the Court; on the ground that the Articles of Impeachment did not state an impeachable offense; and, if proven beyond and to the exclusion of every reasonable doubt, still do not constitute a misdemeanor in office or an impeachable offense. And that the Senate yesterday - - - or this Court of Impeachment yesterday - - - voted 29 to 15 in that regard. Fifteen Senators, or fifteen members of this Court having voted affirmatively that our Motion to Dismiss challenges the jurisdiction and that the same should be granted; and concurring with the legal position of Judge Kelly in that regard.

Now, by way of further discussion - - - I started out to briefly discuss the matter because I think it is a legal matter - - - on Page 4 in the second paragraph, about the middle of the paragraph - - - and this is Judge Terrell's brief which Chief Justice Drew has concurred in, in presenting this booklet to us, this handbook:

"When sitting as a court to try impeachments the jurisdiction of the Senate is limited to such cases as originate in and are brought to it by the House of Representatives. Its jurisdiction extends to questions of law and fact, it may prescribe rules for the conduct of impeachment trials and there is no review of its judgment" - - - now, these are the important words - - - "unless it violates some constitutional guaranty."

We say that this man does have a constitutional right to be tried on charges which a court itself says is an impeachable offense; and you, the Court, have ruled that these Articles presented by the House are not an impeachable offense, by your vote yesterday. You voted that way by 14 plus 1 - - - sustaining our position to dismiss these on the ground that it is not an impeachable offense. That raises the constitutional question that Judge Kelly has, and we are asking the Senate to enter an order of acquittal of Judge Kelly. And we are asking, in the alternative, in the event that you do not, that you give us a reasonable period of time to present the matter to the Supreme Court of Florida, to let us simply test the sufficiency and the legal rights of this man. I come here to try to defend this man on his legal rights and Constitu-

tional rights, and for no other reason and, certainly, I believe that you, in your fairness, will want to give us the right to test this question.

If you do not - - - if you have any question about your position, I believe that every man is entitled to his day in court and his rights under the Constitution and certainly, that's what this man is being tried here, under his Constitutional rights.

Now, if someone else, or some other body, which may rule upon this matter, says that the - - - sustains our position, then that ends this matter; and we think that our legal position is tenable, and that the required two-thirds vote to sustain these Articles of Impeachment were not obtained yesterday by your vote. When you were voting yesterday, you were the Court, passing on the sufficiency of these charges that the House has sent over to you. That's our position, Mr. Chief Justice.

SENATOR PEARCE: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Pearce.

SENATOR PEARCE: - - - not being a lawyer, and not being familiar with all the tactics that are being used here, I would like to ask the Court to inform those members of us who are not lawyers, is it going to be necessary that on every question, that we have a two-thirds vote to rule upon the question in point?

CHIEF JUSTICE DREW: Senator, I - - - first we'll hear from the House Managers and then I will pickup your question, take it up.

MR. O'NEILL: Mr. Chief Justice, on behalf of the Board of Managers, Mr. Welborn Daniel will respond to Respondent's motion.

MR. DANIEL: Mr. Chief Justice.

CHIEF JUSTICE DREW: Mr. Daniel.

MR. DANIEL: Lady and Gentlemen of the Senate sitting as a Court: This is exactly the point that the Board of Managers attempted to establish on the previous day, in that the House themselves tested the sufficiency. However, that point has been decided against the Board; so, I shan't argue further on that. I would refer you, however, to Page 240 and 241 of the Journal of the Senate, July 31, 1957, the Holt impeachment trial, beginning on - - -

SENATOR CONNOR: What page was that?

MR. DANIEL: Pages 240 and 241, beginning on the right hand side of Page 240, Senator Bishop moved that Items I (a) 3 and 4 also be deleted; that is, a motion to delete a particular item from the Articles of Impeachment. After discussion, a vote was taken, and the vote was 17 yeas and 18 nays, so that one more than a simple majority voted not to delete that item from the Articles. The Court ruled, the Chief Justice ruled that the motion is lost, and that Article remained in for the trial, and evidence was adduced on that particular Article during the course of the trial, leaving the final determination as to the guilt or innocence of that particular Article until the final vote.

Now, I might also liken, by corollary, if I might, this particular question to the question of a Constitutional amendment to the Constitution of Florida being presented before this same body, sitting in their capacity as the Senate of Florida which, as you Members of the Senate know, requires a three-fifths vote, and yet in incidental and subsidiary matters, prior to the final passage of the Constitutional amendment require only a majority vote. In other words, a resolution being offered can be amended by a majority vote, subject, however, to final passage by the three-fifths vote, as required.

We say that this is a subsidiary or an incidental motion,

a procedural motion, which has been voted on by the Senate, and which has been turned down by the Senate, leaving the Constitutional mandate of the Senate, or of the Constitution, to be now determined by the Senate, in a two-thirds vote of guilt or innocence upon the conclusion of the presentation of evidence.

In Jefferson's Manual, at Page 246, in the Rules of the House of Representatives of the United States, it states: "The voice of the majority decides; for the *lex majoris partis*" - - - and I'm no Latin student, but it means the majority - - - "is the law of all councils, elections, where not otherwise expressly provided."

The Rules of the Senate of Florida for the regular session of 1963, while not specifically the rules of this particular Court would probably prevail in the absence of a particular rule on this particular point. Rule 78, at Page 20 of the Senate Rules, states that the rules of parliamentary practice, as provided in Jefferson's Manual, just cited by me, shall govern the Senate in all cases to which they are applicable and with which they are not inconsistent with the standing rules and orders of the Senate.

Now, the rules adopted by the select committee of the Court of Impeachment, the Senate, as a Court of Impeachment, are silent, as far as requiring a two-thirds vote on procedural motions. As a matter of fact, it says procedural motions shall be adopted - - - and I don't want to make any incorrect statement, we'll look up the rule on that - - - I believe it says it shall be adopted by a majority. We'll look that up for you, but I feel almost sure that that rule states that the procedural or subsidiary motion shall be decided by a majority; that's been the practice and the only precedent we have in Florida on procedure, and we submit it to you, that this question is not a question of the guilt or the innocence of the accused; it's simply a procedural motion, and that the Senate has decided, by a majority vote, that the motion was lost, that the Respondent do now stand trial, as charged in the Articles of Impeachment. Thank you.

MR. NICHOLS: May I have only a couple of minutes to reply - - -

CHIEF JUSTICE DREW: Yes sir.

MR. NICHOLS: - - - to Mr. Daniel's statement?

First of all, this point, in the Holt case, he cites where they attempted to strike one count, and the vote was 17 to 18. Now, there they were not going to the jurisdictional question of the entire charge. On the separate counts you have voted, the vote has been 18 or better, not just 15, all down the line for dismissing, it's been 18 or better but, on the over-all charge, challenging the jurisdictional question to dismiss these entire charges, there was 15, which is still less than one-third.

Now, the Holt ruling was not challenged in any way. This question was not raised in the Holt case. As a matter of fact, I can find, nowhere in the proceedings, has this question actually been challenged concerning this vote.

Now, Mr. Jones says that this is a subsidiary or incidental motion. Gentlemen, I didn't address you yesterday for an hour on an incidental motion. I addressed you, and told you exactly what we were doing, and you voted that we had a right to take up and consider this Motion to Dismiss on the grounds that it did not state an impeachable offense, and it was clear that you made the decision that we could take it up, and that we're going to vote on this matter, and you're going to meet it head-on, and you did. It wasn't any incidental matter, it was discussed fully by both sides, and then you voted, and it's a procedural proposition, going to the jurisdiction of the entire matter.

Now, he says that these - - - he wants to cite you some rules. One of the members of the Court has asked if you're going to be bound by different rules. Certainly, on

most motions your majority rule covers - - - there's not any question about that but, Gentlemen, you are here now, not as a political body, you are here now as a Court. You are here now, trying a man under the Constitution. You are here trying a man under a Constitutional provision that says that it takes a one-thirds, two-thirds.

This is not a rule of procedure. This is not a rule to pass legislation. This is a Constitutional question of law, and you are a Court, and you're trying a man under the Constitutional provisions, and we ask that you abide by the law, and that you abide by the Constitution, and not your rules.

All these briefs, all these decisions say that you are a Court, and certainly, you are. Everything is put around you as a Court. No one can talk to you or anything else. You are here, trying this man under a Constitutional provision, and we have a very serious Constitutional point involved, and all we're asking of you is to either grant or give us time to present it to another tribunal, and let them decide the question of the law, if there is a position, a legal proposition involved. Don't brush aside this man's rights here as simply under the rule, or majority rule, that you rule your legislature by.

We ask you to give us the right to properly test this. I think you recognize your position, and will grant our motion but, if you don't, then we ask you for a short space, or a sufficient period of time, a week or ten days, at the most, so that we can prepare briefs, or go over there and present it to the Court, the Supreme Court, and let them decide whether or not his matter has been drawn to a conclusion. Thank you very much, Mr. Chief Justice.

CHIEF JUSTICE DREW: Senators, I have a question from Senator Mathews, which reads:

"The Senate, by majority vote, having decided that the Articles do present an impeachable offense, is not the entire Senate now bound by the decision that the Articles make a proper charge?"

I think both sides concede this is purely a question of law, and I shall advise the Senate what my ruling would be, and ask that a roll call be made. Before the roll call is made, I wish to say that this matter has received, not just attention this morning or yesterday but, so far as I am concerned, considerable study and attention over the past several weeks.

The Constitutional provision reads that "no person shall be convicted without the concurrence of two-thirds of the Senators present."

In my judgment, this Court of Impeachment acts in all matters by a majority vote, which becomes the vote - - - becomes the decision of the Court of Impeachment until the vote is taken on the question of guilty or not guilty under the charges, and in that event only it requires a two-thirds vote to convict.

This motion, the denial of the Motion to Dismiss, is not a conviction. There is no Constitutional requirement for other than a majority vote in this instance. If it were true that one-third of this Senate could determine the sufficiency of the Articles and prevent a trial, then at any time one-third of the Senate could prevent the trial on any charge of impeachment by the whole Senate, which I'm sure the Constitution never contemplated.

Mr. Secretary, you will call the roll on the question of whether or not the motion made by the attorney for the Respondent to discharge the Respondent in this case shall be granted.

If you vote "aye," you vote to grant the motion and discharge the Defendant - - - the Respondent. If you vote "no," you vote to deny the motion and proceed with the trial.

MR. NICHOLS: May it please the Court - - -

CHIEF JUSTICE DREW: Mr. Nichols, the vote will have to be taken at this time. What did you wish to say?

MR. NICHOLS: I wish to announce to the Court that in view of the Court's ruling, I still wish the legal right to present the matter to the Supreme Court - - -

MR. O'NEILL: It's our understanding your announcement was a ruling, sir.

CHIEF JUSTICE DREW: The question will be submitted, the question will be submitted to this Court, as to whether they wish to grant you that privilege.

SENATOR CAMPBELL: Mr. Chief Justice.

CHIEF JUSTICE DREW: Senator Campbell.

SENATOR CAMPBELL: Yesterday when we were voting, we were voting to either grant or deny the motion of - - - the motion came from one of the Senators to either grant or deny the motion of the Respondent, and that's what was brought to a vote?

CHIEF JUSTICE DREW: That's right.

SENATOR CAMPBELL: Mr. Chief Justice, at this time I would like to offer a motion - - - I don't know whether it's in order or not, but I would like to at least offer it for the Court - - - for the Chief Justice to rule on.

I would like to move that the motion of the Respondent to dismiss the Articles of Impeachment, and for acquittal, be granted, on the grounds that it was not a two-thirds vote sustaining the Articles of Impeachment as stating an impeachable offense, and that a committee be appointed to prepare a reprimand of the Respondent for becoming involved in partisan politics and failing to comply strictly with the judicial code of ethics, and in conducting himself in a manner unbecoming to a Circuit Judge as evidenced by the testimony presented to the committee of the House of Representatives.

CHIEF JUSTICE DREW: That is in the form of a motion?

SENATOR CAMPBELL: Yes sir.

SENATOR CROSS: That would probably have to be - - - I believe there's a motion before the House. I believe that would have to be offered as a substitute motion.

CHIEF JUSTICE DREW: Do you offer that as a substitute motion at this time?

SENATOR CAMPBELL: Mr. Chief Justice, I offer that as a substitute motion at this time.

SENATOR FRIDAY: Mr. Chief Justice.

CHIEF JUSTICE DREW: Senator Friday.

SENATOR FRIDAY: I can't help but recall, from the statements that have been made here constantly, that this is a Court; this is not a Senate voting on parliamentary proceedings concerning legislative matters and parliamentary bickering back and forth. We have here today a Respondent before this Court, whose career and his position are at stake. I feel that when counsel for that Respondent has made a motion that it would be most improper for a member of this Senate, or member of this Court to substitute his motion for that motion, and I feel that this would not be in keeping with this procedure.

SENATOR CROSS: Mr. Chief Justice.

CHIEF JUSTICE DREW: The Chairman of the Rules Committee, Senator Cross.

SENATOR CROSS: I believe the motion before this Court is a motion to adopt an order granting his motion,

and it's not his motion, it's the motion of this Court. I think we should - - -

CHIEF JUSTICE DREW: I'll have to rule at the present time that the gentleman offered the substitute motion improperly, because I do not consider it to be a substitute motion. If he offers - - - wishes to offer that motion at a later date, why - - -

SENATOR FRIDAY: Mr. Chief Justice, I would like to inquire of the Presiding Officer, would it be your opinion that the effect of the motion made by Mr. Nichols would be a motion for a directed verdict, which would fall upon the members of this Court to decide the guilt or innocence of this Respondent?

CHIEF JUSTICE DREW: I think the effect of voting to grant the motion - - - the effect of voting to grant Mr. Nichol's motion will be to discharge the Defendant and it will close these proceedings. Is that clear?

SENATOR CAMPBELL: Mr. Chief Justice, a vote on the motion of the Respondent now, will that prohibit me from later making my motion? In effect, it is dealing with the same subject, the scope?

CHIEF JUSTICE DREW: It would not prevent your amending the motion to appoint a committee for a reprimand after this motion is carried - - - if it is carried.

SENATOR MAPOLES: Will this require a majority vote or two-thirds?

CHIEF JUSTICE DREW: It requires a majority vote.

SENATOR BARRON: Yesterday, as I recall the motion by Senator Price, he moved that the charges - - - that the motion to quash the indictment, as presented by the Respondent, be granted; and that this was coming from the Court as a restatement of the motion; and that the Respondent be discharged - - - if the motion is granted.

CHIEF JUSTICE DREW: That was not the motion. Do you wish the motion read that was read to us yesterday? Do you wish the motion read?

SENATOR BARRON: No, Mr. Chief Justice, I want to ask you. In your restatement of the motion, just before we voted, didn't you say that if the motion was granted that the Respondent would be discharged? In my mind, that would amount to a finding by the Senate, as a Court, of not guilty. Now, am I incorrect in that conclusion?

CHIEF JUSTICE DREW: If you discharge him, it would have amounted, under the circumstances, and under the previous decisions, to a termination of the proceedings and an acquittal, in the constitutional sense.

SENATOR BARRON: Well, I can't square in my mind this question of the Court. How you can say that, more than one-third of the Senate having voted that way, under the Constitution the man is not discharged. Now, can you explain that to me again?

CHIEF JUSTICE DREW: The Constitution requires a vote of two-thirds to convict. Had you voted the other way yesterday, two-thirds could not have convicted the man. It could only have set him for trial.

SENATOR BLANK: Mr. Chief Justice, a parliamentary inquiry: Does the requirement that only a majority vote is needed to determine interlocutory questions stem from the rules that this body adopted to govern these proceedings, or does it stem from the Constitution?

CHIEF JUSTICE DREW: By a majority vote?

SENATOR BLANK: Yes, does it stem from our rules that we here adopted, or does it stem from something outside the rules.

CHIEF JUSTICE DREW: I think inherent in any body

of this kind is the fact that, in the absence of a rule to the contrary, the action of any body is the action of the majority. This is my opinion, rule or not.

Senator Whitaker appeared in the Senate Chamber, asked to be recorded as present, and took his seat.

By direction of the Presiding officer, Secretary Fraser called the roll and the vote was:

Yeas—7.

Barron	Davis	Mapoles	Stratton
Covington	Kelly	Roberts	

Nays—36.

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

SECRETARY FRASER: 7 yeas and 36 nays.

CHIEF JUSTICE DREW: By your vote you have denied the motion to enter an order of acquittal.

We will now vote on the remaining motion of the Respondent. Would you state your motion on that, Mr. Nichols, so that we may know how much time?

MR. NICHOLS: Mr. Chief Justice and members of the Court: The Respondent moves that we be granted a leave of ten days within which to present this constitutional question to the Supreme Court of Florida.

We must prepare briefs and we must properly present it; and that, of course, takes time. We respectfully request that time.

CHIEF JUSTICE DREW: Well, now, do you want a week or ten days, Mr. Nichols? We have to vote on one or the other.

MR. NICHOLS: I would suggest Monday week, to get something definite; because a week would bring us back right in the middle of the week, with a short period of time.

CHIEF JUSTICE DREW: The attorney for the Respondent moves this Court of Impeachment for a recess from today to Monday week to allow him time to present to the Supreme Court of Florida for action a Writ of Prohibition to enjoin this Court from further proceedings in this matter. A vote of aye grants the motion and this Court will adjourn until a week from Monday. A no vote denies the motion, in which event this trial will proceed.

SENATOR CROSS: Mr. Chief Justice, I have a question for Mr. Nichols that, I think, might bear on this, if I might bring it up.

CHIEF JUSTICE DREW: We have a question which has been sent up from Senator Cross, for Mr. Nichols:

"Would you not have the right and opportunity to present your question to the Supreme Court after the conclusion of this trial?"

MR. NICHOLS: No sir. We think that the matter is a constitutional question and should be decided now. We say that this trial should not proceed under the constitutional provision; and, as expressed in the rules, unless it violates some constitutional guaranty - - - and a proceeding with the trial would violate that very constitutional guaranty that I am asking - - - I am simply asking you for leave to let me present the legal question to the

Supreme Court. That is all we are asking you to do at this time.

CHIEF JUSTICE DREW: Call the roll.

Secretary Fraser called the roll and the vote was:

Yeas—14.

Askew	Covington	Kelly	Williams (27th)
Barron	Davis	Mapoles	Young
Blank	Edwards	Roberts	
Campbell	Henderson	Stratton	

Nays—29.

Barber	Friday	McCarty	Spottswood
Boyd	Galloway	Mathews	Tucker
Bronson	Gautier	Melton	Usher
Carraway	Herrell	Parrish	Whitaker
Clarke	Hollahan	Pearce	Williams (4th)
Cleveland	Johns	Pope	
Connor	Johnson (19th)	Price	
Cross	Johnson (6th)	Ryan	

SECRETARY FRASER: 14 yeas and 29 nays.

CHIEF JUSTICE DREW: The motion for leave to seek prohibition has been denied.

Gentlemen, are you ready to proceed?

Mr. Nichols, I would inquire if you wish at this time to file your Answer.

MR. O'NEILL: Mr. Chief Justice, on behalf of the Board of Managers, we would like to file, under the Bill of Particulars previously furnished, a Supplemental Bill of Particulars - - - a Supplement to the Bill of Particulars as provided, in the last paragraph of the Bill of Particulars on Article VII, which has been prepared, and which I am ready to file at this time.

CHIEF JUSTICE DREW: Give it to the Secretary, please.

I would like to inquire, Mr. Nichols, if you are prepared now to file your Answer?

MR. NICHOLS: May we take that up after we get through with this pleading proposition, Your Honor.

Mr. Secretary, may I see what is filed, please sir?

CHIEF JUSTICE DREW: Mr. Manager, that is as to which Article?

MR. O'NEILL: The last paragraph under Article VII, Mr. Chief Justice. It appears on Page 26 of the black handbook, as prepared by the Chief Justice for the benefit of the Senate. I will point out that there is a printer's error in that. However the original Bill of Particulars, as on file with the Secretary of the Senate, is correct. There is a line apparently missing from the printed version.

CHIEF JUSTICE DREW: As I understand it now, these are copies of the records which you refer to in the Bill of Particulars?

MR. O'NEILL: No sir, it is a Supplement to the Bill of Particulars as provided by Page 26 of the handbook, wherein, in the last line - - - which will be promptly furnished to said Circuit Judge Richard Kelly as a Supplement to this Bill of Particulars.

CHIEF JUSTICE DREW: All right. Mr. Nichols, is there any objection to the filing of the Supplement to the Bill of Particulars?

MR. NICHOLS: Mr. Chief Justice, may the Secretary pass out to the members of the Court these twenty-two new pages that we have just been handed. I am going to state an objection to the matter very vigorously.

CHIEF JUSTICE DREW: Are there enough of these for each member?

MR. O'NEILL: Yes sir. I have handed to the Secretary of the Senate the necessary copies. I don't know where the attorney for the Respondent got twenty-two pages. This is six pages, including the title and signature page.

MR. NICHOLS: I beg your pardon. It is only sixteen. I apologize.

MR. O'NEILL: It is six.

CHIEF JUSTICE DREW: Has counsel for Respondent had a copy prior to this morning?

MR. NICHOLS: That is what I am trying to check, Your Honor.

MR. O'NEILL: For a point of clarification - - -

MR. NICHOLS: Let me finish my objection and I will clarify the matter myself - - - in answer to your question, Your Honor - - - you asked me a question.

CHIEF JUSTICE DREW: Yes.

MR. NICHOLS: First of all, I want to object to this new Supplemental Bill of Particulars, which is a supplement to the former Bill of Particulars. And we ask that this Court reconsider its motion and we present, in the form of a motion, a motion to strike Count VII of these Articles; and we wish to take up with you now this objection to this Supplemental Bill of Particulars and show to you what is going on by the Board of Managers under this procedure.

Now, in the Holt trial, they spent several days on whether or not any Bill of Particulars could just be walked in here and presented, without anybody asking for it.

It is known legal procedure that the Respondent, if he wants a Bill of Particulars, asks for it. We did not ask for any Bill of Particulars - - - the first one nor this one, in this case; but, it is an attempt on the part of the Managers to bolster up and shore up these frivolous charges or Articles that have been made in this impeachment proceeding.

Now, what did the Senate do with your rules? Partially as a result of the Holt case? After they wrangled about this matter for about a day and a half or two days, they finally granted an extension of time of approximately ten days and went home and gave the Respondent a chance to prepare his case, for a bunch of new charges had come in.

Now, what did you do after that and after you started these proceedings? You passed a rule - - - and I am reading from your Journal - - - to just exactly prevent what is trying to be done here. You passed a rule, in the Senate Journal of June 14, 1963, that it is further ordered that all preliminary motions directed to the Articles of Impeachment, and all other preliminary matters, - - - all other preliminary matters! - - - shall be filed by the Secretary of the Senate on or before August 16, 1963.

Now, the first Bill of Particulars, which was long enough - - - and shot us in all directions - - - again, with matters which were not even taken up by the House Committee nor by the House itself in the Articles - - - under the broad language of Number VII, which gives them a blank check to keep bringing in charges and keep bringing in any type of evidence - - - they filed, at least prior to the date that you required that all preliminary matters be filed - - - and certainly we will assume that this was the purpose of your rule - - - they at least filed the first Bill of Particulars, although we didn't ask for it - - - and although it is an attempt to shore up a proposition that they know is weak - - - they did file the first one prior to August 16th. In fact, they got it in there on August 15th.

Now, we have had at least since August 15th to go down and try to read these records and to try to see these witnesses and to do the best we can in defense of this man. This man has tried over fifteen hundred cases. And do you think he can remember every file in every case and every page of transcript of something that was done or said, or that some lawyer said or didn't say? Now, this is a criminal proceeding or in the nature of a criminal proceeding and he should be informed of the charges that are made, or that they contend are made.

Now, they have handed me here this new amended Bill of Particulars. And, with respect to the House Managers, I will say that just before the trial was to start on Monday I went over and asked them if they were going to have any additional pleadings. I was thinking of, if they were going to file a brief in response to my other one. They said yes, they probably would have an amended Bill of Particulars, and they said that they would try to get it; it was being typed for them. They did get it to me and handed it to me at 10:10, and we were to start this trial at 11 o'clock; and I have not had a chance to check it, but I would presume - - - and certainly I will take their word - - - that this is the same Bill of Particulars that they handed me before.

Now, gentlemen, this brings in a lot of new matter. This brings in cases and files that we haven't even seen; and we are asked to come here, in the middle of a trial, and start taking testimony immediately. How can I defend? How can this man remember or get these files and remember what has occurred?

Now, they have a stack of files in there that they asked me to look over - - - Saturday, I think it was, or Sunday - - - and to approve so that they wouldn't have to bring the Clerk of the Court to identify the records. I told them not to bring Clerks; that certainly we would stipulate or agree that they could use official Court files. They don't have to call a bunch of witnesses to do that kind of stunt. In order to help them.

But that is not any opportunity to read those files. That is not any opportunity to see these witnesses. They are talking about bringing in five or six huge matters. They say they are bringing in lawyers now from Tampa and St. Petersburg.

They have not ever furnished us any formal Bill of Particulars or anything else. There are over a thousand lawyers in this area that this Judge serves. About three hundred and some-odd in Pinellas, or in St. Petersburg, and in the whole area there.

So what have they tried to do. They bring along somebody who has grumbled about something, some conduct. How can I have a chance to go and see all the lawyers who may have said that they liked the way that he handled cases?

Now, this is going to boil down to a popularity contest, virtually, under this shotgun proposition that they have in Article VII. Now, I would like to show to you in Article VII, right on the top of the page - - - in what they have just handed me. They bring it in under Section (f); that he committed other and further actions of misconduct and misdemeanors in office. If that is not a shotgun proposition, I have never seen one. And now they are going to continue and to continue to bring to you, or to try to bring to you, every little person who may have stumped his toe in Pinellas and Hillsborough or anywhere else. And they are bringing you matters that were not considered before the House Committee.

They are bringing you matters now that were not considered by the House of Representatives in these Articles of Impeachment. They are bringing you new matters. What do they have? A blank check to the House of

Managers to keep bringing you everything that they can bring to you?

Now, the law is clear that the Respondent must be informed of charges, and that is clearly set out by the Supreme Court of Florida, and I am addressing you now as a Court, and asking you to rule on the question of whether or not these blank charges are sufficient. And you are going to let them continue to bring in bills of particular. We'll be here forever in a popularity contest to decide whether or not this Judge is popular or whether or not the people down there like him, or whether or not the Court is in disrepute or not in disrepute.

Now, the law is clearly set out by the Supreme Court of Florida, and the first case is Sullivan vs. Leatherman, on this proposition:

"So it follows that if the State relies on an indictment charging official misconduct or failure of official conduct in any respect, whether common law or statutory, the offense must be charged in direct and specific terms and that it was wilfully or corruptly done or omitted. Count one, in fact none of the counts meets the simple academic requirements of precise pleading, neither do they charge that Petitioner wilfully or corruptly failed to perform any duty imposed on him by law or that he acted corruptly in the performance of any duty imposed on him.

"So it necessarily follows that when one is relying on a common law indictment, and that is the most that is relied on here, it must meet constitutional and statutory requirements. The charge must be made in such positive and direct terms as will put the Defendant on notice of what he is charged with and enable him to prepare his defense.

"Neither could the best lawyer in Florida define from its content what duty of the sheriff was being corruptly performed.

"To recognize such an indictment would amount to an abandonment of every safeguard that the Constitution and the statute has placed about fair and impartial trial and permit one charged with crime to be tried on charges predicated on nothing more than idle rumor, flying saucers and current gossip. Our Constitution does not permit criminal justice to be so administered."

And again, in another case, in which the Court clearly says that you must inform these - - - the Respondent with these charges. In the case of Lisk vs. City of West Palm Beach, at Page 196, the Supreme Court of Florida says this:

"It is so well settled as to need no citation of authority that every person accused of crime is entitled to be informed of the nature of the accusation against him. This right requires that the charge be stated with such clearness and necessary certainty as to apprise the accused of the charge he will be called on to meet at the trial, so that he will not be misled in the preparation of his defense and so that he will be protected after conviction or acquittal from substantial danger of a new prosecution for the same offense. It is equally well settled that an accused is entitled to have the charge lodged against him proved substantially as laid, and that he cannot be prosecuted for one offense and convicted and sentenced for another, even though the offenses are of the same general nature or character, or carry with them the same penalty. There are well-established principles for the protection of the innocent that govern the framing of criminal accusations and the introduction of proof to sustain them."

Now, I want to go back to you and read to you the charge again under the general shotgun proposition of Number VII: "Commit other and further actions of misconduct and misdemeanors in office."

Now, they tell you they want this additional bill of

particulars, coming in under that general shotgun proposition. I guess, as we get along about a week or so in the trial, we'll get another one.

Now, what was the purpose of your rules? Your rules said that all these matters should be filed prior to August 16, and that was to take care of just this very thing, to avoid this very thing and, as a matter of fact, all that they're attempting to do in these additional charges are to bring some lawyers that's got some complaints of cases that they tried down there.

Now, then - - - and what are we going to do? We're going to get into a long contest of legal matters that were tried before courts, and do you like him, or did you like him? Do you like his ruling or don't you like his ruling? And is he popular in the Circuit down there in which he was elected?

Now, if you're going to be a judge of a popularity contest, then we're - - - this trial will drag on forever. One of the ways to shorten up this trial is to strike this general count and stop this type of stuff, and you have a legal reason to do so. These matters were not before the House Committee, they were not before the House itself in these impeachments, and now they're bringing along, under this general proposition, this blank check, they keep bringing in this stuff, and there's no possible way to defend this man properly, and I do not believe this Court is going to make us continue to try this stuff that they're bringing here, and I respectfully request that you strike Count VII, which will shorten up this trial, and proceed in a legal manner, and I do so with respect, Mr. Chief Justice, to you and the members of the Court.

MR. O'NEILL: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Mr. Manager.

MR. O'NEILL: - - - and Members of the Court, I will talk very briefly, and I would like to draw several analogies, and point out the fallaciousness of the argument, as made by the attorney for the Respondent.

First of all, this Court is not here sitting as a criminal court. There are many authorities for those; most of them have been cited to you in the last two or three days. The Constitution of the State of Florida is clear on that point.

This man is here, being tried for misdemeanors in office, which do not have to be a statutory crime, nor does it have to be something that violates the Constitution of the State of Florida, nor does it have to violate any of the common law crimes, as adopted by this country on July 4, 1776.

All this is is a proceeding for the purpose of removing an official who has violated his public trust. It is not necessary that all of the witnesses be before the House of Representatives to draw the charges, and that is the law.

If you want to draw analogies, and for some of you who are attorneys here, I might point out to you this very salient fact: When a Grand Jury goes in to investigate an alleged crime, and they return a true bill, it's obvious that they do not have all of the witnesses before that Grand Jury in order to return a true bill.

Let me address myself to the two cases, as cited by eminent counsel.

The Sullivan case. In that case, he is eminently correct, that we cannot charge new offenses, and I agree with that law, but in this supplemental bill of particulars, we are not charging new offenses, we are simply, as a matter of courtesy to him, furnishing him a witness list, this we did sometime ago, of the same witnesses which are in this supplemental bill, and helping him, where he will know exactly what those witnesses will testify on these proceedings before you, and what case it involves.

The bill of particulars was filed for the purpose of assisting him, not for the purpose of harassing him, as he has alleged.

I would point out further to you that under our Constitution, as you well know, the House of Representatives is in regular session only every two years, for a sixty-day term and for extended session.

Obviously, the House did not consider every witness on these charges, but they did consider enough of those witnesses, and take the recommendation of that committee that these offenses were committed by this individual, and all this amounts to is giving a list of witnesses to this Respondent's attorney, and the cases within, and whereby, and whereabouts they will testify before this body.

There are no new charges, there are no new charges in this supplemental bill of particulars. There were no new charges in the bill of particulars filed on August 16.

We are quite aware of the rule that the Senate adopted. In an abundance of caution and fairness to this Respondent, we filed the bill of particulars, even though it was the position of the Board of Managers that we did not need to file a bill of particulars at all, because we wanted to be fair, so he might be advised.

It is further the position of the Board of Managers that a bill of particulars is not a part of the pleadings in a case - - - and I cite you authorities, and I now quote:

"A bill of particulars is not considered a part of the pleadings and therefore, any limitation as to time in which a pleading must be filed would not pertain to a bill of particulars."

It is likewise true, even after the State Attorney in a criminal case, where a man may be charged with a felony, or some other crime, that the State Attorney, upon the motion of the Defendant, can and usually does furnish a bill of particulars in that he states with certainty the particular dates that something occurred, and most times the defense attorney will ask for a witness list. Other witnesses are called, and they are furnished as they come to hand, even at the time of trial, even at the time of trial; and we have one authority where it was - - - even after the trial had started - - - all this supplemental bill of particulars - - - and Mr. Nichols was placed on notice. We gave him a witness list. We're trying to assist him in an abundance of fairness to him and this Respondent, to tell him who we're going to call as witnesses, what case they will testify, and when it occurred, and that's all, that's all it does.

Aside from that, as I pointed out to you, on Page 26 of your Handbook, Mr. Nichols was clearly put on notice that there would be other information furnished to him, and if you will read the bill of particulars that was filed by the House Managers, that we furnished to him there a list of cases, so that he might go and check those out.

We did prepare an amended bill of particulars several days ago, and we furnished that to Mr. Nichols. He was advised of that. He was put on notice of this. As a matter of fact, it's obvious that he was put on notice, he comes now and says, "When are you going to have it read?" So I am advised. However, I don't think that he talked to me.

We have made the files available, in all the fairness that we can to Mr. Nichols and his other co-counsel. We got the Court files from the various counties that were involved, and brought them to Tallahassee, at the State's expense and the Board of Managers' expense.

Two of the co-counsel came to that office on Saturday afternoon last, and we made available to them those court files so that it might be convenient, because Mr. Nichols is from Miami, the other co-counsel from other

cities in that particular circuit here involved; and we also made them available to them on Sunday last, and they were available there to them.

I submit to you, Gentlemen of the Senate, and Lady, Members of this Court, there are no new charges in this supplemental bill of particulars, and in an abundance of fairness, we filed it with him so that he might be advised, he might be advised of those witnesses to be called, and in what cases they would be appearing and testifying about, and that's all this is, supplemental, nothing more; no new charges, and the cases cited by the gentleman who is representing the Respondent does not have any authority for the position he's taking, not any authority, because it says "offenses," "offenses." It does not say "evidentiary matter."

SENATOR PRICE: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Price.

SENATOR PRICE: - - - as a nonlawyer member of this Court, if the question is in order, sir - - - if not, I hope you'll tell me, but I would like to pose the question to counsel for the Managers, as to why the supplement to the bill of particulars was introduced after the Court had already considered motions on the original Articles of Impeachment, pertaining to the original bill of particulars.

MR. O'NEILL: Senator, I'll answer your question in this form:

First of all, this Court was not considering the bill of particulars at the time they were considering the Articles of Impeachment, and I would draw the Senator's attention to the question asked by Senator Barron on Monday, I believe, last, as to that particular point; and, therefore, the reason why it was not furnished earlier is because we were under the impression, under the impression the bill of particulars would be taken up.

There is ample authority in other cases, where the United States Congress has not even filed a bill of particulars. It is our position that the bill of particulars is unnecessary, even the one that had been filed on August 16, at which time the investigation was continuing, and the witnesses were being interrogated by the staff of the Board of Managers, and by the Board of Managers and, consequently, we - - - our position is that the bill of particulars, a bill of particulars at all is not necessary. We can present other evidence.

Mr. Nichols takes the position that the bill of particulars cannot, and he doesn't want the list of witnesses, we won't give him any list of witnesses.

SENATOR CLARKE: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Clarke.

SENATOR CLARKE: - - - may I ask an additional question, which I'll submit in writing:

If this procedure is followed, is the Court to presume, then, that such supplemental presentation will and can be made at any time throughout the balance of this trial?

CHIEF JUSTICE DREW: Will you answer the question, Mr. Manager?

MR. O'NEILL: I believe, Senator, the law to be, as I say, in a criminal proceeding, which this is not, in criminal proceedings, it's much more strict than in this type of proceeding, that additional witness lists could be furnished to the Respondent's counsel at any time, either upon his motion, or just handed to him as a cooperative matter.

I would say this to you, that the bill of particulars does nothing more than cite the names of the witnesses and the cases that they will testify about, in an abundance of fairness to Respondent's counsel.

CHIEF JUSTICE DREW: Counsel for the Managers, do you - - - you do not contend that what was stated in the bill of particulars is in any way to be considered as evidence against the Respondent?

MR. O'NEILL: No sir, no sir, we do not contend that. It's only a matter of fairness that we're giving him this information. We don't contend that it's a matter of evidence. The witnesses will be the evidence.

SENATOR BARRON: Mr. Chief Justice.

CHIEF JUSTICE DREW: The Senator from the twenty-fifth.

SENATOR BARRON: Mr. Justice, I understand the rule to be that we should write the questions out for the witnesses, but I would like to pose the question to the House Managers, as did Senator Price:

The question is this, Mr. O'Neill: The bill of particulars that you have presented is in the form of evidence; that is, it says in particular about what these attorneys did before the Court, and what the Court said to them.

Now, under the charge, the last charge, the broad charge, that has been approved by the Senate, it's true that you could bring in any evidence to support that charge, but don't you feel that it's unfair to present this written matter that the Court will consider, and have on its desk all the time during the trial of this case, while we can have the same evidence from the witnesses from both sides?

Don't you feel it's unfair to have written evidence before us when both you and the other side - - - we'll never get through.

MR. O'NEILL: Senator, I did not pass out the supplemental bill of particulars, had no intention of doing it. The Respondent, or someone here - - - and I don't recall right now - - - Mr. Nichols himself, I believe, asked that they be passed out. I made sufficient copies, but it was not my intention to place it on the Senators' desks.

I would say this to you: If the bill of particulars and the supplemental bill of particulars gives the gentleman who is representing the Respondent any difficulty, the House Board of Managers would be happy to withdraw both of them, and there's ample precedent for that, because he withdrew a motion to continue sometime ago without leave of Court.

Our contention is that it is not a matter of pleadings; the bill of particulars is no pleading at all in this case but, out of an abundance of caution and fairness to the Respondent's attorney, we filed it on August 16, while we were still interrogating witnesses. All we have done here is to try to help him, so that he will know who the Board of Managers is going to call, and we did the same thing sometime - - - many days ago, gave him a list of the witnesses, some of them given to him in a list when he was in Tallahassee, some of them at the expense, by calling his office in Miami, sometimes at the expense of his calling our office, "Have you added any more witnesses?"

Our position is that we want to be fair to him, and the bill of particulars is not necessary to this cause. Our position is that the Articles take care of the situation, and there are no new charges in them.

SENATOR BARRON: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator of the twenty-fifth, the rules provide that questions shall be sent to the Chair, and I think we've illustrated what we might get into if we don't follow that rule. I think it will indefinitely continue these proceedings. Does the Chairman of the Rules Committee - - -

SENATOR CROSS: Mr. Chief Justice, I would like to

make a motion, if it please the Court, and have a moment to explain it.

I'd like to move that we go into closed session for our deliberations at this time, and explain to the public and the press that our rules prohibit any debate in open session, it only permits debate among the members in closed session, and limits the time as to that. This - - - we are sitting in a dual capacity of a court and a jury, and we simply go into our deliberations as a jury would.

We have, I think, for the benefit of House Members, I think the ruling is clear by Judge Terrell on exactly this point. If we could go into closed session a moment, and read that and discuss it, and discuss what has been said, I think it would expedite matters.

So, I move - - - if the counsel for the respective parties have finished their arguments - - - if not, I withdraw - - -

CHIEF JUSTICE DREW: Mr. Nichols has the closing argument.

Are there any other questions to be sent up? That's the only question - - -

SENATOR HERRELL: Mr. Chief Justice, do written questions include questions directed to you, sir?

CHIEF JUSTICE DREW: Yes sir - - - no, I - - - I would prefer it that way, Senator. I think the rules provide that. Is that the rule, Senator?

SENATOR CROSS: Yes sir, I think - - -

CHIEF JUSTICE DREW: Whether questions directed to the Presiding officer should be in writing.

SENATOR CROSS: Yes sir, all questions should be sent to you.

CHIEF JUSTICE DREW: The Presiding Officer so rules.

Mr. Nichols, you have the closing argument - - - Senator, I apologize, I recognize you first. Would you like to make a motion?

SENATOR HOLLAHAN: Mr. Chief Justice, I'd like to make a substitute motion, that the motion to dismiss the supplemental bill of particulars offered by counsel for the Respondent be granted.

CHIEF JUSTICE DREW: That is not in order at this time, Senator.

MR. O'NEILL: Mr. Chief Justice, the Board of Managers do now withdraw the bill of particulars heretofore filed, and the supplemental bill of particulars, as we do not think that it adds to anything in the articles.

We have furnished the gentleman here the information. We now withdraw the bill of particulars and the supplemental bill of particulars.

CHIEF JUSTICE DREW: Mr. Nichols, do you object to that?

MR. NICHOLS: For clarity purposes, do we stand - - - do we understand that the charges that you make in the supplemental bill of particulars, and any evidence under those charges, likewise is withdrawn? We're not going to come in under this general proposition, now, and - - - you're not going to try to shoot us again with the same things?

MR. O'NEILL: We'll stand on the Articles of Impeachment, as adopted by the House, saving and except Articles III and IV, which were dismissed on a Motion to Strike by counsel for the Respondent.

MR. NICHOLS: All right, sir. Now, then, Your Honor, I would like to respond, and go back to my original motion, and tell you that that's exactly the reason that

you ought to strike Count Number VII in this, because it leaves us the shotgun proposition, to keep doing exactly - - -

CHIEF JUSTICE DREW: Mr. Nichols, the Court has ruled on Count Number VII. In ruling on Count Number VII, on your own argument, the bill of particulars had no part in this proceeding, the ruling on the sufficiency of Count VII, it has been ruled on, and I declare the motion to be out of order at this time.

MR. NICHOLS: Your Honor, my motion was to reconsider, my original motion was to reconsider Count Number VII, because, in the handbook and in the brief it says the Respondent is entitled, Number one, to be informed of the nature of the charges against him.

Now, that's what we're talking about, and that's what we're - - - have under consideration, the striking of Count Number III - - -

We move to reconsider and move to strike Article VII, because it does leave this shotgun proposition and you are going to have substantially the same evidence coming in, and we can't defend against it. That is exactly what we are talking about.

Now, I would like to conclude my reply because it is quite obvious that all he is going to do is withdraw that and come in under this same general count, under this same general proposition. They are going to bring these to you and these are additional charges. These are additional men. These are additional witnesses.

He keeps telling you that he is doing me a favor. We didn't ask for the favor that he wants to do us. And I am slightly skeptical.

They are good friends of mine. I will have a cup of coffee with them down in the room but I am not asking them to help me on the Respondent's side.

Gentlemen, this is a very serious proposition that we are talking about and I have asked you to reconsider this broad general count, and I have submitted to you the law about it. Many of these files that they say they have presented to us - - -

SENATOR CROSS: Mr. Chief Justice, I think the Court has ruled on the point that counsel is making. I don't think there is any rule to permit a reconsideration of the vote of this Board. Therefore, I move that we proceed to take testimony in the trial.

CHIEF JUSTICE DREW: Gentlemen, you have heard the motion. As many as favor the motion, say aye; opposed, no.

The ayes have it.

Gentlemen, you will proceed with the trial. I understand the record now to be that the Bill of Particulars attached to the original Articles filed, as well as the one offered at the present time, have been withdrawn by the Managers of the House.

MR. O'NEILL: We respectfully request that the Senate disregard the same.

SENATOR ASKEW: Mr. Chief Justice, under the action of the Board of Managers to withdraw the Bill of Particulars and the motion (which was carried) by the Court, to proceed; do I understand that the Board of Managers are still free to bring in and present any testimony that they would have presented by virtue of the explanation shown in the Supplemental Bill of Particulars?

CHIEF JUSTICE DREW: It is the ruling of the Court that the Bill of Particulars is not a part of the pleadings. It is not a part of the pleadings and any evidence in this case will be restricted to the allegations of the Articles of Impeachment.

SENATOR MATHEWS: Mr. Chief Justice, the motion just made was to proceed with the presentation of evidence. Don't we need an answer before we get into that?

SENATOR ASKEW: It is not even in.

SENATOR MATHEWS: I move that we reconsider the last motion and, after that, I would like to announce - - - I would like to move that we now take up the question as to whether the Respondent has filed an Answer.

CHIEF JUSTICE DREW: Gentlemen, you have heard the motion.

As many as favor reconsidering the last vote, say aye; opposed, no.

The ayes have it. The motion is reconsidered.

SENATOR MATHEWS: Now, Mr. Chief Justice, I move that the Senate proceed to take up the question of the Respondent's filing an Answer.

CHIEF JUSTICE DREW: Gentlemen, you have heard the motion.

As many as favor the motion, say aye; opposed, no.

The ayes have it; the motion is adopted.

MR. NICHOLS: May it please the Chief Justice, and Members of the Court:

The Respondent moves at this time for at least a ten day continuance.

We cannot prepare this case nor prepare answers to a group of evidence that has just been handed us. Now, it is impossible to do it. You have asked us to proceed and you have asked us to move along, and the House Managers have told you virtually that they are going to keep calling this type of evidence. If we are going to proceed here, we need to have time to examine these files and to see the witnesses. They make a charge in these matters as to Case Number So-and-So before their clients and before their lawyers. We need to go see the clients or the general public and the lawyers who may be witnesses in these matters.

At this time we ask that you extend to Judge Kelly the same courtesy that you extended to Judge Holt, and continue this case and give us a chance to prepare. We ask you for ten days to do so. Now, you have prevented us from presenting a legal question that we think is extremely important. For goodness sake, give us a chance to prepare the evidentiary matter that you charge this man with.

SENATOR POPE: Mr. Chief Justice, I would like to ask the Court whether or not, in considering a matter in evidence, we will be governed by the decisions of Chief Justice Terrell as contained on Page 19 of the Journal, in Paragraphs 8 and 12.

CHIEF JUSTICE DREW: Of the Journal?

SENATOR POPE: The Journal of the Holt trial. Page 19, Paragraphs 8 and 12.

CHIEF JUSTICE DREW: You mean the explanation down at the bottom of the page?

SENATOR POPE: In Paragraph 8, it refers to a question posed by Mr. Hunt who was the Respondent's attorney as to the type of evidence that could be introduced; and to which Judge Terrell there states that it could not be considered unless it had been previously considered by the House. And, again, he makes the same observation in the last paragraph on the left hand page.

CHIEF JUSTICE DREW: I would not say that this Senate would be bound by rules of evidence or rulings of

the Presiding Judge at the preceding trial.

I have some written questions that I would like to present. Senator Price, do you have a question?

SENATOR PRICE: I have a motion, Mr. Chief Justice.

CHIEF JUSTICE DREW: State your motion.

SENATOR PRICE: Even though I think we have already done it, I would like to move that we put the question on the Respondent's motion to grant a ten-day continuance.

SENATOR TUCKER: We have voted on it one time.

CHIEF JUSTICE DREW: Will the Senator withhold that until I read these questions.

I have a question from Senator Mathews: "In the orderly presentation of evidence will counsel for Respondent have the right to object to any testimony that is not relevant to the Articles of Impeachment?"

CHIEF JUSTICE DREW (CONTINUING):

I would answer that question in the affirmative; that they do have that right.

Memo to Mr. Nichols from Senator Friday: Mr. Nichols, did you not withdraw your motion for continuance?

MR. NICHOLS: I don't understand the question.

CHIEF JUSTICE DREW: Did you not withdraw your motion for continuance?

MR. NICHOLS: No sir. I earnestly plead that you give me that continuance.

CHIEF JUSTICE DREW: I say, did you not withdraw your original motion for continuance?

MR. NICHOLS: Yes sir, I originally withdrew it; got some cases continued where I could come here; and I have been doing my best to represent the man who has been charged with a very serious offense. I have done everything I could possibly do to get on top of this case and to be here in an honorable manner so that you would not be inconvenienced. But this business of continuing to bring in this type of stuff is the point that is involved.

CHIEF JUSTICE DREW: Mr. Nichols, it would save time if you would just answer the question of the Senator.

From Senator Herrell: "Is not a precedent set for the introduction of the supplement on Page 41 of the Holt trial?"

I think I answered that there is a precedent, but it is not necessarily binding on this Court.

A memo to Mr. Nichols from Senator Friday: Have you asked the Managers for a Bill of Particulars to give you the information you talked about?

MR. NICHOLS: The answer is no. I never asked for either Bill of Particulars. They are charging new charges.

CHIEF JUSTICE DREW: Senator Price has moved that we grant the Respondent's motion for a ten-day continuance. Is that your motion?

The motion has been made that we grant the Respondent's motion for a ten-day continuance. I am going to ask for a voice vote.

SENATOR CARRAWAY: Didn't we just vote on this same question?

CHIEF JUSTICE DREW: We voted on a ten-day continuance so that he could go to the Supreme Court for a Writ of Prohibition. He is now asking for a ten-day continuance to prepare for the trial.

SENATOR HERRELL: Mr. Chief Justice, couldn't those ten days be utilized for the same purpose for which we refused the other?

CHIEF JUSTICE DREW: I imagine they could use it for any purpose they please.

Gentlemen, I am going to ask for a voice vote.

Those in favor of granting the motion for a ten-day continuance, say aye; opposed, no.

The noes have it. The motion is denied.

House Managers, you may proceed.

MR. DANIEL: An Answer has not been filed, Mr. Chief Justice; so the matter is not at issue.

CHIEF JUSTICE DREW: When will you be prepared to file your Answer, Mr. Nichols?

MR. NICHOLS: We have been in continuous session since 9:30. May we have about a ten minute recess?

CHIEF JUSTICE DREW: The Court will declare a ten minute recess.

Whereupon, at 11:00 o'clock A. M. the Senate stood in recess.

The Senate was called to order by the Chief Justice at 11:10 o'clock A. M.

CHIEF JUSTICE DREW: The Presiding Officer observes and declares a quorum of this Court of Impeachment to be present. You may proceed.

MR. DANIEL: Mr. Chief Justice, we are still waiting to be at issue, Your Honor.

CHIEF JUSTICE DREW: Mr. Nichols?

MR. NICHOLS: Your Honor, we would like at this time to file an Appearance, Waiver and Answer of the Respondent, Judge Richard Kelly.

CHIEF JUSTICE DREW: You may hand it to the Secretary to be filed. Let the Secretary mark it filed.

MR. NICHOLS: Would you like me to have it read, Your Honor?

CHIEF JUSTICE DREW: Have you filed your Answer?

MR. NICHOLS: Yes sir, and we have likewise stipulated with the House Managers that we would put into the record that during the past proceedings, Judge Richard Kelly was present - - - at the other matters since the start of the proceedings - - - which we have now put into the record, without any objection.

MR. O'NEILL: Do I understand from Respondent's counsel that the official court records at this time also - - - the official court records that we have here - - -

MR. NICHOLS: We will stipulate with you, as previously stated to you, that there is no need to bring a Court Reporter present to have the same authenticated; but we do not stipulate with you as to the materiality or of the evidentiary matter that you might be attempting to use.

MR. O'NEILL: You said "Court Reporter"; do you mean "Clerk"?

MR. NICHOLS: I mean the official Clerk or anybody to identify them. If you say, upon your say-so, that they are official court records, that is all that is necessary.

MR. O'NEILL: And the transcripts that are included and that are part of that file?

MR. NICHOLS: Anything that is part of any official court file; if you will just say that that is official.

CHIEF JUSTICE DREW: You admit the authenticity but not the materiality or relevance.

MR. NICHOLS: Correct. Is that understood, gentlemen?

CHIEF JUSTICE DREW: You will read the Answer of the Respondent to the Articles of Impeachment.

SECRETARY FRASER: "IN THE SENATE OF THE STATE OF FLORIDA ORGANIZED AS A COURT OF IMPEACHMENT.

IN RE:

IMPEACHMENT OF CIRCUIT JUDGE RICHARD KELLY.

APPEARANCE, WAIVER AND ANSWER OF RESPONDENT.

The Respondent, Circuit Judge Richard Kelly, hereby makes his appearance before the Senate of the State of Florida, organized and sitting as a Court of Impeachment, waives the reading of the Articles of Impeachment, and hereby answers and pleads, to each and every of the Articles, Specifications and Particulars thereunder, that he is not guilty."

Signed, Perry Nichols.

CHIEF JUSTICE DREW: Gentlemen, you have heard the reading of the Answer. You may proceed.

MR. O'NEILL: Mr. Chief Justice, may I have a moment. I heard a word and I want to check. I may have misunderstood it.

(There was a pause while Mr. O'Neill examined the written text of the Answer just read by Secretary Fraser.)

CHIEF JUSTICE DREW: I might at this time announce to the Court that the amendments to the rules which were adopted in the beginning of these proceedings, together with the Answer of the Respondent, will be printed and that an appropriate pocket part will be made to insert in the back of the deskbook of each Senator, and we will try to have that available so that you may include it in your deskbook, so that you will have a complete record of the pertinent pleadings and parts of this trial; and we hope to have that to you tomorrow or the day after tomorrow.

MR. NICHOLS: Mr. Chief Justice, in our Answer that we have just filed, we would like to withdraw or strike from it the word "Particulars," because they have withdrawn their Particulars. Therefore, we don't join any issue with them concerning the Particulars.

MR. O'NEILL: Mr. Chief Justice, may I ask counsel for the Respondent ---

MR. NICHOLS: We had drawn this prior, not knowing what ---

MR. O'NEILL: I interpreted your Answer as Articles, Specifications, and Particulars thereunder, as alluding to the particular evidence and not the Bill of Particulars; and, if I have made a wrong construction of your Answer, I have no objection to withdrawing it.

MR. NICHOLS: You are correct.

MR. CHIEF JUSTICE DREW: That will be the order.

MR. NICHOLS: I would like to strike that from it, then.

CHIEF JUSTICE DREW: Will you strike that by interlineation.

MR. NICHOLS: And just put initials by it?

CHIEF JUSTICE DREW: Yes sir. So that our record may be clear.

MR. NICHOLS: Thank you, Your Honor.

CHIEF JUSTICE DREW: You may proceed. Now, I assume that the parties for both sides request that all witnesses be under the Rule.

MR. DANIEL: We do not make that request but we don't object to it.

CHIEF JUSTICE DREW: Do you request that the witnesses be under the Rule?

MR. NICHOLS: Yes sir. I request that the witnesses be under the Rule.

CHIEF JUSTICE DREW: The request will be granted. Any person who has been subpoenaed as a witness in this cause is prohibited from being present in the gallery or within the hearing of the Court of Impeachment at any time during these proceedings; and if any witness is observed in this Chamber during that time, the Presiding Officer requests that such fact be made known to him promptly.

MR. NICHOLS: Mr. Chief Justice, may we also request - - you limited the witnesses to those subpoenaed. I would like to include - - there may be witnesses who may testify who have not been subpoenaed. That it apply to any and all witnesses.

CHIEF JUSTICE DREW: I hardly see how it is possible to make that order, Mr. Nichols, because it is impossible for me to know who will be testifying; but any witness, any person, who has any reason to believe that he will be called in these proceedings is likewise under the Rule and should observe the admonition of the Presiding Judge.

SENATOR MATHEWS: Mr. Chief Justice.

CHIEF JUSTICE DREW: Senator Mathews?

SENATOR MATHEWS: Should not these witnesses all be cautioned, here in open Court, and counsel admonished, that the witnesses will not be expected to discuss the matters between themselves?

CHIEF JUSTICE DREW: I also add that; that these witnesses - - of course they are not here - - but any witnesses should not discuss these matters among themselves nor with anybody except counsel in this case.

MR. DANIEL: Mr. Chief Justice, in order to utilize the time, I have certain official documents that Respondent might wish to stipulate may be introduced at this time. It amounts to the resolution offered by the House - -

MR. NICHOLS: May I just - - you want me to see them?

CHIEF JUSTICE DREW: Yes, suppose you confer with Mr. Nichols, on as many of these things as you can to save the time of the Court.

(At this point all counsel for the House Managers conferred with Mr. Nichols)

CHIEF JUSTICE DREW: I have a question which was sent up from Senator Friday. Is that now taken care of?

SENATOR FRIDAY: Yes sir, that's been put in writing, as has been requested by the Rules Committee.

CHIEF JUSTICE DREW: Thank you.

MR. O'NEILL: Mr. Chief Justice, on behalf of the Board of Managers, Mr. Welborn Daniel.

MR. DANIEL: Mr. Chief Justice, counsel for the Respondent and the Board of Managers have stipulated to

certain official documents which may be entered at this time. I will briefly state the title of each - - -

CHIEF JUSTICE DREW: Would you state the title of each and, gentlemen, it may save time if you would hand those to the Reporter, who can merely note on it the number, and then it can be marked by the Secretary with the proper identification.

MR. NICHOLS: We have no objection, and also to save time, if Mr. Daniel will just state what the instrument is, instead of trying to read it all the way through.

MR. DANIEL: I said I would just read the title.

CHIEF JUSTICE DREW: You may proceed.

MR. DANIEL: The first is House Resolution 1442, which is the resolution authorizing the select committee to investigate the impeachment proceedings; that would be Managers' 1.

The second would be the report of the select impeachment investigating committee, alluded to in the resolution just introduced; that would be Managers' 2.

The third is House Resolution 2504, which are the actual Articles of Impeachment; that would be Managers' 3.

The fourth is the vote of the House of Representatives, June 4, 1963, which would be Managers' 4.

The fifth is the vote of the House of Representatives, Wednesday, June 5, 1963, which would be Managers' 5.

The sixth is the certificate of the county canvassers of Pinellas County, one of the counties in the Sixth Judicial Circuit, as to Judge Kelly's election to that post.

The seventh would be the certificate of the county canvassers of Pasco County, which is the other county in the Sixth Judicial Circuit.

And the eighth is the commission, as Circuit Judge, issued by the Secretary of State from Tallahassee.

MR. NICHOLS: To which we have stipulated.

CHIEF JUSTICE DREW: They will be so marked and received in evidence in this cause, and they will now be handed to the Secretary of the Senate, and he will file them.

Mr. Secretary, you can get those and mark with your stamp, and might I say at this time, Mr. Reporter, that after they are received, and you mark them, if you would lay them - - - well, that's all right, lay them somewhere where the Secretary can get them.

(Whereupon, the above referenced documents were received in evidence and marked Managers' Exhibits 1 through 8, respectively.)

MR. DANIEL: Mr. Chief Justice, procedurally, it will be my intention to make a very brief opening statement at this time.

CHIEF JUSTICE DREW: By the way - - - I beg your pardon, each side, under the Rules, has thirty minutes, if he desires, to make an opening statement, and you may proceed, sir.

MR. DANIEL: May it please the Court, and Lady and Gentlemen of the Senate, sitting as a Court of Impeachment:

I do not intend to take that entire thirty minutes, I assure you, because it is my duty and privilege at this time to present - - -. As I stated, I will be very brief in this statement. I assure you that I also do not intend to be either bombastic or flamboyant, the very purpose of an opening statement being to apprise you generally of an

outline of what is going to be presented by the person making the opening statement.

It necessarily follows, to be brief, that I will not particularize or go at any great length into any particular testimony or facts which we intend to adduce at this hearing.

In doing this, I might omit something that we will later bring out, but I seek your indulgence in that regard, if I do omit any particular fact here which, later on, we do prove.

Fortunately, most of what I would ordinarily have stated in an opening statement has been argued by Mr. Jones in his arguments on the several motions which you have heard over the past two days.

For example, we intend to prove that Richard Kelly, as a Circuit Judge, did bring the judicial process in the Sixth Judicial Circuit of Florida, reflecting on the welfare of the entire state, into disrepute, and one manner in which we intend to prove this is that he repeatedly and unnecessarily and in an improper manner injected himself, virtually in the capacity of an adjutant, into matters carried before him, much to the harassment of the parties, attorneys, and anyone else present; that he strained to and practically went past the breaking point in his discretion in that regard; that he violated numerous provisions of the Code of Judicial Ethics, and rather than exhaust you with a complete outline of what he has been guilty of, and what we will present to you, I would refer you to Mr. Jones' talk yesterday on the Articles of Impeachment.

Now, Mr. Nichols has previously, and I presume he'll again claim that all the acts charged are frivolous, all the acts charged are small.

I might liken the presentation of the Managers' case in this regard to a story of two thieves - - - and I don't mean to allude to the fact that Judge Kelly - - -

MR. NICHOLS: Will Your Honor limit counsel's statement to what he proposes to prove - - -

MR. DANIEL: This is a matter I intend to prove.

MR. NICHOLS: - - - and not what I have said, or otherwise.

MR. DANIEL: I apologize to eminent counsel. I will, of course, limit my statement to what I intend to prove, and the manner I intend to prove it, and in doing so - - - May I liken the presentation of the Managers' case to the story of two thieves - - - and again I hasten to add that I do not mean by this that Judge Kelly is a thief - - - one stole a considerable sum of money at one time, shocked the conscience of the whole state - - -

MR. NICHOLS: If Your Honor please, I don't think this is a proper opening statement to the issues of the House, and these - - -

CHIEF JUSTICE DREW: I think you should state, on an opening statement, what you propose to prove, and I am sure that you will confine yourself to that.

MR. DANIEL: I will do that, and the manner in which I intend to prove it, Your Honor.

CHIEF JUSTICE DREW: Well, maybe it's better to let counsel proceed to make his opening statement.

MR. DANIEL: And shocked the conscience of the state and county in which he was by the magnitude of the money that he stole and of course, he was severely dealt with. The other thief tapped the petty cash till, a penny a day, for the entire time that he worked, and although this was noted, nothing was said about it, because the remark was, well, it's but a penny a day, and it was not un-

til years later that it was discovered that the second thief stole an amount that far exceeded the first.

In much that manner, lady and gentlemen of this Court, we will present to you a series of pennies, and will ask you to follow a trail of pennies to a large total amount of misconduct and misdemeanor in office, which we will prove that Judge Kelly committed in his official capacity as Circuit Judge of the Sixth Judicial Circuit.

That will conclude the opening statement of the Managers, and unless - - - Mr. Nichols, do you wish to make an opening statement at this time?

MR. NICHOLS: Yes sir.

CHIEF JUSTICE DREW: Mr. Nichols.

MR. NICHOLS: Mr. Chief Justice, Members of the Court:

At this time I would like to briefly outline to you what we propose to prove in these proceedings.

If you - - - first of all, I would like to tell you, in response to the Managers' statement about bombastic or flamboyancy, I apologize for my personality, but I am what I am, that's all I am, and I ask that you do not pass to my client my conduct, but I am here to discuss with you what we propose to prove under these Articles of Impeachment, and probably, if you will turn to your handbook again - - -

CHIEF JUSTICE DREW: Can the Senators hear? If any Senator doesn't hear, I hope he will make it known.

MR. NICHOLS: I hear several saying "a little louder," but I don't want to be flamboyant about the matter.

I'm seesawed both ways, but I shall try to talk a little louder, so that you can hear me on the far side.

Now, at Page 15 of your handbook you have the articles. I would like to discuss - - - and I'm not going into a long, detailed explanation of what we propose to prove under those articles, because a lot of that - - - about those articles and that discussion went on yesterday. So, I am not going to impose on your time, but, so that we get some concept that there's two sides to this matter, under Article I, we discussed most of that yesterday, so I'm not - - - under Article I-a, which dealt with a matter that's still on appeal, and the matter is in proper forum, and it will be decided by the Supreme Court, and I don't think there's much need of us going into too much detail about that; that's Article I-a.

Article I-b, however, we will show you, and the proof will reveal, that this deals with a meeting called by the Judge after receiving a telegram from a State Senator, Covington, to the effect that he could no longer support a bill that will provide for the change of Pasco County from the Sixth to the Fifth Judicial Circuit without a public referendum on the question of the change.

Mr. Charlie Luckie was asked by the Judge to attend the meeting of Pasco County Attorneys for the purpose of improving the administration of the Court, and all of the attorneys - - - and other attorneys in the area, immediately after the receipt of this telegram from the State Senator.

The Judge asked the lawyers in the area if they would come over to the Court House, that he wanted to have a discussion with them concerning the future administration of the court, and he did, and he had, and there's a Court Reporter's transcript of what he said, and we simply will show you and prove to you that it's a very fine statement of the Judge, saying, look, this matter's been put to death, let's get on with the administration of business. I assure you, this is no wrangle or otherwise with me as a Judge, and I hope there's none with you, and

we'll move along with our business, and there's a court transcript of it.

We will show you that Mr. Luckie, however, when he was called, as the rest of the attorneys were called, he didn't particularly want to come, and he asked several questions, as to whether or not it involved him or his client, and he said he wasn't coming without an order, and he said, "Judge, does this involve everybody in the county?" "Yes, it does."

We'll show you that - - - he said, "Well, I'm not coming without an order," and he ordered him to come, because he wanted him there because he had been one of the spearheads of the opposition to change the county, and he wanted him to know and hear him say, man to man, that this matter is over.

Now, when he got over there, we'll show you also that all of the attorneys that came asked that they not have the matter in open court, but that they go into the Judge's Chambers, where they could sit around kind of informally to discuss this, but Mr. Luckie said, "No, I came to the Court, I'm not going into Chambers unless I'm ordered to do so," and said that, "I brought an attorney over here with me to represent me."

So, everybody else left the Bench and went into the Chambers, and as the Judge went off the Bench, he said, "Mr. Luckie, your attorney and everybody else is in there. I suggest that you come on in." He said, "Well, are you ordering me to come in?" He said, "Well, if that's what it takes to get you in, come on in."

Now, as I said, we will show you the transcript - - - fortunately, I am glad that every single word was written down, and we'll read to you exactly what this Judge said, and show you the conciliatory manner in which he was approaching the group of lawyers and himself, in trying to move on with the Court's business.

Now, Article I-c, if you'll look at your book there, we'll prove to you, and the facts will reveal, that Mr. Stanley Burnside made a remark to the Judge which he himself admits was made in an angry and contemptuous form, that he referred to the Judge's conduct on the Bench yesterday as "a performance."

The Judge then gave him a formal hearing before the Court and called him up into the Court, that the Clerk of the Court is an officer of the Court, and we'll later on show you that it's part of the function of the Court to administer that function; that he asked him, and had a Court Reporter present, and everything that was said was transcribed, and we will show you exactly what was said and what was not said.

He told him, if he had some complaints to make about the Court, so he could improve the Court, that he would like them to be stated on the record, what it was; and we will show you that there was no punishment or infliction, but he told him, likewise, he didn't think he ought to be referring to the Court, that he was part of the Court himself, and that he ought not to be referring to a trial in which some clerk that had sent up to him - - - what happened was, he sent a clerk up, and the clerk was clerking a very important case, and the case was over, and he asked the clerk to poll the jury, and the clerk didn't know how to poll the jury, and that's part of what was going on; and so, the clerk of the Court got upset over what the Judge had said, about the clerk not even knowing how to poll a jury.

Well, we'll show you exactly what was said and what was not, and show you, actually, that this was within the discretion of the Court, that's all it amounted to, was a discussion of it. However, there was no punishment, there was no nothing, other than a discussion of how they could improve, and if he wanted to improve, wanted to criticize the Court, he thought now was the time to do so

Again, as I say, we will have the records to show you what took place.

Under Article II, an attempt was made by the attorneys of Pasco County to transfer Pasco County from the Sixth to the Fifth Circuit through a bill in the Legislature without a referendum again to the people; they were going to divide the Circuit, which is made up of two counties, and they were going to make - - - take Pasco County and put it over in the Fifth Circuit, where there were already five other counties in it; and, likewise, they were going to put Judge Kelly over in Pinellas County and thus destroy the very legal and legislative manner in which he was elected to be the Judge of Pasco County and, therefore, actually, you would have a Judge without a Bench.

Likewise, we'll show you that in that same situation that they would have to get them, or name them a Circuit Judge which, presumably, would have come from the group that was going to change the Circuit, going to move him over to Pinellas and then, likewise, somebody would have to be named as new Circuit Judge from that area.

Now, the Judge, however, is charged with resisting this attempt, that he's charged with making talks about it, and that - - - we'll show you that he did, that it is proper for a Judge, when he's dealing with a function of the Court - - - and certainly he had a right to respond to virtually an abolition of his office, he was raised in Pasco County. He ran as an elected official of Pasco County, and then somebody comes along to take away his office and moves it somewhere else, and he doesn't have the right to speak out against it? Why, certainly, he not only has the right, but he has the duty to speak out against those types of things; so he did speak out wherever he could.

Now, they say that he spoke in a Republican Club. Yes, he spoke in a Republican Club, he spoke anywhere he could. He has to meet his schedule before the Junior Chamber of Commerce. We'll show you that he had some speeches ready to go before the Zephyrhills City Council.

Gentlemen, the office of Circuit Judge is non-partisan. We'll show you that it's non-partisan, and what he was speaking on was a non-partisan proposition.

We'll also show you, bring you - - - show you that he had a perfect right. Incidentally, after the people of that county, including as many Democrats as Republicans, and many of the Republicans and Democrats came to the support of that matter, because they were about to lose their Circuit Judge, and after the petition that they got, shows most of them were Democrats, and as a result of that, Senator Covington withdrew his support of that, and sent a telegram to the sponsors, including a telegram to Judge Kelly, that he had withdrawn his support of that matter because it does not carry a public referendum, and he thought it would be morally wrong, and I quote the words "morally wrong" from the telegram which we will introduce to you.

This matter should not involve partisan politics.

We will show you correspondence of the Judge, even before speaking to the Republican Club, that he invited Democrats to speak at the same time. He told them in writing where he was going to speak and what he was doing about the matter.

Article III was withdrawn by you yesterday in the Senate.

And Article IV was withdrawn by you yesterday in the Senate.

So, moving on to Article V (a): What happened in this case was that one of the attorneys accused another

attorney. This is what the Managers say - - - and you can read your Articles - - - they told you yesterday that he altered public records. That sounds pretty bad, doesn't it? I think any Judge who would alter public records ought to be impeached; but I want to tell you what we will show were the actual facts about these records. What happened here was that there was a case before the Judge and one attorney - - - one of these attorneys was a lady attorney. On some affidavit which was over a collateral proposition altogether to the litigation, she forgot to personally sign in ink the jurat of the affidavit. On the affidavit made by the person, she apparently just didn't sign it, but the name was in there and every other thing.

Well, they had two hearings. At the first hearing the lawyer raised a technical objection about that. At the second hearing, when they continued the matter and came back, this was raised again, but apparently the matter had either been signed or signed in the presence of the Court, one or the other, at the former hearing. But nevertheless, the lady had signed the matter.

Now, the Judge simply took some testimony. These lawyers were squabbling about whether or not that signature was on the affidavit. And the Judge called a bunch of people and said, "Wait a minute," and he held up his hand and took some testimony as to whether or not that signature was on the affidavit. And all he did was rule that there was not sufficient proof to show that it was properly there before, at the last time, and that there was no impropriety about the matter.

Now, we will also show you - - - and that was completely collateral to the issue involved, and to me it seems rather silly - - - but, nevertheless, he immediately turned around and he ruled completely against the lady for whom he had permitted the affidavit to be signed or that there was not enough proof about it. She lost the whole case from stem to stern.

This was just routine business of a Circuit Judge, and they are hollering "Changed the records."

Several times I have forgotten to sign a complaint in a damage suit, and the Judge has said, "Here. Take it and sign it." Would that be altering the records? That is how trivial this proposition is about altering the records.

Now, the lawyer didn't like it, but he took no appeal. He said that the Judge permitted this woman to alter these records. As a matter of fact, he won it. The very guy who complained won, but he didn't like it because he said the Judge altered the records.

Now, moving on to Article V (b): This was two attorneys, and it is hard to tell from the record but this was a case, a divorce case in which two attorneys were handling a matter before him and the attorneys got into an awful squabble among themselves as to a property settlement, something concerning a property settlement. And the Judge tried to stop them and they were wrangling back and forth, and the Court said, "Wait a minute. That is what you agreed to among yourselves." And he tried to get them to go outside - - - or, if they had not really reached an agreement, don't wrangle in front of him. And finally one lawyer just continued to persist in this matter and he finally held this lawyer in contempt of the Court for not discontinuing the colloquy between the lawyers.

However, later on he, of course, rescinded and changed his mind. He told the lawyer later on that he was sorry that he had held him in contempt; and he collected no money for it, and he rescinded the contempt order, but that he hoped he would not do that kind of conduct any more. Then, however, while the attorney was there with him the second time he said, "I suggest that that testimony between me and you not be put into this lady's divorce case." He said, "It hasn't got any business over in this lady's divorce case."

We will show you that he only did not try to conceal or any other thing, or try to keep it from being transcribed, but we will show you in the record of it where he suggested to the lawyer that it be transcribed and preserved by him for any purpose that he wanted; but he simply suggested, "Don't put it over here in this lady's divorce matter."

He was not trying to prevent the matter from being transcribed nor any of the inferences that may be drawn from that Article; but he simply suggested to him - - - and we will show you in the record, in the very record, where he was talking to the attorney - - - that it be transcribed and that he keep it for any purpose that he wanted to. Again, this is within the bosom of the Court and is an ordinary function of the Court, which several of you men who have been Judges will know something about.

Now, in Article VI - - - I think this is one of the most frivolous articles in the whole group - - - in the prosecution of a murder case in Pinellas County, the Judge is charged with granting a writ of habeas corpus without notice to the State Attorney, as required by the Florida Statutes. Now, that is what that charge says. The charge says that the Judge is required to give the notice. The Article says that.

CHIEF JUSTICE DREW: What article is that?

MR. NICHOLS: Article VI.

CHIEF JUSTICE DREW: Article VI, thank you.

MR. NICHOLS: We will show you, number one, that the Judge does not have any duty to give notice, since the duty is placed on the petitioner and on the Sheriff. The Judge doesn't have to go out and give notice. The notices are the responsibility of the attorney or the Sheriff.

We will show you, however, that this proceeding took place on Thursday of a week and was set before the Judge on the next Monday, to come in before him. That the writ was taken down to the Sheriff and that the Sheriff did, in fact, call the Prosecuting Attorney and he told him about the matter. And he did that on Friday, the next day. That the Prosecutor was in the same building with the Judge and that, when the hearing came on for Monday, nobody was there from the Prosecutor's Office. That there was a conflict between the Prosecutors, apparently, and they didn't show up on purpose, because he had notice, in truth and in fact, however, before the Judge started that proceeding. He called the Prosecutor's Office; he, the Judge, did; and told him there wasn't anybody down there. Now, they were right in the same building. All he had to do was to step down there. They want to say that they had a hearing without notice when, in truth and in fact, they had notice; and, when in truth and in fact, even the Judge himself called the Prosecutor's Office.

Now, the next Article is VII. This Article really says - - - in sweeping terms which are impossible for us to try to meet almost - - - that the lawyers who instigated these proceedings don't like the Judge. That is about all that that article winds up saying.

We will show you that they had no reason not to like him; and that there are an awful lot of good lawyers and fine lawyers throughout the State of Florida and in that jurisdiction who do like him as a Judge.

We will show you that most of the trial lawyers who tried cases down there like him.

We will bring you Baya Harrison, who is a past president of the Florida Bar, who tried the vast majority of the cases in front of him and who says that he is a fine, qualified Judge.

We will bring you Cody Fowler, the past president of the American Bar, from Tampa, who says that this Judge was a fine trial Judge.

Mr. Mike Kinney, who tries between a third and forty percent of the trial cases before this Judge, will show you that this is a fine, qualified Judge.

Article VIII simply collects the mass of stuff that was in the preceding Articles and does not amount to much more than that. They just replead virtually the same thing.

Now we say, gentlemen, that, after you hear the testimony - - - we will also show you that this Judge was one of the hardest working Judges in the circuit; that nobody down there - - - including laymen and lawyers - - - questioned the integrity of this Judge. That he is an industrious, hardworking Judge. That he is virtually the only Judge that worked through the noontime recess hour, two hours, so that lawyers could get orders signed during that period of time.

That this man was brought up in Pasco County and has worked his way through life, through both grammar school and high school, without the guidance of parents; and that he worked his way through Colorado University, after four years in the Marines. That he went into the Marines and served four years; and, after he came back he worked his way on through Colorado University. And, after teaching out there a year and making a little money, he came down to the University of Florida, where he got his law degree. That he graduated from the university of our state, the University of Florida, and then went back to Pasco County, where he had been raised. That he was a good football player and has done his part to serve his country, and that he was a good Judge.

When he got back, however, he practiced law there in Pasco County and established a pretty good law practice in Zephyrhills. That he did a general practice. That he represented the bank and that he represented the city.

Then, after that, he got an appointment as an Assistant District Attorney of the United States Federal Court and for four years was a fine Prosecutor. That he prosecuted cases before Judge Barker. In fact, the vast majority of his trial experience has been in the Federal Courts; for four years before Judge Barker at Tampa, and Judge Choate in Miami, and Judge Simpson in Jacksonville. And that he was a hard working type of prosecutor. That, since taking the Bench as Circuit Judge, he has been a good Judge.

We will show you that he has written a lot of rules. Now, we do not contend that he does not make mistakes, because he does. And probably, following a little bit of the federal pattern of court procedure, he required people who were serving on juries to wear coats and ties. That he required the lawyers to start wearing coats and ties. And that a lot of lawyers don't like to wear coats and ties, and they had not worn them down there before.

We will show you that Judge Dayton - - - at the Bar Association, the minute that he took that over and said that he thought it would help to improve the dignity of the Court, that Judge Dayton said, "You don't have to wear coats and ties in my Court, and I want everybody to know it." This is the gentleman that he had defeated at the polls, and this is the brother of some of the complaining witnesses who will be brought here to this trial.

We will show you, however, that he has done everything that he could conscientiously to improve the administration of justice.

The evidence, I think, unquestionably will lead you to believe and will prove that these acts have been done simply within the realm of the Court, and they may not have been done just exactly like you may have wanted them done or as you would have done it or as I would

have done it; but there is no reason to impeach this man from the office to which he was elected.

CHIEF JUSTICE DREW: You have four minutes remaining.

MR. NICHOLS: Thank you, Your Honor.

Now, gentlemen, we are going to show you that many of the witnesses that are complaining are because he ran for public office on a Republican ticket, and that he is the only Republican official who has ever been elected to the judiciary of Pasco County.

We will show you that the lawyers that are complaining about this matter were a group that supported his opponent; were a group that tried immediately to change the jurisdiction of his Court to create a Court of Record; even before he got to hold up his hand as a Judge, they were already moving to take away his jurisdiction of his Court. We will show you that they tried to change the circuit and abolish it and move it around. It was the same group that was involved.

We will show you, however, that this Judge has one of the best judicial records that there is in the Sixth Circuit. That he has got less appeals than anybody in that circuit, any Circuit Judge.

We will show you that during the two and one-half years that he was on the Bench he handled more than fifteen hundred cases and that there have only been, I think, thirteen appeals. And in Pasco County, there have only been four appeals - - - in two and one-half years, with fifteen hundred cases that he has handled.

Now, gentlemen, if he was such an erroneous Judge, then you would think that the Appeal Courts would be full of this type of thing; but, gentlemen, he has conducted his Court as a hard working Judge and he has been a good Judge and there have not been many appeals. And many of these complaining witnesses who will be here have not even taken an appeal, one way or another, from this Judge.

The Larkin brothers, who will testify, handled better than forty percent of all of the cases and have never yet taken an appeal in Pasco County.

In short, we will show you also that in his election in Pasco County, which is highly Democratic, that he got forty-three percent of the votes in Pasco County. And that this public official has been duly elected down there as their Circuit Judge, and certainly, the Senate should not impeach this man but should leave him as a Circuit Judge in Pasco County; and, if they don't like his personality down there, let them work the matter out.

At the conclusion of the Board of Managers' case, we will renew our Motion to Dismiss these charges, because at that time you will have had the trial, you will have heard all that they have got, and at that time we think this case will be eliminated with the renewal of the Motion to Dismiss at the conclusion of their case; because they will not have been able to prove anything that is of an impeachable nature. Thank you.

CHIEF JUSTICE DREW: The Board of Managers has the closing argument.

MR. NICHOLS: I thought this was just an opening statement, Your Honor.

CHIEF JUSTICE DREW: They have the conclusion, under the rules, Mr. Nichols, to open and close, even on the opening statements.

MR. DANIEL: We will not argue further by way of opening, except to request the Senators to hear all the evidence and this will point out the fallacy of some of Mr. Nichols' argument. Beyond that, we have no conclud-

ing statement by way of opening argument, Your Honor.

CHIEF JUSTICE DREW: I was incorrect in my ruling. An opening statement does not have a closing. You may call your first witness.

MR. DANIEL: Judge, before we do that, would counsel stipulate to the introduction of Volume 3 of the Florida Statutes, merely for the purpose of putting the Canons of Judicial Conduct into evidence?

MR. NICHOLS: Notwithstanding that you handed it to me in wrapped up bound paper, I will be glad to.

CHIEF JUSTICE DREW: It will not be necessary to introduce into evidence the Florida Statutes, because the Court will take judicial knowledge of all of the matters within the Florida Statutes.

MR. DANIEL: We will call as our first witness Mr. Averett, the Marshal of the District Court of Appeal in Lakeland.

CHIEF JUSTICE DREW: May I inquire of the House Managers where their witnesses are located?

MR. DANIEL: I believe they are all in Senate Room No. 31, Your Honor.

Thereupon,

EDWIN N. AVERETT,

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

CHIEF JUSTICE DREW: Will you please state your name?

THE WITNESS: Edwin N. Averett.

DIRECT EXAMINATION

BY MR. DANIEL:

Q Now, you have stated your name. What is your occupation, please?

A I am Marshal for the Second District Court of Appeal in Lakeland.

Q Were you served with a subpoena duces tecum in this matter?

A I was not.

Q Do you have with you a file relating to Pinellas County?

A I do.

Q What is the style of that file?

A James vs. Anderson.

Q Growing out of what Court, in what county?

A Out of Pinellas County; the Circuit Court of Pinellas County, under Judge Kelly.

Q This was brought up in response to a subpoena duces tecum, was it not, Mr. Averett? Served, if not on you, on the Clerk of the Court?

A That I couldn't say.

Q Were you instructed to bring this file up?

A I was.

Q By whom?

A By the Chief Judge, Judge Sherman Smith.

Q Of the District Court?

A The Second District Court of Appeal.

MR. DANIEL: Now, at this time, members of the Court,

we would like to introduce this particular file into evidence.

The reason we have chosen this method rather than a stipulation is because this is in the active files of the District Court of Appeal, and I understand that oral argument is going to be had in a few days. So we want to introduce it and then move to substitute a copy thereof, Mr. Nichols.

MR. NICHOLS: We have no objection for you to photostat this record but we certainly highly object to your bringing in now a fat file with a transcript in a matter which we have not seen and didn't even know was coming. Unquestionably, the appeal file will contain much hearsay; it will have briefs and all types of argument in it; and this is an improper method. It is not a proper evidentiary matter, and we highly object to it.

MR. DANIEL: We would limit our request to the transcript of testimony in the lower court, in order to avoid any of these briefs you are talking about.

MR. NICHOLS: May I suggest to you that we simply let this Clerk identify this record and leave it with you, and let you and I look it over during the noon recess or at a later time and let me see what you are handing to me.

MR. DANIEL: He has to return it to Lakeland.

MR. NICHOLS: Oh, I don't think he does. I think if it is under the jurisdiction of this Senate, it will be marked for identification and will stay here.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Yes. With that agreement - - - that you will look it over and see if you can save time by agreeing on this thing - - - these files will be kept here. There will be no difficulty. They will be kept here and, if they are introduced in evidence, they will be kept here until copies can be made and they must be returned to the Court.

MR. NICHOLS: I will be glad to work that out with counsel for the Managers.

CHIEF JUSTICE DREW: For the time being, we will let you discuss the files and do whatever is necessary.

MR. DANIEL: Do you wish to make a statement?

THE WITNESS: Yes sir. My orders are to keep this in my jurisdiction and not to let it out of my sight. These are original records on appeal before that court, and there are others.

MR. NICHOLS: I have every confidence that the Chief Justice can figure it out.

CHIEF JUSTICE DREW: The file will be filed with the Secretary of this Court until such time as it shall be returned to the District Court of Appeal.

There will be order in the Court. The Clerk had every right to make that statement.

MR. DANIEL: You may inquire of the witness, sir.

MR. MASTERSON: No questions. Thank you very much, Mr. Witness.

MR. NICHOLS: The witness may step down, and I have no objection to releasing the witness from the stand.

CHIEF JUSTICE DREW: You may be excused, Mr. Witness.

(Witness excused)

MR. DANIEL: Mr. Chief Justice, I note that it is real close to the lunch recess, and we do have this file to attempt to stipulate on between counsel. I was wondering

if the Senate might not prefer to adjourn for lunch at this time to give counsel an opportunity to do that.

CHIEF JUSTICE DREW: What is the wish of the Senate?

SENATOR CROSS: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Before you take a recess, do you have any other witnesses that you might present at this time?

MR. DANIEL: The next witness will refer to this transcript, Mr. Chief Justice.

SENATOR CROSS: In view of that, Mr. Chief Justice, I move that we recess for lunch until 2 o'clock.

CHIEF JUSTICE DREW: Without objection, that will be the order, until 2 o'clock.

SENATOR MAPOLES: Mr. Chief Justice.

CHIEF JUSTICE DREW: Just a minute, please.

SENATOR MAPOLES: We have a Senate Rule for 2:30, that we'll adjourn until 2:30.

CHIEF JUSTICE DREW: Unless there is a change by the vote of the Senate. That does not require a waiver of the rules, as the time of recess is primarily a matter for the Presiding Officer. I could declare it without it, but the Senate has ordered it, and I rule it to be properly ordered, until 2 o'clock, not 2:30.

Whereupon, at 12:15 o'clock P. M. the trial was recessed until 2:00 o'clock P. M., of the same day.

#### AFTERNOON SESSION

The Senate reconvened at 2:00 o'clock P. M., pursuant to recess order.

The Chief Justice presiding.

CHIEF JUSTICE DREW: Senators, please be seated. Senator Pearce had to make a long distance call. He will be immediately in the Chamber.

I observe and declare a quorum of this Court to be present.

Mr. Nichols, have you and the House Managers concluded the examination of the last witness?

MR. DANIEL: As far as the witness is concerned, yes sir.

MR. NICHOLS: As far as the witness is concerned, we did.

CHIEF JUSTICE DREW: Have you finished with the file? The Secretary has the file.

MR. NICHOLS: I understand. We have reviewed parts of this file and they have furnished me with the transcript of final hearing, which was rather voluminous. I have not had a chance to check all the materiality of this, as far as the trial is concerned.

Now, we have no objection to the authenticity of this or the identification in any way with this witness that you have had; but this is a long transcript and we say that there are many things involved in this that have nothing to do with the impeachment Articles here and that should not be actually used in evidence.

MR. DANIEL: I would be willing to stipulate - - -

MR. NICHOLS: I will leave it to you, as we go along, as to the materiality and if we have objections at that time, we will make them.

MR. DANIEL: I will be glad to stipulate that we just marked it for identification so that it may be referred to by the witness in testifying.

MR. NICHOLS: I think that is very good.

CHIEF JUSTICE DREW: Do counsel for either the State or the Respondent desire to retain the witness further?

MR. DANIEL: No sir.

CHIEF JUSTICE DREW: For any other purpose?

MR. DANIEL: No sir.

CHIEF JUSTICE DREW: Do you desire to retain the original file for any other purpose?

MR. DANIEL: No sir.

MR. NICHOLS: May I ask that they hold this witness for about an hour here until we get through with the witness that they are now calling to utilize this.

CHIEF JUSTICE DREW: Mr. Witness, you may leave the Court Room.

Do you object to his not being placed under the Rule? He has instructions from his Chief Judge not to let that file out of his sight and I don't want him in contempt of his own Court.

MR. NICHOLS: I am glad to know that other Courts hold people in contempt. Thank you.

CHIEF JUSTICE DREW: You may remain for the time being.

You may proceed.

MR. DANIEL: Your Honor, with respect to the next witness, with respect to the same file that we have been discussing, it was thought that the transcript of the hearing on Motion for Summary Judgment was in that particular file. It was not sent up from the lower court.

I have here a certified copy of it that I would like to tender to counsel to see if he will stipulate in the same manner, merely for identification, so that the witness may refer to it.

MR. NICHOLS: May I cross the room, Your Honor?

CHIEF JUSTICE DREW: Yes sir.

(There was a pause while the document above reference was examined by Mr. Nichols.)

MR. NICHOLS: For the record: With the understanding from the House Managers that this transcript of hearing, which is only seven pages long, contains the entire proceedings, we have no objection to the same, since it has a certificate of the Court Reporter behind it.

MR. DANIEL: The only manner in which I can express that understanding is that I have read the certificate. I was not there when the matter was transcribed.

MR. NICHOLS: I understand that. We likewise, however, stipulate with you as to authenticity, again reserving anything as to materiality.

MR. DANIEL: Agreed.

MR. NICHOLS: The same as the other record.

CHIEF JUSTICE DREW: Without objection, it will be marked for identification as the appropriate numbered exhibit, for identification only.

MR. DANIEL: That is as to all three of these. These are the other two that were referred to.

MR. NICHOLS: There is no need to call the Court Reporter or the Clerk.

CHIEF JUSTICE DREW: They will be marked with an appropriate number for identification only.

MR. DANIEL: At this time, the Managers on the part of the House will call Mr. Howard Rives.

Thereupon,

HOWARD RIVES,

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

DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you state your name for the record, please?

A Howard Rives.

Q Spell you last name, please.

A R-i-v-e-s.

Q Your address, please?

A 1275 Cleveland Street, Clearwater, Florida.

Q What is your occupation or business?

A I am a practicing attorney of Clearwater and have practiced there continuously since February, 1949.

Q Are you admitted to practice in all the Courts of Florida?

A Yes sir, and Federal Courts as well.

Q Have you ever held any official position in connection with being an attorney?

A With the State, you mean? I was Assistant State Attorney for a period of about seven months this past year.

Q Where did you receive your education in the law?

A I attended and graduated from the University of Florida at Gainesville.

Q You graduated in what year?

A February, 1949.

Q You stated that you practiced in Clearwater, Florida; that is in Pinellas County?

A Yes sir.

Q That is one of the counties in the Sixth Judicial Circuit?

A That is correct. Pinellas and Pasco make up the Sixth Judicial Circuit.

Q Are you acquainted with and do you know the Circuit Judges in that Circuit?

A Yes sir, I do.

Q You know Judge Richard Kelly?

A Yes sir, I do.

Q Have you ever had occasion to practice before him in his Court?

A Yes sir, I have had, personally, three cases before Judge Kelly, in which he was the presiding judge.

My firm has had four; I didn't participate in the fourth.

Q Do you recall the style or the Chancery or the Law number of those cases?

A Yes sir. May I refresh my recollection? The first case that I had before Judge Kelly was a lumber company accounting case. The style of the case was Lothridge

vs. Moore. It was a Pinellas County case, upon which Judge Kelly was assigned.

The second case that I had before him was known as Chancery Number 8204; it was a Pasco County case which was assigned to Judge Kelly.

And the third was a case entitled R. H. James, Inc. vs. A. L. Anderson, et al., as Members of the Board of County Commissioners of Pinellas County, which was Chancery Number 64,445.

Q With reference to the last named case - - - James, Inc. vs. Anderson - - - what was the nature of that case?

A Now, with reference to the last-named case, James vs. Anderson, I believe I said that this was a suit for declaratory decree, in which my firm represented the Plaintiffs, who were a class of property owners seeking to adjudicate the validity or invalidity of the 1962 tax rolls of Pinellas County.

Q You say you represented the Plaintiff in that matter?

A Yes sir, I did.

Q Who was the - - - who represented the Respondent, or Defendant?

A The attorney for the Defendant was Page Jackson, who was the County Attorney. May I ask, Mr. Daniel, can you hear me all right?

MR. DANIEL: At any time, if any members of the Court cannot hear, I would be pleased if they would interrupt to let me know.

BY MR. DANIEL:

Q Now, would you, briefly, describe what type of pleadings or papers were filed in this case?

A Are you referring to the taxpayers' suit - - -

Q Yes, James - - -

A - - - for declaratory decree?

Q Yes.

A Well - - -

MR. MASTERSON: Mr. Manager - - - If I may interrupt, tell me, under what Article is this testimony being adduced?

MR. DANIEL: One moment. Articles VII and VIII for two, and I'll look for another in a moment. If the Court please, we'll stand on that for now.

CHIEF JUSTICE DREW: Does that answer your question, or - - -

MR. MASTERSON: That's all right.

CHIEF JUSTICE DREW: You may proceed.

BY MR. DANIEL:

Q I believe my last question was: Will you briefly describe the type of pleadings or papers that were filed in the matter of James vs. Anderson?

A Yes sir. The - - - for the lay members of the Senate, the suit is started, or commenced, by the filing of a complaint. The initial pleading in that cause was the complaint, filed by the Plaintiffs. Thereafter, the Defendant, represented by Mr. Jackson, filed an answer, among one of the grounds being a motion to dismiss, which was incorporated within the answer itself. Those were the initial pleadings filed in the cause.

Q Directing your attention to those pleadings, were any hearings held with respect thereto?

A Yes sir. The case was filed early in August of 1962, and on August 21 a hearing was conducted before Judge Kelly, which was slated to be, actually, a final hearing on the entire cause. It was set for trial for two days. Actually, the hearing was conducted, though, as a motion to dismiss.

Q Now, would you briefly describe the manner in which this hearing was conducted?

A Yes sir. The hearing took place in the Pinellas County Court House, at Clearwater, Florida, on the morning of August 21. It commenced at approximately 9 a.m., and went for, actually, all one day - - - that would be the 21st, and over into the 22nd, for approximately an hour or an hour and a half. The hearing was conducted in the normal manner, as far as the place. The unusual portion about the proceeding, however, was that in this particular instance the norm for a proceeding of this type in our Circuit is to allow the moving party to state his grounds, or to express his motion, and the basis of it, and then to allow the defending party an opportunity to rebut it.

In this particular instance, however, the matter was conducted by the Court's participation of switching the argument back and forth between counsel, which proceeding took approximately five and a half hours on the opening day. That was the method by which it was conducted.

Q Approximately how long would each counsel be permitted to speak before he would be switched to the other counsel?

A The Court himself would regulate, Judge Kelly would stop and use a phrase similar to this: "Stop," "wait," "the pendulum's swung," "what do you say about that, Mr. Jackson?" Or "back to Mr. Rives," back and forth, back and forth.

Q Now, have you participated, in your fourteen years of practice, in hearings on motions to dismiss during that fourteen years?

A Yes sir, quite a number of them, sir.

Q What would be your estimate of the time that this hearing would normally have taken, had it proceeded in a manner which would be normal?

MR. MASTERSON: Objection, Your Honor. We're not concerned here with his estimate of what would be the normal time, we're concerned with what happened in this hearing.

MR. DANIEL: Your Honor, this witness - - -

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: It has been my experience, of course, that the time involved will vary with the nature of the case being presented. By analogy, in this same case, the same, identical motion to dismiss, argued before Judge Richard Leavengood, took approximately a half an hour.

BY MR. DANIEL:

Q In other words, this same motion was later argued before another Judge?

A Yes sir. Judge Kelly was out of the state at that time, on vacation, and the presiding judge assigned, upon joint motion by both the defense and myself, assigned the case to Judge Leavengood to settle the pleadings, which was done.

Q And you state that that took how long?

A My best recollection, sir, it was approximately a half an hour for two motions. There was a motion to strike and a motion to dismiss, argued simultaneously.

Q All right. Now, in the hearing before Judge Kelly, did you have any witnesses appear to testify?

A Yes sir, all of the witnesses that the Plaintiff had planned to use, including an expert witness from First Research Corporation, of Miami, were in attendance, and had been subpoenaed for that hearing, and were compelled, of course, to wait.

Q Were there fees paid in connection with this expert witness?

A Yes, the expert witness was on \$150 a day, plus per diem.

Q And was he ever called to testify in those two days?

A No sir, he was unable - - -

Q What was the amount that you paid him as an expert witness?

MR. MASTERSON: Objected to as utterly immaterial, Your Honor. This is not a matter which goes to the merits of this impeachment.

CHIEF JUSTICE DREW: In the absence of a showing exactly as to who is at fault, the objection will be sustained.

BY MR. DANIEL:

Q Was the cost - - - you stated that this witness was under subpoena?

A That is correct, sir.

Q And as such, were these taxable costs in this matter?

A His expert witness fee at that figure, sir, I do not believe would be a taxable cost.

Q Well, would the normal witness fee - - -

A The normal witness fee would be, yes sir.

Q Were there other costs involved in this hearing?

A Yes sir, local witnesses, were all subpoenaed in the usual form, in the way - - - that is, the tender of one day's witness fee and mileage at the time that they were each subpoenaed.

Q Were they used?

A No sir. One witness was allowed to testify, who was going to leave the state.

Q So that the cost of the witnesses other than the expert witness fee, were taxable costs?

A That's right, sir.

Q Now, who bears this cost, or who bore the cost?

A The Plaintiff has so far.

MR. MASTERSON: Your Honor, this question of the costs is immaterial.

CHIEF JUSTICE DREW: Sustained.

BY MR. DANIEL:

Q Now, subsequent to this motion to dismiss, were there further pleadings filed? If so, what?

A Yes sir. Subsequent to the initial hearing on motion to dismiss, the Plaintiffs elected to amend their complaint and to file an amendment, which was done within approximately ten days. Thereafter, the Defendant filed an answer, a motion to dismiss and a motion to strike. The Plaintiffs thereafter filed a motion for summary judgment,

which summary judgment hearing was conducted on or about December 3 of 1962.

Q Where was that hearing held?

A It was held in the Pinellas County Court House, in the same Court Room which I previously alluded to, the old County Commissioner meeting room in the Pinellas County Court House in Clearwater.

Q Will you describe the Court Room, please, where the hearing was held?

A Yes sir. The Court Room itself is a typical Court Room, divided by a rail, with spectator seats, and at this particular case the room was quite crowded, most of the seats were taken. I would estimate that there were probably somewhere between fifty and a hundred people in attendance at this particular hearing. The Court Room itself is so situated, as is the Judge's Bench, behind me, approximately, and on either side of the Judge's Bench are Chambers, private Chambers, one being for the Court's use.

Q In lay language, "Chambers" amounts to an office?

A Yes sir, it's an office.

Q Now, was the Judge on the Bench when you arrived for that hearing?

A The Judge took the Bench at 9 o'clock. We got there a few minutes early, but he ascended the Bench from the Chambers, he came from the Chambers and took the Bench.

Q Where was the Court file, or was it there?

A The Court file was spread on top of the Judge's desk as the proceeding commenced. It was torn apart and papers scattered around the top of the desk.

Q Now, did the Judge make any reference to the Court file as he opened the hearing?

A Yes sir. He commenced the hearing by stating that he - - - there was a matter to be taken up before we got underway, and that, in essence, was the condition of the motion for summary judgment and attached affidavits which the Plaintiffs in the cause had filed.

Q Where were these affidavits, and how were they attached, please?

A Well, sir, in - - - perhaps, to explain a motion for summary judgment, the Plaintiff has the right to - - - or the moving party has the right to attach, in support of the motion, documentary evidence, affidavits of one of the witnesses, or things that tend to prove an ultimate fact about which you believe there's no dispute.

The motion, in this instance, contained documentary evidence and affidavits themselves. They were authenticated documents, such as Mr. Ray Green, as Comptroller, had certified to the correctness of a tax assessor's manual; that had been affixed to the motion by placing it in a jacket and attaching the jacket to the papers.

All of the papers were stapled together. The affidavits, with their respective exhibits, wherever they were used, had been stapled together, and as an additional fastener - - - at the time of filing, it had been used with a regular slide file staple attachment - - -

Q Sometimes called an Acco fastener?

A Yes sir, an Acco fastener, and that was the condition in which it had been delivered to the Court - - - the Clerk of the Circuit Court.

Q Had copies of these pleadings been served on opposing counsel?

A Yes sir, exact copies had been served.

Q Were they secured in the same manner?

A Yes sir.

Q All right, sir.

Now, what was the Judge's remark with respect to this pleading, or papers?

MR. MASTERSON: May it please the Court, a transcript of this testimony is available, and we feel that that's the best evidence of what was said.

CHIEF JUSTICE DREW: Overruled at this time. You can impeach him with the transcript.

THE WITNESS: The judge's comment was to the effect that the form of the affidavits were in doubt, as far as he was concerned, and the fact that the affidavits had been taken apart, and the statements that he made were to the effect that I had not filed them in the proper form, and the fact that they were taken apart was my fault, and he was soliciting an objection to it from opposing counsel.

MR. MASTERSON: Objection to that conclusion, Your Honor, as to what the Judge was soliciting. It's just the witness' opinion about something. Move that it be stricken.

CHIEF JUSTICE DREW: Granted.

THE WITNESS: I might say that's not an opinion, sir, that's in the record.

BY MR. DANIEL:

Q Did the Judge actually - - -

MR. MASTERSON: Your Honor, I ask that this witness be instructed not to make gratuitous comments.

CHIEF JUSTICE DREW: I think the witness knows that.

BY MR. DANIEL:

Q Did the Judge make any statement with respect to objection to that exhibit?

A Yes, the Judge did, but I have the transcript available - - -

Q Just a moment.

A It's Exhibit D, I believe, sir. May I refresh my recollection by referring to this Exhibit?

Q Is that a transcribed report of the hearing on summary judgment?

A This is an excerpt of the proceedings that were taken on that date by Mr. Gable, who was the Court Reporter then in attendance, yes sir.

CHIEF JUSTICE DREW: Let's get the records straight on that. May I see it?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: This is the State's Exhibit D for identification?

MR. DANIEL: Yes sir.

CHIEF JUSTICE DREW: Very well. You may proceed, sir.

MR. DANIEL: I think, however, that that was the number that the select committee for the House gave it; I don't think that's the number of it at this proceeding. I believe we're going in numerical order. I believe the last that we left off with was 7.

MR. MASTERSON: Was this stipulated into evidence?

MR. DANIEL: I don't think that Mr. Nichols stipulated it into evidence, I think he stipulated it for identification.

MR. MASTERSON: Do you have an additional copy of it, sir?

MR. DANIEL: No, I do not believe so. Would you like to examine this for a few minutes, before I ask questions on it?

MR. MASTERSON: Yes sir, if I may.

THE WITNESS: It is complete, as far as it goes, Mr. Masterson.

CHIEF JUSTICE DREW: What was the last question, Mr. Reporter?

(Last question and answer read)

CHIEF JUSTICE DREW: Was the last question: What was the remark of the Judge at that time?

MR. DANIEL: Yes sir, I believe there was that question.

CHIEF JUSTICE DREW: Would you re-ask your question, please sir?

BY MR. DANIEL:

Q As to whether there were any objections to the motion for summary judgment and attached affidavits, was there any comment from Judge Kelly?

CHIEF JUSTICE DREW: You may answer that question.

THE WITNESS: Yes, there was comment by Judge Kelly.

BY MR. DANIEL:

Q What was that comment?

CHIEF JUSTICE DREW: If you remember what the comment was, you may repeat it.

THE WITNESS: The comment, sir is, of course, officially transcribed in that document which you have. The essence of it, or the substance of it was to the effect that the Plaintiff had improperly filed a motion for summary judgment in improper form, and it was - - - his comment was directed to the form of the affidavits as they were filed, his comments being that the Plaintiffs ought not accept this practice of filing an affidavit in the forms that he had them before him in the Court file - - -

BY MR. DANIEL:

Q You said "Plaintiffs." Do you mean Plaintiffs or Defendant?

A Well, the Plaintiffs, and these particular attorneys ought not to accept that as the authority for the future, and that, if I had to take an ice pick and string and sealing wax and run it together and stick the ice pick through the paper to hold it secure, that's what I had to do to secure an affidavit; that was his comment.

Q With respect to the objection of the affidavit from either party, did the Judge make any comment?

A Yes sir. He asked Mr. Jackson if there was any objection; and Mr. Jackson stated no, that he didn't feel that he was prejudiced by the form of the affidavit; that it had been securely stapled.

Q Did Judge Kelly make further remarks with reference to the papers or the affidavits or the importance of the papers?

A Yes, he made the comment, as I say, that they were very important; that to protect the identity of the affidavit

he made quite a point of the sealing wax episode, and running a string through it. This was in open Court, of course, with the clients and parties litigant. All spectators were present.

Q About how many people were there?

A I would say in excess of fifty, sir.

Q About how long did this sealing wax episode take to its completion?

A My best recollection of the time is that from the time he commenced his discussion of it until he completed it was approximately fifteen minutes.

The transcript which the Reporter made up for me consists of about two and one-half pages of twenty-five lines to the page.

Q Now, did this receive any further notice?

MR. MASTERSON: May it please the Court, whether it received further notice or not is immaterial. That is beyond the control of Judge Kelly.

CHIEF JUSTICE DREW: Objection overruled. I don't know what he is going to say.

THE WITNESS: Yes sir, it did receive publicity. The incident was reported in all the newspapers of the area, somewhat in a humorous vein. I felt like the butt of a joke.

MR. MASTERSON: Now then, I move that the answer be stricken as immaterial.

CHIEF JUSTICE DREW: Overruled. Whatever it was. BY MR. DANIEL:

Q Now, Mr. Rives, I hand you what purports to be - - - well, I hand you the document and ask you if you can identify it? Just yes or no.

A Yes, I can identify it.

Q Without going into the merits, what is that document?

A This document is a clipping that I personally took from the Evening Independent edition, which is a newspaper of general circulation in Pinellas County, on the evening of Monday, December 3rd; reporting the incident which I referred to.

MR. MASTERSON: May it please the Court, I object to any testimony in regard to any article which appeared in a newspaper. First, as being hearsay. Second, as being a matter utterly beyond the control of Judge Kelly. Thirdly, as being outside the purview of this proceeding.

CHIEF JUSTICE DREW: He hasn't reached that point yet. He has just identified what it was. At the proper time I will entertain an objection.

MR. MASTERSON: All right, sir.

MR. DANIEL: To bring the matter to an issue, I will offer the document in evidence at this time.

MR. MASTERSON: I renew the objection, Your Honor, on the same grounds.

CHIEF JUSTICE DREW: I sustain the objection.

BY MR. DANIEL:

Q Now, were there any newspaper reporters among the spectators and parties litigant in the Court Room at the time of this proceeding, the sealing wax episode?

A I think that, throughout the entire proceeding, that there were all of the newspapers in the area, all of the larger newspapers were represented. That would be the Clearwater Sun, the Tampa Tribune, the St. Petersburg

Times and the Independent; all of them covered the hearing that concerned this.

Q Did this matter go on subsequent to this incident to a final hearing in Pinellas County?

A Yes sir, it did.

My best recollection of the date is on or about January 3, 1963.

Q Were further references to the papers or affidavits that you talked about in the Summary Judgment hearing made by Judge Kelly at the final hearing?

A Yes sir, they were.

Q What were those remarks, please?

A At the opening of the final hearing, with Judge Kelly presiding, he instructed - - - at the time we were introducing our documentary evidence - - - he instructed Mr. Jackson and myself to remove the documents that had been attached in the Summary Judgment proceeding from the Court file. And the question was asked by Mr. Jackson to the Court, "Remove them from the file?" He said, "Yes, remove them from the file. They are just a working batch of papers. Let's work with them."

Q This "working batch of papers," was this the same one that should have been sealed with an ice pick and sealing wax at the Summary Judgment hearing?

A Yes sir, they were the same papers.

Q Now, I believe you referred to a Chancery number a while ago.

What was that Chancery number?

A A Pasco County case; Chancery Number 8204. It was an Annulment case.

Q Is there a particular reason for referring to that by its Chancery number, rather than a name?

A Yes sir. One of the parties was a minor, a girl then fifteen, who is still a minor at this time.

Q And you would prefer not to use her name?

A That is correct, sir.

Q Now, what was the nature of this case?

A The proceeding was filed in Pasco County for an annulment, seeking an annulment of a marriage, so that this fifteen-year-old girl would not be expelled from school. She had run off to Georgia and eloped with a twenty-one-year-old boy who was in the military service, and an annulment was sought because the marriage had not, in my opinion, ever been consummated.

Q In your opinion as an attorney?

A Yes sir.

Q It had never been consummated. Did this matter come on for a hearing?

A Yes sir, it came on for hearing before Judge Kelly. It was a Pasco County case but very often we would have a Pasco case heard in Pinellas County if a Judge happened to have free time and happened to be in Clearwater. That was the reason that this particular case had its final hearing at Clearwater, rather than in Pasco County.

Q This was a final hearing, you say?

A Yes sir, it was a final hearing.

Q Would you briefly describe what transpired at the final hearing?

A Yes sir. The proceedings were commenced and the testimony was being taken. And the Court asked me if I knew how to try a Mail Fraud case. And I asked the Court, I said, "Yes, I think I do know how to try a Mail Fraud case" - - - there was a break there in the testimony. And he said, "I didn't ask you if you thought you knew how; I asked you if you knew how to try a Mail Fraud Case." So I told him, "Well, let's assume for argument that I don't know how to try a Mail Fraud case." And his comment then was, "Well, I don't know anything about annulments, either."

Q Was this in the presence of your client?

A Yes sir.

Q What further transpired at that hearing?

A A short time later, at this same proceeding, there was a short break in the testimony and the Court and I had a discussion in regard to the file generally, and especially in regard to the answer which the Defendant had filed in the cause. And I was talking to the Court about the file and the answer and the circumstances of the case, and he stopped me and said, "Hold up your hand and be sworn."

I didn't know what he wanted, but I did; and, thereupon, I was sworn.

And he inquired further and asked me some questions concerning the answer and the preparation of it; and I produced for him a letter which I had written to the boy in the military service; and when I read him the letter, he said, "Well, that exonerates you." Of course, I had no charges placed against me for any reason.

Q You had no charges placed against you to be exonerated from?

A No, this was just a discussion there in Chambers.

CHIEF JUSTICE DREW: I didn't understand what you said his answer was.

THE WITNESS: He said, "That exonerates you."

CHIEF JUSTICE DREW: Oh.

THE WITNESS: I didn't know what for.

BY MR. DANIEL:

Q This was done during the pendency of the examination of witnesses in this cause?

A I don't recall that there were any witnesses in the room at the time. The proceedings had broken down; a few minutes before the young girl became almost hysterical and was taken from the Court Room. I believe the mother was out in the hall with her at the time. I don't recall that the parties were present.

Q Were there witnesses in the room at that time?

A Yes, but - - - one party on the stand and one seated at the table.

Q Now, Mr. Rives, based on your general experience in the practice of law for fifteen years and your - - - strike that - - - have you also practiced before other Circuit Judges in the Sixth Circuit?

A Yes sir, I have had one or more cases before every Judge who has been a Judge of the Sixth Circuit since 1949.

Q I believe you testified that in addition, you had been Assistant State Attorney?

A Yes sir, I was an Assistant State Attorney up until this past August 1st; from January 1st, 1963, to August.

Q Based on that experience in practicing before

Circuit Judges - - - and I will give counsel a chance to object - - - I see that he will in a moment - - - before Circuit Judges in the Sixth Circuit and before Judge Kelly, and, as a practicing attorney - - -

A Yes?

Q - - - do you have an opinion as to Judge Kelly's conduct as a Circuit Judge?

MR. MASTERSON: May it please the Court, whether this witness has an opinion in regard to Judge Kelly - - -

CHIEF JUSTICE DREW: Objection sustained.

SENATOR FRIDAY: May it please the Court, I don't want to unduly prolong the matter, but it would seem to me that the matter of whether or not this witness has an opinion might be well for the Court to consider.

I believe we have the right, from time to time, to discuss the rulings of the Court.

Whether this witness has an opinion or not, it seems to me, would be within the bounds of a reasonable inquiry; and I am wondering if perhaps it might not be better to go into a closed session to discuss it.

On that particular point, I think the witness should be allowed to state whether he has an opinion or not.

CHIEF JUSTICE DREW: Senator, if you desire to appeal the ruling of the Court, you have the privilege of doing that at any time. It is not subject to debate.

As many as support the ruling of the Court, say aye; opposed, no.

The Chair is in doubt. Call the roll.

MR. O'NEILL: May it please the Court, did you rule that the question was not debatable that is to be voted on now, or did you rule that the question of whether opinion evidence would be granted to the Board of Managers and likewise to counsel for the Respondent would not be debatable?

CHIEF JUSTICE DREW: I did not rule that you gentlemen could not debate it if you desire to do so.

MR. O'NEILL: Well, is this a motion on whether opinion evidence is proper with an expert witness?

CHIEF JUSTICE DREW: Gentlemen, you may, if you desire, allow these gentlemen to debate the question or argue the question, and then we will rule on it; or you may rule on it without it, as suggested by Senator Friday.

I think from time to time you will want to appeal the rulings of the Chair and, in any instance where you want to debate the question or you gentlemen want to be heard, I think you have a right to be heard.

SENATOR FRIDAY: Mr. Chief Justice, I would submit to this Court on this question of opinion evidence that the policy that we are about to express an opinion on here is very important to both Managers for the House and to the Respondent in the conduct of their trial; and I suggest to the Court that it might be better to listen to their arguments, a brief argument, in support of their respective positions before we vote on my motion.

CHIEF JUSTICE DREW: Before we have the roll call, Mr. Manager, you may present your argument on the question.

MR. DANIEL: Our contention is simply this, Mr. Chief Justice and Senators:

We have alleged in the Articles that Judge Kelly mismanaged and misconducted his office and that this brought it into - - - let me find the exact words - - - I beg the Court's indulgence for a moment - - - it says that it has

"Been such as to bring his Court into scandal and disrepute, to the prejudice of said Court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such Judge." That allegation precedes every Article.

We maintain that we have qualified this witness as an expert and there has certainly been no objection to that, placed in that form; and he is entitled to an opinion. And we have alleged enough facts in the Article to permit that opinion to be introduced in evidence.

MR. MASTERSON: May it please the Court and members of the Senate;

Traditionally, as lawyers know, in any judicial proceeding the inquiry is for the purpose of determining the facts in controversy; not the opinions of the witnesses. That is immaterial, with the one exception of an expert witness.

I believe a moment ago counsel referred to Mr. Rives as an expert witness.

Gentlemen, there is no such thing as an expert on justice. Mr. Rives is a qualified lawyer, but we are not bringing expert witnesses on how to conduct a Court Room in here. There are no experts in that field.

That is your province to determine; whether or not Judge Kelly has conducted himself properly, and that is to be determined by you on the basis of the facts. Now, if we opened the door at this juncture to opinions of anybody that counsel for the Managers wish to bring in, necessarily you have to open the door to let us bring in those people who think that he is a fine Judge. Now, if you are going to open the door to that, we will be here forever. I submit to you, in fairness and under the law, that the opinions of these witnesses are immaterial and that the Court's ruling is absolutely proper.

MR. O'NEILL: Mr. Chief Justice, I would allude for just a moment to the point made by counsel for the Respondent, Mr. Perry Nichols, in his opening statement to this Court; that he was going to bring the former president of the American Bar Association, Mr. Cody Fowler, and Mr. Baya Harrison here to testify; and that they would testify that Judge Kelly was a good Judge.

That is certainly going to be an opinion. And we are simply eliciting, from a qualified man who has practiced for fourteen years in the Circuit Court of the Sixth Circuit, as to what his opinion is; and certainly, if you will not permit us to show that at this juncture, then they certainly should not be able to show that he has a good Court.

Therefore, I think that this ruling is most important to the proceedings in this cause and that we should be entitled to ask this witness as to his opinion on that Court, after he has been qualified as an expert.

CHIEF JUSTICE DREW: We cannot allow any further argument. I will ask the Court Reporter - - - Senator Friday?

SENATOR FRIDAY: I want to make one thing clear. A moment ago I unfortunately referred to appealing the ruling. I think we have previously resolved this question; but actually, we are not really appealing the ruling of the Presiding Officer. We are amending our own basic decision here. I didn't mean to make that reference a moment ago.

CHIEF JUSTICE DREW: Senator, whatever you call it, that is what it is.

Ordinarily, under the rules, the rulings of the Presiding Judge are the ruling of the Court unless it is submitted

to the Court or any member of the Court requests that they rule on it. You have that perfect privilege.

I would like now to go back to the question which was asked, Mr. Reporter, and will you please read it into the microphone; the last question that was asked the witness.

THE REPORTER: "Do you have an opinion as to Judge Kelly's conduct as a Circuit Judge?"

CHIEF JUSTICE DREW: Call the roll now. Now, if you vote - - -

SENATOR POPE: I would like to ask the Court, if we vote "yea," do we vote to sustain the Presiding Officer?

CHIEF JUSTICE DREW: If you vote "yea," you sustain the Presiding Officer. If you vote "nay," the ruling is contrary to the ruling of the Presiding Officer, and it will allow the admission, and it becomes the ruling of the Court.

SENATOR CROSS: Mr. Chief Justice, a point of inquiry: In determining this, you might vote one way because a proper predicate was not laid, and might be in favor of opinion evidence, and I don't know how we can resolve it in this case. I don't think the proper predicate was laid. I'm not objecting to any opinion evidence of experts.

MR. O'NEILL: Mr. Chief Justice, that's the reason I asked the Court a moment ago if he was overruling, and whether we were voting on the matter of overruling, or whether we were voting on the matter of whether opinion evidence. I made that point, and I want to clarify that before the vote is taken, because I think it's very important, what Senator Cross has just said, to the conduct of this trial.

CHIEF JUSTICE DREW: Gentlemen - - - Mr. Secretary, you will call the roll.

If you vote "aye," you sustain the Chair. If you vote "no," you overrule the Chair, or you substitute your judgment for the Chair's judgment, whichever way you want to look at it.

My ruling was that the question asked the witness, of his opinion, as to whether Judge Kelly was a good judge is an improper question and inadmissible.

SENATOR MATHEWS: Mr. Chief Justice, for clarification of the record, the question the Court Reporter just read to us was simply, do you have an opinion? I don't get it that he's asked him for any conclusion; it calls for a yes or no answer.

CHIEF JUSTICE DREW: Very well, if that is the question that you have, do you have an opinion, I will sustain - - - I will overrule the objection as to whether he has an opinion. I assume it will follow next.

MR. O'NEILL: Mr. Chief Justice, in the interests of simplicity and in the interests of saving time, so that we might proceed, may I suggest to this Honorable Court that a motion now be made to determine opinion evidence, so that we might be guided, and further expedite this trial, which would be of benefit to both counsel, providing the proper predicate has been laid as an expert.

SENATOR CROSS: Mr. Chief Justice, I think that we can expedite this by a short session, closed session. I think - - -

(Cries of "no")

SENATOR CROSS: Well, Mr. Chief Justice, I'll make the motion. I think that it will save time, and that is where it should be argued, I think, because the rules do not permit Members of the Senate to argue anything in open session, and I would like to argue this point, and that was the purpose of the rule, to permit - - -

CHIEF JUSTICE DREW: Will you move that we go into closed session?

SENATOR MAPOLES: Mr. Chief Justice, I would like to make a substitute motion.

CHIEF JUSTICE DREW: State your motion.

SENATOR MAPOLES: That we go ahead and call the vote that is before the Senate, before the Court at this time, that the Judge has already presented, and either vote yes or no on - - -

SENATOR CROSS: Point of order. This takes precedence over all other motions.

CHIEF JUSTICE DREW: I sustain the point of order.

Is there any further debate on the question of the closed session?

Hearing none, as many as favor the Court going into closed session say "aye." Opposed, "no."

Call the roll, Mr. Secretary.

Whereupon, the Secretary called the roll and the vote was:

Yeas—21.

Barber	Gautier	Melton	Whitaker
Blank	Gibson	Pearce	Williams (4th)
Connor	Hollahan	Price	Young
Cross	Johnson (19th)	Roberts	
Edwards	McCarty	Ryan	
Friday	Mathews	Spottswood	

Nays—23.

Askew	Clarke	Herrell	Pope
Barron	Cleveland	Johns	Stratton
Boyd	Covington	Johnson (6th)	Tucker
Bronson	Davis	Kelly	Usher
Campbell	Galloway	Mapoles	Williams (27th)
Carraway	Henderson	Parrish	

SECRETARY FRASER: Twenty-one yeas, twenty-three nays.

So the motion failed of adoption.

SENATOR PRICE: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Price.

SENATOR PRICE: In view of the fast action that's been taken here, I would like to ask that if we're going to have motions put in open session - - here are the rules, and under the rules, Rule 18, a motion put is ordered to be put in the form of writing and to be pronounced by the Presiding Officer.

CHIEF JUSTICE DREW: I must explain to the Senator that at the beginning the Presiding Officer ruled that due to the nature of these questions, and the fact that it would become impossible for any Senator to get the motion up here immediately after the question was answered, that that would be an exception to the rule. I think it would be unfair to the Court and to the Members of the Court if you adhere to that on questions of - - - rulings on questions.

SENATOR PRICE: Mr. Chief Justice, on any matter that comes up then in open session, any Senator does have the privilege to arise for a motion or a question.

CHIEF JUSTICE DREW: To overrule the Chair, in effect, yes sir, to overrule the Presiding Officer.

SENATOR PRICE: On that motion only?

CHIEF JUSTICE DREW: On that motion only, yes sir.

SENATOR PRICE: Any other motions must be presented in writing?

CHIEF JUSTICE DREW: Any other motion or any question must be submitted in writing under the rule.

Now, my ruling is that the question as to whether or not he has an opinion, whether or not he has an opinion as to Judge Kelly's qualifications is overruled, is - - - is sustained.

Now, I assume that you're going to follow that with a question, as to what is your opinion, and under the ruling of the House, that objection to that question has been sustained.

MR. DANIEL: I haven't even asked the question yet, Your Honor.

BY MR. DANIEL:

Q Just for the sake of the record, I'll have to ask you: What is that opinion?

MR. MASTERSON: Objected to on the same grounds.

MR. DANIEL: What are the same grounds? I don't understand the grounds, Your Honor.

CHIEF JUSTICE DREW: That question now has been sustained by the Court, by voice vote.

SENATOR FRIDAY: I believe - - - on the point of order there, I believe that the Court had previously, when the matter was made clear to the question that had been propounded, merely was did this witness have an opinion, and then the Court said that you had - - - the Presiding Officer said that the question had been misunderstood as to its effect, and had reversed his ruling, and had overruled the objection. I then withdrew my previous petition, or question.

CHIEF JUSTICE DREW: Senator, I think the Senate has clearly voted on the question of whether his opinion of whether Judge Kelly was - - -

SENATOR BARRON: Mr. Chief Justice, I would like to say this in this regard - - - may I proceed on a point of personal privilege - - - the remark was very improper.

I feel this, that the question has been asked, as read by the Reporter, was whether he had an opinion. At that time an objection was made, the objection sustained. I then rose and raised my question. Then, when it became evident that the question was simply, did he have an opinion, the Presiding Officer then changed the ruling and overruled.

CHIEF JUSTICE DREW: That is correct.

SENATOR BARRON: And at that time I withdrew my question. Then, the vote we just took was on whether or not we would go into closed session.

CHIEF JUSTICE DREW: Is that the vote we took? Very well, I stand corrected. I have overruled the objection as to whether he had an opinion.

BY MR. DANIEL:

Q All right, sir. Now, just for the record, what is that opinion?

MR. MASTERSON: Objection, Your Honor, same grounds.

MR. DANIEL: I never have understood the grounds.

MR. MASTERSON: Immaterial, irrelevant. The witness is not qualified as an expert on Judges, and this is a subject upon which this body must make a decision, not Mr. Rives.

CHIEF JUSTICE DREW: I sustain the objection for the reason that the ultimate question of whether this man is a proper judge, or has abused his authority, is a question solely for the determination of this Court. On that basis the objection is sustained.

SENATOR CARRAWAY: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Carraway.

SENATOR CARRAWAY: - - - not being a lawyer, I would like to ask the Presiding Officer one question: Does that mean that opinions, either of witnesses, either for the defense or for the prosecution will not be permitted during the rest of this trial?

CHIEF JUSTICE DREW: The same ruling will be made in all cases.

SENATOR CARRAWAY: Thank you.

SENATOR PRICE: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Senator Price.

SENATOR PRICE: - - - under the rules, as explained to us by the Presiding Officer, since we act as both judge and jury, and after such a ruling by the Presiding Officer has been made, that if it be the desire of the Court that to appeal a ruling of the Presiding Officer, proper motion can be made to appeal that ruling - - -

CHIEF JUSTICE DREW: That's correct.

SENATOR PRICE: - - - is that correct?

CHIEF JUSTICE DREW: That's correct.

SENATOR WHITAKER: I would make a motion of that ruling, Your Honor.

CHIEF JUSTICE DREW: A voting on that ruling has been requested.

Now, my ruling is that this witness' opinion as to whether Judge Kelly is a good Judge or a bad Judge is inadmissible, inasmuch as that is an ultimate determination to be made by this Court on the evidence as given you by the State from this stand; a further reason, that there would be no way to ever determine such a question, if you would bring in witnesses from all over the state, it would be merely a case of trying to determine how many were this way and how many were that way.

MR. O'NEILL: If it please the Court, the question would not be as to whether Judge Kelly - - - he has an opinion as to the conducting of a Court, and the question, as stated by the Court, is not the question asked now to be determined. If the Court Reporter will read it slowly, so that you can hear it. It's not the question before this body.

CHIEF JUSTICE DREW: Will the Court Reporter read the question again.

SENATOR STRATTON: While we're waiting, may I ask a question, or make a statement?

CHIEF JUSTICE DREW: Under the rules in this session, in open session, I think we have violated the rule enough so far, and under the rule, I think we had better hear the rule at this time, and if the Court wants to discuss it, I think the Court can go into closed session.

SENATOR STRATTON: Can I ask a question?

CHIEF JUSTICE DREW: Yes sir.

SENATOR STRATTON: Is it necessary to have a precedent to go by in a case like this?

CHIEF JUSTICE DREW: Well, the precedents that we go by are the rules of evidence.

SENATOR STRATTON: Well, I point out, and I beg the Court's pardon, but in the Holt trial, he was condemned by one side and honored by the other. It was brought out openly what the witness thought of him.

CHIEF JUSTICE DREW: Will you read the question?

MR. DANIEL: Your Honor - - -

CHIEF JUSTICE DREW: The Court Reporter says it will take some time to find the question. Perhaps counsel can restate the last question.

MR. O'NEILL: The Court's question, I think, is what the Court Reporter was looking for, Your Honor.

CHIEF JUSTICE DREW: No, I'm asking for the last question he asked.

MR. DANIEL: To paraphrase it, Your Honor - - - well, I think it would be better if he found it, rather than have me paraphrase it.

MR. O'NEILL: Mr. Chief Justice, I would like to clear up a point.

CHIEF JUSTICE DREW: All right.

MR. O'NEILL: Wasn't the question just before the roll was to be called, the question, as placed before the Court, as to the question of opinion, at which time I said that I believed that the question was erroneously phrased, because it didn't clarify the issue here at hand, and asked that the Court Reporter be instructed to read what the Chief Justice had said, that the motion was that they were voting upon at that time.

CHIEF JUSTICE DREW: The Court Reporter will read the last question.

(Last question read)

MR. O'NEILL: Before that - - - of course, that was based on a preceding question, that's based on a preceding question which I asked him, I believe the foundation was laid for this question.

SENATOR CROSS: Mr. Chief Justice, I think it would be helpful to us to know the question prior to that question, the foundation which he laid for the question; that's what worries me.

CHIEF JUSTICE DREW: The question we were discussing, as I understand it, gentlemen, the witness was testifying as to certain proceedings before the Judge, and he asked, the counsel for the Managers asked if he had any opinion - - - if he had an opinion as to whether or not Judge Kelly properly conducted that trial, or his opinion of Judge Kelly in the conduct of that trial. Is that not correct?

MR. DANIEL: Not that particular trial, no sir.

CHIEF JUSTICE DREW: All right, will you please tell me what it was?

SENATOR ASKEW: Mr. Chief Justice, I have noticed that the Court Reporter, every time we talk, he's stopping and taking everything down, and if we don't stop talking long enough, he'll never go back, never have a chance to go back and find the question, and I suggest that everybody stop talking long enough to give him time to go back and find it.

CHIEF JUSTICE DREW: Does the Court want the preceding questions, all - - - three or four questions?

SENATOR ASKEW: I just want them to stop long enough so that he will have time to go back and pick it up. If we talk, he has to keep picking up everything we say.

CHIEF JUSTICE DREW: He has read the last question, and that was, what is your opinion.

MR. O'NEILL: Your Honor, if it please the Court, if I might try to clarify it, the question was asked by the Board of Managers, and it was objected to. There was then about to be taken a vote on behalf of this Court, the Senate, sitting, and a roll call was about to be made, and

before that happened, the Chief Justice stated a question, and the question that was stated was what was going to be voted on at that time, not a question of the Board of Managers, but a question that the Court had placed; that question is what we're going to have voted on, and that's what we need to have read.

CHIEF JUSTICE DREW: I understood the House voted - - - Mr. Nichols.

MR. NICHOLS: Mr. Chief Justice, I concur with one of the Senators; we ought to give the Reporter time. Each one of the Managers - - - within thirty seconds after it's said, even the Managers start talking, and this Reporter has to lay everything down and take down what the Managers say when they start talking; so, he'll never be able to get it for us, and I think - - -

CHIEF JUSTICE DREW: Court will take a five-minute recess.

Whereupon, at 3:08 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 3:13 o'clock P. M.

A quorum present.

Senator Cross moved that the Senate go into closed session, permitting the court reporters to remain present.

Which was agreed to.

Whereupon, at 3:17 o'clock P. M., the Senate closed its doors.

Senator Cross moved that the records of the proceedings of the Senate with doors closed be made public upon the doors being opened.

Which was agreed to and it was so ordered.

Proceedings of the Senate with doors closed:—

Senator Pope asked for the following order:

ORDERED: That the Senate uphold the ruling of the Chair sustaining an objection to the admissibility of opinion evidence sought to be elicited from a witness by a House Manager.

Senator Pope moved the adoption of the order.

A roll call was requested and upon call of the roll the vote was:

Yeas—35.

Askev	Cleveland	Herrell	Pearce
Barber	Connor	Hollahan	Pope
Barron	Covington	Johns	Roberts
Blank	Davis	Johnson (19th)	Stratton
Boyd	Edwards	Johnson (6th)	Tucker
Bronson	Galloway	Kelly	Usher
Campbell	Gautier	Mapoles	Williams (27th)
Carraway	Gibson	Melton	Young
Clarke	Henderson	Parrish	

Nays—9.

Cross	Mathews	Spottswood
Friday	Price	Whitaker
McCarty	Ryan	Williams (4th)

So the order was adopted.

Senator Cross moved that the doors of the Senate Chamber be opened and the doors were opened at 4:00 o'clock P. M.

Senator Spottswood was excused from attendance upon the remainder of the Session for the purpose of attending the State Association of County Tax Assessors Conference in Key West, at which he was to be the main speaker.

CHIEF JUSTICE DREW: Mr. Manager, according to the Reporter, the last question was - - - we will start with this: "Do you have an opinion as to Judge Kelly's conduct as a Circuit Judge?" The witness will be permitted to answer the question as to whether he does have an opinion as to Judge Kelly's conduct as a Circuit Judge.

MR. DANIEL: Do you have an opinion as to that, Mr. Witness?

THE WITNESS: Yes, I have an opinion.

MR. DANIEL: What is that opinion?

MR. MASTERSON: I object to that question, Your Honor.

CHIEF JUSTICE DREW: The objection is overruled.

MR. DANIEL: What is that opinion?

MR. MASTERSON: I object to that question, Your Honor. Shall I state my grounds again?

CHIEF JUSTICE DREW: Yes.

MR. MASTERSON: I object to that question on the ground that the question requires an answer that is immaterial and irrelevant to these proceedings. I object to the question on the ground that it requires this witness to decide the fact which is in controversy here, and that is your province, the Senate's province.

CHIEF JUSTICE DREW: I sustain the objection. To the question in its present form, the objection is sustained.

SENATOR WHITAKER: Mr. Chief Justice, will there be a vote announced on that? I believe the Senate voted on that, and I was just curious as to whether that vote would be made public.

CHIEF JUSTICE DREW: Yes, I think the vote was 35 to 9.

SENATOR WHITAKER: I had a motion pending, asking for a vote before we went into closed session, that is why I brought it up.

CHIEF JUSTICE DREW: We will see that it is in the record.

SENATOR WHITAKER: All right, sir.

CHIEF JUSTICE DREW: It will be in the Journal.

MR. DANIEL: Mr. Chief Justice, not knowing, of course, what transpired in the closed session, I shall frame another question:

BY MR. DANIEL:

Q Do you, Mr. Rives, based upon your experience before Circuit Judges in Pinellas County, during fourteen years as an attorney, have an opinion with respect to the manner in which Judge Kelly conducted hearings and trials?

MR. MASTERSON: The same objection. The opinion would be inadmissible.

CHIEF JUSTICE DREW: In the form asked, the objection to the question is sustained.

MR. DANIEL: I am not attempting, may it please the Court, to take liberties with the Court. As I explained to the Court, I know not what went on during the executive session. But we are in an uncharted ocean to the extent of setting the rules of evidence, if that be the Senate's pleasure; and my asking another question does not in any way reflect any opinion of mine on the Court or the opinion of the Chief Justice.

CHIEF JUSTICE DREW: You may ask your question.

BY MR. DANIEL:

Q Do you have an opinion which you can state with respect to the manner in which Judge Kelly conducted the hearings that you have testified to?

MR. MASTERSON: Objected to on the same grounds. We are not here to determine what Mr. Rives' opinion is. We are here to get at the facts.

CHIEF JUSTICE DREW: The objection is sustained. If you wish to ask a question as to whether he knows the reputation of Judge Kelly, among the Bar and in the community, as to the manner in which he handles his cases, such a question would be permissible.

MR. DANIEL: I thank you, Mr. Chief Justice.

BY MR. DANIEL:

Q Do you have an opinion as to the reputation of Judge Kelly among the Bar and among the public in the Sixth Circuit?

MR. MASTERSON: I object to the question on the ground that it is necessarily an opinion and it has to be based on rumor and hearsay; and, furthermore, it goes to the matter which must be decided by this body on the facts of these individual cases; not upon Mr. Rives' opinion or upon anybody else's opinion. That is what this body is to decide on the facts.

CHIEF JUSTICE DREW: The objection is overruled.

MR. DANIEL: Would you answer the question yes or no.

THE WITNESS: May I ask the Reporter to please read the question.

THE REPORTER: "Do you have an opinion as to the reputation of Judge Kelly among the Bar and among the public in the Sixth Circuit?"

THE WITNESS: Yes, I have an opinion.

BY MR. DANIEL:

Q Would you state it, please?

A Yes sir. The question is - - -

CHIEF JUSTICE DREW: The question was do you know his reputation or does he have an opinion?

BY MR. DANIEL:

Q Do you know the Judge's reputation in the Sixth Circuit, among the Bar and among the public?

MR. MASTERSON: Well, among what Bar and what county, sir?

MR. DANIEL: In the Sixth Circuit.

MR. MASTERSON: There are two counties and any number of Bar Associations in that area.

MR. DANIEL: Are you objecting to my question?

MR. MASTERSON: I am. I want it clarified.

CHIEF JUSTICE DREW: He limited his question to Pasco County, as I understand it.

MR. DANIEL: I said the Sixth Circuit.

CHIEF JUSTICE DREW: The Sixth Circuit.

MR. DANIEL: The witness has testified, Your Honor, that he practiced in the Sixth Circuit, both in Pasco County and in Pinellas County.

MR. MASTERSON: Your Honor, I feel that an im-

proper predicate has been laid in that he has not established that this witness is familiar with both of the counties involved. He practices in Clearwater, Florida, and he has got to establish that he is familiar with the entire area involved.

CHIEF JUSTICE DREW: Overruled.

BY MR. DANIEL:

Q Now, would you please answer that yes or no?

A Yes.

Q What is that reputation?

A The reputation that Judge Kelly has?

MR. MASTERSON: Objected to unless he states that it is good or bad.

CHIEF JUSTICE DREW: Sustained.

BY MR. DANIEL:

Q What is that reputation? Good or bad?

A Bad, as to the conduct of the proceedings. That was the question, was it not?

Q Yes sir.

A As to the method. Now, that is what you are asking.

MR. DANIEL: You may inquire.

#### CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Rives, you have mentioned - - - you have given an answer here in regard to how his reputation is with reference to the conduct of proceedings.

Do you know whether he has a reputation otherwise, for instance, as to diligence?

A You are asking my opinion?

Q No sir, does he have a reputation for being a diligent Judge?

A I would have to qualify the answer. I know that there are those who think that Judge Kelly is quite diligent; and, to my knowledge, he is not a laggard.

Does that answer your question?

Q Yes sir.

Now, you have mentioned two law suits - - - the Anderson suit and the one where you prefer not to have the name of the party mentioned - - - in which you had a problem. Now, in this Anderson suit the Court was concerned, was it not, with the sufficiency of your Motion for Summary Judgment?

A Well, I testified as to two hearings, Mr. Masterson. Which hearing do you refer to?

Q I am directing my inquiry to the motion which was filed for a Summary Judgment.

A The Motion for Summary Judgment?

Q Yes sir.

A Yes, that would be the ultimate item to be determined; whether or not a Summary Judgment should or should not be granted.

Q What the Court was concerned about, with reference to that law suit, was the fact that a supporting affidavit had in some manner become separated from the Motion?

A He said he took them apart.

Q I didn't ask that question, Mr. Rives. I asked you if that was what the Court was concerned about - - - the separation of the supporting affidavit from the motion?

A Yes sir, but he said he took them out of the file - - -

Q It doesn't matter who took them apart, Mr. Rives. I am inquiring as to whether that was what the Court was concerned with - - - that the motion which had been filed, and that separated from the motion in some fashion was the affidavit?

A He discussed that in his commentary on the case, yes sir.

Q That was the point involved, wasn't it?

The affidavit had become separated from the motion and he didn't like that?

A Yes sir, because he stated he took them out of the Court file.

CHIEF JUSTICE DREW: You may answer the question and then later explain, if you wish.

BY MR. MASTERSON:

Q Now, he is a stickler for the form of the pleadings, is he not?

SENATOR HERRELL: Mr. Chief Justice, would you instruct counsel for the Respondent to talk a little louder so that we can hear him?

BY MR. MASTERSON:

Q The Judge is a stickler for the form of pleadings, is he not?

A He has been with me. Yes sir.

Q The question in this case, that you have talked about here, that the form was insufficient, according to the Judge?

A That was his own statement.

Q He said that in the future you should take precautions to make certain that the motion and the affidavit did not become separated; and if necessary, by way of illustration, he said to take an ice pick and tie them together?

CHIEF JUSTICE DREW: If you will pull the microphone a little closer to you, please, I think they all can hear.

BY MR. MASTERSON:

Q Here he was emphasizing the point that he wanted the motion and affidavits kept together, is that not right?

A No sir.

Q That is not right?

A No sir.

Q Moving on to the next point, sir: You mentioned another case, that - - - this was the annulment case, that he directed the remark to you about the fact that - - - he inquired, I believe, whether you knew how to try a mail fraud case?

A That is correct.

Q And you said, "Well, let's assume that I do not"?

A Yes sir.

Q And he said to you, then, "Well, I know how to - - - I don't know the law in an annulment case," or something to that effect. Is that correct?

A Yes sir.

Q Is it fair to say, then, Mr. Rives, that surely this remark was made to point out to you that he wanted some guidance from the lawyers involved on the law of annulment.

MR. DANIEL: I object, Your Honor, on the ground that he's using the Respondent's own ground to recall the quotation.

MR. MASTERSON: I will withdraw the question.

BY MR. MASTERSON:

Q I think, Mr. Rives, you mentioned that in this same case Judge Kelly took you into Chambers, and he said, before a Court Reporter, that he was going to inquire into whether or not you were representing both parties in the lawsuit. Is that correct?

A In substance, Mr. Masterson. I don't have the transcript of the testimony.

Q What - - -

A He asked me to be sworn, so as to testify to him concerning an answer that the Defendant had filed in the case.

Q That's what he was getting at; he was concerned about whether or not you were, possibly, representing both parties?

A I think so, yes.

Q And I want to ask you this, Mr. Rives: It is improper for an attorney to represent both parties, is it not?

A If it has been done, but he didn't ask me about that, sir.

Q But that is improper, and isn't it also proper, if the Court has any reason to feel that this might be the case, to inquire into it?

A It's unusual in the manner in which he did it, Mr. Masterson.

Q But it is the duty of the Court, is it not, to inquire into it, if there's any question about it?

A Well, I can't argue with you about it.

Q Well, you - - -

A I think I would be argumentative.

Q Would you agree with me?

A Do I feel it's the duty of the Court to supervise its proceedings?

Q Yes sir.

A I think it's reasonable to say that is the Court's duty, if there's been a substantial indication, or if his inquiry leads him to believe that something is wrong.

Q And during this procedure you had a Court Reporter present, and all of your rights were fully preserved in that regard, is that not true?

A My recollection is that the Court Reporter was sitting there. I don't recall he was taking any testimony. It was during a break between the testimony, but there was a Reporter present in the room, as I recall it; and that was the letter that I referred to, ultimately I showed him the letter.

CHIEF JUSTICE DREW: Did the Defendant in that case file an answer?

THE WITNESS: Yes, sir, he did, Your Honor. He filed an answer, and also had filed a stipulation for the hearing

to be conducted in Clearwater on that particular date, and he had filed that in persona.

CHIEF JUSTICE DREW: Was it developed whether or not he was represented by counsel?

THE WITNESS: Yes, he had no counsel as such, except his base legal officer and the Legal Aid Society in Boston had also assisted him with it, with the case.

BY MR. MASTERSON:

Q Mr. Rives, who did prepare it?

A I prepared the answer.

Q And that was on the same typewriter, is that right?

A I would like very much to read my letter to him; and I told the Judge how the answer had gotten there.

Q Mr. Rives, please understand, we're not questioning your integrity in the matter - - -

A Well, but I want you to understand, Mr. Master-son, so I can answer you.

The answer - - -

Q Well, now - - -

A - - - And I - - - please let me explain.

CHIEF JUSTICE DREW: Please explain.

THE WITNESS: Please let me explain my answer. I told Judge Kelly that I had written a letter to the Defendant, explaining to him the filing of the suit, and sending him a copy for discussion with his base legal officer, so he would know the form of a Florida procedural answer.

BY MR. MASTERSON:

Q Well, what had happened was - - -

A This is what I told him, and I was the one that told the Court that the boy had signed and returned the answer which I had sent up, one copy.

Q Well, what gave rise to the whole situation was that the complaint and answer were prepared on the same type stationery, on the same typewriter, and that the Judge wanted to find out more about that?

A No sir, it developed that I told him that I had filed that. I told him that, Mr. Masterson.

Q And he wanted to know more facts about that?

A That's right, but he swore me, and insisted that I testify, as such.

Q As part of his judicial interest in the matter?

A That's your interpretation.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Any further questions?

#### REDIRECT EXAMINATION

BY MR. DANIEL:

Q Are you an officer of the Court, as an attorney?

A Yes sir.

Q And you had stated to him exactly how the answer happened to be prepared on the same typewriter?

A Yes sir. I told him - - - I volunteered it to him, and also, further told him that the boy had come to my office and had asked to sign a stipulation to allow the case to be heard in Clearwater, rather than in Pasco County,

and waiving a notice of hearing, all of which was told to Judge Kelly.

Q And you wrote the boy a letter - - -

A Yes sir.

Q - - - advising him to consult with his base legal officer?

A Yes sir. I have a copy of it with me, if you would like to see it, sir.

MR. DANIEL: I think it might be important.

MR. MASTERSON: Your Honor, that's an extraneous issue, what he wrote to this boy, a note about this particular lawsuit; there's no materiality to these proceedings.

MR. DANIEL: I didn't bring it up, the Respondent did.

CHIEF JUSTICE DREW: Do you offer the letter in evidence?

MR. DANIEL: Yes sir.

CHIEF JUSTICE DREW: Admitted. Do you have it?

THE WITNESS: I have a copy of it.

BY MR. DANIEL:

Q Will you testify that that is an exact copy of the letter that you sent Judge Kelly?

A This is an exact - - - not to Judge Kelly, now - - -

Q I mean to the - - -

A - - - to the party involved, yes.

Q And that's an exact copy of the letter that you read Judge Kelly?

A That's correct, this is the copy - - -

Q Would you read that letter, please?

A - - - that I have in my file for such purpose - - -

Q Would you read the letter, please?

A Yes sir.

The letter is dated October 16, 1961.

May I omit the names of the parties?

It's addressed to Recruit M. W. Stell, Jr.; his address:

"Dear Mr. - - -

CHIEF JUSTICE DREW: Will you read a little louder, please, Mr. Witness?

THE WITNESS: Yes sir.

"Dear Mr. Stell:

"On behalf of Mrs. blank and blank, I have caused to be filed in Pasco County, Florida, on October 6, 1961 an appropriate action for the annulment of a marriage ceremony which I am advised took place in Georgia between you and blank. In accordance with procedure, it has been necessary for me to publish a notice in a newspaper published in Pasco County, Florida, and for your information I am enclosing a photo copy of the advertisement that is currently running. The Clerk of the Circuit Court in Pasco County will have mailed to you a copy of the Complaint and a copy of the notice as is required by law in such cases, to your last known address at the time suit was filed. In the event you have not received the papers from the Clerk I am enclosing to you exact copies of the papers filed.

"I will in this letter express to you my views in regard to this case, but I want you to understand that I do not wish you to rely on my advice, since I represent the adverse party, and you should discuss this with your base officer or a lawyer of your own choosing.

"First let me say that I believe that under the circumstances of this marriage as I understand them, neither of you could probably make the marriage work, and that at the present time the same could be terminated by annulment as distinguished from divorce, which is a far better proceeding than to perhaps have this marriage go astray at a future date. I further feel you are much too young to be saddled with the responsibilities of a wife and, of course, if marriage continues, a family, and at the present time the marriage could be severed without undue harm to either of you. Marriage is known in the law as a 'transitory action' in that it will follow the residence and domicile of the parties, and in this case either party, and in the case of this nature we are permitted to file it in a county other than that where the parties reside if we wish to do so. Since Miss blank is so young and still is in school here, it is definitely far better taste that the proceeding be conducted beyond the home town atmosphere. Hence we have selected Pasco County, which is adjacent, but more rural than where persons of idle curiosity would be so apt to follow the proceeding.

"There is an additional reason for use of annulment rather than divorce, and that deals with your future lives from a religious standpoint. An annulment proceeding is one that seeks the declaration that no valid marriage has taken place. If either of you are Roman Catholic or should marry one, the use of annulment would not offend the hierarchy of the Pope. Frankly, I am not Catholic and know little of the exact tenets of the church, but if you are, or think you might ever wish to marry a Catholic, I think you should definitely discuss this with a Priest.

"There is an additional factor now in the case, and that is, of course, that you are now in the Military Service of the United States and on active duty. As such you are entitled to the benefit of the Soldier's and Sailor's Civil Relief Act of 1940, which affords you some areas of protection for suits against your consent. Your Base Legal Officer can, of course, explain these items to you, and you may weigh them in reaching a decision; however, as a part of this action as we have it, there would be no duty on your part to support Miss blank, nor would there be any present or future alimony obligation, which from the standpoint of a man is a very important matter in any domestic case.

"A party who is a defendant in a lawsuit may file an Answer and submit himself to the jurisdiction of the Court, either in person or if he chooses, by the appointment of an attorney in the area. The primary purpose, however, in this instance, is to insure compliance with procedural law and to make certain that when the court issues a decree of annulment, as we expect them to do, that you and Miss blank will know that it has been properly done, and that neither of you could hereafter question the court's action. For this reason I am assuming that you will have no objection to the annulment proceeding, and that with full knowledge of the fact, and after discussion with counsel of your choice, that you would be willing to file a pleading in the case and allow the matter to proceed to final hearing. Assuming once again that the court enters a decree granting the annulment, we would furnish you, or such person as you might designate, with a certified copy of the Order. If you see fit to file the Answer in the form which I am submitting, or anything similar to it, the case can then proceed onto final hearing without undue delay.

"Please advise me if you should have any questions,

or should any attorney you consult wish further information.

"Very sincerely yours"

This was the letter which I showed to Judge Kelly at the time that I told him about the matter.

CHIEF JUSTICE DREW: For the record, the witness is reading from State's Exhibit Number 9, for your records.

MR. DANIEL: Yes sir.

MR. MASTERSON: Is that in evidence now? Did you offer it in evidence?

MR. DANIEL: I understood that the Chief Justice had admitted it.

CHIEF JUSTICE DREW: It is admitted.

(Whereupon, the above referenced document was received and filed in evidence and marked Managers' Exhibit Number 9)

BY MR. DANIEL:

Q Now, with respect to the episode, to clarify one point that was brought out on cross, were you ever given an opportunity to advise the Court that you had not separated the papers?

A Yes sir.

Q And you had fastened them and attached them in the manner you described on your direct examination?

A Yes sir. I asked, in the transcript, to let me see, and I told him at that time that I had securely fastened them, and suggested that perhaps the Clerk might have taken them apart. In Pinellas County the records are microfilmed, and sometimes, in the handling of a Court file, the Clerk himself will take it apart for the record; and that's part of the procedure.

Q But did the Court still make reference to your stapling machine?

MR. MASTERSON: Objected to as leading.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Would you state your question again?

BY MR. DANIEL:

Q But did the Court still make further comment with respect to the pleadings?

MR. MASTERSON: And repetitious.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: The Court made the statement after I - - - about the sealing wax, and went into the sealing wax episode after I had told him of the condition and form in which the affidavits were filed.

MR. DANIEL: All right, sir. You may inquire further.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Mr. Witness, Senator Mapoles has asked the Presiding Officer to ask the witness the following question:

"During your term as State Attorney did you practice under Judge Kelly, and if so, did you have any difficulties or misunderstandings with Judge Kelly?"

THE WITNESS: To answer the Senator's question, I did not ever practice as an Assistant State Attorney under Judge Kelly. I was in Pinellas County, and primarily

with Judges Bird, McNulty, Driver and others, but not under Judge Kelly.

CHIEF JUSTICE DREW: You did not practice under Judge Kelly?

THE WITNESS: No sir.

CHIEF JUSTICE DREW: Senator Stratton - - -

SENATOR STRATTON: My question has been answered.

CHIEF JUSTICE DREW: Your question has been answered.

Any further cross?

MR. MASTERSON: No further cross, sir.

CHIEF JUSTICE DREW: No further direct?

MR. DANIEL: No sir.

CHIEF JUSTICE DREW: You can proceed. Call your next witness.

THE WITNESS: May I ask, Mr. Chief Justice, may I leave, subject to being recalled at the convenience of either party?

MR. MASTERSON: That's satisfactory to us.

MR. DANIEL: Satisfactory to us for the Managers, yes sir.

MR. NICHOLS: Could we just have the witness' phone number, so that we could phone him - - -

MR. DANIEL: I have that in my office. It's available to you at any time, sir.

MR. NICHOLS: Thank you for your kindness.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. DANIEL: In view of the hour, I'll call a witness that I hope will not take very long on the stand.

Will you call Mr. Jack Page.

Thereupon,

JACK PAGE,

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

MR. MASTERSON: Mr. Daniel, may I inquire as to which Article this witness is called on to substantiate?

MR. DANIEL: Articles VII and VIII.

MR. MASTERSON: And is this one of the witnesses, is this one of the incidents that was set out in the bill of particulars that was served upon us this morning?

MR. DANIEL: We have no bill of particulars.

MR. MASTERSON: The amended bill of particulars.

MR. DANIEL: We have no amended bill of particulars; withdrawn.

CHIEF JUSTICE DREW: They have been withdrawn. You may proceed.

MR. DANIEL: Thank you. Do you have any further comment?

MR. MASTERSON: Yes, we do. We object to any testimony by this witness, on the ground that it's a surprise. The material in the bill of particulars which was furnished to us this morning does not give us sufficient time to prepare, and we feel that this testimony should not be received at this time.

CHIEF JUSTICE DREW: The objection is overruled at this time. I don't know what the witness is going to testify to; no member of the Court does.

#### DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you state your name, please?

A Jack Page.

Q Where are you from, Mr. Page?

A St. Petersburg, Florida.

Q What is your profession or occupation?

A I am an attorney.

Q How long have you been an attorney?

A Approximately four years.

Q Have you practiced in St. Petersburg during that period of time?

A Yes sir.

Q I call your attention to the style of the case, Williams vs. Woodman, and ask if you are familiar with that particular case?

A Yes, I am.

MR. MASTERSON: May it please the Court, none of this - - - nothing in this case which has just been cited was before the House, it's not part of the Articles of Impeachment. It's new matter being introduced into this Court at this time, and we respectfully submit that it should not be considered by this body.

MR. DANIEL: I would like to be heard - - -

CHIEF JUSTICE DREW: Overruled. I don't know that I can except a thing that wasn't before the House. There's nothing before us. You may proceed.

BY MR. DANIEL:

Q Were you an attorney in this case that you've just stated you were familiar with?

MR. MASTERSON: Your Honor, may I direct questions to this witness, to determine whether or not he was before this House?

CHIEF JUSTICE DREW: Let's wait until we get to it. You'll have the opportunity.

THE WITNESS: Yes, I was an attorney in that case.

BY MR. DANIEL:

Q Which party did you represent?

A I represented the Plaintiff.

Q Who was opposing counsel?

A Mr. William Kaleel, Sr.

Q What was the nature of this action?

A This was an automobile negligence action.

Q Did it come on for a hearing in a preliminary hearing before Judge Kelly?

A Yes sir.

Q What was the nature of the hearing?

A This was to be a jury trial before Judge Kelly; that is, we got as far as the preliminary hearing before the jury trial.

Q Did it go on to a jury trial before Judge Kelly?

A No sir.

Q What prevented it from going to the jury trial?

A I took a non-suit in this case.

Q Would you state the circumstances that caused you to take a non-suit?

A At the time I notified a very essential witness of the trial date, namely, the physician involved in the suit, I received a call from Dr. Wallace, the physician, and as a result of my conversation with Dr. Wallace, I found that Dr. Wallace would not be available on, not only the trial date, but the whole trial week.

Therefore, I got in touch with Mr. Kaleel, I had a conversation with him. As a result of this conversation I - - - we decided on a joint motion for continuance, based upon the unavailability of a very essential witness. Do you wish me to proceed?

Q Did you take this motion for a continuance, or agreement on a continuance, before Judge Kelly?

A Yes sir.

Q Did he rule on the same?

A Yes sir. He declined to allow a continuance.

Q Did he state his reasons?

A Yes sir. He said that the cost of maintaining the judicial system was so high, and that he was - - - found he was spending a large portion of his time unoccupied, with nothing to do. He wanted to keep the calendar covered. He felt that, except on, perhaps, very unusual circumstances, no continuances should be granted, nor would be granted in his court.

Q Were there other cases set for trial the same week?

A Yes sir.

Q Do you remember how many there were, or the condition of the docket that week?

A As I recall - - - and I'm not too sure, but I think there were six or seven cases, of which mine was the second in line.

Q Did he make any request of you, or request you to perform any acts by which it would be necessary for you to proceed to the trial of this case?

A Yes sir, he suggested several alternative courses of action, and requested that I pursue them.

Q Would you state those alternatives, and what your action was with respect to each?

A He wanted to see if any other physician was available who could testify in this cause. He wanted to see, specifically, whether Dr Wallace's partner, Dr. Keeler, knew enough to testify in this cause. He - - -

Q Did you attempt to determine that that doctor knew enough about this cause?

A I talked with Dr. Keeler, and as a result of my conversation, I reported back to Judge Kelly that he knew nothing of this particular cause, or of my client, and would be unable to put in any testimony.

Q Did he then make a second alternative suggestion, Judge Kelly?

A Yes sir. He then suggested that another doctor, who - - - any other doctor be called in to examine my client and serve as the physician in the case.

Q Did you attempt to acquiesce to this suggestion?

A Yes sir. I talked this matter over with Dr. Wallace,

and as a result of my conversation with Dr. Wallace, I was forced to report back to Judge Kelly that the damage at this time, at the time of the trial, or shortly before, was in the soft tissues, that there was no - - -

MR. NICHOLS: I object to the relating of the condition or situation involved in a personal injury case. It has nothing to do with the issues involved here.

MR. DANIEL: Your Honor, he's stating what he said to Judge Kelly, as to why he could not comply with an alternative request.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: In that any examination of my client at that time, without the benefit of a prior examination, would be worthless; that a physician, in that instance, would be unable to testify as to whether there really had been injury or whether there really was injury to the soft tissue; or whether there was hysteria or something of that nature.

Q Were there further alternatives suggested by Judge Kelly?

A Yes sir, he then demanded or suggested strongly that a deposition of Dr. Wallace be taken.

Q How long was this before the actual trial date?

A This was one week, as I recall, before the trial date.

Q Did you agree to take the deposition or attempt to take the deposition?

A I objected strongly because I felt that a deposition would pretty well ruin my medical testimony in such a close case.

Q Now, just for the benefit of any of us who might not know what a "deposition" is, would you briefly state what a deposition is?

A This is the process of bringing in - - - in this case, the doctor before the opposing counsel; putting the doctor under oath, and asking him substantially the same questions which we would at trial; and allowing to opposing counsel the usual right of cross examination.

Q But it would be not before the Jury or the Court?

A No sir. The transcript would be read - - - the deposition would be read into the record of the Court at the time of trial.

Q Much the same as if I had taken your testimony in St. Petersburg and had read it to the Senate here?

A Yes sir.

Q Now, did you go ahead and attempt to take the deposition, notwithstanding your serious objection?

A Yes sir, I made every attempt, but I found that opposing counsel and my doctor, Dr. Wallace, each had such busy schedules that it was absolutely impossible to get them together at any given time, even in the evening or early in the morning during the week that we had remaining.

Q Had opposing counsel at any time objected to a continuance of this matter?

A No sir.

Q Had he, in fact, agreed to it?

A Yes sir, he had.

Q So what did you do when you determined that it would be impossible to take the deposition? Did you report back to Judge Kelly?

A We reported back, both Mr. Kaleel and myself reported back ex parte to Judge Kelly and explained the

situation once more and again asked for a continuance. At this time Judge Kelly very strongly urged that I subpoena the doctor - - - first asking me was he still in town, to which I answered that he was - - - and he strongly urged me to subpoena the doctor and force him to stay in town and testify in the proceedings.

Q Then what did you do?

A This was such a close case that it was my personal - - -

MR. NICHOLS: Wait now. We are not concerned with your personal opinions. We ask that the witness be restricted to the facts.

THE WITNESS: All right, sir. I reported to Judge Kelly that it was my opinion that this was such a close case - - -

CHIEF JUSTICE DREW: Wait a minute.

MR. NICHOLS: I object to what he told Judge Kelly, Your Honor.

CHIEF JUSTICE DREW: The objection is overruled, as to what he told Judge Kelly.

THE WITNESS: And I don't remember my exact words, but substantially it was to the effect that it was such a close case that I was depending upon adjectives and the attitude of my witness to carry the day for me; and that if I forced the doctor to come in at a tremendous personal sacrifice, he would, in effect, be a hostile witness which, without changing any testimony, could completely ruin our cause. Just by his attitude in his testimony.

BY MR. DANIEL:

Q What did Judge Kelly reply or require?

A He still insisted that, while he was sorry I was in this position, he would have to refuse to grant the continuance.

Q In effect, requiring you to go to trial the following Monday, I think?

A Yes.

Q What did you do?

A I said to Judge Kelly that he was leaving me no alternative; that I would have to take a Nonsuit.

Q Now, what did Judge Kelly say to that?

A He asked what a "Nonsuit" was.

Q And what did you reply?

A I said that it was my understanding that this was a procedure wherein the Plaintiff's attorney, or the Plaintiff, when he was faced with a catastrophic turn of events at a trial where he could not prove his case but he could at a later date; he could, in effect, by means of this Nonsuit discontinue the case without prejudice, so that he would have an opportunity to start over at a future date. And that, further, this was non-discretionary, it was my understanding, as far as whether the Judge allowed the Nonsuit or not. In short, it was my understanding that he would have to allow it.

Q You are an attorney. Do you know whether this is a statutory process or a Common Law process?

A Originally it was a Common Law process, and it was modified by a statute, moving up the time, the latest time that a Nonsuit can be taken.

Q The vehicle "Nonsuit" has been around since the Common Law, is that correct?

A Yes.

Q What is the latest time in which a Nonsuit can be taken?

A By statute, the latest time that a Nonsuit can be taken is when the Jury retires from Bar.

Q So actually, even after you have put on your testimony and when you are at the point of turning the case over to the Jury, you can take a Nonsuit; is that correct?

A That is my understanding, yes sir.

Q Now, does the Court have any discretion in the allowance of a Nonsuit?

A It is my understanding that the Courts do not have any discretion.

Q Did the Court object to your Nonsuit or disallow your Nonsuit?

A Judge Kelly was very surprised at this, and stated that he could not believe that the discretion of a Judge to handle his cases and control his trials in his own manner could be so abridged; and therefore he requested that I make a short brief on the subject.

Q Did you do so?

A Yes sir.

Q Did you send that brief to Judge Kelly?

A I sent the brief to Judge - - - or I handed it to Judge Kelly; and at that time he stated that, while he was not inferring that I would deliberately mislead the Court in any way, he still could not believe in his own mind that such a thing could be; that, in theory, discretion could be taken away from the Judge, and therefore, he wished to research this problem himself. He further stated that if he could find anywhere in the literature any authority for the proposition that he had discretion, then he would not grant a Nonsuit.

Q Was a Nonsuit subsequently granted?

A Yes sir. I received a call from Judge Kelly from Dade City on Saturday afternoon before the trial was scheduled, and he said he had found a Law Review article that apparently agreed with both of us; namely, that it was non-discretionary but that it was also probably very bad law in theory.

Q Did you point out the statute on Nonsuit to Judge Kelly at the time you originally suggested that you were taking a Nonsuit?

A I don't remember at this time, sir.

Q You pointed it out in your brief, I would imagine?

A I am sure I did, sir.

Q Now, as a result of taking a Nonsuit, as an attorney, what did you then have to do in behalf of your client that you represented?

A At that point I had to start all over.

Q By that you mean that you started like you had never filed a suit in the beginning?

A Yes, I filed a Complaint.

Q Having it served on the opposing party?

A Yes.

Q Did this cause you to incur additional costs in behalf of your client?

A Yes sir. All the costs expended up to the time of the Nonsuit were on the Plaintiff.

Q Would all of this extra work and cost have been averted by the simple granting of a continuance?

A Yes sir.

MR. DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q May I inquire, Mr. Page, what it costs you to file a suit in your circuit?

A As I recall, at the time it was \$15.

Q Now, this incident that you are talking about was early in Judge Kelly's career on the Bench, was it not?

A This was in September of 1961.

Q He had not been on the Bench very long then?

A No sir, not too long, as I recall.

Q Now, in criminal proceedings you cannot take a Nonsuit, can you?

A I do almost no criminal law, sir. I don't believe so, but I would not state.

Q And you don't know that in criminal proceedings you are not allowed to take a Nonsuit?

A This is a prosecution. No sir. I would assume that you could not take a Nonsuit.

Q You know that Judge Kelly had been a Prosecutor in the District Court for four years before he went on the Bench, handling criminal matters, didn't you?

A Yes sir.

Q Now, however, after you gave him this memorandum and he did some additional research, I think you said he came up with a Law Review article that advised him that your position was correct in the matter, didn't he?

A Yes sir.

Q And that he followed the law in that regard and granted your Nonsuit, didn't he?

A Yes sir.

Q And he went so far, on Saturday, as to call you and tell you about it, from Dade City; didn't he?

A Yes sir.

Q Now, the taking of depositions is the responsibility of the lawyer that is handling the case, isn't it?

A Yes sir.

Q It is not Judge Kelly's responsibility to keep up with your witnesses in a case, is it?

A No sir.

Q And it is not Judge Kelly's responsibility to see that a doctor does not attend a convention in your behalf, is it?

MR. DANIEL: Objection, Your Honor. There is nothing about a convention. If Mr. Nichols wants to go into the reason that the doctor was not available - - -

MR. NICHOLS: I withdraw the question.

BY MR. NICHOLS:

Q There is not any responsibility on Judge Kelly to try to make your witness available for you, is it?

A No sir.

Q And all you would have had to have done during that month that you were fooling around would have been to issue a witness subpoena - - -

MR. DANIEL: I object to the comment "fooling around."

MR. NICHOLS: I apologize.

MR. DANIEL: Your apology is accepted.

BY MR. NICHOLS:

Q And, during that month you could have issued a witness subpoena and had the witness there, couldn't you?

A Yes sir.

Q And during that month's time you likewise could have taken a deposition and preserved the testimony and had it available at the trial, could you not?

A If we had taken a deposition during the month, yes sir.

Q Well, for a deposition, all you would have to do for a doctor is issue a subpoena and have him come to your office or anywhere else and take the deposition, isn't it?

A It can be done that way.

Q Well, he has to respond to the subpoena, does he not?

A Yes.

Q And you could take it in his office or you could take it in his office and require him, by subpoena, to be available for the deposition, can't you?

A Yes sir.

Q Now, I think I am quoting you correctly. You said you had a close case of liability, in talking with the Judge - - - that you had a close case or a close case of liability, and that you needed all the support that you could get from the witnesses to help you with the case, is that right?

A I don't remember whether I said - - -

MR. DANIEL: Your Honor, I don't believe "liability" was mentioned on Direct Examination. I would object on the ground that it would not be in cross of anything asked on Direct.

MR. NICHOLS: Well, I think he said "close case" - - - a very close case.

THE WITNESS: I meant to say "close case."

MR. NICHOLS: I am not trying to mislead you.

MR. DANIEL: If he said it, I don't object.

CHIEF JUSTICE DREW: I remember the witness saying that it was a "close case."

BY MR. NICHOLS:

Q All right, sir. We will use the words "close case." What were you referring to about a "close case"? What did you mean by that, Mr. Witness?

A I mean that both on liability and making our main - - - mostly making our main point as to the item of damage, we are working in an area where one doctor might have a serious disagreement with another doctor as to whether my client was permanently injured in a way in which she could not continue her usual employment.

Q Well, in a close case the doctor's testimony, of

course, does not help you so far as liability is concerned, does it?

A In theory, not; in practice, yes.

Q You mean that you use doctors over at St. Petersburg to help you win the liability question?

A I think the law in St. Petersburg - - - our trials are conducted the same in St. Petersburg as other places, sir.

Q Now, let me ask you: Is Judge Kelly an industrious Judge?

A Yes sir, he certainly is.

Q Is he a good legal student?

A I believe he is. He is hard working.

Q Does he make himself available to the lawyers in your circuit during the lunch hour so that they can get orders signed and can transact business?

A Yes sir.

Q Now, sir, did you appear before the House Committee and give any testimony in this case when the matter was being investigated by the House?

A No sir.

Q And when were you first contacted by anyone concerning your testimony here?

A I talked to an investigator - - -

Q Approximately when? How long ago?

A Approximately a week and a half ago.

Q About a week and a half ago?

A Yes sir.

Q So the House did not have any of the benefit of your testimony one way or the other, did it?

A No sir.

Q Now, in the trial of this case, of course, and keeping the docket clear is the responsibility of the Circuit Judge, is it not, in your circuit?

A Yes sir.

Q And, of course, any good, industrious Judge wants to keep the calendar clear?

MR. DANIEL: Objected to, Your Honor, as calling for an opinion as to "any good, industrious Judge."

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

BY MR. NICHOLS:

Q The Judges want to keep the calendar clear and the dockets clear, don't they?

MR. DANIEL: Objected to, Your Honor. This witness doesn't know what the Judges want.

CHIEF JUSTICE DREW: I sustain the objection.

BY MR. NICHOLS:

Q Now, relating to your conversation with the Judge, he was trying to explain that to you and he was explaining as to all of the Jurors that were called and the responsibility of the Court and the cost of those Jurors and the cost of operating the Court - - - that it was important and it was important when you have a case set for trial to try it on that date. Wasn't he explaining that, in general, to you?

A The sum and substance of his talk was the expense

involved in both trial and maintaining the judicial system. I don't remember him breaking it down as far as Juries and so on.

Q Well, you think it is important for a Court to be concerned about those matters, don't you?

MR. DANIEL: Objected to, as calling for an opinion of the witness.

CHIEF JUSTICE DREW: Objection overruled.

THE WITNESS: I think it is proper for a Court to be concerned with the cost, yes sir.

MR. NICHOLS: Thank you very much.

#### REDIRECT EXAMINATION

BY MR. DANIEL:

Q Now, Mr. Page, in some of the testimony you gave on Cross, I believe you stated - - - in response to a question by Mr. Nichols - - - that on Saturday Judge Kelly called and granted your Nonsuit? Does, in fact, Judge Kelly have any discretion to grant or deny a Nonsuit?

A In my opinion, he does not have any discretion.

Q According to the Statutes and, as an attorney, does he have any discretion?

MR. NICHOLS: I object to that because it is repetitious. He is going over the same thing.

CHIEF JUSTICE DREW: Overruled. I think it is repetitious.

MR. DANIEL: I withdraw it, in that event.

BY MR. DANIEL:

Q At any time during the procedure in which you sought a continuance in this matter, was the objection interposed by anyone other than Judge Kelly?

A No sir.

MR. NICHOLS: I object to it on the ground it has already been answered and is repetitious. It is the same thing that the witness has testified.

MR. DANIEL: I withdraw the question. You may step down, Mr. Page.

CHIEF JUSTICE DREW: I would like to ask some questions here. Do you complain of the treatment you received with reference to the continuance as well as with reference to the Nonsuit?

THE WITNESS: Mainly with the continuance it would have been a lot easier - - - it took a lot of my time and some expenses on my client in not being able to get a continuance, as opposed to a Nonsuit.

CHIEF JUSTICE DREW: Is it your view that the question of a continuance by a trial judge is a matter wholly within his discretion and is reviewable only on an abuse of that discretion?

THE WITNESS: That is my understanding.

CHIEF JUSTICE DREW: Senator Hollahan of the 43rd asked a question of the Witness Page: "On the Saturday that the law on Nonsuits was discussed, did you further discuss with Judge Kelly your and opposing counsel's request for a continuance?" Do you understand the question?

THE WITNESS: No sir. Would you repeat it, sir?

CHIEF JUSTICE DREW: On the Saturday that the law on Nonsuits was discussed, did you further discuss, on that day, when you discussed the question of Nonsuits,

did you further discuss with Judge Kelly your and opposing counsel's request for a continuance?

THE WITNESS: It's my understanding - - - it was not on a Saturday; this was before that time, but it is my understanding that we still wished the continuance when I brought up the question of the Nonsuit, and he had me explain what it was, and asked me for a brief. We still, much rather - - - I would have much rather have had a continuance at that time.

CHIEF JUSTICE DREW: A question by a Senator: "Was another case set for trial before Judge Kelly on same date that your case was set for trial?"

THE WITNESS: All cases for the trial week were set for Monday. Mine was Number 2, and we were working with the understanding that the probability that Number 1 would be settled, and we would probably be at trial on Monday morning.

CHIEF JUSTICE DREW: Senator - - - did you finish your answer, Witness?

THE WITNESS: Yes, sir.

CHIEF JUSTICE DREW: Senator Mathews asks the question:

"Did you ask the Court to set the case for trial, or move that it be set for trial, or just what procedure is followed in the Sixth Circuit?"

THE WITNESS: There is a sounding of the trial docket - - - this was the springtime of 1961, as I recall, in about May. This case was actually originally assigned to Judge Kissinger. At that particular sounding of the docket, because of the large number of cases, they pretty well ignored the case - - - the Judge to which the case was originally assigned, and took it and assigned it to Judges in whatever order would be easiest to crowd in the docket.

CHIEF JUSTICE DREW: A question from Senator Stratton: "Was this suit against an insurance company, and if so, did not the insurance company have a doctor?"

THE WITNESS: There was insurance involved in this case. The insurance company did not have a doctor.

CHIEF JUSTICE DREW: I might say, before I ask the last question, Senators, that any Senator who desires to ask a question, or if you have anything on your minds which has not been cleared up in these examinations, you have a right to stand up, and I think you should stand up. I just want to be sure that every Senator knows he has the right to ask any question of any of these witnesses.

From Senator Cross of the 32nd: "If the question relative to a continuance was discretionary with Judge Kelly, wasn't the question reviewable on appeal to the Appellate Court?"

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: A question from Senator Barron, of the 25th: "The Judge could have required you to appear in open Court on Monday to make the motion for a Nonsuit, could he not, if he desired to be technical?"

THE WITNESS: The law is a little vague on this, as far as Florida citations, but it was my conclusion that quite possibly he could have. I wouldn't have argued if the Judge had taken that view, although I could not find a case that definitely said how early a Nonsuit could be granted, only how far along, how late it could be granted.

CHIEF JUSTICE DREW: Are there any other questions from the Managers of the House?

MR. DANIEL: No sir.

CHIEF JUSTICE DREW: Do you have any other questions?

MR. NICHOLS: No sir, we have no further questions of the witness. We have no objection to the releasing of the witness, with our same understanding, that he'll leave his phone number, in case we should want to call him.

CHIEF JUSTICE DREW: Do the Managers of the House - - -

MR. DANIEL: We have no further questions.

CHIEF JUSTICE DREW: - - - have any objection to excusing this witness until he may be later called?

MR. DANIEL: No sir, we don't, and we have his phone number; he can - - - this can be made available to them at any time.

CHIEF JUSTICE DREW: The witness is excused. You may call your next witness.

(Witness excused)

MR. NICHOLS: Your Honor, as soon as the witness leaves the stand, I have a motion to make in relation to his testimony. I would like to strike this witness' testimony, on the ground that it has come up, and it now clearly shows that this witness did not testify before the House, and his testimony was not before the Senate in any of - - - before the House in any of these Articles of Impeachment, and they have - - - they are broadening the charges out, and I ask that this witness' testimony be stricken, because they're likewise - - - the only time we ever heard of this witness was when it was submitted to us under this amended Bill of Particulars which was handed to us this morning. We cannot prepare to defend this case with this method.

MR. O'NEILL: In response to Respondent's objection, the Board of Managers would point out to the members of the Court that at no time did Respondent's counsel or Respondent himself make a motion for a Bill of Particulars. We endeavored to cooperate by furnishing a list of names to him, and he was furnished a list of witnesses.

It is the position of the Board of Managers that it is not necessary for this Board of Managers to restrict the evidence before this Court to those witnesses which appeared before the House.

There is ample authority for this, because, when a Grand Jury investigates a case, they do not interview all the witnesses. There is ample authority in Florida for a State's Attorney, in the prosecution of such cases, to present witnesses as late as the day of the trial, and advise Defendant's counsel.

CHIEF JUSTICE DREW: The motion will be denied. It is the view of the Presiding Judge that witnesses in this case are not necessarily restricted to those that appeared before the House, and may be introduced in support of any allegation of the Articles as they have been approved by this Court.

You may call your next witness.

MR. DANIEL: Your Honor, the rule says five, and since it's - - -

CHIEF JUSTICE DREW: The Court will adjourn at 5:15.

MR. O'NEILL: May it please the Court, the next witness will take a considerable amount of time. In fairness to the Senators, since the hour of 5:15 is only ten minutes away, we could not conclude with this witness, and we would respectfully request that the Court consider now a

motion to adjourn. However, I understand, right now, that they cannot make such a motion.

MR. NICHOLS: May I request of the Managers a matter right now that I don't think it will take but a minute to agree upon, that the Managers furnish us at least a list of the witnesses, we'll say, approximately by six o'clock, that they're going to use the next day, at least, so we can have some notice of who's going to be called, and in order to prepare for it, and I will stipulate with you that we will do the same with you when we get ready to call our witnesses, so that you will know some orderly process about what witness is coming on this stand.

MR. O'NEILL: Mr. Chief Justice, the Board of Managers, with all good faith, will attempt to advise counsel for Respondent, and we did so yesterday, or last evening, at the request of Mr. Nichols; when he visited our office we furnished him with a list of witnesses as best we could determine at that particular time. However, we would not want to be bound by the presentation of those witnesses that we might get. We'll do everything we can to cooperate.

CHIEF JUSTICE DREW: I think that's all Mr. Nichols could expect, and I think the Court would be grateful to counsel for doing that. I think it will save everybody's time, and I think that course should be followed.

Now, I understand, from the Managers of the House, that the next witness will take up considerable time, and that we couldn't finish before 5:15.

MR. O'NEILL: Under our present understanding, it would, Your Honor, for both sides.

CHIEF JUSTICE DREW: Now, gentlemen, in view of the fact that it will require more than additional time, we will recess, but before we do recess, I would like to ask counsel for both sides to meet me in my office; there are some things that I would like to discuss with counsel for both sides. And without objection, Court will stand in recess until tomorrow morning at 9:30.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:07 o'clock P. M., until 9:30 o'clock A. M., Thursday, September 12, 1963.