

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Thursday, September 12, 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. Master-son, 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:

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

—44.

A quorum present.

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

Hear ye! Hear ye! Hear ye!

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

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Wednesday, September 11, 1963, was dispensed with.

The Senate daily Journal of Wednesday, September 11, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Gibson of the Tenth Senatorial District offered the following Prayer:

Keep us, O God, from pettiness. Let us be large in thought, in word, in deed. Let us be done with fault finding and leave of self-seeking.

May we put away all pretense and meet each other face to face without self-pity and without prejudice.

May we never be hasty in judgment, and always generous. Let us take time for all things. Make us to be calm, serene and gentle. Teach us to put into action our better impulses, straightforward and unafraid.

Grant that we may realize it is the little things that create differences; that, in the big things of life we are as one, and may we strive to touch and to know the great common heart of us all, and O Lord God, let us forget not to be kind. Amen.

CHIEF JUSTICE DREW: I wish to announce that, under the rules, absent Senators, as a condition of granting their right to be absent, agree to familiarize themselves with the proceedings of this body which took place in their absence. I have arranged to have two copies of the proceedings of each day on my desk - - - if possible the next day; if not, the second day - - - and they will be available to the absent Senators to get and to study and to familiarize themselves with the proceedings. They will be either on this desk available for the Senators, which I shall be glad to give them, or available from the Secretary of the Senate; you will have no difficulty in finding the approximate hour in here, or the place where you left, so that you can familiarize yourself. The Presiding Officer will recognize Senator Cross, who has a motion to present with reference to fees and per diem to be paid witnesses.

SENATOR CROSS: Mr. Chief Justice, and members of the Court: I would like to move that an order be adopted granting the same travel and per diem as were granted in the Holt case, which, I understand, was the travel and per diem of State employees.

CHIEF JUSTICE DREW: Gentlemen, in the Holt case, Senator Shands made a motion that the witnesses shall be paid the same per diem and traveling expense as paid to State employees under the law, which was adopted.

As many as favor the motion that the witnesses - - - that an order be entered directing that all witnesses subpoenaed here or who testify shall be paid the same per diem and traveling expenses as State employees under the law, say "aye." Opposed "no."

The "ayes" have it; the order is adopted. Gentlemen are you ready to proceed?

MR. O'NEILL: The Board of Managers is ready, Your Honor.

MR. NICHOLS: The Respondent is ready, Your Honor.

MR. O'NEILL: The first witness is Judge John U. Bird.

Thereupon,

JUDGE JOHN U. BIRD,

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

DIRECT EXAMINATION

BY MR. O'NEILL:

Q State your name and address and official position, if any, sir.

A My name is John U. Bird, B-i-r-d.

Q Where do you live, Judge Bird?

A 300 Lincoln Avenue, Clearwater, Florida.

Q Is that in Pinellas County?

A Pinellas County.

Q What official position do you hold, sir?

A Official?

Q Official position.

A I am a retired Circuit Judge at this time.

Q When did you first go on the Bench as a Circuit Judge, sir?

A Well, I was appointed on the Circuit Court Bench in 1927, and I occupied that position until July 1st of this year.

Q At which time you did what, sir?

A Retired.

Q And you served as a Circuit Judge from the time you were first appointed until the time you retired, July 1st of this year?

A Yes sir, continuously.

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

A Yes sir, Judge Kelly was one of my associates in the last two years.

Q Are you familiar with a case styled and referred to generally as State of Florida vs. Sinclair?

A Yes sir. I tried Sinclair for murder in the first degree.

Q Do you know whether or not the Defendant in that particular cause was indicted by the Grand Jury?

A Yes sir, certainly. Yes sir.

Q Was he ever arraigned in your Court?

A Yes sir.

Q Did you at any time during the time that this case was before you have a motion for a continuance on behalf of the Defendant, by and through his attorney, to continue and put off the arraignment?

A Yes sir. When the Defendant was - - - when the Indictment was presented, he was represented by Mr. Harold Wilson, one of our local attorneys, who asked that the case be continued. At that time, I believe that was somewhere about the first of November, 1962.

Q Isn't it a fact, Judge Bird, that there were two continuances as to the arraignment date, at the request of the Defendant's counsel?

A The first - - - when it first came up now - - - I am talking from memory right at this time - - - of course I have had lots of these cases; but when it first came up Mr. Wilson stated that he had some other engagement and he wanted - - - asked me if I would continue the arraignment for a week.

Q Did you do that?

A Wait a minute. If I would continue it. It seems to me like the next day the case was called again and he was present, and he asked that it be continued so that he could familiarize himself with the charge, which was

granted; and then he was arraigned, I believe, about a week later.

CHIEF JUSTICE DREW: Judge, was that in Pasco County?

THE WITNESS: Pinellas.

CHIEF JUSTICE DREW: Pinellas County.

BY MR. O'NEILL:

Q This was a case that arose in Pinellas County, was it not, Judge Bird?

A Yes sir.

Q Are you familiar with the declaration rights of - - - the Declaration of Rights of the Florida Constitution?

A Somewhat.

Q Are you familiar with, particularly, Section 9 of the Declaration of Rights, as to bailability for a person charged with crime?

A Section 9 of the Bill of Rights provides that every person is entitled to bail where the evidence is - - - proof is evident, or the presumption great - - -

Q Except - - -

A - - - except in capital cases.

Q Yes sir.

A And in capital cases, where the reverse is true, where the presumption is not great, nor the evidence - - - proof evident.

Q At a later date, did this case come to your attention again?

A I beg your pardon, sir?

Q At a later date, subsequent to the date of November 5, or whatever date the arraignment occurred, or this came to your attention, did you have occasion to have something to do with this case after that?

A I tried the case, Mr. O'Neill.

Q Was there a petition ever presented to you, relative to the State vs. Sinclair case?

A Yes sir, Mr. Davis, the State Attorney, presented to me a motion to vacate an order made by Judge Kelly - - -

Q Do you know - - -

A - - - on a writ of habeas corpus.

Q Do you know the date of the writ of habeas corpus, as issued by Judge Kelly?

A The first part of November, I think, around the 4th or 5th or 6th, somewhere along in there.

Q Do you have a copy of the original petition, or motion, as filed by the State's Attorney in your files?

A I have a carbon copy that was left with me at the date of the hearing, or the application, rather.

Q That was upon application of the State's Attorney?

A Yes sir, to reopen the matter and to vacate Judge Kelly's order granting bail.

Q Who was before you on the date that that petition was presented to you besides the State's Attorney?

A I think Mr. Wilson.

Q Did you, subsequent to this time, or at the time the petition or motion was presented to you, enter an order?

A Yes sir.

Q Do you have a copy of that order?

A I think so, sir.

Q Would you remove from your briefcase, Judge, the petition, as well as the order, and refresh your memory as to the date of the petition and the order, sir?

CHIEF JUSTICE DREW: Do the Senators hear the witness? If any Senator doesn't hear, hold your hand up and I'll see if I can arrange a microphone.

THE WITNESS: The petition filed by the State Attorney is headed "Petition to Vacate Order Granting Bail." It was the 13th day of November, 1962, is the date it's dated.

BY MR. O'NEILL:

Q What is the date of the Order, Judge Bird?

A The 15th day of November, 1962.

Q And what is the date of the petition, sir?

A The date that I said it was, the 13th day of November - - - it seems to me it was the 13th day of November, sir. Yes sir, the 13th day of November, 1962.

Q At the time of the hearing that this petition was presented to you, sir, you have previously stated that Clair, the State's Attorney, and Mr. Wilson, the attorney for the Defendant, was present. Did you enter that order on that day?

A You mean the order that I made on the petition?

Q Yes sir.

A No, I - - -

Q On the same date that you had the hearing?

A I think so, as soon as we could get it written, mechanically written up.

Q What did your order provide, sir?

A The petition was signed by - - -

MR. NICHOLS: We object - - -

MR. O'NEILL: Just a minute, Judge.

MR. NICHOLS: We object to that. The Court records themselves are the best evidence. We have no objection to the use of the official Court records, as to what a particular order says.

CHIEF JUSTICE DREW: Overruled. He can read from - - - he's already testified that's the order he entered.

BY MR. O'NEILL:

Q All right, sir, would you read it?

Is that a copy of the order you entered?

A This is a carbon copy of the order that was served - - - no, I mean, was delivered to me for consideration at the time of the application for the order granting - - - vacating the bail.

MR. NICHOLS: May I inquire as to - - - he says that was a carbon copy of an order delivered to him.

May we inquire of the witness if this was an order actually signed by him later on?

BY MR. O'NEILL:

Q Was that order actually signed by you, Judge Bird?

A The order that was signed by me, yes sir.

Q And that's the one you're referring to?

A You're speaking of the order?

Q Yes sir.

A Yes sir, this is a carbon copy from my office. As far as I know, that's all the order there was, and in that order - - -

MR. NICHOLS: Just a moment. We have no objection to the order being introduced in evidence as an exhibit, just on the statement of the Managers that it is the order. I'm not trying to block it.

MR. O'NEILL: May it please the Court, the carbon copy in possession of Judge Bird, for the sake of simplifying the issue, and the carbon copy order which is in his possession, I've just furnished to the attorney for the Respondent. It's a carbon copy of the original which appears in the file. We do not have the file, and have not been able to get it.

MR. NICHOLS: I have no objection, on your statement and Judge Bird's.

MR. O'NEILL: We would at this time, then, respectfully request that it be entered into evidence, both the petition and the order, upon the identification by Judge Bird.

MR. NICHOLS: I did not say the petition, I said the order to which it relates.

MR. O'NEILL: All right, we'll start with the order.

CHIEF JUSTICE DREW: Admitted and marked with the appropriate exhibit number.

THE WITNESS: This is my office copy.

MR. O'NEILL: All right. Would you hand that to the Reporter, sir.

CHIEF JUSTICE DREW: Just have him mark it and hand it back to you.

SECRETARY FRASER: This will be Number 10.

THE WITNESS: Now, that's the order that I made on the matter.

(Whereupon, the above referenced document was received and filed in evidence and marked Managers' Exhibit Number 10)

BY MR. O'NEILL:

Q Now, was that order entered pursuant to a petition filed by the State's Attorney?

A I beg your pardon, sir?

Q Was that order entered pursuant to a petition or a motion by the State's Attorney?

A Yes sir.

Q Do you have the carbon copy of that motion or petition in your possession?

A Yes sir, that was delivered to me by the State's Attorney at the time, just as a matter of courtesy.

Of course, the original was filed in the Clerk's office - - -

Q Yes sir.

A - - - but this was just left me for my own - - -

CHIEF JUSTICE DREW: Do you agree that on that statement, it's admissible, that it would be admissible.

THE WITNESS: Do you want to see it, sir?

MR. NICHOLS: No sir, I'm not questioning the authenticity or the identity of the thing in any way. I'm trying to reflect in my mind whether or not a petition drawn by a State's Attorney, alleging a lot of facts, which

we haven't got the State's Attorney here to cross examine, is properly admissible into evidence.

MR. O'NEILL: We expect to have him here.

MR. NICHOLS: Well, if you do, would you mind waiting until you have him in here so that I can cross examine him at the same time.

MR. O'NEILL: We would like at this time to offer the petition, with the understanding that Mr. Davis, the State's Attorney, will further authenticate it when he testifies in this cause.

CHIEF JUSTICE DREW: With that statement, it's admitted as Exhibit Number 11.

BY MR. O'NEILL:

Q All right. Now, Judge Bird, at the time that - - -

MR. NICHOLS: Excuse me, there's something I'm confused about here. The last one was Number 10, and is this number what? Number 12?

CHIEF JUSTICE DREW: No, he corrected me. What was the last exhibit number, Mr. Secretary?

SECRETARY FRASER: The last one was Number 10 - - - that particular exhibit is Number 11. The first one was Number 10.

CHIEF JUSTICE DREW: The one we're talking about now is Number 11?

SECRETARY FRASER: Yes sir.

BY MR. O'NEILL:

Q In effect, Judge Bird, wasn't the order that you entered to refer this matter back to Judge Kelly, who had previously entered an order granting bail to the Defendant Sinclair?

A Yes sir, when the order came on before me, and it set up the fact that Judge Kelly had entered this order granting bail of \$10,000, and I was asked to vacate it because of the matters set forth in the order. I thought that ordinary judicial courtesy would require that it go back to the judge who heard it, let him hear his own motion. I didn't know that I had authority, as Presiding Judge, to pass upon the order of another judge; so, I referred it back to Judge Kelly.

Q Now, this case had been previously assigned to you, and two motions for continuance on the arraignment had been granted by you at the request of the Defendant's counsel?

A At that time, yes sir.

Q Before the entry of - - -

A I don't know that he had been arraigned at that time, but he had been brought before me, and a continuance granted on the arraignment at that time, but I don't think he had actually been arraigned on the date that we heard this motion.

Q Judge Bird, are you familiar with Section 27.06 of the Florida Statutes?

A That's the question - - - that's the statute about notice?

Q Yes sir.

A Yes sir, I'm reasonably familiar with it, sir.

Q What, in essence, does this particular statute provide in the case of State Attorneys, in such a case as the Sinclair case?

MR. NICHOLS: I object to that. The statute clearly is the best evidence.

CHIEF JUSTICE DREW: I will have to sustain the objection. You can read the statute if you wish.

MR. O'NEILL: I am trying to find one.

CHIEF JUSTICE DREW: I have it here.

MR. O'NEILL: Volume I.

SECRETARY FRASER: Judge, here is the statute.

THE WITNESS: I have seen the statute many times, gentlemen.

BY MR. O'NEILL:

Q Judge Bird, would you read aloud Section 27.06 of the Florida Statutes, as contained in Volume I thereof, 1961.

A You want me to read the whole section?

Q If you will, sir.

A Section 27.06, habeas corpus and preliminary trials.

"The several State Attorneys of this state shall represent the state in all cases of habeas corpus arising in their respective circuits, and he shall also represent the state, either in person or by assistant, in cases of preliminary trials, of persons charged with capital offenses, in all cases where the committing magistrate shall have given him due and timely notice of the time and place of such trial, except that in such counties where there shall be established a criminal court of record or county court, then such state attorney may not be required to represent such proceedings except in cases where a felony is charged. Notice of the application for the writ of habeas corpus shall be given to the prosecuting attorney of the court wherein the statute under attack is being applied, the criminal law proceeding is being maintained, or the conviction has occurred."

Q Judge Bird, in connection with that now, as I understand your testimony, you testified that this Defendant Sinclair had been before you for arraignment and it was continued and he was not, in fact, arraigned; is that correct?

A He had not been arraigned, as I recall it, at that time.

He had been before me for arraignment and the arraignment postponed to allow counsel time to study the information.

Q Is it the duty of the Court, the Circuit Judge, to give notice, under the provisions of that statute, in your opinion?

MR. NICHOLS: Wait just a minute now. I object to that. The statute is very clear. The statute says that notice shall be given. It does not say that the Circuit Judge is responsible for the giving of the notice. Certainly the lawyers or the sheriff, upon whom the matter is directed, are required to give the notice; but there is nothing in that statute that says that a Circuit Judge has to give that notice.

MR. O'NEILL: If the Court Reporter will read the question, you will find that I asked the opinion of this witness as to whether or not it was his opinion.

MR. NICHOLS: All right. And, in addition to that, I object to the giving of an opinion about it because the statute is very clear.

CHIEF JUSTICE DREW: I will sustain the objection. You may ask him what his custom is.

BY MR. O'NEILL:

Q Judge Bird, what is the custom as to notice to the State Attorney in criminal proceedings in the Sixth Judicial Circuit?

MR. NICHOLS: I object to that.

MR. O'NEILL: In habeas corpus proceedings.

MR. NICHOLS: Wait a minute. I object to that. The Chief Justice said that he could testify as to what his custom is, not what the rest of the circuit is.

MR. O'NEILL: I think, Your Honor, that he is entitled to give the custom of the Sixth Judicial Circuit. He has been there since 1927.

MR. NICHOLS: I heard very clearly the Chief Justice's ruling, I think.

CHIEF JUSTICE DREW: Judge, you were the Presiding Judge of that circuit?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: I overrule the objection.

THE WITNESS: I was - - - well, ever since I have been on the Bench I have been either the senior Judge or the Presiding Judge of the Sixth Judicial Circuit; and, as such, I lived in Clearwater, the County Seat. And the criminal cases - - - felonies - - - kind of fell to my lot because I was there. Now, in habeas corpus cases, in any kind of habeas corpus, it has always been my policy - - - I have never heard one yet that I know of in all these years that I did not first have the State Attorney present or represented.

Under this statute I considered it mandatory that the State Attorney be there. I personally always considered that he was there and, if he was not there, I would require him to get there before I had a hearing on it. That is the way I do it.

BY MR. O'NEILL:

Q Why, Judge Bird?

A Sir?

Q Why, sir?

A Because the statute apparently said so, and the public interest required it. The public - - - the public interest of society required that the State be represented in cases of this kind.

Q Was this a rather notorious case, or do you know, sir?

MR. NICHOLS: I object to that phrasing of the matter.

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

BY MR. O'NEILL:

Q Did this case, the Sinclair murder case, did it get wide notoriety or publicity in the newspapers, and was it common talk?

A Yes sir.

Q In Pinellas County?

A Yes sir.

MR. NICHOLS: I object to that. He has told the Court that it was a murder case and that is what we are involved with.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: The case - - - the people were very much excited over this case. This man Sinclair - - -

MR. NICHOLS: I object to his going into a long dissertation about the facts of the law suit.

CHIEF JUSTICE DREW: Sustained.

BY MR. O'NEILL:

Q Judge Bird, did you later try this law suit?

A Sir?

Q Did you later try this particular case? The Sinclair case?

A Yes, I tried the case.

Q Do you know the facts of the case?

A Well, I remember them as fairly as I can - - - I have tried thousands of cases; I remember this case because it was an outstanding case.

Q What were the facts that were presented to the Jury at the particular time that you tried this case?

MR. NICHOLS: Now, Your Honor, this has nothing to do with the issue involved in this case. It has nothing to do with Judge Kelly, his action. If we are fixing to try a murder case and what the testimony was in the murder case, it has nothing to do with Judge Kelly, charged under these Impeachment proceedings.

MR. O'NEILL: If it please the Court, by way of argument - - -

CHIEF JUSTICE DREW: Let me ask a question: What is the purpose of this evidence, Mr. O'Neill?

MR. O'NEILL: To show that Judge Kelly did give bail to a man who was charged with a very heinous crime, as charged in Article VI of the Articles of Impeachment, wherein we charge that he did do it unlawfully and improperly. And that is the purpose, to show that it was a heinous crime; and I think, under that charge, we are entitled to show what type of crime it was and how heinous it was; and the wide public interest.

CHIEF JUSTICE DREW: Well, any murder is a heinous crime. I will sustain the objection.

BY MR. O'NEILL:

Q Judge Bird, I would like to ask you this question: Do you know the reputation of Judge Kelly among the Bar and in the community as to the manner in which he handles and conducts his Court?

A You mean his reputation?

Q Yes sir. As to the manner in which he conducts his Court and handles his cases.

A Well, I guess I do, sir. Insofar as - - - I guess I do.

Q What is that reputation, sir?

A The most of the lawyers and I would say a great percentage of the laymen, as far as I know - - - and I haven't talked about Judge Kelly's case - - - he is one of my associates, and I didn't talk to him or allow anybody to talk to me as much as I could possibly help it; but, in the course of the proceedings and in the course of the conduct of the circumstances around there, naturally, the newspapers were involved and people were talking about it. I would say that - - -

MR. NICHOLS: Wait a minute, Judge Bird.

Is your question directed to all matters that the Judge has been handling? His general reputation since he has been on the Bench?

I think that is what you are asking him, isn't it, Mr. O'Neill?

MR. O'NEILL: My question is: What is that reputation?

MR. NICHOLS: In the community and among the Bar? His general reputation?

MR. O'NEILL: That was the original question. He answered that in the affirmative - - - that he knew it.

THE WITNESS: True.

MR. NICHOLS: All right, sir.

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

You may inquire.

CHIEF JUSTICE DREW: Judge, before the Cross Examination I would like to read you a question. I think it will save time.

Senator Cross would like to ask you, Judge Bird, if error was committed in not giving notice to the State Attorney, couldn't the error be corrected in the Appellate Court and shouldn't it have been corrected in the Appellate Court and not in this forum?

THE WITNESS: You ask me if error was committed and it should be appealed?

CHIEF JUSTICE DREW: Judge, I will read you the question again.

"If error was committed in not giving notice to the State Attorney, couldn't the error be corrected in the Appellate Court and shouldn't it have been corrected in the Appellate Court and not in this forum?" meaning in this Court of Impeachment.

THE WITNESS: I don't think so, sir. I think it could be reached anyway. The State could have appealed it, and it could have been reached by the Appellate Court. I see no reason why it could not have been reached by the Appellate Court.

#### CROSS EXAMINATION

BY MR. NICHOLS:

Q In other words, Judge Bird, that matter - - - if there was a legal error by Judge Kelly, it could have been corrected in the Appellate Court, couldn't it?

A I don't know that it was necessary to correct it. It could have been corrected on a motion for rehearing, just as was done in this case; and I referred it back to Judge Kelly for him to hear it.

Q All right, thank you, Judge.

Now, let me get two or three things clear. The matter which you eventually tried was the criminal case. You were trying the criminal case involved in this murder case?

A You mean the Sinclair case?

Q Yes, the Sinclair case.

A Yes sir.

Q Now, the matter, however, that was - - -

CHIEF JUSTICE DREW: Judge, I know this is hard to do, but, instead of looking at Mr. Nichols, would you mind just speaking into the microphone?

We are having trouble with our audio facilities. Instead of looking at Mr. Nichols.

THE WITNESS: Well, I like to look at counsel when I am talking to him but, all right, sir.

MR. NICHOLS: Judge, I will see if I can get up a little closer here where you won't have to turn from me.

CHIEF JUSTICE DREW: All right, sir.

BY MR. NICHOLS:

Q The matter, Judge, that we were talking about and that Mr. O'Neill was talking about, the Sinclair part of the case that you eventually tried was the criminal phase of the case, wasn't it?

A Yes sir.

Q Now, however, there was a civil suit for a writ of habeas corpus filed over in Clearwater by the attorney who was representing him - - - Harold Wilson, I believe, represented the accused, didn't he? And he filed a writ of habeas corpus in a civil proceeding, and that was before Judge Kelly, wasn't it?

A Well, now, whether habeas corpus is a civil proceeding or a criminal proceeding, I am not prepared to say, sir. I think it is in the nature of a criminal proceeding.

Q Well, anyway, he filed a separate suit?

A Filed a petition and a habeas corpus.

Q He filed a petition and a writ of habeas corpus over in Clearwater, and that matter was before Judge Kelly, wasn't it?

A When he issued the writ it was before him, that's right.

Q And he had jurisdiction.

A Any Circuit Judge has jurisdiction to enter a writ of habeas corpus.

Q And he entered a writ of habeas corpus in that matter that was over in Clearwater, didn't he?

A Yes sir.

Q And of course, the writ of habeas corpus was available to any Circuit Judge that is sitting in the circuit, is it not?

A The writ of habeas corpus is a Constitutional writ that any Circuit Judge may issue.

Q That's right. Now, then, when the State Attorney filed his motion to vacate this writ, he did it in the criminal proceedings that were before you, didn't he?

A No sir, he filed it in the habeas corpus proceeding and asking me to intervene.

Q Asking you to intervene to set aside the order that Judge Kelly had already entered?

A Yes sir. And, instead of filing it before Judge Kelly, he filed it before me as Presiding Judge.

Q I see.

A And the Judge to whom the case had been assigned for trial.

Q All right, sir.

A I was thinking that, in the comity of judges, Judge Kelly should hear it. I didn't want to pass on Judge Kelly's order, so I sent it back to him.

Q I appreciate that, Judge, and I understand it fully. I agree with you that that is where the matter should have fallen.

Now, I think Judge Kelly had set a bail of \$10,000, hadn't he?

A That is my understanding, sir.

Q Now, the Defendant, however, never did raise that bail, did he?

A No sir.

Q And he never was released from jail anywhere at any time, was he?

A No sir.

Q And neither during the trial nor after the trial, he was not released until he was sent on to Raiford, was he?

A Yes sir.

Q All right, sir. Now, during the trial, however, the Jury did not convict this man of first degree murder, did they?

A As I recall it, they convicted him of murder in the second degree.

Q That is correct. They found him guilty of murder in the second degree.

A As I recall it, yes sir.

Q And murder in the second degree, a man is entitled to a writ of habeas corpus as a matter of right, isn't he?

A I think so, sir. If the charge is that.

Q That is correct.

A If he is charged with something that is not capital, he is entitled to bail as a matter of right.

Q Now, the Jury that ultimately decided the matter agreed with the - - - or could have agreed with Judge Kelly's view about the lesser offense that the man was charged with?

MR. O'NEILL: Objected to.

CHIEF JUSTICE DREW: Overruled.

MR. O'NEILL: That is objected to, may it please the Court, on the ground that it is improper Cross as to what the Jury believed. The facts are that he was convicted of second degree murder.

MR. NICHOLS: I understand, but the net result of the Jury's verdict coincided with that possibly of Judge Kelly.

MR. O'NEILL: Objected to on the same ground.

MR. NICHOLS: Which was less than murder in the first degree, wasn't it?

THE WITNESS: I told you the facts, Mr. Nichols; and you can draw you own conclusions, as to whether they concurred or not.

MR. NICHOLS: Thank you, Judge.

Q Thank you, Judge. I don't think that we'll need that.

Now, you mentioned the fact that Judge Kelly was one of your co-Judges on the Bench. I believe, is it not true, that in the Circuit, the way you men work, that he sits in Pasco one week and in Pinellas the other week, doesn't it, by alternating back and forth?

A Well, I don't know that that is entirely correct. He sat in both - - -

Q In both Circuits?

A Both counties. He had jurisdiction in both counties.

Q And Judge Kelly is a hard-working Judge, is he not?

A As far as I know, he did his work - - - hard work. I've never been in Judge Kelly's court.

Q I know, but - - -

A So, I just couldn't answer that question, Mr. Nichols.

He said that he had a lot of work, that he was crowded, his calendar was crowded, and he still wanted others.

Q I see.

Well, he was willing to take on work, and even help you Circuit Judges in your work or any other type of cases that you then assigned to him, was he not? He took the assignments that were assigned to him?

A As far as I know, Judge Kelly wanted more work.

Q Now, Judge, you don't know of any general reputation anywhere, you don't know of any - - - if there's any question of his integrity involved, do you? Judge Kelly?

A I don't know of any - - - you mean his honesty?

Q Honesty, that's right.

A No sir, I've never heard his honesty questioned; I've heard his judicial temperament. - - -

Q I understand that. I asked - - -

A - - - questioned very seriously, but I never heard his honesty questioned.

Q I asked the question as to his honesty and integrity.

Now, the - - - Judge - - -

A When you speak of honesty, you mean - - -

Q Now, Judge, let me - - - you are a witness in the matter, and I'm trying to be respectful - - -

A And I just want to get what you're talking about.

Q All right, fine.

I don't get the privilege of cross examining judges very often. You all are usually working on me, and I tell you I've been held in contempt by judges.

Now - - -

MR. O'NEILL: Now, may it please the Court, we object to the outlining by counsel for the Respondent as to what he has been - - -

MR. NICHOLS: I apologize to you and withdraw the statement.

BY MR. NICHOLS:

Q It's very important, isn't it, being a Judge, that the judiciary be independent at all times, isn't it?

A It seems that's the theory of our Constitution, sir.

Q And you've lived up to it the best you know how, sir?

A The best I know how.

Q Being a good Judge is a pretty tough job, isn't it, Judge?

A Being a good Judge?

Q Yes sir, being a good Judge and calling - - - you have to call them as you see them, don't you?

A Yes sir.

Q And that requires calling it, sometimes, against friends, as well as people that are not your friends, doesn't it?

A Naturally.

Q And a good Judge just goes right down the middle, doing the best he can do, doesn't he?

A Well, that's what he is supposed to do, sir.

Q Yes sir. Now, that may include calling a case, or calling a ruling against your political supporters or your non-political supporters, doesn't it?

A Naturally.

Q Now, Judge, in the trial of many cases - - - and you've tried, certainly, probably as many cases as any judge in the state, probably, in the trial of cases, isn't it quite frequently that - - - and particularly in contested criminal cases, that sometimes tempers flare of lawyers; you've had that happen in your court, haven't you, Judge?

A Oh, yes sir. Lawyers don't always agree with the Judge, that's true.

Q And sometimes the Court has to admonish lawyers in matters, to try to keep the decorum of the Court Room, don't they?

A Occasionally.

Q And during your practice, have you ever held either clients or general public, or lawyers in contempt?

A Have I ever?

Q Yes sir.

A Well, I've admonished them. I don't know that I've actually fined them; maybe. I don't know that I ever put a man in jail, but I have - - - I've had questions of contempt, and I've admonished the lawyers, and I've threatened them with prosecution when one - - - I mean with contempt if he said - - - if he asked the question again, and the Court reversed me on it; so, I haven't asked that question.

Q That's what I'm talking about, that sometimes, when tempers get to flaring, even a Judge can make a mistake, can't he?

A A Judge is a human being, and I don't know of any perfect one, sir.

Q And lawyers are human beings, and we may make mistakes, too?

A They're certainly not angels; all of them, anyhow.

Q Now, there's not anything so unusual about a court admonishing lawyers or others to keep the decorum in the Court Room and keep the trial moving, is there? It has to be done on occasion, doesn't it?

A In the presence of the jury and in the presence of the audience, I think the Judge should be very cautious.

Q I agree with you, Judge.

A And if there is anything serious, I usually take the counsel in Chambers and have an understanding with them.

Q All right, sir. Now, Judge, I believe, in 1960 you had an election down there in your Sixth Circuit, didn't you, and that you led the ticket over all judicial officers, did you not?

A I think so.

Q You were the high - - - had the highest ballot, the

most votes cast for you of any other judicial officer in Pinellas, didn't you?

A Well, I was the only Democrat elected, if that's what you want to say.

Q Now, of - - - but of those others elected, you had the largest vote, didn't you - - - and you are a Democrat, aren't you, Judge?

A Yes sir.

Q Now - - -

A That is, I'm a member - - - running on the Democratic ticket.

Q That's what I'm talking about, and you have four years.

Now, in 1962, in 1962, Judge Hobson and Judge Phillips are Democrats, and they beat their Republican opponents, didn't they?

A That's right, yes sir.

Q And they are Circuit Judges there in Pinellas right now?

A Yes sir.

MR. NICHOLS: Judge, I don't think that we have any further questions of you at this time, and as far as we're concerned, you can be released to return to your home, and I understand that today is your seventy-eighth birthday, is that correct, sir?

THE WITNESS: Oh, no, you're way off.

MR. NICHOLS: I am. Well, I understand that this is your birthday.

THE WITNESS: This is my birthday, and - - - but you fellows kind of messed it up, as far as my party is concerned.

MR. NICHOLS: Well, Judge, I'll say that the State Board of Managers did it, they called you, but I wish to thank you for your testimony, anyway, and I'm partly guilty, and I'm sorry for it.

THE WITNESS: Passing the buck.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: Judge, we have some questions from the Senators.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Senator Gibson, was your question answered - - - Senator Gibson?

SENATOR GIBSON: It seemed a little indefinite.

CHIEF JUSTICE DREW: Senator Gibson would like to know whether you ever found an attorney in contempt and fined him, that you remember?

THE WITNESS: I don't think I ever actually fined him, except, maybe, for being late or something of that kind, Senator.

I - - - not for misconduct, but I have a rule in my court down there that anyone who is late in court pays a dollar a minute, and I have entered a fine in such case as that. I've never had the unpleasant duty of actually fining a man for contempt. I don't recall ever having done so. I may have, but I don't recall it.

CHIEF JUSTICE DREW: Senator Friday would like to know: You do not feel your presence here in this forum is to seek correction of notice of State's Attorneys, do you, sir?

THE WITNESS: Will you read that again?

CHIEF JUSTICE DREW: You do not feel that your presence here is to seek the correction of the State's Attorneys - - - correction of the notice to State's Attorneys, or the lack of notice to State's Attorneys in the Sinclair case, I assume Senator Friday means, that your purpose here is not to seek the correction of that process.

THE WITNESS: You mean here today?

CHIEF JUSTICE DREW: Yes sir.

THE WITNESS: I haven't - - - I was brought up here under a subpoena duces tecum. I brought myself and I brought everything that they asked me to bring. I'm here under subpoena, not voluntarily.

CHIEF JUSTICE DREW: As Presiding Judge - - - Senator Stratton wants to know, as Presiding Judge for many years in the Sixth Judicial Circuit, have other Judges other than Judge Kelly made legal errors?

THE WITNESS: I think that the Chief Justice can answer that question.

CHIEF JUSTICE DREW: Senator Mathews would like to know, Exhibits 10 and 11 in evidence, those are the petition and the order, Judge, that you have copies of, have not been disclosed to us. At what stage will we be able to know the contents - - - that's directed to the Presiding officer.

SENATOR MATHEWS: Yes sir.

CHIEF JUSTICE DREW: We will have them read after the witness finishes, Senator Mathews.

I, as the Presiding Officer, would ask this question: During this period of time in the Sixth Judicial Circuit, under the rules of your Circuit, were all criminal cases assigned to you, Judge Bird?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: In all of the Circuit?

THE WITNESS: No sir, only in Pinellas County. The criminal cases in Pasco County were assigned to Judge Kelly.

CHIEF JUSTICE DREW: At this particular time?

THE WITNESS: Yes sir. Judge Kelly, ever since he took over from Judge Dayton - - - Judge Dayton went out of office, and Judge Kelly has had the assignment of those cases.

Before, when Judge Dayton - - - well, they had two judges over there in Pasco County, Judge Dayton, who Judge Kelly superseded in the election, was appointed by Judge Collins to fill one of the vacancies that was created by a new census, and he lived over in Pasco County. So, they had two Judges over there during those two years, and it was divided between those two over in that county. I haven't tried a case in Pasco County in a long time.

CHIEF JUSTICE DREW: For the record, Judge, how many counties in the Sixth Circuit, and what are they?

THE WITNESS: Pasco and Pinellas, two counties. Pasco has a population, I think, around 35,000 or 40,000, and Pinellas has a population of 374,000, if I remember.

CHIEF JUSTICE DREW: Senator Barron would like to ask this question: "Judge Bird, aside from the practical practice and custom in your Circuit, did Judge Kelly have the authority, under the law, to grant the writ and to grant bond to the accused?"

THE WITNESS: I'll say this, gentlemen: Under the

Constitution, any Circuit Judge has jurisdiction to issue writs of habeas corpus, just like the Justices of the Supreme Court have the - - - in our Circuit, we have a rule which I, as the Presiding Judge, adopted, that all criminal matters were to be tried by me - - - by the way, that case, that rule went to the Court and - - - for its consideration, and still stood.

There was an amendment to that rule that provided that any Circuit Judge could issue a writ of habeas corpus under the Constitution, but that it was suggested, not directed, it was suggested that in that event the writ should be returnable to the Judge to whom it was assigned.

Does that answer your question, sir?

CHIEF JUSTICE DREW: Judge, Senator Askew would ask, in all your experiences, did you ever personally notify the State's Attorney of application for a writ of habeas corpus and then not have the State's Attorney appear for the hearing without giving a reasonable explanation?

THE WITNESS: I don't - - - no sir, I have never heard a writ of habeas corpus in the absence of the State Attorney, or in absence of notice to the State Attorney, never, not that I know of, the whole time.

SENATOR ASKEW: Mr. Chief Justice, would you repeat my question, sir, to the witness? The witness didn't respond to the question.

CHIEF JUSTICE DREW: He says, in all your experiences, did you ever personally, did you ever personally notify the State's Attorney of the application for a writ of habeas corpus and then not have the State's Attorney appear for the hearing without giving a reasonable notice? Did you ever personally notify - - -

THE WITNESS: I never personally notify anyone, State Attorney or otherwise, but I - - - in habeas corpus proceedings I require that it be shown that he was notified. I didn't do it personally, I didn't call him up and say I've got a writ of habeas corpus, unless it was something that was an emergency, and then I would call him up over the telephone and say, "I've got a habeas corpus here. Some man wants to get out. He's under - - - he's arrested under a fugitive warrant and he wants to be out," and under those conditions, I have actually called up his office and told him we had him there.

SENATOR ASKEW: Mr. Chief Justice, I realize, under the rules, that we're supposed to present written questions. This has concerned me, because sometimes there's not, apparently - - -

CHIEF JUSTICE DREW: Do you want time to ask another question of the witness, Senator?

SENATOR ASKEW: I would like to rephrase the question, with the Court's permission.

CHIEF JUSTICE DREW: Senator, it would be contrary to the rules. We will - - -

SENATOR ASKEW: Well, will the Chief Justice repeat my question to the witness?

CHIEF JUSTICE DREW: "In all your experiences, Judge, did you ever personally notify the State's Attorney of application for a writ of habeas corpus and then not have the State's Attorney appear for the hearing without giving a reasonable explanation?"

THE WITNESS: I don't recall any such as that, Senator.

CHIEF JUSTICE DREW: Does that answer the Senator's question?

SENATOR ASKEW: Yes sir.

MR. NICHOLS: Mr. Chief Justice, I have one or two other questions. I want to identify a record.

BY MR. NICHOLS:

Q Judge Bird, I hand you, in the Sinclair case, filed in Pinellas County, the original file in common law Circuit, Pinellas County, Case Number 16180, and ask you to examine this and see if this is not the habeas corpus proceeding in the civil proceeding, in the common law side of the docket, that was filed over in Clearwater, at which Judge Kelly presided - - - not the criminal matter.

MR. O'NEILL: May it please the Court, we admit, if the Respondent's attorney will state that that is the original court file, we admit that it is, without authentication by the Judge.

MR. NICHOLS: All right, fine. That's all right.

MR. O'NEILL: The same courtesy he has shown us in that regard.

BY MR. NICHOLS:

Q I would like to ask the Judge if you ever knew that was actually filed over in the county, Judge?

A I never actually saw it, sir, but I was aware of the thing, like everybody's aware of the daylight and dark, but I never did actually go and examine the record.

Q I didn't know whether you knew that that was actually filed over there or not.

A I knew that - - - it's just common knowledge, was the only thing, sir. I never looked at the record.

MR. NICHOLS: We'd like to have this marked for identification at this time, and later - - -

MR. O'NEILL: The Board of Managers has no objection.

CHIEF JUSTICE DREW: Mark it for identification as Respondent's Exhibit 1 for identification.

(Whereupon, the above referenced document was marked for identification as Respondent's Exhibit 1)

MR. NICHOLS: I have no further questions, Judge.

CHIEF JUSTICE DREW: Do you have any further questions?

MR. O'NEILL: Having had the redirect answered, we have no further questions.

We ask that the witness be - - - as Respondent's counsel if he objects to the release of this witness.

CHIEF JUSTICE DREW: You have consented to the release of this witness?

MR. NICHOLS: Yes sir.

MR. O'NEILL: Happy birthday, Judge.

CHIEF JUSTICE DREW: You may be excused, with the thanks of the Court for attending.

THE WITNESS: Thank you, Senators and Your Honor.

CHIEF JUSTICE DREW: Judge, there's another question that one of the Senators wants to ask you. He said:

"What was Judge Kelly's judicial temperament?"

THE WITNESS: You mean you're asking me an opinion of that?

MR. NICHOLS: I object to the question - - - just a minute, now. I object to that question on the ground that the Judge has said he never has been before him.

CHIEF JUSTICE DREW: I'll sustain the objection.

MR. O'NEILL: Thank you, Judge Bird.

THE WITNESS: Thank you so much, Gentlemen.

(Witness excused)

CHIEF JUSTICE DREW: Now, Mr. Secretary - - - did you leave those copies, Judge Bird?

SECRETARY FRASER: Yes, we have them.

CHIEF JUSTICE DREW: I'll ask the Secretary to stand at the microphone, if you will, and read those.

MR. O'NEILL: May it please the Court, I think, in order for the Senate to follow, it would be more proper to read the last exhibit first, and - - - the petition first, and then the order, as a suggestion to the Court, rather than the order first, which was the first one introduced.

CHIEF JUSTICE DREW: Read the Order first, and then the Petition.

MR. O'NEILL: I would suggest that the Petition be read first.

CHIEF JUSTICE DREW: Well, read the Petition first and then the Order.

SENATOR FRIDAY: Mr. Chief Justice, I would like the Secretary to make a note - - - I don't want to raise this while we are in open session, but I would like to discuss the matter of objecting to the Judge's questions; to the Judge not being allowed to have his question answered.

CHIEF JUSTICE DREW: Read the Petition. It isn't necessary to take it down, as you can get a copy.

MR. NICHOLS: I am willing to be held in contempt for doing it. I didn't realize this was coming.

CHIEF JUSTICE DREW: Before you start reading, I wish to announce that about 11:00 o'clock each morning and about 4:00 o'clock each afternoon, in any event, we will take a recess of ten or fifteen minutes.

SECRETARY FRASER:

"IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY.

12,884 Ct. Cr.

|                         |   |               |
|-------------------------|---|---------------|
| STATE OF FLORIDA        | : |               |
|                         | : |               |
| vs.                     | : | MURDER IN THE |
|                         | : |               |
| MAURICE EUGENE SINCLAIR | : | FIRST DEGREE  |
|                         | : |               |

**PETITION TO VACATE ORDER GRANTING BAIL**

TO THE HONORABLE JOHN U. BIRD, CIRCUIT JUDGE:

Comes now Clair A. Davis, State Attorney for the Sixth Judicial Circuit of the State of Florida as Petitioner herein and respectfully says as follows:

1. That the judiciary of the Sixth Judicial Circuit of Florida consists of eight circuit judges and that during the greater part of the last past two years, Your Honor has been, and still is, the presiding circuit judge of said circuit.

2. That for a great number of years it has been the general recognized rule of procedure and practice before this Court that Your Honor has taken over all jurisdiction over grand juries and criminal cases in the category of felonies, including capital cases.

3. That upon the suggestion of your Petitioner herein, submitted to Your Honor on the 8th day of October 1962, Your Honor entered his Order upon the same date, to-wit: October 8, 1962, recalling the Grand Jury of Pinellas County, Florida, to assemble upon the 29th day of October, 1962 to examine into and act upon all capital cases and other matters which may be properly brought before them.

4. That pursuant to Your Honor's Order aforesaid, the Grand Jury of Pinellas County did assemble at the Courthouse in Clearwater, Florida, where they were convened by Your Honor and, by Your Honor, instructed to proceed with their deliberations of the criminal cases to be presented unto them.

5. That upon said Grand Jury convening on the 29th day of October, 1962 as aforesaid, said Grand Jury remained in session from the 29th day of October, 1962 to the 31st day of October, 1962, both dates inclusive, and, at the conclusion of said session, said Grand Jury returned into open court and turned over unto Your Honor their Grand Jury Presentment together with six Indictments each charging crimes of a capital nature, including one Indictment charging Maurice Eugene Sinclair with the crime of Murder in the First Degree.

6. That upon Your Honor receiving from the Pinellas County Grand Jury the Presentment and six Indictments as hereinabove mentioned, Your Honor recessed and adjourned said Grand Jury on the afternoon of the 31st day of October, 1962 with instructions to said Grand Jury that they should stand adjourned unless and until again re-called by the Court.

7. That included within the deliberations of the Grand Jury while in session as aforesaid, was the case of the State of Florida against the aforesaid Maurice Eugene Sinclair which had theretofore been bound over to said Grand Jury, without bail, following preliminary hearing by the proper committing magistrate in Pinellas County, Florida on the 19th day of October, 1962.

8. That at preliminary hearing before the committing magistrate, October 19, 1962, aforesaid, where defendant, Maurice Eugene Sinclair stood charged with the crime of Murder in the First Degree, said defendant was represented by one Harold Wilson, a practicing attorney in Pinellas County, Florida, which said Harold Wilson has ever since continued to be the defense counsel of the said Maurice Eugene Sinclair.

9. That upon the Grand Jury Indictment charging Maurice Eugene Sinclair with the crime of Murder in the First Degree being returned in open court before Your Honor on the 31st day of October as aforesaid, said Indictment and the charge contained therein was given vast publication over the press, radio and television medias in Pinellas County, Florida and was a matter of common knowledge throughout the County of Pinellas before the end of the 31st day of October, 1962, and your Petitioner verily believes, and therefore charges, that defense counsel, Harold Wilson, on the 31st day of October, 1962, well knew that his client, Maurice Eugene Sinclair, stood charged upon Grand Jury Indictment with the offense of Murder in the First Degree.

10. Further alleges Petitioner he has learned that upon the 1st day of November, 1962, defense counsel, Harold Wilson aforesaid, appeared before the Honorable Richard Kelly, one of the Circuit Court Judges of the Sixth Judicial Circuit of Florida to whom said attorney presented a Petition for Writ of Habeas Corpus styled STATE OF FLORIDA ex rel MAURICE SINCLAIR, Petitioner, vs. DON GENUNG, SHERIFF OF PINELLAS COUNTY, Respondent, based upon the preliminary hearing held before the committing magistrate October 19th, 1962 and the bindover commitment of the said Maurice Eugene Sinclair to await the action of the Grand Jury as herein-

before mentioned and, thereupon, obtained the issuance of Writ of Habeas Corpus entered by Richard Kelly, Circuit Judge aforesaid.

11. Your Petitioner has further learned that, on the 5th day of November, 1962, Richard Kelly, Circuit Judge aforesaid, entered his Order in connection with the First Degree Murder case then and now pending against the said Maurice Eugene Sinclair before Your Honor as the judge assigned and holding jurisdiction over said case, which said Order by Richard Kelly, Circuit Judge, granted bail in the amount of \$10,000 conditioned as required by law and providing that upon defendant, Maurice Eugene Sinclair posting such bail, that he be discharged from custody all as appears from a copy of said Order delivered to the State Attorney's office in the Courthouse at Clearwater, Florida, by a representative of the Sheriff's Office of Pinellas County, Florida on the 6th day of November, 1962.

12. Petitioner further says that, at no time, has he ever been served or had delivered to him, a copy of the Petition for Habeas Corpus nor a copy of the Writ of Habeas Corpus herein mentioned to this very date; that the only mention of anything that had transpired in the premises was a telephone call from Don Genung, Sheriff of Pinellas County suggesting that he had a Writ and asking to be advised as to what he, as Respondent, should do and that your Petitioner then suggested to the said Sheriff that he merely file a reply to said Writ wherein he would show his authority for detaining the prisoner was based upon the Grand Jury Indictment charging the defendant with the crime of Murder in the First Degree.

13. Your Petitioner further respectfully says that the criminal case, State of Florida vs. Maurice Eugene Sinclair, charging said defendant with the crime of Murder in the First Degree upon Ida M. Brown, has ever since the 19th day of October, 1962 been given vast news coverage by the press, radio and television media in Pinellas County, Florida; that the alleged offense is generally referred to as the "torso murder" wherein it is claimed that the body of the said Ida M. Brown was mutilated by the severance of her hands, arms and head from her body, as a result thereof the general public within Pinellas County has been greatly shocked and concerned over the details charged in connection with said case.

14. Petitioner further says that upon the return of the Grand Jury Indictment against Maurice Eugene Sinclair on the 31st day of October, 1962, said case was scheduled for arraignment before Your Honor in open court on November 1, 1962 at 1:30 p.m. but that, due to a claim of prior commitment on the part of defense counsel, Harold Wilson, aforesaid and, as a courtesy to the said Harold Wilson, said arraignment was postponed; that on November 2nd, 1962, the defendant, Maurice Eugene Sinclair and his counsel, Harold Wilson were called to appear before Your Honor for the purpose of arraignment of the said Maurice Eugene Sinclair upon said Indictment but by reason of said defense counsel contending that he had not had sufficient time to study said Indictment prior to arraignment, the arraignment was again postponed until the regular arraignment session to be held by Your Honor in open court at Clearwater, Florida on the 8th day of November, 1962.

15. That during the regular arraignment session held by Your Honor in open court November 8th, 1962, the defendant Maurice Eugene Sinclair and his counsel, Harold Wilson, both then and there being present and upon your Petitioner, as State Attorney arraigning the said defendant, by reading the charge contained in the aforesaid Indictment, said defendant, with his counsel, Harold Wilson, entered the plea of not guilty and not guilty by reason of insanity with an explanation to Your Honor that examinations had been and were in progress by experts procured by said defense counsel for the



and belief and as to these he verily believes these to be true.

/s/ CLAIR A. DAVIS

CLAIR A. DAVIS, State Attorney  
for the Sixth Judicial Circuit of  
of Florida.

Subscribed and sworn to before me  
this 13th day of November, 1962.

/s/ Margaret H. Wismer

NOTARY PUBLIC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing PETITION TO VACATE ORDER GRANTING BAIL has been furnished, by U. S. mail to Harold Wilson, Attorney for Defendant, 321 Indian Rocks Road, Largo, Florida, this 13th day of November, 1962.

/s/ CLAIR A. DAVIS

CLAIR A. DAVIS, State Attorney  
for the Sixth Judicial Circuit of  
Florida."

CHIEF JUSTICE DREW: Now, read the Order.

SECRETARY FRASER: Read the Order?

CHIEF JUSTICE DREW: That was the reading of the Petition, gentlemen. Now he will read the Order.

SECRETARY FRASER:

"IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY.

CT. CR. NO. 12,884  
16,180 LAW

|                         |   |               |
|-------------------------|---|---------------|
| STATE OF FLORIDA        | ) |               |
| —vs                     | ) | MURDER IN THE |
| MAURICE EUGENE SINCLAIR | ) | FIRST DEGREE  |

**ORDER**

This cause coming on to be heard before me as the Presiding Judge in the above-styled cause and as the Presiding Judge of the Sixth Judicial Circuit of Florida, upon the sworn "Petition to Vacate Order Granting Bail" filed by the Honorable Clair A. Davis, State Attorney for the Sixth Judicial Circuit of Florida, which said Petition was filed Ct. Cr. No. 12,884 on the 13th day of November, 1962, and in Law Case No. 16, 180, Circuit Court;

And it appearing from said Petition that, while said case was and is pending before the undersigned Judge under prior assignment and arrangement as the Presiding Judge of said Circuit, the Honorable Richard Kelly, Circuit Judge, in Law Case No. 16,180, Habeas Corpus, has entered an Order providing for the release of the said defendant, Maurice Eugene Sinclair, upon his posting of the sum of \$10,000, on the said charge of Murder.

It is unbecoming of one Circuit Judge to review, reverse, or affirm the Order of another Circuit Judge of the same Circuit;

IT IS THEREFORE THE ORDER AND JUDGMENT OF THIS COURT that said Petition is referred to the Honorable Richard Kelly, as the Circuit Judge who issued the Order upon the Writ of Habeas Corpus in this cause, for further action and disposition; and this assignment

of the Petition is for that purpose only and in no wise an assignment of the cause to the said Honorable Richard Kelly for any other purpose.

It further appearing that, because of the serious matters and things set forth in said Petition and the fact that the defendant has entered a plea of not guilty by reason of insanity since the issuance of said Order upon said Writ;

IT IS ORDERED that the Sheriff of Pinellas County shall securely hold and detain the said defendant, Maurice Eugene Sinclair, without bail until the final action and disposition of said Petition by the Honorable Richard Kelly, Circuit Judge as aforesaid, or until the further Order of this Court.

DONE AND ORDERED this 15th day of November, 1962, in Chambers at Clearwater, Florida.

/s/ JOHN U. BIRD  
PRESIDING CIRCUIT JUDGE  
PRESIDING TRIAL CIRCUIT JUDGE"

CHIEF JUSTICE DREW: Mr. Secretary, have photostatic copies made of those and send a photostatic copy to Judge Bird and retain those in the records of this cause.

MR. O'NEILL: Mr. Chief Justice, a photostatic copy has been given to Judge Bird, so that would not be necessary.

CHIEF JUSTICE DREW: Thank you. You may proceed. Call your next witness.

MR. O'NEILL: On behalf of the Board of Managers, Mr. Welborn Daniel.

MR. DANIEL: With respect to 11:00 o'clock, I think we have a witness that we can probably fit in here, who will not take more than ten or twelve minutes.

Call Mr. Robert Williams.

Thereupon,

ROBERT WILLIAMS,

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

CHIEF JUSTICE DREW: Mr. Witness, will you please speak directly into the microphone. I know it is difficult but, instead of looking at counsel who are asking you questions, look at the microphone and speak directly into it, please sir.

THE WITNESS: I will, Your Honor.

**DIRECT EXAMINATION**

BY MR. DANIEL:

Q For brevity's sake, will you state for the record your name, your profession, your association, and your address?

A My name is Robert Williams. I am from St. Petersburg, Florida. I practice law there. I am a general partner in the law firm of Earle, Hawes & Williams in that city.

Q Mr. Williams, how long have you been a practicing attorney in Pinellas County?

A Since 1960.

Q And in what school did you receive your law education?

A Stetson.

Q You graduated in 1960?

A 1959, sir.

Q 1959. Where did you practice between 1959 and 1960?

A I passed the Bar in 1960.

I graduated in September - - - no, I beg your pardon - - - in May of 1959, and I passed the Bar in 1960, the March Bar.

Q Do you know Judge Richard Kelly?

A I do, sir.

Q Have you ever practiced before him?

A Yes sir, I have, sir.

Q Have you practiced before the other Circuit Judges in the Sixth Judicial Circuit?

A Yes sir.

Q What is the nature of most of your practice, your personal practice, as opposed to your partners' practice?

A Defense - - - trial work.

Q Primarily trial work?

A Yes sir.

Q Do you recall any of the cases in which you have appeared before Judge Kelly?

A Well, Mr. Manager, there have been a number of them.

Q Do you recall specifically the case of Allen vs. Hauser?

A Yes, I do, sir.

Q What was the nature of that case?

MR. NICHOLS: May I inquire, Your Honor, under what Article this is going to come in?

MR. DANIEL: Article VII.

BY MR. DANIEL:

Q What was the nature of that case?

A The particular case was a personal injury case that I was defending.

Q What was the nature of the hearing?

A This was a Pre-trial Conference before Judge Kelly.

Q Did any matter other than that relating to the case transpire or come up?

A Yes sir.

Q What was that matter?

A This was a discussion of the pending problems over in Pasco County. This was immediately following the pre-trial conference, and at that time Judge Kelly started this conversation.

Q What was the conversation?

A It - - - along the general terms of - -

MR. NICHOLS: Now, wait a minute, I object to general terms, letting this lawyer re-edit the matter. I'm interested only in what the Judge said.

BY MR. DANIEL:

Q All right, just state the subject matter of the conversation, and then what Judge Kelly stated, if you would.

A Well, as I have previously stated, the subject matter dealt with the problems that were at that time existing in Pasco County.

Q Let me ask you this first, by way of the time element: Do you recall the approximate date of this, or can you acquaint it with some other incident?

A This conversation took place some short period of time prior to the Select Committee meeting here in Tallahassee.

Q And that was with reference to the Articles of Impeachment?

A Yes sir.

Q Did Judge Kelly make any statement with respect to either that or, as you stated, the lawyers of Pasco County?

A Yes sir, he did. His statement was that something had to be done to punish the lawyers in Pasco County for the way that they were treating him as a Judge.

Q Did he particularize on any lawyers, or just generalize the lawyers in Pasco County?

A To my best knowledge, he did not specifically name any attorney. His comment was that these lawyers or those lawyers in Pasco County.

Q Now, from your practice before Judge Kelly, and your general knowledge by practicing before other Circuit Judges in trial work in Pinellas County, do you know the Judge's reputation among the Bar and the public, with respect to his conduct of cases?

A Yes sir, I do.

Q What is that reputation, sir?

A It is bad.

MR. DANIEL: You may inquire.

#### CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Williams, do I understand that you all were having a discussion after the pre-trial conference of a case? Am I correct, and where this took place?

A I don't understand you. You mean where did it take place?

Q Yes. What was the occasion on which you were having the discussion, or the Judge was having a discussion with you and some other lawyers?

A Yes. This occurred in St. Petersburg, following - - well, as you know, following a determination of a hearing.

Q This was following a pre-trial conference which you all had been having, concerning some litigation that was going on?

A That is correct, sir.

Q Now, when was this - - do you recall the day of the week that you were having the pre-trial conference?

A Yes, I do, sir; this was on Saturday.

Q On Saturday. Was there any other Judge working that day?

A Mr. Nichols, I honestly cannot tell you. I do not know.

Q All right, sir.

Now, however, he was holding pre-trial conferences concerning cases that were going to be tried, and you had one of those cases that was to be tried?

A How many he had, I can't tell you - - -

Q I understand that, but I'm talking about what you were there for?

A Yes sir, I was there for this pre-trial conference.

Q All right, and were you defending - - - was your firm defending that case, or were you representing the Plaintiff?

A We were defending.

Q You were defending?

A As usual.

Q As usual. All right, sir.

Now, how many matters have you handled yourself, legal matters before, or been participating in cases before Judge Kelly?

A Mr. Nichols, I would have to give you an approximation.

Q I'll accept an approximation.

A All right, sir. Something of half a dozen or a dozen or so, I would say.

Q Have those all been handled in a judicial manner?

A I can only tell you that I, personally - - -

Q I'm asking, from your personal observation, in the handling of the cases, have you been satisfied with his handling of those cases?

A Insofar as my personal experience has been concerned, I have not received any ill treatment at the hands of Judge Kelly, if that's what you're asking. Is that what you're asking?

Q Yes sir, that's what I'm talking about.

Now, you have no question about this Judge's integrity, one way or the other, do you?

A Mr. Nichols, I have no personal knowledge - - -

Q All right, sir.

A - - - one way or the other, about the Judge's integrity.

Q Now, you handle a good bit of trial work, your firm does?

A Yes sir.

Q And who are the members of your firm?

A Richard Earle, Mark Hawes, myself, and we have four associates.

Q Do you know Mr. Muscarella?

A Mr. Muscarella?

Q Yes, Mr. Muscarella?

A From Clearwater, I guess. Yes sir, I do.

Q From Clearwater.

A Yes sir.

Q And what is your conduct or association with him?

A Well, Mr. Muscarella and his firm does a good deal of Plaintiff's work, and, consequently, we come in contact with him quite frequently in that capacity.

Q Yes sir. Now, let's move down to the occasion where you said that the Judge had this conference with you, or had a discussion with you about the lawyers in Pasco County. Now, were you all discussing, or was he discussing with you the fact that the lawyers, by petition or by legislative matter, were trying to change the Circuit around to put Pasco County in another Circuit?

MR. DANIEL: Your Honor, I'm not sure I have an objection. I didn't hear all the question.

Would the Reporter read it back?

MR. NICHOLS: I'll be glad to state it again.

MR. DANIEL: I prefer to have the Court Reporter read it back.

CHIEF JUSTICE DREW: Read it back, Mr. Reporter.

(Last question read)

BY MR. NICHOLS:

Q In other words, the changing of Pasco County, putting it over with the Fifth Circuit, taking it out of the Sixth Circuit?

A Mr. Nichols, I, in all honesty, can't tell you whether that particular subject was broached. It may have been. I don't - - - I can't tell you whether that particular point came up. I just don't recall, don't remember now.

Q Well, that was about the time that that incident was occurring in public, and pretty well known among the Bar over there, wasn't it, general knowledge?

A I'm familiar with that question, yes sir.

Q Now, would it be fair to say that in that discussion that he was having with you lawyers - - - by the way, what other lawyers were present?

A At that time Attorney William Allison, from St. Petersburg, who was representing the Plaintiffs in that particular case, he was there.

Q Were there any other lawyers present?

A Not to my recollection, no sir.

Q Or were there any other persons present?

A I do not believe so.

Q Was there a Court Reporter present at the pre-trial conference?

A No sir.

Q Now, then, he was having a kind of private conversation with you two lawyers?

A Yes.

Q All right, sir. Now, would it be fair to say that he said something, in substance, to the effect that the Bar Association ought to do something about the situation over there?

A This was part of the conversation.

Q In other words, that was part of his conversation?

A Yes, it was. I didn't mean to mislead; this was - - - the conversation went - - - again, now, I'm having to give you in general terms, if you don't mind, if you want them.

Q No, I think you've answered my question. Thank you very much.

A All right.

Q How did this private conversation come to the attention of the Board of Managers?

A This - - - I don't know, sir. I can't honestly tell you.

Q Well, did you come before the House Committee up here and give your testimony?

A No, I did not, Mr. Nichols. I was present during a portion of the House Select Committee meeting; I was subpoenaed up here as a witness for Judge Kelly. However, I did not testify; and at that time I did not have any discussion, to my knowledge, with anyone from the House or the Senate, other than a friendly conversation.

Q Well, who first contacted you, then, and how did this matter get before us now? Who first contacted you, or - - - some investigator?

A That's true.

Q And when did he contact you?

A I cannot - - -

MR. DANIEL: Your Honor, I don't know that this is relevant. I'll object as not being in recross of anything asked on direct.

MR. NICHOLS: Well, Your Honor - - -

CHIEF JUSTICE DREW: What is the purpose of the question?

MR. NICHOLS: Well, the purpose of the question is to ascertain in what manner and how they're going about this and how they're bringing this in under Item Number VII here.

MR. DANIEL: I'll concede that the Board of Managers conducted an investigation and, of course, we have a list of witnesses that Judge Kelly called before the House Committee, and we were as interested in what those witnesses would say as what any other witnesses would say.

CHIEF JUSTICE DREW: I'll sustain the objection. I can't see that it serves any purpose.

BY MR. NICHOLS:

Q Out of the six matters, however, that you have personally been before the Judge, you don't know of any matter that's been handled in a manner in which he should be impeached for, do you?

MR. DANIEL: Your Honor, only to the extent that it's leading, and that it assumes facts not in evidence, I object; the portion, "Out of the six matters," I don't believe that was the witness' testimony.

MR. NICHOLS: I thought he said that he had handled approximately - - -

MR. DANIEL: He said six or a dozen.

MR. NICHOLS: Well, I'll rephrase it.

BY MR. NICHOLS:

Q Now, out of the matters that you handled before him, you, personally, don't know of any matter, that he handled any matter in a manner which he should be impeached for, do you?

A Mr. Nichols, thank goodness I don't have to make the determination about this impeachment. I - - -

Q Will you just answer my question, please?

A I don't know what it takes to impeach a Judge. Now, I would like to refuse to answer that particular part of it, unless I'm directed to by His Honor.

Q Well, there's nobody making an objection about it. Suppose you answer the question.

A I don't know what it takes to impeach a member of the - - -

Q I said, out of the matters that you handled, and from your observation in those matters that you handled, you never saw any manner in which you feel that the Judge should be impeached for, do you?

CHIEF JUSTICE DREW: Out of any matter that you handled, Mr. Witness.

THE WITNESS: Mr. Nichols, I believe - - - I'm not trying to be cute or evasive, I - - -

BY MR. NICHOLS:

Q Can you answer the question?

CHIEF JUSTICE DREW: If you don't feel you can answer the question, why, say so.

THE WITNESS: I don't feel I can answer the question, Your Honor, sir. He's asked me about the cases I have handled. There have been instances that were offensive to me, personally. My experience is limited, obviously; I'm a relatively young man, and for that reason, I don't know that I can tell you whether or not these things would warrant impeaching anybody.

BY MR. NICHOLS:

Q Well, you don't - - - you haven't signed any petition for the impeachment of Judge Kelly, have you?

A No sir, I have not.

Q Then, as far as your observation of him, and his conduct in the handling of matters before him, he hasn't done anything for which you feel he should be impeached?

MR. DANIEL: Objected to as calling for the conclusion and opinion of the witness.

CHIEF JUSTICE DREW: Well, he said he couldn't answer that question. He says he's not qualified.

MR. NICHOLS: We have no further questions.

MR. DANIEL: No further questions.

CHIEF JUSTICE DREW: We have a question from Senator Price: "What does the term 'bad' mean, with reference to the Judge's reputation?"

THE WITNESS: Your Honor, this is quite a question. This answer of "bad" on my part to me means that there has been, at least, in my impression, an almost active attempt on the part of His Honor to promote discord among the Bench. There is a feeling, generally, I believe - - - I share the feeling - - I'm not proud of it, but I do - - - that I am most uncomfortable, and I believe that - - - I say that this is the general feeling among the other members of the local Bar that, appearing before the Judge, there is - - -

MR. NICHOLS: Wait a minute, Your Honor.

Now, this man certainly can't express the opinion of the other members of the Bar.

MR. DANIEL: Your Honor, Mr. Nichols - - let him proceed to the question. I think he should - - -

MR. NICHOLS: Well, I'm not going to turn this witness loose and let him have a field day, and certainly, he isn't entitled to try to express how other people feel. I don't believe this man's qualified to express how other lawyers feel, or what they're thinking.

CHIEF JUSTICE DREW: I'm going to - - - you can go ahead with your answer, and explain - - - to answer Senator Price's question, as to your - - - what you meant

by "bad." I think you have the right to explain it, but you should confine yourself, confine your answer to how you feel, or your reaction, not what somebody else tells you.

THE WITNESS: All right, Your Honor, I'll do the best I can.

There is - - - again, this is my experience - - - there is an inability to predict even a range of what you might expect when you appear before this Judge. Whether or not this has any meaning to anyone else or any other lawyer, I cannot say. There are occasions when - - - at least, in my practice, you are forced to give your client some idea of what he can expect as a result of his litigation. I cannot do this when I try to answer the question to a client of mine that has to appear before this Judge. This is embarrassing to me, because when the time comes to make the statement to my client I'm put in a position, then, of either explaining to him why I am unable to do this, and that is not good, because you're slapping at the Bench and I, personally, don't enjoy that; and if you don't answer them, then something's wrong with you. I think I may be getting far afield from the Senator's question about why his reputation is bad but this, to me, forms a part of it. The unpredictability of the Court that Judge Kelly presides over, the instances that I have observed, the treatment of some other lawyers, which was offensive to me - - - I can't tell you whether or not it was offensive to the other lawyer that was involved in it. To me, it was, and if I had been involved in it I would have been a little disturbed.

CHIEF JUSTICE DREW: Will you please state what you're talking about, now, what those things were, so the Court will know what you're speaking about.

MR. NICHOLS: And the names of the people who he's talking about.

CHIEF JUSTICE DREW: Yes, he may want to call them.

THE WITNESS: As I say, I can't tell you whether or not this bothered the other attorney as it did me; the other attorney was Mr. Muscarella; this is the attorney that Mr. Nichols asked me about. The occasion was involving the trial of a lawsuit. The particular instance that I was referring to was that as the trial progressed, Mr. Muscarella was in the process of making an objection, as I recall, along the lines of irrelevant and immaterial, something like that, and at that time Judge Kelly stopped the proceedings, and in open court, proceeded to advise Mr. Muscarella how he should make his objections, and the words that he should use in forming his objection. As time passed, a few minutes later, Mr. Muscarella again got to his feet and started making the same objection, and he was cut short by His Honor and the same routine went on again, that he was advised how to make his objection. A few minutes later, the same procedure took place, and as the trial progressed, Mr. Muscarella at one point would rise to his feet, or was - - - had gotten to his feet to make an objection, and at least, it's been my experience that once in awhile you rise to your feet and wait for a moment until the proper time comes, and you put your objection to the Bench. He was doing this, apparently, and the trial was brought to a halt by the Court, and Mr. Muscarella was advised, in very pointed terms, that he was not to get on his feet unless he had something to say, and told him to sit down.

Again, later in the day, with the trial progressing - - - Mr. Muscarella was on his feet - - - and we all get weary sometimes when we stand - - - and he was leaning with his hip against counsel table. The trial was again brought to a halt and Mr. Muscarella was advised that he should stand on his own two feet when he was on the floor in the courtroom and not be leaning on counsel table. The same incident was repeated a little later. Mr. Muscarella, again,

was leaning against the rail that separates the arena from the spectators, and again the trial was brought to a halt and Judge Kelly told Mr. Muscarella that he should stand up erect on his own two feet, and not be resting against the rail. This would have bothered me, I think. I know it would have bothered me. This is what I was referring to.

I don't know whether I have answered Senator Price's question or not. The only thing that I can say further is this feeling among the members of the Bar where I practice is the same - - - I don't know whether the word "fear" is proper; but it is a feeling of extreme apprehension; of not knowing what is going to happen when you go in before Judge Kelly.

CHIEF JUSTICE DREW: Gentlemen, we are going to take a ten minute recess at this time.

Whereupon, at 11:15 o'clock A. M., the Senate stood in recess.

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

A quorum present.

CHIEF JUSTICE DREW: You may proceed.

MR. DANIEL: I believe Mr. Nichols had finished his cross. We have no redirect.

MR. NICHOLS: I have some additional cross that I would like to pursue with this witness, in view of the explanation that was made.

#### FURTHER CROSS EXAMINATION

BY MR. NICHOLS:

Q Will you please, sir, give me the style of the case in which you and Frank Muscarella were trying?

A Mr. Nichols, I do not recall it right now, sir. It is possible to get it, but I just don't happen to remember it.

Q Was that a personal injury case?

A Yes, it was.

Q And it was being tried in front of Judge Kelly, is that correct?

A Yes sir.

Q And during the trial these incidents that you have related, that you said took place, were an attitude toward the attorney Frank Muscarella; is that correct?

A Yes sir.

Q And you felt that that was embarrassing to Frank Muscarella?

A I think I said before I started that I could not tell whether or not it was. Of course, I don't know.

Q All right, you felt that it was, anyway. It was your feeling.

A It was embarrassing to me. My personal feeling.

Q All right. Now, isn't it a fact that as he was rising, constantly through the trial, he was making speeches instead of objections; and that the Judge called him down for it?

A No sir. I can't say that he was making any "speeches."

Q Isn't that what the Judge called him down for, and said, "I want you to state an objection when you rise. State your objection and the grounds of the objection, and don't make a speech about it."

A Mr. Nichols, I don't recall it that way. No, I don't. My best memory is that Mr. Muscarella was in fact in the

process of making an objection and he was stopped by His Honor and instructed how he should word his objection. I don't remember the Court ever at any time admonishing him for making any speeches, no.

Q Well, didn't he, instead of stating his objection and the grounds, start arguing the proposition to the Court? And that that was what the Court was talking with him about?

A I do not recall that. It may have been.

Q It could have occurred?

A It could have.

Q Now, Mr. Muscarella would be fairly familiar with that transaction, I presume, wouldn't he?

A I have no way of knowing. He may be.

Q Well, he was there and it was addressed to him, wasn't it?

A That is correct.

Q Now, didn't this occur on several occasions and he continued to, instead of stating his objection first and stating the grounds - - - and the Judge stopped him and said, "Wait a minute. I have told you a couple of times to state your objection and the grounds; and then argue about it."

Didn't that occur on several occasions?

A Well, the occasion occurred numerous times in the trial.

Q That's right.

A And whether or not it was as you put it, I don't remember.

Q Well, it occurred - - - continued to occur several times, and the Court was trying to keep an orderly process in the trial, wasn't he?

A Mr. Nichols, I can't tell you whether that was his purpose or not. If you want to put it that way - - -

Q Well, you will concede, won't you, that it is the responsibility of the Court to keep an orderly process in the proceedings, won't you?

A Absolutely. That is certainly part of the functions of the Court.

Q Now, you mentioned that this was going on in open court, and you said that the Judge stopped - - - or halted - - - or what was the phrase you used?

A I may have used the term "called a halt."

Q Called a halt.

A The proceedings stopped while he made - - -

Q Was the Jury in or out of the room?

A The Jury was in the room, sir.

Q All right. He just temporarily stopped the matter?

A Yes sir.

Q He didn't call a halt. He just said, "Wait a minute, counsel. If you are going to make an objection, make an objection and the grounds." It didn't take but just a few seconds to get the matter straightened out, did it?

A Well, Mr. Nichols, as I recall, I believe I used the term "very pointedly," directed Mr. Muscarella how to do this.

Q Well, he was trying to help - - -

MR. DANIEL: If it please the Court, we don't mind Mr. Nichols testifying for the witness, if he will let the witness answer the question before he interrupts him.

CHIEF JUSTICE DREW: I think the objection is well taken. Suppose you just ask the questions.

THE WITNESS: I was going to say that, as to exactly how long this took, I don't remember. I can't tell you exactly.

BY MR. NICHOLS:

Q Now, who eventually won this case, the Plaintiff or the Defendant?

A The Defendant.

Q Your firm won the case?

A Yes sir.

Q Did Mr. Muscarella take any appeal for the conduct? Or did he take any appeal at all in the matter?

A I don't believe that he did, sir; no.

Q Then he didn't choose to assign the Judge's conduct as error in the Appellate Court, did he?

MR. DANIEL: Mr. Chief Justice, none of the Articles attempt to set up any errors in law, or what we might call reversible errors, as evidence of misdemeanor. We concede that these matters would be handled by an Appellate Court. The Article charges misconduct, which is not necessarily appealable. Therefore, we object to that question on re-recross by Mr. Nichols.

CHIEF JUSTICE DREW: The Court is interested in knowing whether his conduct brought the Court into disrepute, and so forth, and he is entitled to proceed along that line to find out what the Judge's conduct was, and what he said and did. The Court is anxious to know that.

BY MR. NICHOLS:

Q Now, there is a great body of law in the books, isn't there, that if a Judge injects himself into a case to where it interferes with the administration of justice he is reversed in the Appellate Court. You are familiar with that, aren't you?

A Vaguely, yes sir.

Q Well, there is plenty - - - a good body of law; and the Appellate Courts throughout this state and throughout the country correct Judges' mistakes, don't they?

A Yes sir, they do.

Q In fact, we have got three District Courts and the Supreme Court of Florida, which are four full Courts sitting all the time, to correct mistakes and errors of Courts, lower Courts, haven't we?

CHIEF JUSTICE DREW: I think we can take judicial knowledge of that, Mr. Nichols.

MR. NICHOLS: All right.

CHIEF JUSTICE DREW: That we do have Appellate Courts that review the actions of all trial courts.

BY MR. NICHOLS:

Q All right, sir. Now, did Frank Muscarella, the attorney who was involved, did he turn to the Court Reporter in the proceedings and make any objections about the matter?

A I don't believe he did, sir.

Q Well, he wasn't even concerned, so far as this mat-

ter was concerned, in assigning it as error, to even direct an objection in the transcript, was he?

MR. DANIEL: Objected to, Your Honor, as calling for a conclusion of the witness.

CHIEF JUSTICE DREW: Read the question.

MR. NICHOLS: I withdraw the question, Your Honor.

BY MR. NICHOLS:

Q Now, you mentioned that your firm does trial work?

A Yes, that's right.

Q Over there. Are you acquainted with some of the trial lawyers like Ross Stanton, of Baya Harrison's firm?

A Very well, sir.

Q They do a lot of trial work before this Court and before this Judge too, don't they?

A Yes sir, they do more trial work than we do.

Q They do more trial work than you do?

A Yes.

Q Are you acquainted with Mike Kinney of Tampa and Cody Fowler's firm? Does Mike Kinney do a tremendous amount of trial work before this Judge?

A He certainly does, sir.

Q You talked about what attorneys say. Have you ever heard Mike Kinney or Ross Stanton say anything about being fearful about appearing before this Judge?

A I have not, sir. No.

Q Have you heard them say, to the contrary, that they think he is a fine Judge and a good trial Judge?

A No sir, I have not.

Q Were you present when they testified before the House Committee? You said you were up here.

A I said I was up here, but I at no time was in the Chamber, nor did I testify. I never at any time heard anyone testify.

Q Did you read in the paper what Mike Kinney and Baya Harrison and Stanton said?

MR. DANIEL: I hesitate to object, but the learned advocate objected yesterday to newspapers.

CHIEF JUSTICE DREW: Sustained.

MR. NICHOLS: I am not talking about that. I am talking about what he has said about the general reputation and what he bases it on and other lawyers' opinions, and so forth.

CHIEF JUSTICE DREW: I sustain the objection.

MR. NICHOLS: All right.

BY MR. NICHOLS:

Q At the Pre-trial Conferences that you all had, the Judge required the lawyers to be pretty well prepared on both the law and how the case was going to be conducted, as I understand it?

A Yes sir.

Q He is a pretty strict Judge, isn't he?

A Yes sir.

Q And he requires the rules of conduct in his Court to be abided by?

A Yes sir, he does.

Q And does he, on occasions, require lawyers to prepare memorandums of law to be presented to him, to help guide him on the law?

A Mr. Nichols, he may, sir. I can't answer that from my own knowledge. I don't believe that I have ever been asked; I don't know whether any other members of the firm of which I am a member have or not. I just can't tell you.

Q Well, it's not anything unusual for Judges to do that; in fact, they do it all the time, don't they?

A Yes sir, they certainly do.

Q Any good judge wants to be guided by the law?

A I would certainly think so.

MR. NICHOLS: That's all, thank you.

#### REDIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Williams, to straighten up one point that Mr. Nichols adduced on cross examination, I believe he asked you if you were subpoenaed as a witness before the House Committee, and you responded that you were subpoenaed as a witness on behalf of Judge Kelly?

A Yes.

Q And I believe you testified that you did not testify during the House Committee hearings?

A No.

Q And how did it happen that you did not testify?

A Beg pardon?

Q How did it happen that you did not testify before the Committee?

A Well, I was personally talked to by Judge Kelly, and after the conversation I was told I was released to return to St. Petersburg.

Q In other words, Judge Kelly himself interrogated you, and then told you he wouldn't need you as a witness?

A That's correct.

Q This was a private interrogation, not before the Committee?

A This was out in the rotunda.

Q Did you tell him essentially the same things that you have here today, or part of it?

A I feel relatively sure that I told him exactly what I have said here today.

Q Now, you stated, on cross examination, that Judge Kelly was a strict Judge, and he enforced the rules of his Court. Do the other Judges of the Sixth Circuit also enforce the rules of their Court?

A Yes sir, they do that.

MR. DANIEL: That will be all, sir.

CHIEF JUSTICE DREW: Will there be anything further?

#### RE-CROSS EXAMINATION

BY MR. NICHOLS:

Q You will concede that Judge Kelly used good judgment in releasing you as a witness, would you?

A I don't know, Mr. Nichols. Do you think so?

MR. DANIEL: We'll stipulate to it.

CHIEF JUSTICE DREW: These questions have been requested to be asked by Senators.

From Senator Whitaker, of the 34th: "Would you fully explain what you mean when you say Judge Kelly told counsel how to word his objections? Could you repeat Judge Kelly's exact words to counsel?"

THE WITNESS: Sir, the words - - well, I don't think that I honestly can.

CHIEF JUSTICE DREW: Give the substance, then.

THE WITNESS: Along the lines - - Mr. Whitaker, I actually would have to be putting this thing together, and I don't think that would be fair, one way or the other. I just honestly don't remember exactly what it was. I believe I said initially that it was a - - - to my best memory, something along the lines of how you properly formed the objection to irrelevant and immaterial questions - - and this is my best remembrance of it. Other than that, I'd hesitate to try and go further.

CHIEF JUSTICE DREW: Senator Friday asks this question: "Was the Muscarella incident in the trial before a jury or the Court?"

THE WITNESS: This was a jury trial.

CHIEF JUSTICE DREW: The jury was present when the occasion occurred?

THE WITNESS: Yes sir, they were, Your Honor.

CHIEF JUSTICE DREW: From Senator Henderson: "Do you know of any instance when Judge Kelly did indeed punish any Pasco County attorney in any manner for any reason outlined in your testimony?"

THE WITNESS: I have no personal knowledge of what was done in Pasco County, other than the newspaper articles that we read.

CHIEF JUSTICE DREW: This question from Senator Stratton: "You stated under oath that you didn't know what an impeachable offense was, yet you present yourself to the public as an attorney. My question is, do you think you are qualified to testify in this case?"

THE WITNESS: Senator, I believe that when an attorney reaches the point where he takes the Bar exam, I think one of the requirements is that he has read the Canons of Ethics, both of lawyers and the judicial Canons - - - I believe that's correct. I have read these. I, by no means, want you to believe that I know all about it, because I certainly do not. As to what actual incidents would require the impeachment of a Judge, this is what I was referring to, I hold myself out as an attorney, I hold myself out as an attorney. I - - - there you are. I am still practicing, and I have been for two years, and I'll continue for a while. About the impeachable - - - what it takes to impeach Judge Kelly, this I still don't know. My feeling along that line, in all candor, is that something - - - a situation has developed where there has been a rupture in the judiciary in our Circuit that I hope can be corrected in some fashion; how it can be done, I don't know. Impeachable offenses are for you gentlemen to determine. I can't tell you this.

CHIEF JUSTICE DREW: Any other questions?

#### FURTHER RE-CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Williams, can't that be corrected at the polls, if you don't like the Judge?

A Yes sir, Mr. Nichols, that's very true; that's about two or three years off.

Q And legal errors can be corrected in the Appellate Courts?

A Absolutely.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Any other questions?

MR. DANIEL: No sir, I don't think so.

SENATOR BLANK: Mr. Chief Justice, would you indulge me a moment to send up a question?

CHIEF JUSTICE DREW: Yes sir.

Senator Blank sends this question up to the witness: "In the discussion at the pre-trial conference to which you referred, did Judge Kelly indicate that he thought he himself should administer some punishment to the Pasco County lawyers?"

THE WITNESS: Senator, he did not indicate to me that he personally intended to do this. It was more or less a statement that it should be done by the Bench, or by the Bar; I can't tell you at the time. I just - - this was rather shocking, but he did not tell me that he intended to do this himself, or wanted to personally. I cannot tell you whether he wanted to or not. I would hope not.

CHIEF JUSTICE DREW: Any other questions?

MR. NICHOLS: No further questions.

CHIEF JUSTICE DREW: Any questions?

MR. DANIEL: No further questions.

CHIEF JUSTICE DREW: The witness may be excused.

MR. DANIEL: He can be, as far as the Board of Managers is concerned, Your Honor, and he can return - - -

MR. NICHOLS: You have his phone number?

MR. DANIEL: We do have his phone number.

CHIEF JUSTICE DREW: You may be excused, subject to being recalled at a later time, Mr. Williams.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. O'NEILL: May it please the Court, may I ask Mr. Chief Justice a question, as to whether or not the Senate proposes to have any closed session between now and the time for the adjournment for lunch? The reason for my question, if I might explain, is that the next witness will be rather lengthy.

CHIEF JUSTICE DREW: We will carry the next witness on until 1 o'clock, or shortly before 1 o'clock. We will not, so far as I know, unless some Senator moves, there will be no closed session before or shortly before 1 o'clock, if there is one then.

MR. O'NEILL: All right, sir. Mr. Jones, on behalf of the Board of Managers, will interrogate the next witness.

CHIEF JUSTICE DREW: Call your next witness, and what is his name?

MR. JONES: Will the Sergeant call Judge A. J. Hayward, Jr.

CHIEF JUSTICE DREW: I would like to request the witness - - - Mr. Secretary, would you move the microphone down where the witness can speak into it - - - Mr. Sergeant At Arms. Let him speak directly into the microphone. You can mash the front of it down, and if you get close to the microphone, do not look at either counsel, but look directly forward, and if you will speak directly into the microphone, we will appreciate it.

JUDGE HAYWARD: Yes sir.

Thereupon,

JUDGE A. J. HAYWARD, JR.,

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

DIRECT EXAMINATION

BY MR. JONES:

Q Would you state your name, please?

A A. J. Hayward, Jr.

Q What is your occupation, Mr. Hayward?

A I'm an attorney.

Q How long have you so been an attorney, practicing?

A Since 1947.

Q Where do you practice?

A In Dade City, Florida.

Q Would you give us a brief resume of your educational qualifications as an attorney at law in Florida?

A An AB Degree from Stetson University, an LLB Degree from the University of Florida.

Q Sir, have you held any public offices in the State of Florida?

A For nine years I was County Judge of Pasco County. I am now Judge of the Small Claims Court of Pasco County.

Q And you have been practicing law in Pasco County for how long, Judge?

A Now? The last time, for two and a half years - - - two years.

Q What is the nature of your law practice in Pasco County?

A General practice.

Q Do you know Richard Kelly?

A Yes sir.

Q How long have you known him?

A Approximately ten or eleven years.

Q Did you know Judge Kelly prior to the time that he went on the Bench in Pasco County?

A I did.

Q Did you practice law with him as a practicing attorney?

A I was on the Bench, I believe, when I first met Judge Kelly.

Q Judge, do you recall the case of Collura vs. Collura?

A I do, sir.

Q Could you, or would you explain to the Court the nature of that case?

A Yes sir. I got into the case a little bit late. It was on a petition to change the custody of children, and I was representing Mr. Collura, the husband.

One morning the telephone rang, and by telephone I was summarily summoned to the Court's Chambers, and when I arrived at the Court's Chambers, present, I believe, was a Court Reporter and the Judge and, later, Mr. E. B. Larkin.

Q Judge, if I could interrupt you just for a moment, you say this was a divorce case which you had come into after a final decree had been entered - - -

A Yes sir.

Q - - - and you came in for the purpose of reopening the divorce case in behalf of Mr. Collura?

A Not exactly. I was defending a petition by the wife.

Q In other words, his wife had filed a petition to reopen the case against her former husband?

A That's correct.

Q And you were representing the former husband?

A That's correct, sir.

Q Did you, or had you had a hearing set upon this day that Judge Kelly called you and summarily asked you to come to his office?

A Yes sir.

Q Had that hearing been cancelled, or was the hearing still pending?

A Mr. Larkin and I had, by written stipulation, agreed that the hearing was not to be held that day.

Q In divorce cases, or in other cases, if the two lawyers agree not to hold an interlocutory or preliminary hearing in a case, is it the usual custom that they can dismiss the hearing?

A That was my understanding, and later in the discussion, the Judge confirmed that attitude and understanding.

Q This is the usual custom among the Bench and the Bar, when the two lawyers agree that they, for some reason, will not have the hearing today?

A It has been ever since I have been practicing.

Q And do I understand that you and Mr. Larkin had so agreed to cancel this hearing this day?

A That's correct.

Q Now, if you will, sir, continue where I interrupted you, with the fact that Judge Kelly had summarily called you to his office.

A He began a series of questions of Mr. Collura dealing with information which he could have gotten from nowhere but Mr. Collura in my absence, questions and information which - - -

MR. MASTERSON: We move to strike that, Your Honor, as being a conclusion of the witness.

MR. JONES: I think, if Your Honor please, that this witness can testify that this information was in the mind and head of Judge Hayward and Mr. Collura only, and that subsequently, Judge Kelly began to ask questions that he could have only obtained from these two parties.

CHIEF JUSTICE DREW: I'll admit it. The Senate can judge the weight of it.

BY MR. JONES:

Q Continue on, Mr. Hayward, if you will, please.

A He began a series of questions relative to information which he could not have gotten from anybody but Mr. Collura, and which had to be obtained without my knowledge.

The questions were designed or calculated to prove either that I was negligent in the handling of the case or that I had misrepresented the situation to my client.

Q Do I understand - - -

A Neither of which is true.

Q Do I understand you to say that the questions in the form of accusations were made that you were either falsifying to your client, or that you were negligent in the presentation of your client?

A The questions were asked in such a way as to bring out the belief that I had not pursued the case diligently and had not set it down for a hearing at an early and proper date.

CHIEF JUSTICE DREW: Mr. Jones, did he testify that the Court Reporter was there at the time?

BY MR. JONES:

Q Judge Hayward, was a Court Reporter there?

A He made a transcript of this whole procedure.

CHIEF JUSTICE DREW: All right, that's what I wanted to know.

BY MR. JONES:

Q Mr. Hayward - - -

MR. MASTERSON: May it please the Court, the Defendant objects to the witness testifying any further about this conversation. We submit that the best evidence is the transcript itself.

MR. JONES: If the Court please, I think the best evidence is the testimony under oath of this witness, what he heard Judge Kelly, the accused, say to him, and the - - -

MR. MASTERSON: Excuse me just a minute, counsel.

MR. JONES: Later, if counsel for the Respondent would like to cross examine this witness, or attack his integrity or impeach his testimony by the transcript, I think that is permissible.

CHIEF JUSTICE DREW: I'll overrule the objection. I think he can testify - - - do you intend to introduce in evidence the transcript?

MR. JONES: I anticipate that it will be introduced, yes sir, and I do so intend.

CHIEF JUSTICE DREW: Is the transcript available to opposing counsel?

MR. JONES: I believe they have it. I have a copy, which is all I could find in my office. I have the certified copy, but I believe you have - - -

MR. MASTERSON: You have it there.

MR. JONES: I have the certified copy, a certified copy.

MR. MASTERSON: Your Honor, I renew my objection, that the best evidence is the transcript, which is here and available in the Court.

CHIEF JUSTICE DREW: Well, for the purpose of these proceedings, I'll overrule the objection, and let the witness testify. I think we'll save time.

MR. NICHOLS: We have no objection for the Board of Managers offering it in evidence and using it in evidence, but we don't have an extra copy of it.

CHIEF JUSTICE DREW: You may proceed, gentlemen.

MR. JONES: Thank you, sir.

BY MR. JONES:

Q Judge Hayward, if you will, now, refresh our memory as to who all was present at the conversation with Judge Kelly, or the hearing?

A Judge Kelly, Mr. - - - the Court Reporter, Mr. Larkin and I and Mr. Collura were in the room.

Q Had the Judge been informed, or was he then aware of the fact that you and Mr. Larkin had previously stipulated to counsel this hearing?

A The stipulation had been filed in the cause with the Clerk. As to whether or not it had been brought to the Judge's attention until the file was taken up for the hearing, I do not know.

Q Judge Hayward, the episode that we are speaking of, was it in the form of questions and answers to you from Judge Kelly, and from you answering Judge Kelly? Or was it all Judge Kelly speaking to you?

A It was all Judge Kelly questioning my client, Mr. Collura, and interspersing it with self-serving declarations as to his diligence in office, and so forth; and he, in effect, sought to deny me the privilege of answering the backhanded charges, and I had to insist that he give me an opportunity to answer for the sake of the record, as well as defending my position.

Q Did you ever, in fact, specifically request Judge Kelly to give you an opportunity to answer the charges which he was making to you in front of your client?

A Yes sir.

Q He did give you that opportunity?

A Yes sir. I insisted that he do so.

Q What was the final disposition of the episode of which you are speaking?

A Ultimately, he agreed with Mr. Larkin that possibly the filing of the stipulation was all right and we were dismissed with no action being taken other than the privilege of continuing the cause until a later date.

Q Judge Hayward, do you find it customary in your practice that the Court objects to lawyers agreeing to expedite, or to otherwise agree to matters in their cases?

A I do not ever remember having it happen before.

Q Judge, I will refer you now to the case of Lauck vs. Lauck. Do you recall that case and your representation therein?

A I do.

Q Would you briefly describe to us the type of case that it was?

A A contested divorce case.

MR. MASTERSON: Mr. Manager, can you tell me what count this matter comes under?

MR. JONES: Yes sir. It comes under Articles V and VII, specifically.

MR. MASTERSON: Count VII?

MR. JONES: V and VII.

BY MR. JONES:

Q You will proceed, Judge Hayward, and give us a brief resume as to what this case was.

A As I said, it was a contested divorce case and involved, among other things, the custody of children. We held the first hearing on the merits in the Judge's Chambers, and there was no direct or competent evidence of any type whatsoever introduced as to whether or not the wife was a fit mother. The Court awarded the children to the husband; stating, among other things, that it was apparent that, from her conduct and her nervousness, she was unable to take care of the children.

Q Judge Hayward, what "nervousness or conduct" was he speaking of, specifically? That at the final hearing or otherwise?

MR. MASTERSON: May it please the Court, is a transcript of this conversation available?

MR. JONES: I believe the Court has already ruled on this matter, counsel.

MR. MASTERSON: I am inquiring whether there is one available.

CHIEF JUSTICE DREW: He is perfectly competent to testify as to the transactions and what the Judge said. The fact that there is a transcript doesn't make that the best evidence.

MR. MASTERSON: I am aware of the Court's ruling, Your Honor. I am trying to determine whether there is a transcript available.

MR. JONES: There is one in the Board of Managers' office, and we have sent for it, counsel.

MR. O'NEILL: The original Court file will be available.

CHIEF JUSTICE DREW: All right.

BY MR. JONES:

Q Judge Hayward, I will repeat my question:

The nervousness of the mother of these children spoken of, was at the final hearing or otherwise? By Judge Kelly?

A It was the final hearing in the case.

Q Was he speaking of her nervousness at that hearing?

A Yes.

Q Would you describe that and the incident that occurred there, if any?

A The lady naturally was nervous. She had, as so many women who go through this ordeal, she had gone through a lot and she was crying a little bit; she was upset; and was displaying her emotions. But no more so than the average cultured lady who finds herself under those circumstances. There was nothing in her conduct nor her words to indicate that she was not capable of taking care of the children.

Q Judge Hayward, the Court entered a final order that day, or a final ruling?

A Yes sir. Either that day or shortly thereafter, based on that hearing.

Q In whose favor did the Court find all the equities to be?

A The interesting thing about that was that the husband had filed the suit; and, at the conclusion of the husband's testimony and later at the conclusion of the case, I had moved the Court to dismiss the suit on the ground that there was no cause of action and that the evidence did not sustain the husband's position.

And the Court ruled that all of the equities were with the wife; in effect, saying that the husband was out of Court; that it was dismissed; that he had no standing in Court. And yet he turned around and gave the custody of the children to him.

Q Thank you, sir. After the final hearing when the equities, as I understand, had been found with this mother, the children were awarded to the father?

A That is exactly right. The divorce was even granted to the mother.

CHIEF JUSTICE DREW: How old were the children? Were they boys or girls?

THE WITNESS: There were several. There were two boys, I believe, sir, and maybe one or two girls. I do not recall.

CHIEF JUSTICE DREW: What were their ages, approximately?

THE WITNESS: Ranging from perhaps eight to eighteen. Within that range.

BY MR. JONES:

Q Subsequently or after the final hearing, was the mother committed to a mental institution or a hospital of any sort?

A Yes sir. She was put in a psychiatric ward in the Lakeland hospital.

Q After this occurred, did the Judge, in turn, reaward the children to her while she was admitted to the mental institution?

A I had petitioned the Court to amend and correct that first order, asking that the custody of the children be changed from the father to the mother. There was an informal hearing held, at which Jack Edmunds, an attorney who was then practicing in Dade City, and I and the Court were present and, without any formal introduction of evidence of any kind whatsoever, and with the knowledge that the lady was confined in the hospital under psychiatric care, the Judge switched the custody and gave them to the mother. There was no evidence as to the degree of illness; the nature of the illness; no diagnosis, no prognosis, when she would get well or whether she would get well.

Q Did the Judge, in fact, stay his order subsequently, or take any other action to withhold the order until the mother was out of the hospital?

A He did not. In the order he deferred the change of custody temporarily until the mother got out of the hospital and the order will take effect, I believe, January 1st - - - this coming January.

Q In the original case, did the parties Mr. and Mrs. Lauck agree and request and stipulate that, upon the final decree of divorce being awarded, that their joint property would be separated and did they request the Court to make that separation?

A My recollection is that both sides petitioned the Court.

Q In other words - - -

A Both sides asked the Court to divide the property.

Q Did the Court do so upon the agreement of the parties?

A It never did.

Q Judge Hayward, I refer you now to the case of Hayward vs. Hayward.

Do you recall that case?

A Yes sir.

Q I show you the transcript of record and ask you if you can identify that record as being a record of that case?

CHIEF JUSTICE DREW: What was the name of that case?

MR. JONES: Hayward vs. Hayward.

MR. O'NEILL: The Court file, Your Honor. Not the transcript.

MR. NICHOLS: I think I can identify the matter and we can speed up the process.

THE WITNESS: That is the file.

MR. JONES: This is the Court file, both of them.

MR. NICHOLS: We have no objection to your using both of the Court files.

MR. JONES: Do you want somebody here to help you with these files?

THE WITNESS: I can't do it very rapidly.

MR. JONES: Mr. Sergeant At Arms? I wonder if you can assist Judge Hayward in just a second, if you would, please sir; upon his request.

BY MR. JONES:

Q What was the nature of this case, Judge Hayward?

A It was a contested divorce, sir.

Q Judge, in lay language, what is the usual course of a case? The complaint is filed, and an answer, and so on. Would you just briefly explain the procedure that a case goes through; the various instruments that in a normal case occur?

A Well, in a case of this type, after you get through the dilatory, really - - - a lot of them - - - motions - - - the Bill of Complaint, of course, is filed first and then the Answer; and, if necessary, a cross bill, a cross complaint; and pretty generally they are heard and the issue is framed by that.

Q All right, sir. In other words, there is a Complaint filed by the complaining party and then there is an Answer filed to the Complaint?

A That is correct.

Q If a party does not file an Answer and, in effect, does not appear in the suit, what occurs then?

A A Decree Pro Confesso, so called, is entered; meaning that they are in default; that they have allowed the time to run out. That they are automatically out of court, due to the tolling of the statute and the passing of time.

Q Was such a Decree Pro Confesso filed and taken in this case?

A It was, yes sir.

Q I understand, then, that there was a Complaint filed and there was no appearance made by the person upon whom the Complaint was filed; is that correct?

A There was no appearance made within the statutory time.

Q And the Decree Pro Confesso was taken or the default was taken?

A Yes sir.

Q Was there a subsequent appearance of the Defendant, or an attempted appearance?

A Yes sir. There was a motion filed to vacate or set aside the default, the Decree Pro Confesso.

Q Made by an attorney representing the Defendant?

A That is correct, sir.

Q What was the result or occurrence upon that motion being filed? Did it proceed to a hearing before the Court?

A Yes sir, a hearing was held before Judge Kelly, and I pointed out that, among the several defects of the motion, was the fact that there was no affidavit attached to

it. And an affidavit, under those peculiar circumstances - - - to set aside a default - - - an affidavit is absolutely essential. It is a sine qua non, so to speak, without which nothing can happen. And because there was no affidavit, and perhaps other reasons, the Judge denied the motion and ruled in my favor.

Q Do I understand you, sir, in lay language, that a petition had been filed that the defaults judgment, so to speak, be thrown aside?

A That is correct.

Q And there was no oath or affidavit that the things contained in the motion to vacate were true, is that correct?

A That is correct.

Q What was the Court's ruling when it was called to his attention that the motion was not properly affirmed or sworn to?

A He denied the motion on that ground.

Q Did he take any further action or cause anything else to be done further at that hearing or immediately after the hearing?

A Well, he entered an order denying the motion, and there was a long, a prolonged discussion between him and adverse counsel in which he practically persuaded her to file another one. Under the rules of practice, she was not entitled to another effort.

Q Did adverse counsel realize and express to the Judge that they were not entitled to file another motion?

A She expressed that belief, if I remember correctly, but pleaded for the opportunity, and the Court granted it.

Q Was the motion filed again at the insistence of the Court?

A There was a second motion filed, yes sir; for the same identical purpose.

Q To vacate the default judgment, is that correct?

A That's correct, yes sir.

Q Was that motion defective or was it contested as being defective or improper, before Judge Kelly?

A There were several defects in the motion; and, again our attention was directed primarily to the purported affidavit. In the first place, the purported affidavit actually was not an affidavit. It did not contain an invocatory clause and it did not contain an asseveration clause, which means this: That, for an affidavit to be effective, you have to have both, in the language of the instrument, you have to invoke a higher power and swear to the facts in the light of that higher power. Rather than just say, "I have read it," it must be said you, upon oath - - - or to this effect - - - who deposes and says that I have read these facts and they are true and correct. There was no invocatory phraseology whatsoever in it. It was not dated. And on the affidavit, where the signatures are required, there was no signature whatsoever, except the signature of the Notary. Counsel and the adverse party, who must - - - either one or the other - - - must swear to the motion had not done so and had not signed the instrument at all.

Q Judge Hayward, was this called to Judge Kelly's attention?

A It was, sir. I had made notes in my office file of the defects; and, in particular, I was interested in that - - - the fact that it had not been filed. I called that to the attention of the Court during the argument, and the Court in effect agreed all the way down the line by

telling me, "Yes, Mr. Hayward, that is right." And, based upon that, among other things, the Court again denied the motion.

Q Did the Court at that time acknowledge to you and the parties at hand that there were no signatures on the affidavit?

A He said - - - I pointed it out to him and immediately thereafter he said, "Yes, that is right," or "Yes, that appears to be right."

Q Now, Judge Hayward, I believe I understood you to say that, upon the finding that there were no signatures and that the affidavit was incorrect, that the Judge again denied the motion to vacate, based on that affidavit; is that correct?

A That is correct. If I remember correctly - - - I am sure of this - - - I feel positive - - - that the adverse counsel requested the opportunity to sign it at that time and the Court would not let her.

Q Was there another hearing held in this matter, where another motion and affidavit was filed?

A Yes sir. As we said at the outset, she was entitled to one effort, but was granted this third time. Rather, the thing - - - let me go back just a minute. The thing was brought to the attention of the Court the third time, I believe, by my motion. I had gone over the file and discovered that subsequent to that hearing, that the affidavit had been signed, and I had moved the Court to strike the pleading of adverse party and adverse counsel, on the ground that they had altered this affidavit and had altered a public record, and as such, I was entitled to a default immediately and completely.

Q Well, upon that being done, was that motion put before Judge Kelly once more with the signatures on it?

A It was, sir.

Q Did Judge Kelly acknowledge at that time, as he had before, that the signatures were not there?

A Well, he questioned adverse counsel and - - - about that, about the fact that the signatures had not been on there, and she, in effect, admitted it. She said, "Well, I don't remember, I don't remember when it was signed or whether I signed it," and he asked her, "Is that your signature?" She says, "I don't know whether that's my signature," and she said, "If I signed it, I might have signed it at the first hearing or I might have signed it some other time." She did not know when she signed it, but the Court recollected, the Court, that the signature had been on there the first time when, actually, there had been no signature on there. I had examined it, my secretary had examined it, Jack Edmunds, a practicing attorney in Dade City had examined it and made an affidavit to the effect that the signatures were not on there, and that the signatures were later put on there, and that, in so doing, it constituted an alteration of a public record, and the Judge, in effect, approved it by, in his words, "It is my recollection that it was on there."

Q Now, Judge Hayward, it is your positive testimony, and you do so testify that Judge Kelly acknowledged that at the prior hearing the signatures were not there?

MR. MASTERSON: May it please the Court, I think the witness' testimony speaks for itself, and that counsel should not rephrase what the witness has said.

CHIEF JUSTICE DREW: Overruled at the present time.

BY MR. JONES:

Q Would you answer the question, Judge?

A Yes, if you'll ask it again.

Q It is your positive testimony that on the initial hearing on this particular motion that Judge Kelly acknowledged, among other errors, that the signatures were not there?

A That's correct, sir.

Q Judge Hayward, you have in front of you a file entitled "Hayward vs. Hayward." Is that the file of that particular case?

A Yes sir.

Q Would you please, sir, turn to the motion to vacate, which we have discussed.

A I have one of them before me now, sir. I have a motion to vacate before me, sir.

Q Have you examined that motion to vacate?

A This is the first one.

Q That is the motion which you identify in the file?

A Yes sir, the first one.

Q Sir, would you refer to the second motion, upon which the signatures were first missing?

A I have it before me, sir.

Q Judge, do the signatures now appear on the affidavit?

A Yes sir.

Q Would you describe the bottom of that affidavit and the appearance of the signatures with reference to that affidavit?

A Well, the signatures are not put in the usual place. Ordinarily, they are put to the right of the page, below the verbiage used in the affidavit. These are squeezed in, and it will be obvious to anybody that looks at them, these two signatures are squeezed in at the left, written in very small handwriting, and I submit that they were put there - - - I know that they were put there after the seal.

Q Judge, are there any lines drawn for the placing of those signatures, as is usually found on legal documents?

A There are not.

Q Could you tell us, please sir, did this case finally go by default, or was there a final hearing held?

A We stipulated, sir.

Q And the case was finally settled and disposed of without lengthy testimony?

A Yes sir, upon the stipulation and a short hearing, final hearing.

Q Could you tell us, please, if you recall, how many hearings, or how many appearances before the Circuit Judge were necessitated in completing this case?

A If I remember correctly, there were nine, possibly more; I may be off one or two, give or take either way, but it was - - - it should have been a run-of-the-mill divorce case that turned into a nightmare and a fiasco.

Q Judge Hayward, how many hearings are customary, in the practice of law, to be held in a non-contested or a stipulated divorce suit?

A Well, even with the - - - well, the word is "zeal," the zeal that went into this one, we should have disposed of it with two hearings.

Q And I believe your testimony was that there were nine hearings?

A Yes sir.

Q How many hearings were filed on the question of the affidavit and the notary and the signatures alone?

A I'm sorry, I do not understand that question.

Q How many hearings were held with reference to the motion to vacate, and the affidavit on the motion to vacate?

A Well, on the motion to vacate, I believe there were four hearings.

Q Judge Hayward, I would direct your attention, when you came back to Dade City to practice law, did you have an occasion to visit in the Court Room while Judge Kelly was trying another case other than yours?

A Yes sir. I had just returned to Dade City for the purpose of opening an office and beginning my law practice again there, and I went to the Court Room, where a trial was in progress, and there was a short recess, and Judge Kelly invited me - - -

Q Pardon the interruption, sir.

What part of the Court Room did you go to? That provided for lawyers or for spectators?

A I was a spectator at the time.

Q All right, if you will, continue.

A And Judge Kelly invited me to come inside the Bar and approach the Bench, and I declined, on the ground that I was not properly dressed, because I had on a sport shirt with the tail hanging out of my trousers.

Q Yes sir. Were you informed, or did you learn then of Judge Kelly's custom or regulation of dress in the Court Room?

A No sir, I had never talked to the Judge about those rules.

Q Did he discuss it with you at that time?

A No sir.

Q Did you later have an occasion to appear before Judge Kelly and if so, where, pertaining to the Court Room or his office or Chambers?

A Yes sir. The next time that I went before Judge Kelly, actually, I had had an early hearing set, an early morning hearing, and I had forgotten that the hearing was coming up so early. I went into the office, again dressed only in a sport shirt and trousers, and I was caught short of time. I rushed over to the Court Room, and there was some conversation about, "You can't come in now without a coat," and I said, "Well, Judge, I don't have a coat with me." He said, "Well, you'll have to get a coat." I said, "I dismissed my valet for the morning, and I don't have anyone to drive me out to the house, some three miles out in the country, to get my coat," and he said, "Well come on, I'll drive you out there," and he got up, and we started toward the door, and then the Court Reporter said, "Well, I have a jacket which Mr. Hayward can wear, if it will be acceptable to the Court," and the Court said, "All right, get it. Let's put it on him." And so, we got this jacket. It was a huge thing, old, faded corduroy green jacket, and he draped it around my shoulders, and the tail of it swung down around my ankles, and there I stood with this jacket on, and my shirttail hanging out, my sport shirt, and when I sat down to start to try the case - - - it was on some sort of uncontested matter, when I sat down, the arms of the jacket crawled down across the arms of the chair like a

snake, and I was reminded of a snake as I watched that thing go crawling down on the floor.

Q Judge, what did you say, this was an uncontested hearing?

A Yes sir.

Q Where was it held? In open court or - - -

A In Chambers, in the hearing room.

Q Who all were there in the Judge's Chambers?

A I believe the Reporter, and possibly the client and the Court, to the best of my knowledge. I was a little bit frustrated by that time.

Q Did you have an occasion to appear before Judge Kelly subsequent to that time, wherein you had a difference over coats?

A Yes sir.

Q Would you please explain to the Court the next Court episode?

A Well, after this deal which I just described, I was in a short time later with a tailored tan corduroy jacket, and I knew of my own knowledge that another attorney had worn a corduroy jacket frequently to Court but, anyway, after the hearing was concluded, the Court kept me and lectured me on the impropriety of my attire, saying that it was not in keeping with the dignity of the Court, and so forth.

Q Judge Hayward, if I may, for a point of clarification, was it a coat constructed such as mine, or yours, that you now have on?

A Well, yes, it was a button jacket, a sports jacket, tailored for my own use, my purpose.

Q What type of material was it made out of?

A Corduroy, tan corduroy.

Q Approximately how long did this lecture take?

A Approximately ten minutes.

Q And you were then released?

A Yes sir.

Q Has Judge Kelly ever given you an expression of, or stated a fact, as to whether or not you and he had any differences?

A Yes sir, but after that corduroy routine, I was asked on the street one morning to take care of an emergency matter in the Court's Chambers, and I went up to see the Judge for the purpose of making an appointment, so that I could go put on a coat and tie, and at that time the Court said, "Well, you and I have an agreement that you don't have to wear a coat."

Well, that was the first time that I had heard of any agreement. We hadn't even discussed it.

Q Judge Hayward, has Judge Kelly ever made an assertion or statement that you and he shall never agree?

A To that effect. I was in his office one morning, discussing another matter, and the Court Reporter, Mr. Swain, was present, and we were casually chatting about, perhaps, the case, if I recall correctly. At any rate, there was a slight difference of opinion about a principle of law involved, and I remarked that we couldn't agree, or something to that effect, and right out of a clear blue sky, with no warning and no provocation of any sort, Judge Kelly said to me, he said, "Well, we can't see things eye to eye, and we've got political differences that will never allow us to see them that way."

MR. JONES: Your witness.

CHIEF JUSTICE DREW: Before you commence the examination of this witness, it's now twenty minutes to one, eighteen minutes to one, and the Chair would like very much to ask the Senate to go into closed session for a few minutes before 1 o'clock, for the discussion of a matter, and right now, we will, if some Senator will make a motion - - -

SENATOR POPE: I so move.

CHIEF JUSTICE DREW: It is so moved.

As many as favor the motion, say "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Whereupon, at 12:42 o'clock A. M., the Senate closed its doors.

Senator Cross moved that the doors of the Senate Chamber be opened and the doors were opened at 1:00 o'clock P. M.

Whereupon, at 1:01 o'clock P. M., the Senate, sitting as a Court of Impeachment, stood in recess until 2:30 o'clock P. M., this day.

### AFTERNOON SESSION

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

The Chief Justice presiding with all members of the Senate present.

CHIEF JUSTICE DREW: Senators, I know you will give your undivided attention to the testimony that is being produced and the evidence being given by Judge Hayward.

You may proceed with the cross examination.

Thereupon,

JUDGE A. J. HAYWOOD, JR.,

resumed the stand and testified as follows:

#### CROSS EXAMINATION

BY MR. MASTERSON:

Q Judge Hayward, a few minutes ago, on direct examination, you were enlightening the members of the Senate in regard to the procedural rules. We have a good many members who are not lawyers and I would like to go over that with you again in some little detail, particularly with reference to the case of Hayward vs. Hayward. That case was a suit in which you were the party Plaintiff, is that correct?

A That is correct, sir.

Q Actually, there were two suits, were there not? Both styled Hayward vs. Hayward; one filed by you and one filed by your wife, is that correct?

A Well, actually there were two Bills of Complaint filed; there were not two suits in the full sense of the word, because the Complaint filed by adverse counsel was withdrawn just as rapidly as possible.

Q But there were two Complaints filed and two separate Court files created, is that true?

A That is correct.

Q And these two Court files, through coincidence perhaps, were one number apart; is that right? The Chancery numbers were just one number apart, I believe?

A I believe that is correct, yes sir.

Q So we have two cases, both styled Hayward vs. Hayward pending in the Pasco County Circuit Court. I want to go over with the members of the Senate and with you the procedure involved in a divorce action so that they can understand just what happened in this case. Now, a divorce action is commenced, is it not, by the filing of a Complaint?

A That is correct.

Q And thereafter a copy of the Complaint and a summons are served upon the opposing party, is that correct?

A Ordinarily.

Q It should be. And, when the summons and Complaint are served upon the opposing party, the summons states that you must answer this Complaint within twenty days or a Decree Pro Confesso will be taken against you; is that substantially correct?

A That is correct.

Q And what we mean by a "Decree Pro Confesso" - - - when that Decree Pro Confesso is entered against the Defendant, that means that he can no longer file - - - he or she - - - can no longer file an answer to the charges brought out in the Complaint unless the Court sets aside the Decree Pro Confesso?

A That is correct.

Q In other words, there can be no joining of issue. The party who has the Decree Pro Confesso can then go forward without ever having a suit on the merits?

A That is correct.

Q All right, sir. Now, let's examine what was happening in this case of Hayward vs. Hayward. Upon receipt of the copy of the Complaint and summons, Mrs. Hayward's counsel filed a motion to dismiss; and inadvertently it was filed in the wrong suit. It was filed in the suit that she had brought and not in the file which covered the papers in the suit which you had filed; is that correct?

A Let me get your name?

Q My name is Masterson.

A Mr. Masterson. The word "inadvertently" is wrong.

Q Well, strike that word. Was there a motion to dismiss filed, which your wife's counsel filed - - - filed and styled improperly so that it got filed in her own suit, rather than the suit which you had brought?

A If I remember correctly, I later discovered there was a motion to dismiss - - - well, she filed a motion to dismiss without prejudice, if that is what you mean. To dismiss her own Bill of Complaint. She got out of Court.

Q But she was attempting to file a motion to dismiss your complaint and it got filed in the wrong suit. There was testimony in your case to that effect, was there not, Judge Hayward?

A I am not quite sure what you are saying.

Q Well, I am trying to say it as clearly as I can. There were two suits pending, both styled Hayward vs. Hayward?

A That is correct.

Q In one, you, Judge Hayward, were the Plaintiff seeking a divorce from Mrs. Hayward; and, in the other, Mrs. Hayward was seeking a divorce from you. Is that correct?

A That's right.

Q Now, this lady lawyer, Mrs. Virginia Jordan, who was defending your wife in the suit that you brought and prosecuting the suit which she brought, filed a motion designed to dismiss your complaint, is that right? And didn't you so state?

A She filed a motion to dismiss and a change of venue, wasn't it? If I remember correctly.

Q She filed a motion to dismiss your complaint, or tried to?

A I don't know really exactly whether she filed a motion for change of venue. I wasn't following her case. That was her case. I remember. I can tell you what is in my case but I am not absolutely sure what she did.

Q She wanted to dismiss some suit, is that right?

A I later discovered that there was a motion to dismiss or a motion for change of venue. I don't know exactly how she styled that.

Q She wanted to dismiss a suit called Hayward vs. Hayward, did she not?

A She did dismiss it. She voluntarily dismissed it.

Q She wanted to dismiss a suit called Hayward vs. Hayward, in which you were the prosecuting party, did she not? Didn't you so state?

A I don't remember her ever filing a motion to dismiss in my case.

Q You don't think it happened in your case? She did not file one in your case in any event, is that right?

A I said that I didn't remember it.

Q You don't recall that. But, Judge, in any event there was a motion to dismiss some suit called Hayward vs. Hayward that was filed, and you were a party to that suit?

A Well, I don't remember whether it was a motion to dismiss right out or whether it was a motion for change of venue. I do not recall.

Q You don't recall?

A It was her motion, not mine.

Q All right.

A And I didn't discover it until much later.

Q In any event, however, this circumstance arose. You took a Decree Pro Confesso in your suit against your wife, is that correct?

A That is correct.

Q Now, when your wife's attorney, Mrs. Jordan, became aware of the fact that she was about to be shut off without a hearing because of this legal requirement that she answer within twenty days, she immediately moved the Court and said, "I have a defense to this suit. Please set aside the Decree Pro Confesso," did she not?

A She filed a motion to vacate the Decree Pro Confesso, yes.

Q And the reason for that was that she wanted the case to be heard on its merits, is that correct?

A Well, the motion is in the file, sir.

Q Yes sir. Isn't that what it says, that she wants to go forward with the motion and file a counterclaim?

A Essentially, I think that's what it means, yes.

Q So, the issue that was before the Court at this

time was whether or not your wife could defend the suit which you had brought against her on its merits?

A No sir, that was not the sole issue, because that issue had never been properly presented, we had not gotten that far. The motion was defective.

Q Well, but what she was trying to accomplish was to persuade the Court to let her come into Court with her witnesses and prove her case, and you were saying, no, no, don't let her do that, Judge. She didn't answer within twenty days; so, she should not be permitted to.

A The law says that, sir.

Q I know, that's what - - - that's the law that you were urging?

A I presented that argument to the Court.

Q Now, - - - and the Judge ruled with you?

A Yes sir.

Q He said the motion was defective, is that right?

A Yes sir.

Q And then the lady lawyer who was representing your wife filed another motion, again seeking to set aside the Decree Pro Confesso, and again urging that she had a defense to these charges that you had filed, that she wanted to assert them. Is that correct?

A Essentially, that's correct.

Q Now, the judge again ruled against her, is that correct?

A That's right.

Q And for you?

A That's right.

Q The second ruling for you; there were two of them. Now, what did Mrs. Hayward's attorney do at that point? What was the next legal step?

A I believe that the Court had ordered - - - if I remember correctly the sequence - - - you see, this case was an awful mess. It was handled badly from the word go.

Q Who handled this case badly?

A Well, among other people, the Judge.

Q And who else? You said "among other people." A lot of people were involved in the mishandling of the case?

A Look, I'm not interested in anyone else. I didn't come up here for that purpose. I came up here to tell you the truth. Now, let me - - -

Q But you have criticized, have criticism to make of other people involved, and - - -

A Well, let me answer your question. May I?

Q Yes. I want to find out who the other people were who mishandled the case.

CHIEF JUSTICE DREW: Answer the question.

THE WITNESS: Well, I think the adverse counsel did.

BY MR. MASTERSON:

Q I see.

What was the next move in the case?

A Well, if I remember correctly, the Judge had ordered her not to file another motion or anything else without his permission, without approval or order of the

Court, and she filed a motion to get the order from the Court to file another motion to vacate that Decree Pro Confesso.

Q She's still trying to get a chance to have her case heard on the merits, is that correct?

A Yes sir.

Q And you're still opposed to that; you don't want the Court to let her tell her side of the case, you want the Court to enter judgement against her because her attorney failed to file an answer within twenty days?

A That's what the law says.

Q Now, a hearing was held on this third proposition for setting aside the Decree Pro Confesso, and at that point, you brought to the Court's attention that the motion was defective because a defect in the jurat, is that right?

A I'm not exactly sure of the sequence. Now, whether it was the third hearing, I don't remember directly.

Q Well, in any event, the issue before the Court was this: Judge, you can't set aside the Decree Pro Confesso, because at the last hearing there were no signatures on the application to set aside the Decree Pro Confesso, and now there are some signatures?

A No sir, that was not the entire ground. Each time that she filed a motion to set aside the Decree Pro Confesso, if I remember correctly - - - and I feel sure about this - - - I filed a motion to strike her motion. In each instance I alleged what I considered to be the defect in her pleading, and all the way back, and asked that everything be stricken; and so, there were many, many defects which were brought to the attention of the Court, and argued in detail.

Q One of the Articles with which we are confronted charges the Judge with falsifying an official record; that's what we're trying to get at here.

MR. JONES: Mr. Chief Justice, we would like to object to that statement by counsel; that is incorrect. The charge does not read that way.

MR. MASTERSON: I'm sorry. I will read the Article.

BY MR. MASTERSON:

Q The Judge did "allow, aid or condone the alteration of public records in a cause pending before him in the case of Hayward vs. Hayward in the Circuit Court of the Sixth Judicial Circuit of Florida," and so forth. The charge is that he aided, allowed or condoned the alteration of a public record.

Now, the public record we're talking about, Judge Hayward, is the affidavit in support of your wife's motion to set aside the Decree Pro Confesso and allow her to proceed with her case on its merits, is that correct?

A Yes sir.

Q And what was wrong with the affidavit?

A Well, there were several defects.

Q Well, what was wrong with it that involved aiding, condoning, the alteration of a public instrument? What did he do wrong?

A Here, so the charges say - - - and you're most interested in that - - - he purported to recollect a signature, or two signatures - - -

Q You say, "he purported to" - - -

A Let me answer your question, please, Mr. Masterson. He purported to recollect two signatures to an affidavit

which did not contain the two purported signatures which he recalled.

Q Well, this was a disputed fight, about whether or not there was some purported signature on the instrument, was there not?

A In substance, no.

Q Well, didn't the lawyer, who was the opposing attorney in this case, and representing your wife, testify that, in open court, those signatures had been added to the instrument? Is that true?

A Would you ask me that question again, please?

Q Yes sir. Mrs. Virginia Jordan, the lawyer that represented your wife, testified in court that those two signatures were actually on this affidavit, that were placed on the affidavit in open court, is that true?

A That's true, but she also testified they weren't. She said she didn't know. She gave about three or four different versions of it.

Q It was a question - - -

A She didn't seem to know what had happened.

Q It was a question of fact involved, and the Judge found that this lawyer, Mrs. Jordan, was not attempting to deceive the Court, and that the signatures were on the affidavit, and there was a ruling adverse to you.

A Well, now, nobody had mentioned the fact that she was trying to deceive the Court; those are your own words. He found that the signatures had been there.

Q Yes sir. And therefore, the motion to set aside the Decree Pro Confesso was not defective on that basis?

A Well, he agreed that it was. In the transcript he says, "That's right," right after I called it to his attention.

Q He made a ruling that the signatures were on the affidavit, and that the motion was, therefore, sufficient, is that correct?

A That the motion, therefore, was sufficient?

Q Yes sir.

A I don't think he ever made that ruling. He said this: That, as he recollected the signatures were on there. That motion was never sustained.

Q What happened to the motion?

A We stipulated.

Q You stipulated to what?

A Well, I'm not proud of it, but I won the lawsuit. I got the divorce uncontested, and all the matters straightened out.

Q Well, what did you stipulate to?

A To the outcome of the lawsuit, that adverse counsel and adverse party would not come in, or didn't even want a hearing.

Q So that what we're talking about here, when we say the Judge is allowing, aiding or condoning the alteration of a public instrument, is that he made a finding in a suit which you won, and got the relief you asked the Court to give, that he recognized that a lawyer who testified in court, that those signatures were on the instrument was not misleading the Court?

A No, say that again, will you, please?

Q I think that might well be done; it was not well put. The Judge merely made a ruling based upon con-

flicting evidence, that these two signatures on the affidavit in this case which you won were there at the time the other attorney said they were?

A I don't know that he ever formally ruled that way. What he did was say, "I recollect that they were there." The motion and, consequently, the affidavit, were never given legal effect and the only - - - really, the only conflict in the testimony, as to whether or not the signature was there, was from adverse counsel, who didn't sign it.

Q The Judge believed adverse counsel, and not you, is that correct?

A It's kind of hard to know what's in another man's mind and heart.

Q Well, he made a finding that adverse counsel - - -

A He used the words, "I recollect it was there."

Q All right, sir, and the effect of the finding was to let your wife defend her case?

A Not necessarily, sir.

Q Who got injured by the finding?

A Pardon?

Q Who got injured by the finding? Who was hurt?

A I don't think that's a proper question for me to answer, but I'll do it.

Q I can ask the Court to rule on whether the question is proper or not, if you wish.

A No, I don't mind answering your question.

Q All right, sir.

A It isn't a matter of who got hurt. Actually, nobody got hurt except me, in the sense that an injustice was done over and over again, and I had to go back and argue that point over and over again. Now, he had - - - she had one opportunity to file that motion, but the Court gave her two or three or four. Now, get this - - - you've asked the question; I'm going to answer it for you:

It doesn't matter whether or not anybody got hurt. The criminal intent could be present, and that's what makes a crime a misdemeanor, when you really stick it to them; that is what we are dealing with, that's the substance of this charge.

Q You feel that the Judge was really sticking it to you in this case?

A No sir, I didn't say that.

Q I thought that's what you were saying.

A Well, you should listen more carefully.

Q I'll try to. Now, you say nobody got hurt, though?

A No, I didn't say that.

Q I thought you did.

A You can't - - - one cannot render an injustice and not do somebody some harm.

CHIEF JUSTICE DREW: Now, Mr. Witness, if you will just answer the question of the attorney, if you would not be argumentative, we'll get along much faster.

THE WITNESS: Yes sir.

BY MR. MASTERSON:

Q Now, Judge, have you ever taken an appeal from any decision of Judge Kelly?

A No sir. The cases that I testified to, sir, I won them, all except one, and it's still in.

Q Collura vs. Collura and Lauck vs. Lauck, is that correct?

A Well, the Collura case is not yet completed.

Q Now, let's begin, now, at the Collura case, Judge. In the Collura case, Mr. Collura was your client, was he not?

A Yes sir.

Q Now, Mr. Collura had had a divorce and was seeking to have some supplemental relief of some kind, is that true?

A Not quite, sir. His wife had filed a petition to deprive him of the privilege of having the children over the week end.

Q All right, sir; and you wanted to straighten this matter out?

A Well, I represented Mr. Collura, yes sir.

Q Now, Mr. Collura went to see Judge Kelly because nothing was happening in his case, isn't that what was the problem?

A That was the impression Judge Kelly sought to put across, yes sir.

Q Well, isn't that the impression that Mr. Collura had? Isn't that the reason he went to see the judge? He said, "Judge, I'm not - - - my case isn't being heard, and they are telling me that your calendar is crowded that you can't hear me" - - -

MR. JONES: Mr. Chief Justice, we'd like to object to this question as calling for the conclusion of this witness, as to what Mr. Collura may have had in mind.

CHIEF JUSTICE DREW: I think he can reframe his question.

MR. MASTERSON: If you'll give me a moment, Your Honor, I'll find it in the transcript.

BY MR. MASTERSON:

Q Now, didn't Mr. Collura state, in open court, that he had been told by you that he could - - - his case wasn't proceeding because the Judge's calendar was so crowded that it couldn't be heard? Wasn't that what was bothering him?

A Did you say wasn't that what was bothering him?

Q Is that what he said in open court? Let's say that.

A I believe he said something to that effect, yes sir.

Q Yes sir, and the substance of his testimony was that I'm concerned; my case isn't moving along, and my lawyer tells me that your calendar is so crowded he can't handle the case?

A I don't remember him saying it in that way, no sir.

Q Here's Mr. Collura's statement from the transcript:

"Well, I've been told by Judge Hayward that there hasn't been time for a hearing, there hasn't been time to place a hearing, that you have been so fully filled that he had to prolong this thing way into April."

Do you remember that?

A That sounds like what occurred, yes sir.

Q All right, sir. So, we have a litigant coming to the Judge, and asks the Judge, why isn't my case being

heard; they tell me your calendar is too crowded, and the Judge called you on the telephone, didn't he?

A I don't know what the man said to the Judge, but I know what he said in the transcript.

Q Well, this transcript relates to Mr. Collura's attitude and why the Judge called you. He did call you, didn't he?

A Yes, he did.

Q Is that what you meant when you said earlier today that you were summarily summoned to the Court?

A Yes.

Q You meant that Judge Kelly had called you to tell you that your client was in his office, who had a problem and that the problem affected you?

A No, he didn't say that. I was told to go to the office.

Q I see. And also the opposing counsel was "summarily summoned" to the office, is that right?

A I don't know how the other counsel was summoned.

Q But he showed up?

A Yes.

Q And the Judge thereupon proceeded to explain to you what the problem was with the client, did he not?

A He went into it, yes sir.

Q And he had the client tell you, in open court, what the problem was?

A I heard it, yes sir.

Q So it was explained to you in open court. And then, Judge, you said that you wanted to make an explanation, is that correct?

A Something to that effect.

Q And the Judge said, "Mr. Hayward, you don't need to make an explanation. We just wanted to bring this matter to your attention," or something to that effect. Right?

A I don't remember exactly what the Judge did say.

Q He said that you didn't need to make an explanation. You recall his saying that, don't you?

A No, I don't know that I do. I don't deny that he said it, but I was a little bit unhappy about that time.

Q Why were you "unhappy"?

A Well, being called out of my office.

Q Well, if a Judge has one of your clients in his office who is grumbling about you, don't you think it might be a good time to go over and straighten the matter out?

A I think he ought to send the client to see the lawyer first.

Q Well, the client isn't saying that it is the Court's fault. He is saying, "The reason that my case isn't going forward is that you won't attend to it, Judge."

A That is not the truth and is not the fact.

Q That is what the client says.

CHIEF JUSTICE DREW: You read that once. You have been over this two or three times.

MR. MASTERSON: All right, sir.

BY MR. MASTERSON:

Q Now, who won the Collura case? Is that still on appeal?

A Well, it has never been concluded.

Q Has never been concluded. Didn't the Judge say also at this hearing, Judge - - - Judge Kelly said to you that there was no intention to censure you; no desire to censure you. He had no wish even to have you make an explanation. He just wanted to air the matter?

A Yes, but the way you can do things, you know. If you were present you would understand and get the aura of discontent, which does not show up on the record.

Q You don't recall, Judge Hayward, that Judge Kelly said, to refresh your memory - - - when you offered to make an explanation: "Excuse me just a minute, Mr. Hayward. I do want to make an explanation to you. I am not definitely asking you for any explanation.

"MR. HAYWARD: Yes sir. I realize that.

"THE COURT: I am not in any way attempting to censure you, but this man came in and made a statement," and so forth. But there was no attempt to censure you or force you to make an explanation. He brought the matter to your attention and I presume you ultimately straightened it out with your client.

CHIEF JUSTICE DREW: Mr. Masterson, we have been over that three or four times. The Court fully understands it.

MR. MASTERSON: All right, sir. I will proceed.

BY MR. MASTERSON:

Q Now, Judge Hayward, the third case of which you complain is Lauck vs. Lauck.

One final note on the Collura matter, if I may, Your Honor: Did not Judge Kelly explain to the litigant and to counsel in this language: "The Court is here available and ready and when he wants a hearing he can get one. Certainly I think he will be able to get one within the time within which you have to give notice"?

A What was that last part? About notice?

Q "The Court is here available and ready, and when he wants a hearing he can get one. Certainly I think he will be able to get one within the time within which you have to give notice."

A I don't know. Maybe he did say it, but he also said that he had never denied anybody an opportunity for a hearing, which was not a fact.

Q Let's turn, Judge, to the case of Lauck vs. Lauck, which is the third case about which you have complained. Now, Lauck vs. Lauck was a divorce action?

A Yes sir.

Q And which party did you represent?

A The wife, the Defendant, the counter claimant.

Q The counter claimant in this suit. There was also a custody problem, was there not?

A Yes sir.

Q Now, what is your grievance about that case? What is it that you feel the judge did that was wrong? Do you think the final order was wrong?

A I am not quite sure what you mean by "wrong"; but I am sure of one thing: To make a ruling affecting the lives of a group of children and their whole future, based on no evidence whatsoever, is about as far as you can get from justice.

Q In other words, you think he should not have placed the children with the father? Is that what you think is wrong?

A I petitioned him to take the children away from the father.

Q The children are now with the father, are they not?

A Yes.

Q Under a final order which gave the father permission to take them; and they must be returned before December 28, 1963; is that correct?

A I believe so. Or January 1st. I don't remember.

Q That was the final result of this suit and there were very many complex reasons why this result was arrived at; but you agree that the final result is satisfactory to you, don't you?

A Now, your statement about the "complex reasons" as to why the result was arrived at is manufactured. At least there is no evidence in here to that effect. Those are your words. That came out of your mind.

Q Judge, are you pleased with the final result?

A Not completely, no sir.

Q You concurred in the final order, did you not?

A It was as good as I could get under the circumstances.

Q Judge, the final order contained this statement: "The foregoing order is approved as to form and content," and it is signed by you.

A Pardon?

Q The final order in the cause contains the statement - - - let me show it to you - - - "The foregoing order is approved as to form and content." Signed: "A. J. Hayward."

A I will take your word for it - - - I guess. Yes, I recall that. As I say, it was about as good as I could get under the circumstances.

Q You did enter in the official Court record that you approved the final result in this case which you are now complaining about in this Court?

A I am not "complaining" about the case. I am complaining about the technique the man used.

Q The end result does not disturb you?

A I think it will work out. It apparently is working out. But the way that you arrive at a conclusion or the manner in which you make a ruling in a court of law is awfully, awfully important.

Q All right, sir. Sometimes these problems in custody matters are pretty vexatious for a Circuit Judge, aren't they?

A Obviously so.

Q And in this particular case the tenor which granted custody to the father of these children clearly preserves an existing situation. The children already were with the father, isn't that correct?

A I believe a few days.

Q Well, the temporary order recites that the children were in the custody of the father.

A May I see that order?

Q Yes sir.

(The document above referenced was exhibited to the witness.)

A The designation as "temporary order" is erroneous.

Q Well, it wasn't a final order in the case. You went on to have further proceedings, did you not?

A It was calculated to be a final order at that time, yes.

Q Now, the order says that it was "Ordered, adjudged and decreed that the Plaintiff Virgil A. Lauck be and he is hereby awarded the temporary care of the children"; and it says further, in presenting the basis for it, "It appearing to the Court that the best interests of the children of the parties hereto will be served by the present conditions and arrangements remaining in status quo." And that is why he entered this order, which recites in the order that it is temporary. Did you think it was final?

A I think it was intended as a final order, nevertheless.

Q Despite the word "temporary." How did you arrive at that conclusion?

A By our conversation.

Q So this Judge entered this order just preserving the status quo. He didn't take the children away from the mother.

A That has no bearing on the fact that he later made a different ruling, based on nothing.

Q Did you appeal anything in this case?

A What?

Q Did you appeal anything in this case?

A No sir.

Q Did you petition for a rehearing on this temporary order?

A Yes sir. I petitioned to alter and amend the first order.

Q The temporary order?

A Yes sir.

Q Judge, in this Court file, on May 10th, a temporary order was entered; and the next thing that appears in it is a notice of final hearing on May 25, 1962.

A There was a petition in there to change the decree; among other things (1) that it was contrary to the law, (2) that it was contrary to the evidence, and (3) that it was contrary to the law and the evidence, and (4) contrary to the announced intention of the Court. And the Court and I had a warm discussion about the phraseology contained in the order.

Q You are talking about a motion to reframe the final decree, not the decree awarding temporary custody?

A Whichever one takes the children away from the father. That was all I was interested in at the time.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: No further questions?

MR. JONES: I have just one or two questions, if Your Honor please.

#### REDIRECT EXAMINATION

BY MR. JONES:

Q Judge Hayward, isn't it true that in decrees in law

suits with reference to the custody of minor children, that the decrees are never final; the Courts are always open to hear new petitions?

A That is true, relative to the custody of children, always.

Q But, in effect, the order of the Court that awards the children to either one party or the other is the final decree and final order for that time until somebody else petitions to reopen the case?

A That is correct.

Q To clear up a matter that I feel was confusing on the cross examination, is it true that at the first hearing Judge Kelly acknowledged to you in open court, and to the other parties, that the signatures were not there?

A Yes sir.

Q Is it true that - - -

MR. MASTERSON: Mr. Chief Justice, as I understand it, you ruled that any further going into this matter is repetitious.

CHIEF JUSTICE DREW: I don't recall the ruling, but you asked him if it is true. I don't know whether you questioned him on that point, as to that.

BY MR. JONES:

Q Judge Hayward, did the Court, at the final hearing, disclaim knowledge of whether or not the signatures were there at the prior hearing?

A The Court used the phrase, "As I recollect it, they were there."

Q Judge Hayward, you have been in the practice of law for some time. As a matter of custom and procedure and rules of Court, who handles grievances between the client and his lawyer?

A The Grievance Committee.

Q The Grievance Committee of the Florida Bar?

A Of the Bar.

Q It is not a regular procedure for the Court to intervene between the client and his lawyer as to a grievance?

A Not if it is justified.

MR. JONES: Thank you. We have no more questions and we will be happy to excuse Judge Hayward.

MR. MASTERSON: I have another question.

MR. JONES: If the Court please, we think it would be proper, in the orderly procedure of questioning these witnesses, that there be a direct, cross, and redirect. Of course I would certainly alter my redirect examination if I know that counsel is going to have the opportunity to conclude.

MR. MASTERSON: Your Honor, he raised the point as to who handles grievances.

CHIEF JUSTICE DREW: It is a new matter, and I think you have got a right to cross examine on it.

MR. MASTERSON: All right, sir.

#### RE-CROSS EXAMINATION

BY MR. MASTERSON:

Q Now, Judge Hayward, this was not a matter that was just between you and your client. This was a matter of a client coming into the Judge's office and saying, "You

are not moving my case forward," that the Judge wasn't doing it.

A There you go again, arguing the case.

CHIEF JUSTICE DREW: Judge, I am sure you are familiar - - -

THE WITNESS: I apologize.

CHIEF JUSTICE DREW: - - - that you are not supposed to argue the questions.

THE WITNESS: According to the question asked, the answer to your question would be "Yes."

MR. MASTERSON: That is all.

MR. JONES: That is all we have. If you have no objection, counsel, we would like to excuse Judge Hayward.

MR. MASTERSON: No objection.

CHIEF JUSTICE DREW: We have some questions. Judge, for the benefit of the Court, the Circuit Court has concurrent jurisdiction with the Florida Bar in all grievance matters, doesn't it?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: So the Florida Bar does not have exclusive jurisdiction.

THE WITNESS: I thought he asked me the custom.

MR. JONES: The custom.

CHIEF JUSTICE DREW: Judge, how much time had elapsed from the date you filed the Collura suit - - - is that the name of it?

THE WITNESS: Collura.

CHIEF JUSTICE DREW: The Collura case. To the date of the hearing before Judge Kelly, of which you speak?

THE WITNESS: Judge, I don't know. I never was in any hurry about that case.

CHIEF JUSTICE DREW: Well, the question is quite simple. How long was it, if you remember - - - if you don't, we will have to go to the record.

THE WITNESS: No, I don't remember.

CHIEF JUSTICE DREW: Was it a matter of months?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: A matter of several months?

THE WITNESS: Yes sir. He was paying me monthly. That was part of the reason.

CHIEF JUSTICE DREW: What was the answer?

THE WITNESS: He was paying me on a monthly basis, and we agreed that was part of the reason.

CHIEF JUSTICE DREW: Senator Stratton asks this question - - -

MR. MASTERSON: Judge, I wonder if the witness would talk into the microphone. It is difficult to hear.

THE WITNESS: All right.

CHIEF JUSTICE DREW: Try to speak a little louder in answering the questions.

"Were you a leader in the proposed changing of Pasco County in the Sixth District to the Fifth District?" Senator Stratton asks that question.

THE WITNESS: No sir, I was not.

CHIEF JUSTICE DREW: Senator Stratton asks this question: "Did you solicit help to get appointed a Circuit Court Judge in the proposed Fifth District if the change occurred?"

THE WITNESS: I discussed it one time.

CHIEF JUSTICE DREW: He asks the further question: "Would you state whether or not you and Judge Kelly were political foes?"

THE WITNESS: Judge Kelly seemed to think so, but it was a surprise to me.

CHIEF JUSTICE DREW: Another question from the Senator from the 21st - - that is not a question - - Senator Cross of the 32nd asks this question: "Aren't all stipulations relative to custody and support of minor children and property rights of parties subject to the approval of the Court in divorce cases?"

THE WITNESS: Necessarily. Yes sir.

CHIEF JUSTICE DREW: Senator Henderson has asked the question, which I think was covered in one of the previous questions.

From Senator Mapoles: "Judge Hayward, did I understand you to say that Judge Kelly offered to drive you to your home for you to properly dress yourself in order to appear before his Court?"

THE WITNESS: He made that offer.

CHIEF JUSTICE DREW: "Do you consider Judge Kelly to be cooperative and of good character?"

THE WITNESS: Cooperative? No. Of good character? I would be reluctant to answer that question about any man.

CHIEF JUSTICE DREW: You do not desire to answer that question?

THE WITNESS: I don't know that I am the right person to ask about another man's character. I don't know any more about a man's character than anyone else, Judge.

CHIEF JUSTICE DREW: Senator Hollahan of the 43rd District, - - - did you finish your answer?

THE WITNESS: A man can be dead wrong and get himself mixed up in life and not have the slightest conception of what he is doing and still not necessarily be a man of evil character, and vice versa. A lot of times it is a cover-up. So, I just don't know, Judge.

CHIEF JUSTICE DREW: Senator Hollahan, of the 43rd, asks: "Did you feel that the stipulation in the Hayward case cured any problem of default in the supporting affidavit that you testified about?"

THE WITNESS: It was not designed or intended or calculated to do that. It was designed primarily to bring the litigation to an end, which it did.

CHIEF JUSTICE DREW: The Senator from the 9th asks: "What is the reputation of Judge Kelly among the Bar of Pasco County? Is it good or bad?"

THE WITNESS: It is bad.

CHIEF JUSTICE DREW: The Presiding Judge would like to ask whether or not the award of the children in the case, the last case, I think, to the mother while she was in some mental institution had any relation, or was in any way concerned with the treatment of the mother while she was in that institution? That is, was it done on the recommendation of a psychiatrist or anything of that sort?

THE WITNESS: Judge, I'm sorry, I did not get your question clearly. Would you mind repeating it?

CHIEF JUSTICE DREW: As I understand the evidence, the custody was awarded to the husband, and then there was an award to the mother some time while she was in a psychiatric institution or mental institution - - -

THE WITNESS: The psychiatric ward of the Lakeland Hospital.

CHIEF JUSTICE DREW: And was the award made to the mother in connection with any psychiatric treatment or suggestion by a psychiatrist or otherwise?

THE WITNESS: No sir, there was no expert evidence whatsoever.

CHIEF JUSTICE DREW: Thank you very much.

SENATOR HENDERSON: Mr. Chief Justice, just to make sure that my question wasn't repetitious, I would like to have it put to the witness, if you would, sir.

CHIEF JUSTICE DREW: Senator Henderson, of the 22nd, asks this question: "Do you now seek or have you ever sought a Circuit Judgeship in the Sixth Judicial Circuit, or have you evidenced any interest in such judgeship?"

THE WITNESS: I am not now engaged in the seeking of any Circuit Judgeship.

CHIEF JUSTICE DREW: The question was: Do you now seek or have you ever sought a Circuit Judgeship in the Sixth Circuit, or have you evidenced any interest in such judgeship?

THE WITNESS: I am not seeking. I have never made a campaign or an organized or concerted effort to get it. As to whether I ever will, what country lawyer, at some time or another, wouldn't think about it?

CHIEF JUSTICE DREW: Does that answer your question?

SENATOR HENDERSON: Would you read the third part of that question?

CHIEF JUSTICE DREW: "Have you evidenced any interest in such judgeship?" I assume he means, have you asked for support or said that you would be interested?

THE WITNESS: I just stated exactly that, didn't I? I like public life. Some day I hope to get a promotion. Does that answer your question?

CHIEF JUSTICE DREW: You may be excused and, as I understand from counsel for the respective parties, you are released, subject only to further recall.

THE WITNESS: I can go home?

MR. JONES: Yes sir.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Will the Sergeant please call Wealthy Jane Ketchum.

CHIEF JUSTICE DREW: You may proceed with the examination of this witness.

Thereupon,

WEALTHY JANE KETCHUM,

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

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please.

A Wealthy Jane Ketchum.

Q Where do you reside, Mrs. Ketchum?

A Brooksville, Florida.

Q What is your occupation or profession?

A Legal secretary.

Q For whom?

A A. J. Hayward, Jr.

Q How long have you been so employed by Judge Hayward?

A For approximately two years.

Q The Judge Hayward of which you speak is the gentleman that just left the stand, or just preceded you, is that correct?

A Yes sir.

Q Have you also been employed, or were you, in the past, employed by Judge Kelly?

A Yes sir.

Q Prior to going to work for Judge Hayward?

A Yes sir.

Q What do your duties consist of in your occupation with Judge Hayward?

A Running the office, and I also act as Clerk of the Small Claims Court, which he handles.

Q Do your duties also consist of occasionally accompanying Judge Hayward to the Courts, in an effort to help Judge Hayward?

A Yes sir, quite often, in driving him to Court in New Port Richey and Clearwater, when necessary.

Q Do you ever attend hearings with him and actually place yourself in his Chambers, or in the Court's Chambers while a hearing is going on?

A Yes sir, to handle his papers.

Q Do you recall, in the office, a case by the name of Hayward vs. Hayward?

A Yes sir.

Q Did you, on occasion, accompany Judge Hayward to the Court for hearings in that particular matter?

A Yes sir, all of them.

Q Mrs. Ketchum, I will now show you two volumes of a transcript entitled "Hayward vs. Hayward," and ask you if you recognize these?

A Yes sir. These are two different cases, though.

BY MR. JONES:

Q See if they are the two now. Is that it?

A Yes sir, I recognize these two transcripts, December 19, 1962, and January 18, 1963, in Hayward vs. Hayward.

Q Mrs. Ketchum, do you recall being in the Chambers with Judge Hayward on the hearing in this matter, where the opposing party had filed a motion to vacate, and there was no affidavit thereon?

A Yes sir.

Q Can you find that place in the record which you have before you, of that case, where it was found that the entire affidavit was missing from that motion?

A May I refer to my notes?

Q You may. Do your notes simply expedite your finding the page?

A Yes sir, I've got the page numbers and the line numbers here.

May I start at the top of Page 25.

Q This is - - - if I understand you correctly, now, this is where the first motion to vacate was filed, and there was no affidavit to the motion, is that correct?

A Yes sir.

Q You may, if you please, illustrate to the Court that fact.

A Judge Hayward is speaking: "Now, I searched through every case I could find in Florida that even bordered on an oath; but Black's Law Dictionary - - - and it's annotated; many, many citations - - - says that an oath is an affirmation or asseveration taken that there is - - - that the party must be sworn; there must be some invocation of a higher power and the fear of reprisal if taken in" - - -

Q Mrs. Ketchum, perhaps I can expedite it; if you could find the place, there, where Judge Kelly ruled that there is no affidavit.

A Yes sir.

Q Would you, please.

A The Court says: "Now, you're talking about this affidavit and motion to set aside default judgment?"

"MR. HAYWARD: Yes, sir.

"THE COURT: Filed December 11?

"MR. HAYWARD: Yes, sir. That's a prerequisite, Your Honor. I don't think I ought to have to go further.

"THE COURT: OK, sounds like you're right to me. What do you say? I don't believe - - - what you intended there was a jurat, and I don't think that's a jurat."

Q All right, ma'am. Did you further appear with Judge Hayward in Judge Kelly's Court on this same matter, on a motion to vacate?

A Yes sir. The - - - well, the next hearing was on a petition for rule to show cause. The subsequent hearing was the motion to vacate.

Q Mrs. Ketchum, did you see yourself the affidavit and the motion, as it was first filed?

A Yes sir.

Q Were the signatures there, to your knowledge, at the time? Did you view any signatures there?

A They were not there, and I drew it to the Judge's attention when we received it in our office. We checked out the file.

Q Now, did you return with Judge Hayward to the Court at the next argument of this particular motion?

A Yes sir.

Q Did you have an opportunity to view the affidavit or the motion at that time?

A We had checked it out the day before, and had noted that - - - I noticed that the signatures had been added since the prior hearing.

Q Was it the same motion and affidavit that you had seen in the file previously?

A Yes sir.

Q Mrs. ---

CHIEF JUSTICE DREW: Just a minute, counsel. The witnesses who are subject to recall, as I understand it, are still under the Rule until you have been permanently excused from this case. I believe Judge Hayward, somebody told me, is in the balcony. If he is, he will have to ---

JUDGE HAYWARD: Yes sir. I thought I was told that I was released.

MR. O'NEILL: Subject to recall, Judge.

CHIEF JUSTICE DREW: If there are any other witnesses that are subject to recall as distinguished from witnesses who have been released, they cannot remain in the balcony.

You may proceed.

BY MR. JONES:

Q Mrs. Ketchum, I believe you had just testified that the affidavit that was in the record was the one that you had viewed there before?

A Yes sir.

Q Did it now have signatures on it?

A Yes sir.

Q And you accompanied Judge Hayward to the meeting, or to the hearing the third time on the same affidavit and motion?

A Yes sir.

Q And the signatures were then on it?

A Yes sir.

Q Can you refer us to the portion of the record which determines or indicates whether or not Judge Kelly affirmed this motion and affidavit?

A You mean when it was drawn to his attention by Judge Hayward ---

Q Yes.

A --- that papers had been altered?

Q Yes.

A Judge Hayward called it to his attention on Page 9 of the manuscript --- transcript, on January 18, 1963. He said: "Now, I had not intended bringing this up formally, but I think it's such time that things were pointed out to the Court by way of strengthening the contempt. The last time they were here, as you may remember, there was under consideration a jurat attached to a motion to vacate decree. That jurat wasn't dated, the verbiage was defective, and the jurat wasn't signed. Those three defects were brought to the attention of the Court.

"The counsel for the defense checked out the file and it was gone from the clerk's office some six or seven days. Upon returning it, the jurat has been signed by two signatures, one of which I know is that of my wife and I firmly believe the other to be that of the counsel for the defense. That's alteration of the public records, your Honor, and is a grave charge, and should be considered very thoroughly. And I am ready, I think, to prove exactly that. And I think that everything she has filed, or purports to file, if for no other reason than that, should be stricken."

Q Mrs. Ketchum, would you now refer us to the place where the Court ruled or decided the question on the signatures.

A It will take a little explanation here. The Judge and I had both been put under oath by the Court and sworn that these signatures were not there at the prior date, and the Court answered and said, on Line 6, Page 36:

"THE COURT: I want to say this in deference to you and to your secretary. The Court has a recollection that the signatures appearing here on the questioned affidavit that we have been discussing, the two signatures in the lower right hand corner, were there at the time of the last hearing. Now by that the Court does not jump up and swear to the death that they were, but my recollection is that they were there. I think that there is some strength for that position in that it appears that the signatures were there prior to the time the notary seal was affixed. It does not appear that the signatures were put in after the seal was affixed. Now the Court certainly cannot denounce you for your recollection when its own recollection is not any stronger than it is. I think that it could well be that the Court is mistaken about that, but that is my recollection. But in either event this attorney, an officer of this court, has here under oath stated that she has not affixed her signature to this document since the time that the same was filed on December 11 of 1962; therefore, it has to be the opinion of the Court that, based on the testimony that you have produced here, that there is not sufficient evidence in light of the record for the Court to undertake to censure for this account, because I think that it has not been sufficiently proved that such an act as is suggested occurred."

Q Mrs. Ketchum, if you would, now, immediately refer back to the Court testimony, and to Judge Hayward's testimony, which recognizes the fact that the signatures were not there at the prior hearing.

MR. NICHOLS: In order to save time, I have no objection to introducing all of those two records, and then you can read whatever you want to from them.

MR. JONES: All I would like for her to do, counsel, is to find the one place Judge Hayward complains or does not complain that the signatures were there, and Judge Kelly admits it.

CHIEF JUSTICE DREW: Well, if you can't find right now ---

THE WITNESS: I think I have it right here, sir.

CHIEF JUSTICE DREW: Proceed.

THE WITNESS: Let's see, it's on ---

"THE COURT: All right, stand up." This is to Judge Hayward.

"The plaintiff herein, being first duly sworn, testified as follows:

"MR. HAYWARD: This case has been going on for approximately three months and I've been getting correspondence from her all along, and documents signed by her.

"THE COURT: By her, you mean Miss Jordan?

"MR. HAYWARD: By Mrs. Jordan. And I think that I have had enough experience in law and as a judge investigating such things to say that in my opinion that is her handwriting.

"THE COURT: All right.

"MR. HAYWARD: And I recognize Mrs. Hayward's handwriting.

"THE COURT: All right. Do you wish to cross examine?"

BY MR. JONES:

Q Mrs. Ketchum, is this the hearing at which you

appeared with Judge Hayward, where it was found - - - where there was found to be no signatures on this affidavit, that's the one that I wanted.

A Oh.

Q The one that you appeared with Judge Hayward?

A Yes.

Q There were no signatures on the affidavit, and Judge Kelly admitted there were no signatures?

A I read that a short time ago, where the Court recollected that there was.

MR. MASTERSON: She read that the first time.

BY MR. JONES:

Q At the first hearing where Judge Hayward appeared and you and Judge Hayward saw that there was an affidavit with no signatures on it - - - and I understand that at that time it is your testimony that Judge Kelly recognized that there were no signatures?

A Yes, he did.

Q That is the point I wish to refer to.

A I read that too, I think.

CHIEF JUSTICE DREW: I thought the witness covered that.

THE WITNESS: Yes sir.

MR. JONES: If she read it from the record, then that is sufficient, Judge. Thank you. We have no further questions. You may cross examine.

#### CROSS EXAMINATION

BY MR. NICHOLS:

Q You are Mrs. Ketchum?

A Yes sir.

Q Mrs. Ketchum, how long have you been Judge Hayward's secretary?

A For close to two years. It will be two years in January.

Q Two years in January. During the suggested change of the circuits in which a number of Pasco County lawyers petitioned for the change in circuit, do you recall whether or not Judge Hayward signed a petition for the change of circuit, putting Pasco County with the Fifth Circuit?

MR. JONES: Mr. Chief Justice, I don't believe that is in cross of anything brought out on direct.

CHIEF JUSTICE DREW: I don't think it is either. Do you remember anything being brought out with respect to that, Mr. Nichols? You contend that there was?

MR. NICHOLS: There may not have been. I will withdraw it, Your Honor.

CHIEF JUSTICE DREW: You are limited to what was brought out on direct.

BY MR. NICHOLS:

Q Mrs. Ketchum, isn't it a fact that Judge Hayward was discussed for the appointment of Circuit Judge in the event of a change in the Circuits, and that was fairly common knowledge in Pasco County?

MR. JONES: Mr. Chief Justice, that is the same question in different words.

CHIEF JUSTICE DREW: I sustain it, unless you want to make her your witness. When you finish cross examining her, you can do so.

MR. NICHOLS: I would like to make her my witness for a few questions.

BY MR. NICHOLS:

Q Wasn't it discussed among Pasco County lawyers?

MR. JONES: Mr. Chief Justice, the Board of Managers has not rested its case, and I do not believe that it is the place for the Respondent to put on his testimony.

MR. NICHOLS: I am going to ask her just a couple of questions. I hate to hold her here for three or four days until you get through.

MR. JONES: I realize that, but the witness is amenable to service and has been cooperative, and we will be more than happy to keep her under subpoena if you want to recall her; but we would like to go ahead.

MR. NICHOLS: All right. We will just simply have to request her to stay here. Thank you very much. I have no cross examination.

CHIEF JUSTICE DREW: I have a question to ask of the witness from Senator Mathews.

SENATOR MATHEWS: Mr. Chief Justice, I don't think the question is necessary.

CHIEF JUSTICE DREW: You may be excused, but you are still under subpoena and you will not leave the jurisdiction of the Court.

MR. JONES: Do I understand counsel to insist - - - this lady left her husband and children at home and she would be under the call and would be amenable to return. Do I understand counsel to insist on her remaining?

MR. NICHOLS: If you have her phone number where we can reach her by phone, fine.

MR. JONES: We do, as we do in all cases.

MR. NICHOLS: That is perfectly all right.

CHIEF JUSTICE DREW: She is excused subject to call, either on behalf of the Managers or counsel for Respondent.

MR. NICHOLS: May we have marked in evidence the two records that she has identified, so that we can keep some orderly process about it? She has had an exhibit and she has testified from it and the exhibit should be marked.

CHIEF JUSTICE DREW: Do you wish to offer them in evidence?

MR. JONES: We have no objection - - - Mr. Nichols would like to have them marked. We do not offer them.

CHIEF JUSTICE DREW: Mark them for identification as appropriate State's exhibits, for identification only. I think they would be Number 12 and 13. The exhibits from which the last witness has been reading are Numbers 12 and 13 for identification, by the State.

SENATOR MATHEWS: Mr. Chief Justice, a point of inquiry. Are you using consecutive numbers for identification exhibits and for exhibits in evidence?

CHIEF JUSTICE DREW: We are so far, yes sir.

Would the Senate like to use them as A, B for one; and consecutive in the other hereafter?

SENATOR MATHEWS: It makes no difference. But it seemed to me like it would be more orderly.

MR. NICHOLS: I think Senator Mathews' suggestion is good. They would be much easier to identify.

CHIEF JUSTICE DREW: Well, we will have to start from here. Hereafter we will, but otherwise it will confuse

the record. Hereafter, those for identification we will number with letters, if you will, and the others that you introduce in evidence will be serially numbered.

MR. NICHOLS: I think we only marked one other. That was the Common Law file that Judge Bird identified. So, if you like, as long as we are changing over to A, B, C, I would suggest that we agree to withdraw the other number and make it "C"; being the Common Law file referred to by Judge Bird in the habeas corpus matter.

MR. JONES: That would be Respondent's Exhibit for identification Number 1, if it please the Court. It was a Court file.

MR. NICHOLS: That is correct.

MR. O'NEILL: As I understand the way the Chief Justice ruled, these would be marked for identification as 12-A and 13-B of the Board of Managers.

CHIEF JUSTICE DREW: I have another question to ask the witness from Senator Barron of the 25th: "Do you know if Judge Kelly changed the record or directed anyone to do so, or condoned the change in any way? Do you know of your own knowledge?"

MR. O'NEILL: Could we have that question again? It was in three parts.

CHIEF JUSTICE DREW: "Do you know if Judge Kelly changed the record or directed anyone to do so, or condoned the change, if any?"

THE WITNESS: I don't think that he changed the record.

CHIEF JUSTICE DREW: You do not think that he changed the record; is that your answer?

THE WITNESS: No, I don't think that he changed it; but I would think, by his remarks in the transcript, that he condoned the change, because even the lawyers admitted that the signatures were not there at the prior hearing, in the transcript.

CHIEF JUSTICE DREW: You may be excused. Call the next witness.

MR. O'NEILL: Mr. Chief Justice, did I understand the Court, either yesterday or this morning, to say that he was going to take a recess at the hour of 4:00 o'clock?

CHIEF JUSTICE DREW: At four o'clock.

MR. O'NEILL: This other witness will probably go on the rest of the afternoon and possibly tomorrow.

I would respectfully suggest to the Court that we have the recess now, instead of at four.

Whereupon at 3:50 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 4:00 o'clock P. M.

A quorum present.

CHIEF JUSTICE DREW: You may call your next witness.

MR. O'NEILL: Charlie Luckie, Jr.  
Thereupon,

CHARLIE LUCKIE, JR.,

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

CHIEF JUSTICE DREW: Will you try to speak directly into the microphone and not look at counsel. If you turn your head we can't hear you, so speak directly into the microphone and don't look at counsel, unless you have a microphone directly in front of you.

MR. NICHOLS: What Article is Mr. Luckie's testimony going to involve, Mr. Jones?

MR. JONES: Counsel, Mr. Luckie's testimony applies to Article I (a) and such other Articles as might be referable, along with Articles VII and VIII.

#### DIRECT EXAMINATION

BY MR. JONES:

Q Mr. Luckie, you are an attorney practicing law in Pasco County?

A Yes sir.

Q What city?

A Dade City, Florida.

Q How long have you been so practicing?

A Since 1952, in Florida.

Q Would you please give us a brief resume of your educational and professional qualifications?

A I graduated from Emory University Law School in 1951. I was admitted to the Georgia Bar in 1951 and came to Florida and took the Florida Bar Examination in 1952 and was admitted to practice in Florida in 1952. I started practicing in Clearwater, Florida, which is in the Sixth Judicial Circuit. I practiced there for approximately eight months, and then I moved to Dade City, Florida, and I have been practicing in Dade City, Florida ever since with the same law firm.

Q That makes your total law practice how long?

A It will be twelve years, almost twelve years.

Q Do you now practice with a law firm or do you practice alone?

A I am in a law firm composed of myself and my partner, George C. Dayton.

Q How long have you been in partnership with George C. Dayton?

A The partnership was actually formed in 1955, as I recall. I was an associate of the office until 1955, when I became a partner.

Q Mr. Luckie, do you know Judge Richard Kelly?

A I do.

Q For how long have you known him?

A I have known Judge Kelly since I came to Dade City, Florida, to practice law. At that time he was practicing in Dade City, as I recall. I met him very shortly after I came to Dade City.

Q What was your relationship then to Judge Kelly? Social or professional or just exactly what was your relationship?

A Just professional. I have never had any social relationship with him.

Q How long did he practice law in the same Courts there with you, or that you had an opportunity to associate with him in the practice of law?

A When I came to Dade City, as I recall, Judge Kelly was practicing with W. Kenneth Barnes. He then moved to Zephyrhills, Florida, and opened a practice in Zephyrhills - - - Zephyrhills is in Pasco County - - - and he practiced in Zephyrhills by himself, and later with Mr. Lester Bales, who became his partner in Zephyrhills - - - and he practiced there for several years - - - I don't recall exactly how many - - - and then he left the practice in

Zephyrhills and went with the United States Attorney's Office.

Q Do you know where he went with the United States Attorney's Office?

A In Tampa.

Q Did he return, to your knowledge, from Tampa to Pasco County?

A Yes sir.

Q Did he come back to the practice of law from Tampa or from Miami, Mr. Luckie, or do you know?

A I am not sure about that - - - where he was just before he came back to Dade City - - - I didn't keep up with him.

Q And did you say that he returned to Dade City and began the practice of law with Lester Bales?

A I don't believe that he ever actually went into practice with Mr. Bales after he left the United States Attorney's Office. There could have been some short period of time. But he came back and opened an office in Dade City and went into practice with a lawyer by the name of Julian Howay, and they practiced under the name of Kelly & Howay, I believe, was the firm name.

Q Mr. Luckie, have you also had an opportunity to practice law before Judge Richard Kelly as a Circuit Court Judge?

A Yes sir.

Q For how long have you so practiced?

A Ever since he became a Circuit Judge.

Q Mr. Luckie, were you practicing law in Dade City, Florida, when Judge Kelly ran for election as Circuit Judge?

A Yes sir.

Q Were you involved in that election pro or con in any respect? In any respect?

A I had no official capacity in anybody's campaign, as far as the election was concerned.

MR. NICHOLS: We object to any testimony prior to this Judge becoming an official. We are here under an impeachment for an official act or acts while he was in office, and we are not here on any other matter. This is an Impeachment proceeding involving official acts while he was a public official.

MR. JONES: Do I understand, if the Court please, that counsel objects?

MR. NICHOLS: Maybe I didn't state that.

CHIEF JUSTICE DREW: I assume you are limiting your testimony to events which occurred subsequently to the Judge becoming a Circuit Judge.

MR. NICHOLS: Sure. They have introduced in evidence a certificate as to when he took office. Incidentally, I don't know myself what that date was. What was it?

MR. JONES: We have not charged the Judge with any offenses in the Articles of Impeachment prior to his ascending the Circuit Court Bench.

MR. NICHOLS: Well then, there is no need for testimony in that regard. That was my objection.

CHIEF JUSTICE DREW: Let's not get into an argument. Confine the questions to those events, impeachable events or events that might bear on it, after he became Circuit Judge.

MR. JONES: As I understand, if the Court please, the Court does sustain the objection of Mr. Nichols.

CHIEF JUSTICE DREW: As to any offense charged in the Articles of Impeachment, you are confined to those; things charged in the Articles of Impeachment arising after he became Circuit Judge. Collateral events - - - such as a man's knowledge of the man before that time - - - are perfectly permissible - - - they lead up to that.

BY MR. JONES:

Q Mr. Luckie, I refer you to that period of time immediately after the election, when Judge Kelly became a Circuit Judge. Did anything unusual happen to you or your law practice immediately thereafter?

A Not very long after he became a Judge, we filed a Suggestion of Disqualification in a case, the case of State Road Department vs. Simpson.

Q Mr. Luckie, is your Suggestion of Disqualification and the reasons therefor included in this file of State Road Department vs. Simpson?

A Yes sir.

Q Mr. Luckie, I'll ask you to examine those files and determine what case it pertains to, or may pertain to?

A These are the files in the case of State Road Department of Florida and Pasco County, Petitioners, vs. Hackney Simpson and others. Defendants, filed in Circuit Court of the Sixth Judicial Circuit of Florida, Pasco County, Florida, Law Number 1544-L.

Q How many volumes are there, Mr. Luckie?

A Three.

MR. JONES: We would like to have State Road Department vs. Aiken marked as Managers' Exhibit Number 14 for identification.

CHIEF JUSTICE DREW: That will be another number for identification. Was it Number D for identification?

MR. NICHOLS: I think it's C.

CHIEF JUSTICE DREW: Well, check on it; see whether it's C or D.

MR. NICHOLS: To clear up something for the purposes of the record, are all three of these offered and marked as one exhibit?

MR. JONES: Yes.

MR. NICHOLS: And all three files relate to the same legal transaction?

MR. JONES: Yes. In other words, it's only three volumes to the file of State Road Department vs. Aiken - - -

MR. NICHOLS: All one file, but in three volumes?

BY MR. JONES:

Q Is that correct, Mr. Luckie, State Road Department vs. Simpson?

A It's one file, three volumes to the file.

MR. NICHOLS: Now, just again, for clarity, may I ask the Senate Clerk - - - the Secretary of the Senate what the number is?

SECRETARY FRASER: 14-C.

MR. NICHOLS: 14-C. Just for clarifying the record.

SECRETARY FRASER: There are three volumes on this particular exhibit.

MR. NICHOLS: All right, sir.

CHIEF JUSTICE DREW: All right, proceed.

MR. NICHOLS: Do you want to have them back?

MR. JONES: Yes sir, we would like to have them back, Mr. Secretary.

(Whereupon, the above referenced instrument was marked Managers' Exhibit 14-C for identification)

BY MR. JONES:

Q Mr. Luckie, if we could revert just a moment, we could assume, could we not, that at the time Judge Kelly became a Circuit Judge, you and your law firm then had cases that were pending before other judges?

A Yes sir.

Q Were any of those cases immediately changed, or were they changed to Judge Kelly?

A No sir. There was an effort made to change the judges in three of the cases that I recall.

Q Did the Court send out any - - - in speaking of the Court, speaking of Judge Kelly, did he send out any notices that, henceforth, your cases would be handled by him?

A No sir, not as such. He sent out notices of hearing, advising us that he would conduct hearings on motions pending in these cases.

Q Had these cases previously been handled by other judges?

A Yes sir.

Q I refer you to the case of Hayman vs. Gruber. Do you recall what judge was handling that case?

A No sir, I don't without looking at the file.

Q It was being handled by a judge other than Judge Kelly?

A Yes sir.

Q And from whom did you receive the notice switching the case from the first judge to Judge Kelly?

A I don't recall the date. I would have to refer to the file.

Q From whom did you receive that notice?

A From whom?

Q Yes.

A From Judge Kelly.

Q Referring you to the case, sir, of Goldner vs. Faulkner, or Golden and Faulkner vs. Harold, do you recall that case?

A Yes sir.

Q Do you recall by what judge that case was being handled?

A No sir, not from my independent recollection.

Q Was that case switched to Judge Kelly?

A No sir. We received a notice from Judge Kelly that he was going to conduct a hearing in the case.

Q So I as understand your testimony, these cases were not switched to Judge Kelly, but you received a notice from him that hearings would be held in those cases by him?

A That's correct.

Q Mr. Luckie, is it the usual practice for the judges to set down hearings in cases, or do the attorneys call these hearings up?

A It's usually done by the attorneys.

Q Is it unusual for the Court to set down hearings in cases, particularly, civil cases?

A Insofar as my experience has been in the practice, it is unusual.

Q Was this same practice followed in Ryal vs. Board of Public Instruction of Pasco County?

A I believe you have the style of the case wrong.

Q What is the style of the Board of Instruction case?

A It's Hamilton vs. - - -

Q Hamilton vs. the Board of Public Instruction?

A Yes sir.

Q Was this same procedure followed in that case?

A Yes sir.

Q Were hearings, in effect, held in those cases by Judge Kelly?

A No sir.

MR. NICHOLS: Excuse me. Were these different dates that these notices were sent out?

BY MR. JONES:

Q Mr. Luckie, did these come all at once, or were they intermittent, or did they come relatively in the same time? If you can't answer it - - -

A I don't recall.

Q Sir?

A I do not recall whether they came at once, or whether it was over a period of several days.

Q Do you recall whether or not it was over a period of several days or weeks or months? Can you give us that for an estimate?

A I would say it would be over a period of several weeks.

Q I refer you, now, to the case of the State Road Department vs. Simpson, which you have in front of you.

Did anything unusual occur in that case?

A We filed a Suggestion of Disqualification in the case, suggesting that Judge Kelly be disqualified as the trial judge.

Q Had this case been filed, Mr. Luckie, prior to the election or after the election?

A Prior to the election.

Q Had it been heard by any other judge prior to the election?

CHIEF JUSTICE DREW: What election do you refer to?

MR. JONES: The election of Circuit Judge Richard Kelly as Circuit Judge of Pasco County, of the Sixth Judicial Circuit, Your Honor.

THE WITNESS: In connection with Order of Taking and Appointment of Appraisers, Judge Orvil L. Dayton, Jr. had heard the case.

CHIEF JUSTICE DREW: I don't think I quite understand. You filed the Suggestion for Disqualification to disqualify Judge Kelly before the election?

THE WITNESS: No sir, I didn't mean to give that impression, Your Honor. The Suggestion for Disqualification was filed after Judge Kelly was elected and qualified for office, and assumed the office of Circuit Judge.

BY MR. JONES:

Q Mr. Luckie, if you would, please, give us the date that Judge Kelly was sworn in, or began to be the Circuit Judge of the Sixth Judicial Circuit, sir?

A I don't know the date.

Q Would it be January 1, 1960?

A That would be - - -

Q '61?

A 1961, being in January of 1961.

Q Would you then refer to your file, and give us the date that the Suggestion for Disqualification was filed?

A It was filed on February 1, 1961.

Q February 1, 1961?

A Yes sir.

Q Mr. Luckie, did, or had you received word from Judge Kelly that hearings would be held in this file?

A Judge Kelly had issued an order that he was going to hold a pre-trial conference in the case.

Q Do you recall what judge had heard - - I believe you said Judge Orvil L. Dayton, is that correct.

A Yes sir.

Q Would you explain to the Court, what is a Suggestion for Disqualification?

A It is a procedure, under Section 38.10 of the Florida Statutes, whereby a party to a lawsuit who has reason to fear that he or she will not receive a fair and impartial trial before the Circuit Judge assigned to the case may file a Suggestion of Disqualification, setting forth the reasons why the party feels that the judge would not be unbiased and unprejudiced. This Suggestion of Disqualification must be accompanied by three affidavits, and it also must be accompanied by a Certificate of Good Faith on the part of the attorneys who present it to the Court.

Q How many such affidavits were filed, Mr. Luckie?

A One by George C. Dayton; one by Charles S. Pickard and Helen C. Pickard, his wife; one by Glenn D. Olmsted; one by Immer and Company, signed by Charles A. Immer, President of that company; one by George P. Hayden and Susie E. Hayden, his wife; one by First Federal Savings and Loan Association of Pasco County, by B. D. Thomas, Vice-President; one by C. G. McGavern; one by Emma M. Smith; one by Robert E. Clawson.

Q Do I understand that the effect of these affidavits is that these people - -

MR. NICHOLS: Now, I don't - - - I object if you're stating your understanding to the effect that - - -

MR. JONES: I withdraw it, Mr. Nichols.

BY MR. JONES:

Q Mr. Luckie, would you be so good as to read your Suggestion for Disqualification?

A The Suggestion for Disqualification is addressed to the Honorable Richard Kelly, and has the Court style on it.

"Come now the Defendants, First Federal Savings and Loan Association of Pasco County, a corporation organized and existing under the laws of the United States of America, Willis W. Flynn and Mary E. Flynn, his wife, George P. Hayden and Susie E. Hayden, his wife, Immer and Company, Glenn D. Olmsted, Charles S. Pickard and Helen C. Pickard, his wife, and Emma M. Smith, in the entitled cause, and respectfully suggest that the Honorable Richard Kelly be disqualified to hear and determine the issues in this cause for the following several reasons:

(a) That the said Honorable Richard Kelly is interested in the result of this cause and is disqualified under the provisions of Section 38.02, Florida Statutes.

(b) That the Honorable Richard Kelly is disqualified for the reason that these Defendants have filed herewith their affidavits that they fear that they will not receive a fair trial in the Court where the suit is pending on account of the prejudice of the said Honorable Richard Kelly, as Judge of the said Court, against these Defendants for the reason that the said Honorable Richard Kelly is so prejudiced and biased against these Defendants' counsel of record. That they fear that such bias and prejudice will be visited against them. These Defendants also file herewith a certificate of counsel of record that their affidavits are made in good faith and also file herewith affidavits of two reputable citizens in the County who are not related to the Defendants or their counsel supporting the substance of the affidavits and sworn statements herein contained.

(c) In support of said grounds of disqualification, the following is respectfully submitted:

#### SWORN STATEMENT OF COUNSEL AS TO DISQUALIFICATION FOR INTEREST

GEORGE C. DAYTON, of counsel for the above named Defendants, on oath, avers as follows:

1. That the records on file in the office of the Clerk of this Court show that on September 6, 1960, a Complaint was filed by B. L. Gore and his wife, Mary M. Gore, and others, against Pasco County, The Board of County Commissioners, the State Road Department and others. The suit was filed in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, in Chancery, and numbered 7814-C. That said Complaint was signed by Richard Kelly, as attorney for the Plaintiffs. A Motion to Dismiss was filed on September 13, 1960, by Pasco County and the Board of County Commissioners and by the County Commissioners in their individual capacities, by their attorney, W. Kenneth Barnes, Esquire. A Motion for Compulsory Amendment was also filed in behalf of the County and County Commissioners by their same attorney. A Motion to Dismiss was also filed by Messrs. Larkin, Larkin & Goodson in behalf of certain other individual Defendants in said cause and a Motion to Dismiss was filed by the State Road Department on October 15, 1960, by its attorney of record, Gilbert A. Smith, Esquire. Said cause is still pending upon said Motions. The Complaint, among other things, alleges that B. L. Gore and Mary M. Gore, his wife, are the owners of the following described lands, lying and being situate in Pasco County, Florida, to-wit:

Tracts 9, 24, 25, 40 and 41, Section 35, Township 25 South, Range 21 East, Zephyrhills Colony Company Lands, as per map or plat thereof recorded in Plat Book 1, Page 55, Public Records of Pasco County, Florida,

and that the said lands are in close proximity to Highway 301, also known as State Road 39, and to certain drainage canals, ditches and culverts therein mentioned. The Complaint further charges that on September 7, 1959, the Board of County Commissioners of Pasco County caused

an existing culvert lying beneath the Wire Road, approximately one-half mile South of the intersection of the Wire Road and U. S. Highway 301, to be reopened and excavated a ditch and that such canals and ditches were carelessly and negligently constructed and caused an artificial interference and diversion of the natural flow of surface water and flooded the property of the said B. L. Gore and Mary M. Gore. The Plaintiff proceeds to allege damage to crops, shrubbery, landscaping and lands, etc., and that the County Commissioners and the State Road Department elevated the roadbed of U. S. Highway 301 a number of feet beyond the natural level of the land which contributed to the flooding of the property of Mr. and Mrs. Gore and that the drainage provided by the County Commissioners and the State Road Department was improper and damaged the Plaintiff's property. The Plaintiff prayed for an injunction against the State Road Department requiring it to fill and sod so as to restore the natural ridge lying directly East of U. S. Highway 301 to its original condition and to maintain this ridge in such condition and that the State Road Department and the County be required to exercise the power of eminent domain, to make full, complete and just compensation as required by law and sued for exemplary damages because of the alleged wanton and reckless nature of the said Defendants' conduct.

2. That this cause involves, among other things, the condemnation of right-of-way for the said U. S. Highway 301, also known as State Road 39, over, along and across the lands hereinabove last described, which are particularly described in the petition in the second paragraph under SRD #3, 4. That this suit, therefore, involves the same lands and damages resulting from the construction of the same highway as is the subject matter of the suit filed as Chancery 7814-C, wherein the said Richard Kelly, Esquire, is counsel of record, being one and the same person as the Honorable Richard Kelly, who is now Judge of this Court and who has issued an Order Directing Pre-Trial Conference, dated January 18, 1961. That said Chancery 7814-C avers that the said lands are owned by B. L. Gore and Mary M. Gore, his wife, while the petition in this case avers that the lands are owned by Bennett L. Gore, Mary M. Gore, and Freddie Gore, as Trustees of Gore Trust, subject to a mortgage in favor of the Federal Land Bank of Columbia. That it is within the power of the Judge of this Court in the instant case to direct the awarding of the same damages to the Gores by the Defendants, Pasco County and State Road Department, as is sought for them in said Chancery 7814-C which is still pending and wherein the Judge of this Court still appears as counsel of record. That affiant believes that this case was taken on a contingent basis by the said Richard Kelly, Esquire, or by the firm of which he was the senior member, Kelly & Howay, and even though it may be assumed that the Honorable Richard Kelly will no longer participate as counsel in said cause since he is prohibited by law from so doing, that he would be entitled to a share of any damages recovered. One of the Defendants represented by affiant in the instant case, to-wit: Susie E. Hayden, was invited to join in said Chancery Case No. 7814-C to seek damages for water flooding on her land which we are seeking for her in the instant case. Said Susie E. Hayden declined to enter into said suit and for this reason feels that the said Honorable Richard Kelly may be prejudiced and biased against her in this case which involves the same subject matter and the same damages.

#### AFFIDAVIT OF COUNSEL AS TO BIAS AND PREJUDICE

GEORGE C. DAYTON, counsel for the said Defendants in the entitled cause, on oath, further avers:

1. That in his opinion, said Honorable Richard Kelly is so biased and prejudiced against him that affiant believes that such prejudice and bias will be visited against

his clients in the entitled cause and that his clients will not receive a fair and impartial trial from the said Honorable Richard Kelly. More particularly, affiant avers as follows:

(a) That affiant has been a resident of Pasco County during his entire life. That affiant is the brother of Orvil L. Dayton, Jr., who is now serving as a Judge of this Court and who was defeated by the said Honorable Richard Kelly in the general election held on November 8, 1960, the said Honorable Richard Kelly being the Republican nominee for the office of Circuit Judge and the said Orvil L. Dayton, Jr. being the Democratic nominee. That said election was hotly contested and the said Honorable Richard Kelly was victorious by only 420 votes, having received a sufficient majority of votes in Pinellas County to overcome the majority lead of said Orvil L. Dayton, Jr. in Pasco County.

(b) That affiant is the son of Orvil L. Dayton, Sr., who served as County Judge of Pasco County in 1900 and was elected to many other County offices and was Judge of this Court for many years, having retired from the Bench in 1934 to re-enter the practice of law with affiant and the said Orvil L. Dayton, Jr. That said Orvil L. Dayton, Sr., retired from the practice of law in 1956 and never held public office after the year 1934. That the said Orvil L. Dayton, Jr. has also served as County Judge of Pasco County and Circuit Judge of the Sixth Judicial Circuit, such service covering a period of more than twenty-five years. That affiant's uncle, who is now deceased, George W. Dayton, served as State Senator for the Senatorial District of which Pasco County was then a part for the Sessions of 1909 and 1911. That affiant served as a member of the House of Representatives of the State of Florida during the Sessions of 1947 and 1949 and as State Senator for the 38th Senatorial District of Florida for the Sessions of 1951 and 1953. That affiant and his said family were elected to many of the offices held by them sometimes over opposition and sometimes without opposition. That affiant's family has never had a monopoly in Pasco County Government or politics. Judge Kelly, in his campaign, falsely stated that the Dayton Family had had such a monopoly for the past fifty-six years and also that none of affiant's family had held office by virtue of election which statement was false.

(c) During the campaign between said Honorable Richard Kelly and affiant's brother, Orvil L. Dayton, Jr., the said Honorable Richard Kelly in open and flagrant defiance of the following judicial canons of ethics, to-wit:

Canon 28 which is as follows:

'28. Partisan politics.—While to entertain his personal views of political questions, and while not required to surrender his rights or opinion as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, except as required by law, the public endorsement of candidates for political office and participation in party conventions.'

'He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.'

and Canon 30 which is as follows:

'30. Candidacy for office—A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of his appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the im-

pression that if chosen, he will administer his office with bias, partiality or improper discrimination.'

'While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.'

'If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.'

'He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.'

And also in open defiance of the pronouncement of the Supreme Court of Florida in the case of *State ex rel, LaRussa v. Himes*, 144 Fla. 145, 197 So. 762, which is as follows:

'This situation is typical of how restricted the candidate for judicial preferment is limited as to topics he may discuss on the hustings. The candidate for legislative or executive office is expected to announce his position on policies and issues and to stoutly advocate them but when a candidate for the judiciary does this, he disqualifies himself to sit in any cause affecting the issue he advocates. His oath of office limits his declarations from the stump. The moment he allies himself on either side of issues or individuals, he endangers his position as a judge and apparently destroys his neutrality. The man in the moon and the weather man are about all the people he can with impunity talk about without attitudinizing himself. He may indulge in a few pleasantries at the expense of Uncle Remus and the crops but that is the limit of his tether. The makers of the Federal Constitution realized the utter futility of judges engaging in political combat and galvanized them from it by making them appointive for life.'

openly engaged in partisan politics and espoused the Republican platform and avowed ruin and defeat to Democrats in this County generally. Affiant attaches hereto and marks Exhibit 'A' the complete text of a speech by the Honorable Richard Kelly made at a Republican Political Rally at the Pasco County Fairgrounds near Dade City on October 15, 1960. This speech is as transcribed by the official court reporter whose certificate it bears and is believed to be a verbatim transcript of such speech and is made a part of this affidavit and suggestion of disqualification to the same extent as though set out herein in full. The Court will notice that in this public speech, said Honorable Richard Kelly showed great bias and prejudice against Democrats, particularly Pasco County Democrats. That affiant and his partner, Charlie Luckie, Jr., are both lifelong registered Democrats and at least some of the Defendants in this cause are Democrats.

(d) That the said Honorable Richard Kelly in said campaign, made affiant's brother, affiant and affiant's family all targets of abusive, disparaging and false statements made by him. The attention of the Court is invited to the following portion of the said speech, a copy of which is attached as Exhibit 'A':

'Then when his brother was in the Legislature, they passed a law making it mandatory that one of the Circuit Judges sit in this County and created an additional site for him to sit in.'

This statement by the said Honorable Richard Kelly was false and he knew or should have known that said statement was false at the time he made it. The 1951 Legislature, of which affiant was a member, did amend the law

(see Section 26.071, Florida Statutes) so that it would contain the following proviso:

'Providing that one of the said Circuit Judges shall reside in and be appointed or elected from Pasco County.'

Of course, Dade City has been designated as a site for Circuit Judges to sit since the County was created. This was done many years before affiant's birth. No additional site was created. Affiant also invites the attention of the Court to the many abusive statements made against affiant, his family, County officials, Democrats in general, and that said Honorable Richard Kelly even challenged affiant's brother to debate the party platforms publicly.

(e) Affiant further avers that the said Honorable Richard Kelly used his law office during the campaign as headquarters for the Republican nominee for President, Richard Nixon, and the Vice-Presidential Republican nominee, Henry Cabot Lodge, notwithstanding the fact that he was running for judicial office at the same time.

(f) Affiant attaches hereto and makes a part hereof, the following advertisements which appeared in the Dade City Banner, to-wit:

Issue of October 20, 1960, which is marked Exhibit 'B';  
Issue of October 27, 1960, which is marked Exhibit 'C';  
Issue of November 3, 1960, which is marked Exhibit 'D'.

Affiant also attaches hereto and makes a part hereof the following advertisements which appeared in the Pasco Shopper and were circulated to all local and R. F. D. boxholders in this area:

Issue of November 3, 1960, which is marked Exhibit 'E';  
Issue of November 3, 1960, which is marked Exhibit 'F'.

Affiant also attaches hereto a copy of a letter which was circulated to practically all of the voters of Pasco County by the said Honorable Richard Kelly" ---

MR. NICHOLS: Your Honor, so that there will be no misunderstanding about it, counsel for Respondent withdraws his objection to matters before the Election, in view of the reading of this matter.

MR. JONES: Mr. Chief Justice, for the clarification of the record, I understand Mr. Nichols' objection stands --- Mr. Luckie is merely reading from the official transcript which has previously been stipulated to.

MR. NICHOLS: I understand, but you have gone completely into the matter and have opened the door and had him read all about it; so we withdraw my objection concerning that and we will go all the way into the matter.

CHIEF JUSTICE DREW: Counsel has a right to withdraw his objection. As I understand what you are reading, Mr. Luckie, it is the disclosure of your affidavit to disqualify the Judge.

THE WITNESS: I am reading from the affidavit itself, Your Honor, which is a part of the Court file.

CHIEF JUSTICE DREW: You are required to state in such affidavit the reasons for seeking disqualification.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: You may proceed.

A (continuing): "Affiant also attaches hereto a copy of a letter which was circulated to practically all of the voters of Pasco County by the said Honorable Richard Kelly, dated November 4, 1960, and hereby makes the same a part hereof and marks the same as Exhibit "G." Affiant also attaches hereto and makes a part hereof, a Thermo-Fax copy of an editorial which appeared in the St. Petersburg Times on October 31, 1960, which shows that the type of campaign conducted by the said Honorable Richard Kelly incurred the disapproval of the

largest newspaper in this judicial circuit, which said copy of said editorial is marked Exhibit "H." Affiant also attaches hereto a Thermo-Fax copy of a news article appearing in the St. Petersburg Times on October 28, 1960, entitled, "'Mudslinging' Label Pinned on Candidate", which said copy of said news article is marked Exhibit "I." It is noted that the personal attack upon affiant's brother and his family was so improper that the chairman of the Republican Campaign Committee of Pinellas County was constrained to apologize for him. Without commenting here in great detail on each of the improper statements which abundantly show the bias and prejudice of the said Honorable Richard Kelly, affiant thinks it would be sufficient to say that it is apparent that said Honorable Richard Kelly was elected on the platform that he would use his office to accomplish the defeat and destruction of the Dayton family and would do his utmost to prevent them from being successful in any public endeavors.

(g) Affiant feels that the Honorable Richard Kelly is, therefore, politically obligated by reason of his campaign statements to rule against affiant in any case in which affiant is involved as counsel or party.

(h) Affiant further avers that he does not believe that said Honorable Richard Kelly will give a fair and impartial trial to the Defendants represented by him in the instant case or to any other parties whom he might represent. There are only two ways that said Honorable Richard Kelly can fight the Dayton family from his vantage point on the Bench. One is to rule against affiant and his clients and two is to castigate affiant and his clients from the Judicial Bench.

(i) Affiant further avers that in his twenty-six years as a member of the Florida Bar, he has never filed a suggestion of disqualification and has very reluctantly filed this. The actions and statements of the Honorable Richard Kelly during the campaign, coupled with his activities since his elevation to the Bench, have caused affiant to feel compelled to take this action.

(j) Affiant further avers that said Honorable Richard Kelly, since his elevation to the Bench, far from showing any reluctance to assume jurisdiction over cases in which affiant or his firm are involved, has shown an unseemly aggressiveness to assume jurisdiction. In the case of Hamilton v. Board of Public Instruction now pending before this Court, the affiant and his firm represented the Defendant, Board of Public Instruction, and other Defendants, the cause was pending on Motion to Dismiss and Motion to Strike which had been set down for argument before the Honorable Jack F. White, one of the Judges of this Court. That a notice was issued by opposing counsel in said cause attempting to set this case before the Honorable Richard Kelly with only three days' notice. That the consent of Judge White had not been obtained to transfer the jurisdiction of said case to said Honorable Richard Kelly. It also appeared that the date set in the notice conflicted with a hearing which affiant had in the Court of Appeal of the Second District. Affiant and opposing counsel, with the consent of Judge White, agreed to set the matter before the Honorable T. Frank Hobson, Jr., one of the Judges of this Court. That the said Honorable Richard Kelly listened to a part of the three hours' argument conducted before Judge Hobson and was present during most of the argument of affiant's adversary counsel and took notes but was conspicuously absent during most of affiant's argument. That after the argument was concluded, Judge Hobson took the matter under advisement, which said hearing was held on January 16, 1961. Immediately after the hearing, said Judge Kelly upbraided Judge Hobson for taking jurisdiction of the case and demanded that the jurisdiction of the case be transferred to him. Judge Hobson was compelled by Judge Kelly's attitude to write to the Honorable John U. Bird, Presiding Judge of this Court, a copy of Judge

Hobson's letter being hereto attached and marked Exhibit "J" and hereby made a part of this affidavit by this reference. That Judge Kelly subsequently wrote to Judge Bird, a copy of Judge Kelly's letter being also attached hereto and marked Exhibit "K" and made a part hereof. That affiant wrote to Judge Bird on January 26, 1961, a copy of affiant's letter being hereto attached and marked Exhibit "L" and made a part hereof. Affiant avers that the matters set forth in such letter of January 26th are true and correct.

(k) That Judge Kelly, on his own initiative, has sent notices of hearing in the cases of James T. Haymons v. T. L. Groover, doing business as Safety Cab Co., being Law Case No. 1607, and Peter Joseph Golden v. Winston Harrell and Jeral Wade Ryals, being Law Case No. 1603. No request was made to Judge Kelly by any of the attorneys in said cases.

(1) Affiant also avers that Judge Kelly has been very aggressive in his effort to obtain jurisdiction of cases in which affiant was involved.

(2) These acts, statements and many more similar in nature, purpose and design on the part of Judge Kelly, have created a firm conviction and belief in the mind of affiant that the Defendants in the entitled cause cannot receive a fair and impartial trial at the hands of Judge Kelly and that the said Judge Kelly is biased and prejudiced against this affiant, his firm and the Defendants herein.

/s/ George C. Dayton

Sworn to and subscribed before me this 1st day of February, A.D. 1961.

/s/ Beulah E. Ennis

Notary Public  
My Commission Expires October 15, 1962

DAYTON, DAYTON & LUCKIE  
Attorneys for above named  
Defendants

BY: /s/ Charlie Luckie, Jr.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That a true and correct copy of the above and foregoing Suggestion of Disqualification and Affidavit of Bias and Prejudice was furnished by delivery to the Honorable Richard Kelly, Circuit Judge, Pasco County Courthouse, Dade City, Florida, and to Mr. W. Kenneth Barnes, Attorney at Law, P. O. Box 443, Dade City, Florida, on this the 1st day of February, A. D. 1961.

/s/ George C. Dayton

Of Counsel for Defendants named  
in said Suggestion of Disqualification and Affidavit of  
Bias and Prejudice"

BY MR. JONES:

Q Mr. Luckie, did the County Attorney also file a Suggestion of Disqualification?

A Yes sir.

Q Was the Suggestion for the firm of Dayton & Luckie, which you just read - - what was the outcome of the Suggestion? Was it granted or denied?

A Judge Kelly denied our Suggestion of Disqualification.

Q Was the Suggestion of Disqualification of the County Attorney granted or denied?

A It was granted.

Q What was the final outcome in regard to who tried the case of Simpson vs. State Road Department?

A Judge Orvil L. Dayton, Jr. tried it.

Q What was the occasion, or in what fashion or manner was the case transferred from Judge Kelly to Judge Dayton?

A I don't know. The file does not reveal the manner in which it was accomplished.

Q Did the Court ever rule on the Suggestion?

A Do you mean Judge Kelly?

A Yes sir.

Q What was his ruling on the Suggestion?

A Do you want me to read the Order of the Court?

MR. NICHOLS: I would appreciate it if he would.

BY MR. JONES:

Q Read it, yes sir.

A This is the Order of the Court of February 6 - - -

CHIEF JUSTICE DREW: Before you read that, counsel, Senator Campbell of the 39th requests that Judge Hobson's letter to Judge Bird - - - the exhibit to the petition - - - be read in full.

Is the exhibit on the petition?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Will you read Judge Hobson's letter to Judge Bird, as requested by Senator Campbell of the 39th. I think it would be more orderly to do that at this time.

THE WITNESS: This letter is marked Exhibit J. It is dated January 17, 1961, addressed to Honorable John U. Bird, Circuit Judge, Court House, Clearwater, Florida.

"IN RE: HAMILTON VS. TAYLOR, et al.

"Case #7898 Chancery.

"Dear Judge Bird:

"In reference to the above case there has been some misunderstanding. It has arisen as to what Judge should hear the matter. I would like to give you a resume of the factual situation leading up to the misunderstanding.

"The case was filed in Pasco County by the firm of Barnes & Wagner requesting injunctive relief and damages. A Motion to dismiss as well as a Motion to Strike certain paragraphs to the Complaint were filed by the firm of Dayton, Dayton & Luckie. A Notice of Hearing on said motions was filed by the defendants setting said motions before Judge White at the Court House in Dade City on Thursday, February 23, 1961. On January 10th, 1961, a motion was filed by the plaintiff requesting that the grounds of the Motion to Dismiss and the Motion to Strike be set out in detail. This motion filed by the plaintiff was set down for hearing before Judge Kelly on Friday, January 13th, 1961. Due to Mr. George Dayton's having previous engagements, the hearing set before Judge Kelly on the plaintiff's motion was cancelled.

"I was assigned to come to Dade City for jury trials on January 16th, 17th and 18th; however, the trial for January 16th was continued, and as Mr. Wagner and Mr. Luckie were on the continued case, and aware of the fact that it had been continued, Mr. Wagner requested that I hear the pending motions in the above case on Monday, January 16th. I was also informed by Mr. Wagner that Judge White, before whom the original hearing was set, had agreed that it would be all right for me to hear it.

"At this point, I would like to bring to your attention that when the above case was filed in November, 1960, there was only one Judge in Pasco County, and the subject case was not assigned to any specific Judge. I came to Dade City Monday morning, January 16th, and dismissed the venire for the trial week until Tuesday morning at 9:30 A. M. Immediately following the dismissal of the venire, Judge Kelly requested to see me at which time he discussed matters not material to this subject; however, he did advise me that he had no calendar for the week of January 16th. Following this discussion I heard argument of Counsel on the pending motions in the above matter. After argument I reserved ruling to re-search further and immediately after lunch and prior to my ruling, Judge Kelly again requested an audience with me.

"Judge Kelly came in and was quite upset with me because I had not cleared with him my hearing on the motions in the above case. He inferred that it was his case and should have been cleared with him. I agreed with Judge Kelly that if it was his case that it should have been cleared with him; however, I was unaware of the fact that it was his case, and I had agreed to hear the matter in order to expedite the case due to the fact that it requested injunctive relief, and also, as a favor to the litigants and to the attorneys, at all times assuming that the case was Judge White's and that he had agreed to my hearing it.

"Judge Kelly said that he felt that since he had informed me earlier that morning that he had no calendar, that I should have turned the case over to him. He further informed me that he was of the opinion that the dignity of the Court would be lowered if continued bickering between the Judges existed, with which I wholeheartedly agreed. However, in this instance I do not feel that I have in any way lowered the dignity of the Court or myself. Judge Kelly was further of the opinion that politics were involved, and inferred that the attorneys had used this means to circumvent his hearing the case.

"I am referring this matter to you as you are the presiding Judge in this Circuit, and will respectfully carry out the decision which you make in this matter.

"As you will note, I am sending a copy of this letter to Judge Kelly as well as the other Judges in the Circuit and the attorneys involved, and request that if I have inadvertently stated any of the facts that Judge Kelly, advise me as to the misstatement and I certainly shall correct anything not correctly stated herein.

"I shall not enter any order in this matter and request that you assign the above case to a specific Judge.

"Sincerely yours,

"T. Frank Hobson, Jr.,  
"Circuit Judge."

It shows copies to Orvil L. Dayton, Jr., Judge Leavengood, Judge Kissinger, Judge White, Judge Collins, Judge Kelly, Barnes & Wagner, Dayton, Dayton & Luckie.

BY MR. JONES:

Q Mr. Luckie, prior to the Judge, Judge Kelly coming on the Circuit Bench, did your firm, the firm of Dayton & Luckie, try cases before Judge - - -

MR. NICHOLS: I believe he was about to read an Order, that the Judge set aside. Could we have that read?

MR. JONES: All right, sir.

THE WITNESS: This is an Order of Court, filed February 6, 1961, in the case of State Road Department and others vs. Simpson.

"This case came before this Court on the 2nd day of February, 1961, for a Pre-Trial Conference and on the 1st day of February, 1961, the law firm of Dayton, Dayton & Luckie, representing various defendants herein, filed a SUGGESTION OF DISQUALIFICATION which appeared to this Court to not be well founded and, at the time set for the hearing of the Pre-Trial Conference, W. Kenneth Barnes, Attorney for the Petitioners, filed with the Court a suggestion that the undersigned judge, while an attorney in private practice, recently represented a defendant in this case in another matter, involving lands, here a subject, and construction and drainage of a state highway, here a subject, and the instant case having been recently assigned to the undersigned judge for trial and this judge not being aware of the situation referred to, as related in the suggestion of W. Kenneth Barnes, until the evening hours of the 1st day of February, 1961, and it appearing to the Court that the suggestion of the Petitioner was well founded, and the Court having considered the said suggestion and the facts pertaining thereto and upon consideration thereof it is:

"ADJUDGED AND ORDERED as follows:

"1. That the SUGGESTION OF DISQUALIFICATION filed in this case by the firm of Dayton, Dayton & Luckie be and the same is hereby now denied.

"2. This Court on his own motion does hereby now disqualify himself from hearing and determining any of the matter pertaining to this case.

"DONE AND ORDERED this 3rd day of February, 1961, in Chambers at Dade City, Pasco County, Florida.

"Signed, Richard Kelly, Circuit Judge."

BY MR. JONES:

Q Mr. Luckie, did I understand that the Court denied your petition, but then immediately voluntarily recused himself, is that correct?

MR. NICHOLS: The Order speaks for itself.

MR. JONES: Well, if you would - - - I'm sorry, counsel, I didn't hear it properly, at the last.

MR. NICHOLS: All right.

BY MR. JONES:

Q Right there at the last. Would you read that, please?

A He denied the petition which we had filed, and stated that on his own motion he was disqualifying himself.

Q Mr. Luckie, was it customary or ordinary for your firm, Dayton & Luckie, to try cases before Judge O. L. Dayton, Circuit Judge?

A Not contested matters. We did take cases before him which were uncontested, such as uncontested divorces, uncontested mortgage foreclosures and matters of that kind.

We did not try contested litigation before Judge Dayton.

MR. JONES: If the Chief Justice please, we are about to go into another file, another case, and I notice that it's six minutes from the time when the Court - - - I'm afraid that we'll have to restart the file again in the morning if we start reading one of these Orders, but if it would be the Senate's will, I can - - -

CHIEF JUSTICE DREW: Well, gentlemen - - -

SENATOR ASKEW: Mr. Chief Justice, before we go home, I wonder if the Chief Justice would put my question.

CHIEF JUSTICE DREW: All right, Senator Askew has a question he would like to ask the witness: "Was Aiken also a Defendant in the State Road Department vs. - - - and Pasco County, against Simpson, or was the Aiken case and the Simpson case separate cases?"

THE WITNESS: They were separate cases. The Simpson case was completed prior to the filing of the Aiken case.

CHIEF JUSTICE DREW: Another question:

This is by Senator Henderson:

"Mr. Luckie, have you ever evidenced interest in the Circuit Judgeship in Pasco County, in the Pasco County area of Florida?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: All right, gentlemen. Now, I have been requested, by Senator Pope - - - he asked the Court to go into just a brief session immediately following adjournment, a closed session for the purpose of discussing two or three minutes, an amendment to Rule 7, which relates to amending the rule regarding the seating of the wives of the Senate.

Without objection - - - Senator Pope makes the motion that we go into closed session for that one purpose.

Without objection, that will be the order.

Whereupon, at 5:10 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 Rule 7 be waived to permit the wives of the members of the Senate to sit within the Senate Chamber during the trial.

Senator Pope moved the adoption of the order.

Which was agreed to and the order was adopted.

Senator Cross moved that the doors of the Senate Chamber be opened, and the doors of the Senate Chamber were opened at 5:12 o'clock P. M., at which time the Senate, sitting as a Court of Impeachment, stood adjourned until 9:30 o'clock P. M., Friday, September 13, 1963, pursuant to the rule.