

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Thursday, September 19, 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:

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

—44.

A quorum present.

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

Hear ye! Hear ye! Hear ye!

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

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Wednesday, September 18, 1963, was dispensed with.

The Senate daily Journal of Wednesday, September 18, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Ed. H. Price, Jr., of the Thirty-sixth Senatorial District offered the following Prayer:

Our Heavenly Father, we thank thee that we meet here today as free Americans under the jurisdiction of one God. We ask that thou would give us thy Holy Spirit, thy counsel, thy guidance, thy wisdom so that we may find the truth. Then, Father, we ask that you give us the courage to stand up for the truth. Forgive us our sins.

Guide us and lead us this day and all the days to come. In Christ's name we pray. Amen.

CHIEF JUSTICE DREW: Senators, before opening the proceedings this morning, I wish to read again the last part of Rule Number 7 of the Rules of this Court.

"The presiding officer of the court may rule on all questions of evidence and incidental questions, which rulings stand as the judgment of the court, unless some member of the court shall ask that a formal vote be taken thereon, in which case it shall be submitted to the court for decision, or he may, at his option, in the first instance submit any such question to a vote of the members of the court."

Ordinarily, in a Court proceeding, on a ruling on any question asked by counsel for either party, they will be protected against an unfavorable ruling or an incorrect ruling by the right to appeal to an Appellate Court.

In this proceeding, I am sure that counsel for both sides realize - - - as the Courts have repeatedly stated - - - that this is a Court of exclusive and final jurisdiction, and that there would ordinarily be no appeal from the decision of this Chair.

I want to state to this Court and to make it quite plain that it will not be offensive to me in any way for any member of this Court, at any time during these proceedings, to question the correctness of any ruling that I make concerning the introduction of evidence or any other order which is requested by this Court. I want to tell you that I consider it your duty to make such motions at any time that you feel it should be done, because these men, in their endeavors to properly represent their interests and the interests of their client and the State, I am sure are conscientious in their actions. As in all cases, these are adversary proceedings, and I am sure that counsel, from time to time, as all counsel through history have done, will probably be overanxious in the presentation of their cause.

Now, in the ordinary cases - - - and we are governed by rules of evidence under the precedent established in the previous impeachment proceedings and by the direct action of this body - - - ordinarily the rules of evidence will be followed. I have leaned over backwards to overlook questions which were probably improper or perhaps leading, out of a desire that the lay members of the Senate may have such evidence as they feel bears in any respect in these proceedings, because you occupy a unique position; unique because it exists only, to my knowledge, in Courts of Impeachment. You are acting as judges, in judging the law, and as a jury in weighing the facts. I realize the difficulty of counsel. I am sure they realize the problems of the Presiding Officer and this Court. In the ordinary case - - - and these rules of course should be followed here - - - the burden is on the man presenting a witness not to ask leading questions. Questions should be asked in a direct manner. Counsel agreed, at a joint conference before the trial commenced, or shortly thereafter, that it would be proper for this Court to be liberal with reference to leading questions, because in many instances they could expedite the disposition of these proceedings in which forty-four Senators and many others are involved. But that should be the rule. Counsel for the State, who is now presenting his witnesses, should not - - - except in informal matters - - - ask leading questions. On the

other hand, counsel for the Respondent, on cross examination, has greater latitude in cross examination than the attorneys do in the direct examination. Counsel for the Respondent may ask leading questions. He should not be argumentative. He should not make statements or make speeches in asking a question. Where the line is drawn sometimes is difficult. But that is the rule which we shall follow.

Now, for your guidance, so that you may be fully able to exercise your right to question any ruling of this Chair at any time - - - not only your right but your duty - - - this method of presentation of evidence will be reversed when the State concludes its case and the Respondent commences its case. At that time the Respondent may ask only direct questions and then the State shall have the right to ask leading questions.

I would ask counsel not to engage in controversy, not to make speeches in asking questions, not to ask leading questions on direct examination, and to endeavor to ask their questions in such a manner as to fully and completely present their evidence in this case in the most expeditious manner. I would request counsel to direct remarks to the Chair, and the Chair will rule. If in any instance the Chair rules contrary to counsel for either party, if he requests the right to present argument on whether that question should be sustained or overruled, he will be allowed a reasonable time to do so. Now, this does not mean that that privilege will be accorded to every objection, because the Court is not required to accord that privilege. But in all serious matters, matters of importance or that counsel seriously believe in, I want them both to feel at liberty to ask the Court for permission to argue; and, if I feel it important, it will be granted. And then, if I feel it is of serious debate, I shall exercise my privilege under the rules to submit the question to this Court; or, if the Court or any member of the Court at any time desires or wishes to ask that the Chairman be overruled - - - and I say that advisedly - - - of course the rule is a little more diplomatically couched, but that is exactly what it is and that is exactly your right - - - I am the Presiding Officer. You are the Court and the Jury.

At this time I would also like to make this statement to those in the gallery, counsel for the respective sides, and to all witnesses, that until they are released by the joint consent of counsel for both sides, they shall not come into the gallery. I shall expect counsel for both sides to admonish their witnesses to this effect. The Chair has been advised that on one occasion - - - I cannot say this is true - - - that on one occasion a witness yesterday, who testified, was later in the gallery during the taking of testimony. I'm sure that counsel for neither side knew that. The Chair would appreciate it if they would advise their witnesses concerning it.

Gentlemen, you may call your first witness.

MR. NICHOLS: Mr. Chief Justice, before we start, I would like to make a motion, addressed to the Court, to the Chief Justice and the other members of the Court: The Respondent moves the Court to require the Managers to have prepared and transcribed and made available to the defense all the reporters' notes of hearings to be testified to by 5 o'clock p.m. of the day before the testimony, and if this is not done, to forbid such testimony from being used. Now, by way of illustration, yesterday afternoon we had a man named Wolfe on the stand. He testified in his testimony that there had been a Court Reporter present, and transcribed this.

This witness, we did not know what he was going to say, what his charges were, nor anything else. So, I stood here almost five minutes, trying to get over there to see if there was a transcript in the proceedings. He testified at length concerning this proceeding, and the witnesses that were there, and what was said and what the judge

said and didn't say. Now, that transcript, of course, is material to the accuracy of what was said and not said, and would be very competent evidence, and certainly should be made available to us. In the cases under which the original articles were charged, and under which the original bill of particulars was filed, back on August 16, which was the purpose of the rule, we were able, in any file that did not have the transcript, to get the Court Reporter down in those areas to transcribe it, so that we can at least be prepared on what this Circuit Judge did say and didn't say in those proceedings. Now, also, by way of illustration, this witness yesterday went on to say, in these very proceedings, that what the judge had said had a bearing on the client committing suicide the night before. Now, we ask the Court, this Court, to ask the Managers to be responsible for those witnesses in that regard. Now, counsel - - - and I'm reading to them - - - asked this question:

"Q Now, did this have any effect on your client, Mr. Chaney?" Now, if this particular statement was made in any court by a witness, and particularly in any criminal case, there would be an immediate mistrial, Your Honor. We appeal to the fairness of the Court, because we can't declare a mistrial. Where do we go? We come right back to the same jury and the same Court to hear the matter.

So, this type of questions and answers that are injected, we ask that the Court hold the counsel for the Managers responsible not to ask improper questions, that put prejudicial matter in the jury's mind, where we cannot get it out; and so, we ask - - - and particularly, we ask that a transcript of any proceedings be made available to us at least the evening before. Now, they have a Thermofax machine, or duplicating machine back there, which this can be run through; and, certainly, we ought to have some knowledge. Now, they have said, "Well, we'll let you see the files," and we have - - - they have a number of files over there - - - in fact, they've got three drawers of them over yonder, but there was not in the file the transcript that this witness was testifying yesterday, and we had no way. Now, we immediately have sent to the Court Reporter, we had them typing until 2 o'clock last night, to try to get the transcript to have it here, and then we were caught with four minutes left to examine the witness. Now, we're in the defense of a man that's involved in his entire public reputation, and we ask only in fairness and we only ask the opportunity to, certainly, for them to give us some way to defend the charges, and it will be of great benefit to us to have, at least, the transcript that the witness is testifying about, as to what's said or not said, or prohibit the witness from coming on the stand, and that's our motion.

MR. O'NEILL: I don't believe that I understand the motion, may it please the Court, except that he wants us to furnish him a transcript, and he objected to us furnishing him a bill of particulars, but before I speak on that, I resent the comments of Respondent's counsel that he would imply that the Board of Managers have at any time been unfair with him or his client. We have done everything within our power to cooperate with him, to make available the court files. We have sent for the court files that he's requested that we get him; we have furnished transcripts where the transcripts were in the files, where they were available to us. We furnished him lists of witnesses that we expected to call. We endeavored to give him a bill of particulars and a supplemental bill of particulars. He objected to that, which would set out all these cases. Therefore, he has no bill of particulars; and now he comes in here complaining and saying we are being unfair, and I resent it, and I resent that he would imply that the question asked of Mr. Wolfe yesterday afternoon was improper. I submit to the Court that the question asked of Mr. Wolfe was very proper, and it would be proper in a criminal trial, and I think that any attorney that's a member of this Senate will tell you the same thing, that that question, there was nothing

wrong with it. Now, the answer that Mr. Wolfe gave to it, if that might have been given in a criminal trial, then the Court could take it into consideration.

Now, as to furnishing this Respondent transcripts of what those witnesses have would cost the state a tremendous sum of money, because there are many cases. Lots of these transcripts are available in the court files, and have been furnished to counsel. As a matter of fact, I think, in this particular case, the court files had been here for some time, and Mr. Nichols knew that this witness was going to be called; he was not surprised, and he knew the name of it, and I think the motion should not be granted.

MR. NICHOLS: All right, Your Honor, just a brief response. They talk about the expense to the state. Now, they have paid investigators, they have paid help, and in preparing these cases, and they have been at this matter since the House hearings, preparing and getting this matter for trial. Now, they told us that they were going to bring up all of the records, and on - - - when the case had just started, we had the opportunity to look briefly through those three drawers over yonder, and we find that the transcripts that we're talking about in some of them are not here, and that's what I'm talking about, and that's what I'm asking them to furnish us, and in those that are here, we simply ask them to have them duplicated for us on the duplicating machine, and if the State is without help or assistance in this regard, I'll get my personal secretary to come over here and do it for the State, but all I'm asking you to do is to make available to us, by 5 o'clock, any transcripts that a witness is going to testify from.

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

CHIEF JUSTICE DREW: Mr. O'Neill.

MR. O'NEILL: - - - did not testify from any transcript.

CHIEF JUSTICE DREW: Mr. O'Neill, under all the rules, the man who makes the motion has the closing. You have an argument and he has the closing argument.

MR. O'NEILL: I just wanted to clear up a fact, if it please the Court, that Mr. Wolfe was not testifying from any transcript, did not have it in front of him.

CHIEF JUSTICE DREW: Gentlemen of the Senate, I think this is a matter you've heard; the motion is, the request is that this Court require, in the case of any witness called by the State to testify who testifies concerning facts which were reported, that there be furnished to the attorneys for the Respondent a copy of the transcript at 5 o'clock the evening before the witness is called - - -

SENATOR BARRON: If the Court please - - -

CHIEF JUSTICE DREW: I will hear any discussion - - - the Senator from the 25th.

SENATOR BARRON: - - - Mr. Chief Justice, as I understood the request, it was to be only transcripts that the House had. I think it would create an undue hardship for them to go down and get them, or do I understand the request correctly? In other words, if they do not have the transcript, do I understand that they're requesting that.

CHIEF JUSTICE DREW: Is that the request, Mr. Nichols?

MR. NICHOLS: Yes sir, that's the request, or - - -

CHIEF JUSTICE DREW: You do not request any transcript that is not already in existence?

MR. NICHOLS: Now, the answer is - - -

CHIEF JUSTICE DREW: That is a question from the Senate to you, Mr. Nichols.

MR. NICHOLS: All right. Now, in those instances, we made the request, if we could, where they're calling a witness that has no transcript involved, either to hold up this witness' testimony to let us see what he - - -

CHIEF JUSTICE DREW: We have one motion now - - -

MR. NICHOLS: Well, sir, the motion that I have now before the Court is to produce the transcripts that they have here available.

CHIEF JUSTICE DREW: Senator Johns.

SENATOR JOHNS: Your Honor, is this customary, that they be furnished transcripts in the regular trial?

CHIEF JUSTICE DREW: Is it not the regular customary procedure in all instances? Where the transcript is available, I think opposing counsel has the right to request a copy of it, yes.

MR. NICHOLS: May I also respond?

MR. DANIEL: May it please the Court, is counsel for the Respondent going to be permitted to continue to interject his arguments into this matter?

CHIEF JUSTICE DREW: Counsel for the Respondent is entitled to answer the question of any Senator from the floor.

MR. DANIEL: I understood the question was directed to the Court, Your Honor.

CHIEF JUSTICE DREW: Was the Senator's question directed to me or to Mr. Nichols?

SENATOR BARRON: I wanted clarification.

MR. NICHOLS: Mr. Chief Justice, may I say this. In the brief in the Holt case, Judge Terrell plainly says that the Respondent must be informed of the charges. And that is the law, and we are trying to get some method to be informed so that we can defend this man.

SENATOR HERRELL: Mr. Chief Justice?

CHIEF JUSTICE DREW: Will it be all right to let Mr. O'Neill respond, Senator Herrell?

SENATOR HERRELL: Yes.

MR. O'NEILL: May it please the Court, being informed of a charge and furnishing the evidentiary matters relied upon by the State are two different things, as Mr. Nichols very well knows. Being "informed of the charge" simply means those charges which have been brought against him. This Respondent has been informed of these charges for some months. Now, if Mr. Nichols is endeavoring to require us to furnish him all of the evidence that we have, why then we are put to the burden of proving his defense for him. Now, we do not object to furnishing him with a list of witnesses and the court files and those matters which we have. We have endeavored to do that and have done that since this trial started. At no time have we refused to give him any information. As a matter of fact, we gave him a list of witnesses and how they would be called this morning. We gave him a complete list and he has had that for many weeks.

CHIEF JUSTICE DREW: I think counsel on both sides have been very cooperative. I congratulated them. I hope they will continue to be. I fully realize that difficulties will arise concerning it, but now we have one motion before the Senate for decision. That is that they be furnished a transcript of any evidence of any proceedings in which a witness is testifying, if it is available to them.

SENATOR HERRELL: Mr. Chief Justice, where would these transcripts come from? Are they Court records pertaining to a trial in which these various witnesses testi-

fied? Or is it the transcript which was taken by the Managers representing the House in their House hearing?

CHIEF JUSTICE DREW: It would have to necessarily be a transcript - - - ordinarily, gentlemen, under the rules of procedure in civil cases - - - not criminal cases - - - you would be entitled to discovery. You would be entitled to examine the witnesses for the other side before the trial. That rule has not been adopted in many states with reference to criminal proceedings, and it has not been followed in Florida. Would you ask the attorney - - - submit your question?

SENATOR HERRELL: Mr. Nichols, do you refer to a specific transcript which would be part of a Court record in some Court of the state, or are you referring to the transcript which was taken of the testimony given before the House?

MR. NICHOLS: We refer to the transcripts of testimony in Court records. We were advised by the Managers that they would have all those Court records from those counties brought up here. They do have three files over there, right behind them. And these are the ones that are being handed to the witness here on the witness stand.

SENATOR HERRELL: Mr. Nichols, you are not referring to transcripts which the House does not have in its possession?

MR. NICHOLS: No sir. We have that testimony.

CHIEF JUSTICE DREW: Gentlemen, are there any further questions?

SENATOR FRIDAY: Mr. Chief Justice?

CHIEF JUSTICE DREW: Senator Friday?

SENATOR FRIDAY: I still get some aura of confusion about this thing. I thought at first that the motion was with reference to testimony about any trial or testimony adduced at a trial which was reported; whether the House Managers have that here at the time or whether it has ever been typed up and put into the record. Then it appeared that the motion has been somewhat reduced to those transcripts which the House Managers presently have in their possession here in this building, for the purposes of this proceeding.

CHIEF JUSTICE DREW: That is my understanding.

SENATOR FRIDAY: Then we are now discussing those; and do I understand the Managers to say that these transcripts are at any and all times available to counsel for Respondent?

MR. O'NEILL: They are and have been.

SENATOR FRIDAY: May I ask one further question?

CHIEF JUSTICE DREW: You may ask.

SENATOR FRIDAY: If at any time the attorney or counsel for the Respondent asks that a copy be made, do you and can you have that done with expedition?

MR. O'NEILL: We have and can have copies made. We have endeavored, since the trial commenced, to give the transcripts that we had, if they were available, to Mr. Nichols. Now, we can have copies made of those transcripts if Mr. Nichols so desires. Many times the notes are not transcribed and placed in the file. In some of these instances the Court Reporter said that he had his notes. On those cases where they have been transcribed, they have been handed to Mr. Nichols in each instance; and we can make copies of them and make them available to him if he so desires. We don't object to that. But what we do object to is him requiring us to go down and get notes transcribed from the Court Reporter where it never has been done before.

SENATOR PRICE: Mr. Chief Justice, a point of inquiry. Before we vote, I want to get a clear understanding. As I understand the motion which has been made by counsel for Respondent, it is that, after the decision is made as to the type of material we are talking about - - - that which is here - - - the motion incorporates the fact that he wants this material, if it is to be made available to him by counsel for the Managers, transcribed so that he can have it in his possession by at least five o'clock of the afternoon before the witness testifies. Is this correct?

CHIEF JUSTICE DREW: That is my understanding. Are there any other comments?

SENATOR FRIDAY: Mr. Chief Justice, then I am confused. Again, it seems to me that, as to those transcripts of testimony which the Managers now have in their files, that there is an agreement between them that, at any time that counsel for Respondent requests, they will have copies made and furnished to them; so that appears to be a moot point and does not require any vote of this body to resolve that particular question. So I would request clarification from the Presiding Officer as to just what we will be voting on and just what we will mean if we vote "aye" or what we will mean if we vote "no."

CHIEF JUSTICE DREW: If you vote aye, it would be to require the State to furnish a transcript that they may have in their possession, in any Court proceeding, concerning the testimony of any witness, not later than five o'clock of the day before the witness is called.

MR. O'NEILL: Mr. Chief Justice, may I make one or two points in that regard. What is being endeavored here to be done indirectly is that counsel for the Respondent wants the Board of Managers to furnish him evidence that they expect to use the day before and set the witness list. That is what is endeavored to be done here. And if we do not furnish the transcript and then we put a witness on the stand and he inadvertently should say - - - and he is testifying without a transcript - - - if he should say that a Court Reporter would be there at the hearing - - - maybe it never has been transcribed - - - then he would object to that witness testifying; and I just don't want to get caught in that trap. He wants to eliminate those witnesses. And we would set our witness list where we would be bound by that and would not be able to change it. That is what he is endeavoring to do.

CHIEF JUSTICE DREW: Senator Whitaker?

SENATOR WHITAKER: Mr. Chief Justice, I would like to direct a question to the House Managers.

CHIEF JUSTICE DREW: Yes sir?

SENATOR WHITAKER: As I understand the question before the Senate, as clarified by Senator Friday's question - - - if you understand that, gentlemen, would you tell me do you not stipulate or agree to do what Senator Friday expressed in his question? It being that you will furnish any transcripts you have in your possession?

MR. O'NEILL: Senator, they have been available to Mr. Nichols ever since this trial began, at all times, in the Managers' office. At times he has taken the files, with our consent, and taken them to the hotel, and has had the files overnight until the next day. And if we didn't use that witness, of course he would come right in and object. He came last night and got some, as I understand it, from some of the staff.

CHIEF JUSTICE DREW: Does that answer your question?

SENATOR WHITAKER: Yes sir.

CHIEF JUSTICE DREW: Senator Johns?

SENATOR JOHNS: Would it be out of order for you to advise the Court as to your thinking on this matter?

CHIEF JUSTICE DREW: My thinking on the matter is that, in a proceeding of this kind, where there is no review, that any evidence or any transcript which they have in their possession, any testimony concerning any witness who is to testify, that that transcript should be made available to counsel for the other side a reasonable length of time before he is called so that they may be familiar with it and be prepared for cross examination. That is my view.

SENATOR MATHEWS: Mr. Chief Justice, may I ask counsel for the Respondent a question?

CHIEF JUSTICE DREW: Yes sir.

SENATOR MATHEWS: Your motion says five o'clock of the day before. If we are still in session at that time, it occurs to me that the House Managers might not know, until after we adjourn at 5:15, what they are going to do the following day. So would you amend your motion - - - accept an amendment to it to make it six o'clock?

MR. NICHOLS: Yes sir. That is perfectly all right.

SENATOR MATHEWS: To give them time to decide what they are going to do.

MR. NICHOLS: I just want to get it before midnight, because I can't do much work between twelve and three o'clock.

SENATOR MATHEWS: Thank you very much.

MR. O'NEILL: May I ask for the Court's construction of this now?

CHIEF JUSTICE DREW: The motion is that in the case of all witnesses to call the following day, that you shall furnish any transcript to counsel for Respondent by six o'clock - - - that is in the motion, and I assume it would be within reasonable relation thereto - - - of the day before the witness is called; so that they may familiarize themselves with the matter.

MR. O'NEILL: May I ask the Court a question, the Presiding Officer?

CHIEF JUSTICE DREW: Yes sir.

MR. O'NEILL: If the Board of Managers, on the eighth day of September, furnished to Mr. Nichols the entire, complete Court records and made them available at that time, would it not have complied with the motion that is now being made?

CHIEF JUSTICE DREW: I will rule on that. I think it would have been complied with if it has been furnished at any time prior to the witness going on the stand.

MR. O'NEILL: Well, we would have no objection to the motion then, because he has been furnished, on September 8th, everything that we have.

MR. NICHOLS: Now, Your Honor, if that were true I should be disbarred and disciplined for making the statement or making the motion. That is not an accurate statement. They have brought some of the files - - -

CHIEF JUSTICE DREW: Mr. Nichols, I am going to interrupt you.

MR. NICHOLS: And we have not been furnished these transcripts.

CHIEF JUSTICE DREW: Mr. Nichols, I am going to interrupt you and call for a vote.

SENATOR BARRON: Mr. Chief Justice?

CHIEF JUSTICE DREW: Senator Barron?

SENATOR BARRON: I still do not think that some of the members of the Court understand just exactly

what they are about to do. Mr. O'Neill has pointed out that if we vote to require that they furnish all of the records from which a witness might testify, then we might later find ourselves in a legal snarl on whether or not they have furnished the complete records. It seems to me that the request should be to furnish any recorded material from which the witness will be testifying, not the whole file.

CHIEF JUSTICE DREW: That is the motion.

MR. NICHOLS: The Senator is right, and that is the motion.

CHIEF JUSTICE DREW: That is the motion.

SENATOR BARRON: Only that which he will use to refresh his memory.

CHIEF JUSTICE DREW: If there has been testimony given and there is a copy of the testimony, that is it; or any pertinent pleadings. That is the motion, as I understand it.

SENATOR FRIDAY: One further question.

CHIEF JUSTICE DREW: Senator Friday?

SENATOR FRIDAY: Whether that witness would be the witness for the House Managers or for counsel for the Respondent?

MR. NICHOLS: I stipulate that we will do the same thing with the opposing side.

SENATOR FRIDAY: Would that witness be limited to testimony in circumstances where the testimony had been reported, or could that witness testify as to matters which had not been reported?

CHIEF JUSTICE DREW: He could testify to matters which have not been reported. And I say, gentlemen, that whatever this Court does is not an irrevocable thing as to either side. If either side has good reason to offer why it cannot be done or any other thing, this Court can at that time deal with the specific problem.

SENATOR WHITAKER: Mr. Chief Justice, please explain to me, if you will, what we are voting on that the House Managers have not already granted to the Respondent?

MR. O'NEILL: Nothing.

CHIEF JUSTICE DREW: I cannot answer that question. There seemed to be a debate and I cut it off one time. One side said they did and the other side said they didn't. So I am going to ask for a voice vote unless they want a roll call.

SENATOR TUCKER: Roll call.

CHIEF JUSTICE DREW: Senators, if you vote yes, you are voting in favor of requiring the House Managers to furnish, at least by six o'clock of the day before that witness is called, the transcript of testimony which he may have given, concerning which he will testify, or any pertinent document which appears in the official records of Court.

Those who vote yes, vote in favor of that requirement; those who vote no vote against that requirement.

You may call the roll, Mr. Secretary.

Upon call of the roll on the motion made by Mr. Nichols the vote was:

Yeas—34.

| | | | |
|--------|----------|-----------|-----------|
| Askew | Bronson | Cleveland | Edwards |
| Barber | Campbell | Covington | Galloway |
| Barron | Carraway | Cross | Henderson |
| Blank | Clarke | Davis | Herrell |

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|----------------|---------|------------|-----------------|
| Hollahan | McCarty | Price | Usher |
| Johns | Mapoles | Roberts | Williams (27th) |
| Johnson (19th) | Mathews | Ryan | Young |
| Johnson (6th) | Melton | Spottswood | |
| Kelly | Pope | Stratton | |

Nays—10.

| | | | |
|--------|---------|----------|----------------|
| Boyd | Gautier | Pearce | Williams (4th) |
| Connor | Gibson | Tucker | |
| Friday | Parrish | Whitaker | |

So the motion was adopted.

CHIEF JUSTICE DREW: Gentlemen, I have the following communication from Senator Covington, as follows: "Please inform the Court that Mr. Wolfe was in the gallery sitting on the steps during the morning testimony before he testified upon request. I will explain the basis of this positive knowledge. "As an attorney, I am certain he is familiar with the rules pertaining to witnesses." Senator Covington, do you have any further comment? Is the Court desired to take any further action on the matter?"

SENATOR ASKEW: Mr. Chief Justice, I move that his testimony be stricken.

CHIEF JUSTICE DREW: Gentlemen, you have heard the motion. Is there any discussion?

SENATOR FRIDAY: Yes sir. May I inquire was Mr. Wolfe here - - was Mr. Wolfe ever advised that the rule had been invoked? I don't believe he was sworn in or that he was so advised.

I just don't want us to act hastily until we know whether it was an intentional violation. I agree that we have a matter here that has alarmed us.

CHIEF JUSTICE DREW: I cannot say whether he was advised. I can say - - - and if I am wrong in my recollection I wish counsel for either side would advise me - - - that the Court requested counsel for both sides to advise the witnesses that they were under the Rule and were not to be in the gallery. I will ask counsel for the State if they did advise Mr. Wolfe to that effect?

MR. O'NEILL: May it please the Court, we have endeavored to advise all witnesses. Now, Mr. Wolfe did not request to appear here as a witness. He was subpoenaed here. However, Mr. Wolfe came up some few days ago - - - I think it was Sunday or Monday, the 8th or 9th of September. As far as him being in the gallery, I did not notice that there was any witness in the gallery, and I do not know whether he was in fact in the gallery. If he was - - - and I assume he was from the statement made by the Senator - - - he certainly was not advised by us directly. I have no present recollection that he was so advised. I do not impugn the motives of Mr. Wolfe in sitting in the gallery.

CHIEF JUSTICE DREW: Is Mr. Wolfe in the building?

MR. O'NEILL: No sir. He returned last night. He had a plane scheduled out at five o'clock, and he has returned to Cocoa Beach, or wherever he is from.

CHIEF JUSTICE DREW: Senator Askew?

SENATOR ASKEW: Mr. Chief Justice, as I recollect, the Chief Justice did instruct both sides; but more than that, sir, Mr. Wolfe is an attorney at law and he should have known. And I think that there is no excuse for him to have been present when testimony was taken, knowing that he was going to be a witness in the cause.

MR. O'NEILL: May I request the Court for a point of clarification. Is it not the law of Florida that a witness cannot be placed under the Rule until such time as he is sworn?

CHIEF JUSTICE DREW: No, that is not the law. Witnesses are not usually sworn. Witnesses are always brought into Court before they are ever sworn, and are charged with reference to the Rule. Being sworn is not a condition precedent to being under the Rule. They should be warned. They should be warned; and, if Mr. Wolfe was not warned, the question of whether - - - as to his being an attorney, gentlemen, I doubt is important; because in some cases witnesses are under the Rule and in others they are not under the Rule.

SENATOR FRIDAY: Mr. Chief Justice, that was why I asked the question. I felt that we were fixing to do something here rather hastily without thought and without consideration of Mr. Wolfe's participation in this matter, as to the matter of intent.

CHIEF JUSTICE DREW: I agree, Senator.

SENATOR FRIDAY: I do not feel that probably, he was advised, and I would hate for us to do something to impugn his motives.

CHIEF JUSTICE DREW: The Court desires to call Mr. Wolfe back to the Court. That will be the order of the Presiding Officer. Counsel for the State will ask Mr. Wolfe to return to this Court to be interrogated concerning his presence in the gallery. Gentlemen, you may proceed.

The motion made by Senator Askew was not acted upon at this time.

MR. DANIEL: May it please the Court, before we do this, there's a point of clarification on the motion just adopted by the Senate. I notice the difference in the language of the motion, as frequently expressed and re-expressed in the request, and the language of the motion, as put by the Presiding Officer, the words "and other pertinent documents" was included in the language of the motion as put by the Presiding Officer, and I'm wondering if we're not going to engage in quite a hassle later as to what is a pertinent document. I understood that the motion was only on the transcript.

CHIEF JUSTICE DREW: Mr. Daniel, I commend both counsel for their cooperation in this case so far. I'm sure both counsel know the spirit in which this motion was made, and I'm confident that both you and Mr. Nichols will endeavor to carry it out. If you have any difficulty, if you will make it known to the Court, or if it arises, we will endeavor to deal with it as it does arise. I think there's no necessity to anticipate it. If you have any difficulty, if you will come to me, I will see that this is resolved, either by myself or by this Senate, and if the Senate wants to and expects me to resolve it, I'm going to assume the power to resolve it, unless the Senate requests me to do otherwise.

MR. DANIEL: The only purpose of the question was to clarify it. We intend to fully comply with the motion, as adopted by the Senate, and the question was so that we would know how to comply with it.

CHIEF JUSTICE DREW: If you have any problems, if you will come to me I'll be glad to help you work them out. You may proceed, gentlemen.

MR. JONES: Will the Secretary please call Mr. Joseph Donahey.

SECRETARY FRASER: Donahey.

MR. JONES: Joseph Donahey.

SECRETARY FRASER: Donahey. How do you spell that?

MR. JONES: D-o-n-a-h-e-y, Donahey.

CHIEF JUSTICE DREW: While the witness is coming, I wish to announce to the Senators and counsel for the respective parties, that if they need any additional fill-in sheets, they are available, either in my office or the Secretary's office, and will be furnished on request.

Thereupon,

JOSEPH DONAHEY, 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 State your name, please.

A Joseph Donahey.

Q Will you please give us your occupation or profession?

A Lawyer.

CHIEF JUSTICE DREW: Mr. Donahey, before you begin speaking, would you speak directly into the microphone, please sir, and do not look at opposing counsel, and after you have concluded your testimony, you are not to appear in the gallery of this Senate or in any place where you may be within the hearing of the Senate; you will be under the rule, sir.

THE WITNESS: Yes sir.

BY MR. JONES:

Q State your name, please.

A Joseph Donahey.

Q What is your occupation?

A Lawyer.

Q Where do you reside?

A Clearwater, Florida.

Q Would you tell us, please, if you do, who you practice with?

A I am an associate with the law firm of Wolfe, Bonner & Hogan.

Q What type of practice do you do, Mr. Donahey?

A General practice.

Q Would you please give us a brief resume of your educational background?

A I got my law degree from Stetson University College of Law, in St. Petersburg, in 1961. I was admitted to the Bar in October of 1961.

Q Mr. Donahey, did you have an occasion to attend an adoption proceeding before Judge Kelly?

A Yes, I did.

Q And was that with Mr. Hogan, Mr. Elwood Hogan?

A Yes.

Q If you would, please sir, relate, briefly, what transpired there at that hearing?

A I believe that the hearing occurred during the beginning of December, 1961. My recollection is not specific. During the course of the hearing, a discussion developed as to the sufficiency of an affidavit, due to the diligent search and inquiry that had been made to locate the natural parent of the child in question.

Q Would you explain to us, briefly at this point what this affidavit is, diligent search and inquiry?

A The Florida Statutes require that in such a proceeding an affidavit be made a part of the record that a diligent search has been made to locate the natural parent of the child, so that the Court can be satisfied that the natural parent has had the opportunity to appear.

Q This is when the natural parent cannot be found or served in the State?

A That's correct.

Q All right, sir, if you will, go ahead.

A During the course of this discussion that developed between Mr. Hogan and Judge Kelly, I would say that --- first of all, the discussion lasted for some few minutes, and became somewhat animated. The only specific comments that I can recall --- and here again I will not couch it specifically in the words, I can't recall the words specifically, but the discussion was concluded by Judge Kelly directing a comment to Mr. Hogan, in which he stated that --- to the best of my recollection, "Mr. Hogan, your interpretation of this statute is probably correct. However, I am the Judge of this Court, and as long as I am the Judge of this Court, I will determine what is sufficient and what is not."

Q The Court acknowledged that Mr. Hogan was right?

MR. McALILEY: Your Honor, I object to that question as leading. I think this witness has already testified to what the Court said.

CHIEF JUSTICE DREW: I think it's repetitious.

BY MR. JONES:

Q Would you please explain to us, sir, what you mean by "animated," the conversation was animated by the Court, I believe you said?

A I would say that as the discussion continued, between Judge Kelly and Mr. Hogan, that the atmosphere changed, it began as a normal discussion on a point of law between a Judge and an attorney appearing before him. I frankly feel that it degenerated along the line and became more of an advocacy proceeding. It appeared to me more as though we had two opposing counsel debating an issue, rather than counsel addressing the Court, or the Court addressing an attorney in regard to a matter.

Q Mr. Donahey, among your duties with your law firm, do you also have the duty of taking cases down to the Court House for the other law partners?

A I do. I am the newest member of the firm, or the young associate in the firm, and as such, it has become my duty, over the period that I have been there, to make a daily trip to the Court House to file new suits and to deliver pleadings that must be filed in our various cases, and to appear before the various judges to have orders signed in the cases pending before them, yes.

Q I will ask you, sir, after Judge Kelly took the Bench, was there any change in the procedure and method of filing your cases and those of other attorneys, which you have observed?

A There was.

Q Would you explain that to the Court, please?

A When I began --- I actually started my employment with the law firm of Wolfe, Bonner & Hogan prior to passing the Bar, and filed cases then. Prior to this time, and shortly after this period, when you would take your new suits to the Law Department, at the Court House in Clearwater to file them, the Clerk of the Court, in our Law Department, kept a legal pad, a secretary's shorthand legal pad on the counter, on which would appear the names of the various Circuit Judges. If you were concerned, if you had any interest in it, when you went in to

file your case, you could glance down at the book, and you would see what judge this case would be assigned to; in that way, you would not have to wait until they actually went through the procedure of filing it and giving it a number and assigning a judge. I can't tell you how long, but some months after Judge Kelly took the Bench, apparently some difficulties developed; this procedure was changed. The judges' names no longer appeared on that list but, rather, a system of letters appeared, A, B, C, D, something to that effect. You could no longer tell what judge your case was being assigned to. I made inquiries as to the reasons for the change and found, as matters proceeded, that one could learn which judge the initial stood for; you could decipher the code with some help and then, if you wanted to, it was possible, by holding your cases off, to avoid having it assigned to any particular judge, if you desired to.

Q To your knowledge, did your firm do this?

A Yes sir.

Q In an effort to avoid what?

A There were occasions, sir, where - - - when I would go to the Court House with new cases, that it was requested that I avoid having them assigned to Judge Kelly.

MR. JONES: You may inquire.

CROSS EXAMINATION

BY MR. McALILEY:

Q Just two very brief questions, sir. Are you associated with the firm in which Mr. John Bonner, who has already testified in this hearing, is in?

A I am.

Q And what was instituted in - - - with reference to filing cases, was what was known as a blind filing system?

A That's correct.

Q And are you familiar that this is the system used in many of our judicial circuits, sir?

A It is.

Q All right, sir. So, what's happened in Clearwater is to change from a selective judge system to a blind filing system; is that essentially correct, sir?

A What's that? I'm sorry.

Q Prior to this change, the attorneys were in a position to select a judge?

A No, you did not select the judge. The list was there, and you had no way of controlling it.

Q I see. So, the new change, then, is simply a blind filing system, without a list?

A Well, you would then look at the list. The list remained on the counter; they didn't take it off the counter, it remained there, but no longer did the judges' names appear. Rather, you had A, B, C, D, E, rather than their names.

Q Well, under the present system, are you able to select your judges?

A No.

MR. McALILEY: That's all I have.

CHIEF JUSTICE DREW: Do you know why the blind - - - or are you qualified to state why the courts have adopted the blind filing system?

THE WITNESS: I would say, sir, that my only direct - - - well, I have no direct knowledge. Of course, this is

controlled by the Clerk of the Circuit Court and the Law Department.

Of course, I heard conversations in the Law Department that gave that information.

CHIEF JUSTICE DREW: Well, do you know why they have the blind filing system, as a member of the Bar, or what condition brought it about?

THE WITNESS: Are you speaking specifically in regard to our circuits, or just circuits, generally, throughout the state?

CHIEF JUSTICE DREW: Just generally. The idea, the purpose of a blind system, what purpose does it serve?

THE WITNESS: I, frankly, don't know what the basic reason is, for adopting it throughout the State.

CHIEF JUSTICE DREW: All right.

REDIRECT EXAMINATION

BY MR. JONES:

Q Let me ask you, sir, just for clarification: Explain to us again how the system used to work?

MR. McALILEY: Objection, Your Honor, as repetitious.

MR. JONES: This is in redirect, if the Chief Justice please.

CHIEF JUSTICE DREW: I'm going to let him explain it; there may be some confusion about it.

THE WITNESS: Prior - - -

MR. JONES: The first system, Mr. Donahey.

THE WITNESS: The first system that I was familiar with was a legal - - - a secretary's shorthand pad that laid on the counter in the Law Department. It would have each judge's name down six times.

BY MR. JONES:

Q Six times?

A Six times, each Judge's name would appear on six lines. Then there would be an open space, and then the next Judge's name would appear for six lines, until each Judge's name had been used six times, and then they would start over again. This was the system that was in effect when I first began practicing.

Q Now, sir, when an attorney went in, could he have his case placed alongside any judge?

A No, he could not. They were filed in order.

Q Then, by what method could you avoid Judge Kelly under that system?

A You just looked at whose name was up. If his name was up, you didn't file the case.

Q You took the case back to your office?

A That's correct.

Q And then, what was the other system that came about?

A They replaced the Judges' names with letters of the alphabet.

MR. JONES: Thank you, sir.

CHIEF JUSTICE DREW: A question from a Senator: Did you at anytime ever intentionally avoid filing a particular type suit before any judge other than Judge Kelly?

THE WITNESS: No sir.

CHIEF JUSTICE DREW: I would like to ask you if the purpose of the blind filing system, if you know, was to get away from the criticism of the Bench by lawyers selecting - - - being able to select particular judges? Is that your understanding?

THE WITNESS: I would certainly say that that was one of the reasons, yes sir.

CHIEF JUSTICE DREW: One Senator asks: Doesn't the system of A, B, C identify the judge as well as the names?

THE WITNESS: No sir, it was not supposed to be general information, as to what letter designated which judge; this was supposed to be a secret.

CHIEF JUSTICE DREW: That is the reason they call it the secret system, isn't it?

THE WITNESS: That's correct.

CHIEF JUSTICE DREW: So that the lawyers will not be able to pick a judge if they want to, in any case?

THE WITNESS: That's correct.

MR. McALILEY: No further questions.

CHIEF JUSTICE DREW: You may come down, please.

MR. JONES: We have no further questions, Your Honor.

CHIEF JUSTICE DREW: You will please adhere strictly to the rule. Unless summoned, you will not come in here again.

MR. JONES: Mr. Donahey, you may go home, subject to call. We have your phone number and your address.

THE WITNESS: Thank you.

MR. JONES: You may go.

(Witness excused)

CHIEF JUSTICE DREW: Call your next witness.

MR. JONES: Mr. Secretary, will you call William E. Hogan.

SECRETARY FRASER: William E. Hogan.

MR. JONES: Hogan, H-o-g-a-n.

MR. NICHOLS: Your Honor, while this witness is being called to the stand, the witness last on the stand testified concerning some proceeding in an adoption matter. We have secured from the Managers the file, and it's been sealed. It's the transcript of what was said or not said apparently has been sealed in the file, and we would like to get His Honor's permission for the opening of the file so we can check the transcript. Do you have any objection to that?

MR. JONES: We have no objection at all. The presence of the seal, of course, is to protect this child.

MR. NICHOLS: That's correct, and I don't intend to violate it. If there's nothing in there, we'll reseal the file.

MR. JONES: We didn't seal it, of course, but we have no objection, if the Court wishes.

MR. NICHOLS: May we just have the permission of the Court to open the file?

MR. JONES: We have no objection.

CHIEF JUSTICE DREW: What is that? Is that the guardianship file?

MR. NICHOLS: Adoption file.

MR. JONES: Adoption file.

CHIEF JUSTICE DREW: The adoption file?

MR. NICHOLS: Yes sir.

CHIEF JUSTICE DREW: You may open the file and hand it to me immediately, that I may receive it.

MR. NICHOLS: All right, sir. Thank you.

CHIEF JUSTICE DREW: I'm assuming that was the Senate's suggestion.

MR. NICHOLS: Yes sir.

Thereupon,

WILLIAM ELWOOD HOGAN, JR.,

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

CHIEF JUSTICE DREW: Mr. Witness, would you speak directly into the microphone, please, not look at either counsel, and after you have concluded your testimony, you are under the rule. You are an attorney?

THE WITNESS: I am, sir.

CHIEF JUSTICE DREW: You're under the rule; I don't have to advise you on that.

THE WITNESS: Yes sir.

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please?

A William Elwood Hogan, Jr.

Q What is your occupation?

A Attorney at law.

Q Would you give us a brief resume of your educational background?

A I received my BA degree at the University of Georgia; LLB degree from Stetson College of Law, in St. Petersburg.

Q Where do you now practice, sir, and how long have you been so practicing?

A Clearwater, Florida, since 1958.

Q Mr. Hogan, do you know Judge Richard Kelly, and have you practiced before him?

A I do know him, and I have practiced before him.

Q Do you recall, sir, an adoption case in which you were the attorney for one side, appeared before Judge Kelly?

A I do.

Q What was the name of that adoption proceeding?

A In Re - - - the last name of the minor children was Rowe, by their stepfather, Dwayne E. Patterson.

Q If you will, please sir, just briefly relate the circumstances that occurred at that adoption proceedings, in the final hearing, I believe.

A Yes sir. This was a stepfather adoption by - - -

Q What is a stepfather adoption, please?

A - - - by Dwayne E. Patterson. The proceedings went along rather routinely, until Judge Kelly began to inquire into the sufficiency of the affidavit of non-residency on the part of the natural father, for the purpose of publication. We - - - the Judge and I engaged in legal argument as to the sufficiency of the supporting testimony. While argument was in progress, Judge Kelly

abruptly turned, and in a very loud and, I must say, belligerent tone, spoke to the Court Reporter, Al Reeves, demanding to know why Mr. Reeves was not taking down the argument in the Court record. Mr. Reeves answered that it was not customary in our circuit to take argument between counsel and the Court, at which time Judge Kelly very loudly informed him that he would take down every word until he was instructed to do otherwise. After further argument, Judge Kelly was ready to make his ruling to the effect that more had to be done on the part of the petitioner to support the affidavit, but he made the remark to Mr. and Mrs. Patterson who, let me say, at this time had become visibly shaken by the conduct of the Court, it being their first time in the Court Room. He stated, "Your attorney may be correct" - - - now, the rest of this statement is - - - this is basically, and I'm positive it's close - - - "Your attorney may be correct, but this is my Court and I have to rule the way I see fit," or something to that effect. Later, my clients, not taking issue exactly with whether it was legally sufficient or not, but this fact that - - - being stated to them, "Your Attorney might be right, but," this did confuse them, and even as of a recent date, they have again expressed their confusion to me about that statement. At that time, at that time Judge Kelly again very loudly and belligerently yelled at Mr. Reeves, wanting to know why he was taking this down in the record, and ordered him to stop immediately. At this point Mrs. Patterson began to cry. She had started a few minutes earlier, and had gotten control of herself. Mr. Patterson became incensed over the fact that his wife was so upset, and he was upset himself. I had to actually speak to him and ask him not to address Judge Kelly directly which he was, at that point, insisting on doing.

Q Was this a contested matter? Had the natural father appeared or objected; or was this just an uncontested hearing in the Judge's Chambers?

A It was an uncontested hearing in the Judge's Chambers; and, as an attorney, I felt at that time the acts taken by the Petitioners to locate the last known address of the natural father were sufficient, and I must state that I still feel at this date that that testimony was sufficient.

Q Will you relate the manner and method by which the Judge questioned you or conducted the argument between you and himself?

A The manner - - - this was two years ago, or two and a half years ago.

Q If you can, relate the question that the Judge was putting to you, or the part of the proceeding that he was objecting to.

A The part of the proceeding he was objecting to was the sufficiency, on the part of the Petitioners - - - what steps they had taken to definitely establish either the known whereabouts of the natural father or the lack of that knowledge; and that was the point he ruled upon. His ruling was that it was insufficient.

Q Had you previously filed a sworn affidavit to that fact, of the search and inquiry?

A The statutory form of search and inquiry was made part of the petition for adoption which was sworn to by the Petitioner.

Q Who all was there, Mr. Hogan?

A Mr. and Mrs. Dwayne Patterson, the Court Reporter, Albert Reeves; myself, and my associate, Mr. Joseph Donahey.

Q I believe you said that Mrs. Patterson began crying or became otherwise upset?

MR. MASTERSON: May it please the Court, that is a leading question and is repetitious, and we object to it.

CHIEF JUSTICE DREW: He testified that she had begun to cry. I think it is leading.

BY MR. JONES:

Q Would you explain to us, sir, the specific conduct that made Mrs. Patterson cry?

A Both of my clients, Mr. and Mrs. Patterson, became visibly upset at the first outburst between Judge Kelly and the Court Reporter, Mr. Reeves. It caught them, as well as myself, by complete surprise. They being completely unfamiliar with being in a Court Room, became visibly upset at that point. At the time that the Court was stating that I "might be right, but," Mrs. Patterson began to cry. The reason for her emotion, I feel certain, was the fact - - -

MR. MASTERSON: Objected to, Your Honor. He cannot speculate about her reason for emotion.

CHIEF JUSTICE DREW: I sustain the objection.

THE WITNESS: All right, sir. This hearing was taking place just before Christmas. We were attempting to complete this adoption prior to Christmas Day, at which time the family, the entire Patterson family, was returning to their former home in North Carolina for a visit, and we were making every effort to complete this adoption for that Christmas visit.

BY MR. JONES:

Q Was it so completed before Christmas?

A In fact, it was, yes sir; but at a later date.

Q Mr. Hogan, I will ask you, had you ever had a similar experience such as this before another Judge or Court?

A I had not.

Q Have you had such an experience since this experience before any other Court?

A No sir.

Q Mr. Hogan, do you know Judge Kelly's reputation, among the bench and the bar and the general public, in the Clearwater area?

A I do.

Q As to the manner and method in which he conducts his Court?

A I do.

Q Give us, if you will, that opinion.

A I must say that, in the Clearwater area, it is poor.

Q Could you explain to us what you mean by "poor"; what you mean by that his reputation was poor?

A The reputation that I am aware of is one in which Judge Kelly was tremendously unpredictable. We - - - myself and the other members of the bar - - - were very hesitant to go into his Court because of not knowing what to expect from him in the way of his attitude, and fear of being embarrassed in front of our clients, unreasonably and unnecessarily.

Q Would you tell us, sir, how you have learned of this reputation?

A From conversation with other members of the bar.

Q Approximately how many members of the bar would you say you have discussed this with, or they have discussed it with you?

A I would say I have discussed it personally or have been in groups in which this was discussed that would involve ninety per cent of our Clearwater Bar, which totals approximately a hundred; so I would say ninety attorneys.

Q You say you feel that this same reputation exists among the general public. Would you please, sir, tell us if you can, approximately how many persons of the general public you have discussed it with or they have discussed it with you?

A This is a very hard estimate to make, over the number of years that this has been going on.

Q If you can, please?

A Of my own personal clients, I would say somewhere in the neighborhood of twenty-five or thirty. I have, again, been in groups of businessmen - - - civic clubs and so forth - - - in which this matter has been brought up, and in which I am sure the reputation is available because the comment has been made to me in groups of laymen since I was an attorney; that since there was so much smoke, there must be fire.

MR. JONES: You may inquire.

MR. MASTERSON: May it please the Court, that last remark of the witness about "Where there is so much smoke, there must be fire," we request that it be stricken.

MR. JONES: In order to hasten these proceedings, in order to move along, we will withdraw the question.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Are you a member of the firm of Wolfe, Bonner & Hogan?

A I am.

Q This gentleman who preceded you is also a member of that firm, at one time?

A He is now associated with us.

Q They had Mr. Bonner in here yesterday, I believe?

A Monday, I believe.

Q Monday. Now, within your firm, Mr. Hogan, apparently Judge Kelly is not very popular?

A No sir.

Q All right, sir. Now, on this occasion that you were before Judge Kelly in relation to this adoption proceeding - - - what was the name of it?

A The adoption step-father was Dwayne E. Patterson.

Q And Mr. Patterson was seeking to adopt the natural child of the mother and the natural father?

A That is correct.

Q And you had filed an affidavit in the proceeding saying that you had diligently searched for the absent father?

A The affidavit was in the petition, sworn to and signed by Mr. Patterson.

Q What had you done to look for the absent father?

A As I recall, the record will show that the absent father was in arrears some \$10,000 in child support.

Q I didn't ask you that question, Mr. Hogan. I asked you what you had done to find the absent father?

A One more word.

MR. JONES: If the Court would allow the witness to answer the question which he was previously asked.

THE WITNESS: Because of this indebtedness, the testimony shows - - -

MR. MASTERSON: We want the witness to answer our question and not editorialize.

CHIEF JUSTICE DREW: Mr. Witness, if you will answer the question and not interject your own ideas, I think we will get along much faster.

THE WITNESS: All right, Your Honor. I am merely trying to say what the record holds, but - - -

BY MR. MASTERSON:

Q Tell us what you did.

A They had searched through the Courts and they made an effort, through the Courts of North Carolina, to find this man.

Q Who had?

A Mr. and Mrs. Patterson.

Q What had they done? What had they done in this search? Tell us specifically.

A These acts were done in proceedings to try and locate the man to enforce these non-support payments.

They had also - - - they come from a small town in North Carolina in which Mrs. Patterson's family still resides - - - did at that time and still does, as far as I know - - - they had called, if I may refer to my file, I will give you the exact name, but it was Mrs. Patterson's mother - - - and asked her to inquire in the local area for him. They knew Mr. Rowe's home address, which was the last known address. His family also resided in this same small North Carolina town. That address was furnished. Mrs. Patterson's mother made inquiry for them, and reported the results of her inquiry. This fact was later reduced - - - but after the hearing date - - - was later reduced to affidavit form by Mrs. J. B. Phillips, I believe her name was. But prior to the hearing, though, Mrs. J. B. Phillips was contacted, did make inquiry; and that matter was reported to the Court.

Q Well, Mrs. J. B. Phillips was not before the Court at the time the Court said that it would like to know what diligent search had been made?

A No, she was not.

Q And you furnished the Court thereafter with an affidavit from Mrs. Phillips setting forth what she had done to locate the absent Defendant, the Defendant?

A That is true, substantiating the testimony given by Mrs. Patterson.

Q So that this Court's concern was with the rights of a party who was not before the Court, who was not represented, and who had to have someone to speak for him or his rights would not have had any spokesman at all; isn't that correct?

A Mr. Masterson, we are getting back to the point of what is sufficient and what isn't. As I stated, at that time I felt, as an attorney, that the testimony was sufficient, and I still do.

Q And the Court felt differently; that a further effort should be made to protect the absent party?

A The Court felt differently.

Q And the Court accommodated you, at least to the extent of entering a final decree before Christmas, which was what you were seeking to achieve?

A True.

Q And he did so after you furnished him with proof which did satisfy him that the absent father's rights were being protected?

A Yes.

CHIEF JUSTICE DREW: Just a minute. I have some questions. Senator Price asks the question, Mr. Witness: "How many citizens other than your clients and other than lawyers and the bench, have you talked to personally and individually in arriving at your opinion that the Judge's reputation is poor with the general public?"

THE WITNESS: Senator Price, I am a member of several - - - at least one civic organization and a couple of fraternal. I must state that this is just a pure guess on my part, but I would say that I have been in the company of one hundred fifty to two hundred people in the last two or two and a half years, in which this matter was discussed, specifically.

CHIEF JUSTICE DREW: Senator Johns of the 15th asks: "Has Judge Kelly's attitude toward you in Court damaged your law practice any?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: Senator Friday of the 24th inquires: "What date was this adoption hearing? Month and year?"

THE WITNESS: December, 1961.

CHIEF JUSTICE DREW: Any other questions?

MR. JONES: Yes, I have just one question.

CHIEF JUSTICE DREW: You may proceed with redirect examination.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mr. Hogan, do Courts generally accept the faith of affidavits? Do the Courts before whom you practice - - - do they generally accept the faith of the affidavits filed by the attorneys for the parties?

MR. MASTERSON: May it please the Court, it has been the custom here on redirect examination for counsel to lead the witness.

CHIEF JUSTICE DREW: State your objection.

MR. MASTERSON: My objection to the question is on the ground that it is leading; suggests the answer; and is repetitious. And is not in redirect of anything covered on cross.

MR. JONES: If the Court please, I would suggest that it is not a leading question. I have merely asked him for a fact - - -

CHIEF JUSTICE DREW: No, I don't think it is leading. I will overrule the objection. If it is leading I will overrule it, anyway.

BY MR. JONES:

Q Mr. Hogan, I will re-ask the question. Do Courts generally accept the faith of the affidavits as filed by the attorneys and the parties, that you have practiced before? Without going behind those affidavits?

A No sir, not without going behind the affidavit. But, as I testified, the affidavit that I used and the testimony I am accustomed to presenting before the Court, I have always had the Court accept the same.

Q Yes, that was my question. This is not the practice before Judge Kelly?

A This is my only exception to that position, and that was before Judge Kelly.

MR. JONES: Thank you, sir.

CHIEF JUSTICE DREW: I have one other question, from Senator Davis of the 40th District: "Are not all children wards of the Courts, whether the adoption be contested or not?"

THE WITNESS: I am not sure what the Senator regards as being a "ward of the Court." Of course, the Court is concerned and is primarily concerned with the general welfare of the Court - - - I mean welfare of the children.

CHIEF JUSTICE DREW: Your answer is you don't know whether they are wards of the Court, or you don't know what we mean by "ward of the Court"?

THE WITNESS: I am not sure as to the category of the term "wards". I must agree that the Court's primary concern, in an adoption case, is the general welfare of the minor children. If that is what he means by "ward", then the answer would be yes.

CHIEF JUSTICE DREW: The Presiding Officer asks this question: On the proof of publication, or the statute upon which it is based, do you refer to the section under Chapter 74, "Adoptions," on process, service and publication? Are you familiar with that? From the question?

THE WITNESS: Your Honor, I don't recognize it by number, but that is the adoption section, as I recall, and of course, the process section is the one followed.

CHIEF JUSTICE DREW: The process you followed is the ordinary process for general constructive service under the statute?

THE WITNESS: Under the adoption statute, yes sir.

CHIEF JUSTICE DREW: Is there another section for service of process?

THE WITNESS: Yes sir, I believe there is one.

CHIEF JUSTICE DREW: Did you follow the requirement of that statute also in these proceedings?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: I will ask you to look at the two sections because I am going to later read them to the Senate, and I don't want to read something that you are not referring to. Would you look at Section 48.01, 48.03, and 72.13, and see if those are the sections which you are talking about. You and your counsel might state in the record the sections that you are referring to and under which you procured that service, so that there will be no misunderstanding. A number of the Senators are interested in having the law read to them. If you require more time to study it, we can call you back at a later time.

MR. MASTERSON: May it please the Court, could we have a recess at this time? It is almost eleven o'clock.

CHIEF JUSTICE DREW: When we conclude with this witness. I will ask, are you through with the witness?

MR. O'NEILL: Mr. Jones is interrogating the witness but I believe he stated that that was all.

MR. JONES: Yes, the Court asked this question.

CHIEF JUSTICE DREW: Yes. Are you concluded?

MR. JONES: Yes.

CHIEF JUSTICE DREW: Are those the statutes, counsel?

THE WITNESS: Your Honor, I am familiar with both of these statutes. Basically, the 72.13 is the one used in adoption cases. Without again checking my files, I am inclined to believe that the form that my firm uses goes a little beyond the specific requirements of 72.13, and takes in some of that which is covered - - - if not all of that which is covered in 48.04.

CHIEF JUSTICE DREW: That was my understanding. I just wanted to be sure.

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Thank you very much. You are, of course, excused, subject to being called. As I understand, you may return home. They have your telephone number. Is that correct?

MR. MASTERSON: You Honor, may we request that this witness remain in the building for another half hour or so.

CHIEF JUSTICE DREW: The witness will remain in the building for another half hour until released by joint consent of counsel. Gentlemen, I think this would be an appropriate point to take a recess for ten or fifteen minutes.

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

The Senate was called to order by the Chief Justice at 11:15 o'clock A. M.

A quorum present.

CHIEF JUSTICE DREW: The Court will come to order.

MR. JONES: Call Mr. Hogan back to the stand, please sir.

CHIEF JUSTICE DREW: I recognize Senator Mathews, who wishes to make a motion with reference to the time of adjournment tomorrow.

SENATOR MATHEWS: Mr. Chief Justice, in view of the fact that the transportation is such that the plane that many members of the Court have to take if they're going to go home on the week end leaves at 12:40, I move that the time of adjournment tomorrow be changed to 12 o'clock, noon, to reconvene at 10 a. m. Monday morning.

CHIEF JUSTICE DREW: Is there any discussion of the motion?

You've heard the motion of the Senator from the Eighteenth. All in favor let it be known by saying "aye". Opposed "no".

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

You may proceed, sir.

Thereupon,

WILLIAM E. HOGAN,

resumed the stand and testified further as follows:

MR. JONES: You may inquire.

RE CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Hogan, a few moments ago we were handed the transcript in this case under seal, and I did not have it available to me when I examined you a moment ago - - -

CHIEF JUSTICE DREW: I would admonish counsel

not to read any names of any persons, particularly, the minor.

MR. MASTERSON: All right, sir.

BY MR. MASTERSON:

Q I'm going to read briefly from this transcript; it was the testimony of the mother in regard to the search which she had made:

"Q And he was unable to locate your former husband, is that correct?

She's talking about an attorney who had been trying to locate her former husband.

A That's correct.

Q Now, about when was that? What year?

A Gee, I can't remember. I don't know"-----

CHIEF JUSTICE DREW: Were these interrogations of the Court, or of counsel?

MR. MASTERSON: This was the interrogation of the Court.

BY MR. MASTERSON:

A Gee, I can't remember. I don't know if it was '53 or '54.

Q Would it have been any later than '54?

A I haven't done anything in the last three years, I am positive.

Q In the last three years have you personally made any effort to locate your husband?

And then he gives the name of the husband.

A Not through me. My parents have for me.

Now, the parents weren't before the Court, were they?

A No sir, only through her testimony.

Q And the Court told you to get an affidavit from the parents, saying what they had done to locate this absent husband?

A That's correct.

Q And when they did that, the Court granted you your decree, and did it before Christmas, in order to accommodate you?

A That's true.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Any redirect?

MR. JONES: Yes sir, if you please.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mr. Hogan, on your direct examination did you complain of the fact that the Court did not have a right to inquire into this?

A No sir.

MR. MASTERSON: It's repetition, Your Honor.

CHIEF JUSTICE DREW: Overruled.

MR. JONES: Just one or two questions. If you'll just let me go, I believe I can hasten the proceedings.

CHIEF JUSTICE DREW: Overruled.

MR. JONES: Thank you, sir.

BY MR. JONES:

Q What, then, sir, was your testimony directed to of which you complained at the hearing? What conduct on the part of the Court then did you complain of?

A The comments to my clients - - -

MR. MASTERSON: Mr. Chief Justice, this is pure repetition; this was covered on direct; this is not anything covered on cross.

CHIEF JUSTICE DREW: I realize it is. I overrule the objection at this time.

THE WITNESS: My objection was that Judge Kelly made the remark to my clients that "Your attorney may be correct, but." I felt that that was an improper remark, and embarrassing to me to be made to my clients, and I later discussed this with Judge Kelly, pointing this out, stating to him that I would never intentionally make a mistake before a Court, I didn't think any lawyer would; that if a mistake was made, I felt it a matter of privacy, to be discussed in private, between the Court and counsel, and not to be dragged out in front of the clients which, in my - - - well, not to be dragged out in front of my clients. Judge Kelly replied to that, stating that he wasn't elected to make mistakes, that lawyers would not make mistakes, and that if they were made before him, he would point them out in front of clients; this was two, three days after the hearing.

MR. JONES: We have no further questions.

You may step down, Mr. Hogan, and you can - - -

MR. MASTERSON: No further questions. We'll excuse the witness.

CHIEF JUSTICE DREW: Mr. Hogan, you are admonished again, you are under the rule, and I'm sure you wouldn't violate it but, so that I'll be sure there is no misunderstanding about it, I want to make sure of your understanding.

(Witness excused)

CHIEF JUSTICE DREW: Gentlemen, at this time, at the request of several of the Senators, I'm going to read the two statutes that the gentleman referred to, that you may better understand the nature of the testimony of yesterday and of today, concerning adoption proceedings. The first statute is the statute concerning constructive service generally; it's Section 48.03, Florida Statutes, 1961. It reads as follows:

"As a condition precedent to service by publication, there shall be filed in the cause a statement executed by the Plaintiff, his agent or attorney, setting forth substantially the matters hereafter required, which statement may be contained in the initial or other pleading, if sworn to, or in any affidavit or other sworn statement.

"The word 'Plaintiff' as used in this Chapter shall extend to any party in the cause who may be entitled to service of original process upon any party to the cause or any person who may be brought in or allowed to come in as a party by any lawful means. The word 'Defendant' as used in this Chapter shall extend to any party on whom service by publication is authorized by this Chapter, without regard to his designation in the pleadings or position in the cause.

"After the entry of a final judgment or decree in any cause no sworn statement shall ever be held defective for failure to state a required fact if the said fact otherwise appears from the record of the cause."

Section 72.13, under the Chapter relating to adoption, provides:

"In the absence of consent as hereinafter provided for, upon the filing of the petition, the clerk of the

court wherein it is filed shall forthwith issue a notice directed either to the natural parent or parents, or the legal guardian, commanding them to be and appear in said court, on a day named in said notice, not less than twenty-eight nor more than sixty days from the date thereof, and to show cause why said petition should not be granted. Rule days are abolished in all proceedings hereunder."

Rule days, gentlemen, laymen, refer to an old system that we used to use, that used to designate the first Monday of every month. Most causes were made returnable then.

"Said notice shall be served by the proper sheriff in the same manner as that in which summons in chancery are served, not less than fifteen days before the return day named in said notice. As many alias and pluries notices" - - - that is, any other notices - - - "as may be necessary may, from time to time, be issued, returnable as herein provided, to a later date or later dates. If any person named in said notice be alleged to be a non-resident of Florida, or if the name or residence or whereabouts of any such person is alleged to be unknown, or if any such person cannot be personally served" - - - that means service within the state by the sheriff or some duly authorized officer - - - "the clerk shall cause such notice to be published once each week for four consecutive weeks, four publications being sufficient, prior to the return day, in some newspaper published in the county, which notice shall show the filing of said petition for adoption of such child. The clerk shall mail a copy of such notice to every such non-resident person at his place of residence as shown in the petition. The clerk shall file a certificate of constructive service, and thereupon such constructive service shall be as effectual as to persons who are non-residents or whose names or residence or whereabouts are unknown, as if such persons had been personally served with process within this State, according to law. In the event it is necessary to serve such notice by publication, it shall be shown either in the verified petition or in an affidavit attached thereto, that diligent search has been made by the petitioner or petitioners to ascertain the names, places of residence, and legal disabilities, if any, of the natural parent or parents, or legal guardian."

Those are the two statutes to which the preceding witness testified.

SENATOR BARRON: Mr. Chief Justice, in Section 48 there is a definition, and sets out the requirement of what a diligent search and inquiry is. I wonder if it would be appropriate to read that? I think it's on the bottom of the page, on the right hand side.

CHIEF JUSTICE DREW: "Sworn statement."

"The sworn statement of the Plaintiff, his agent or attorney, for service of process by publication against a natural person shall show:

"(1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and, Paragraph

"(2) Whether such person is over or under the age of twenty-one years, if his age is known, or that his age is unknown; and, Paragraph

"(3) In addition to the above, that the residence of such person is, either:

"(a) Unknown to the affiant; or,

"(b) In some state or country other than this state, stating said residence if known; or,

"(c) In the state, but that he has been absent from the state for more than sixty days next preceding the

making of the sworn statement, or conceals himself so that process cannot be personally served upon him, and that affiant believes that there is no person in the state upon whom service or process would bind said absent or concealed Defendant."

Those are the three sections with which much of the testimony from the witnesses have been concerned, and I read it at the request of several Senators. You may proceed.

MR. O'NEILL: Mr. Secretary, will you call Mr. George A. Routh.

SECRETARY FRASER: George A. Routh?

MR. O'NEILL: George A. Routh, R-o-u-t-h. Thereupon,

GEORGE A. ROUTH,

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

CHIEF JUSTICE DREW: Would you, please sir, speak directly into the microphone, and not turn your head toward either counsel, so that the Court may hear you, and after you've finished your testimony - - - are you an attorney?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: After you have finished your testimony, sir, you are under the rule and, of course, you know what that implies.

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your name, and where you live, and your profession, please sir?

A George Routh, R-o-u-t-h. I live in Clearwater, Florida. My profession is attorney.

Q Mr. Routh, how long you been a practicing attorney?

A Since October, 1961.

Q Where did you receive your education to become an attorney?

A Stetson College of Law, St. Petersburg, Florida.

Q Have you always been engaged in the practice of law in Clearwater since you were admitted to practice?

A Yes.

Q What date were you admitted to practice?

A October, 1961.

Q What type of practice do you have? Is it a specialized field, or general?

A General practice.

Q With whom do you practice, sir?

A I practice with the law firm of Phillips & McFarland, Lloyd Phillips and Donald McFarland.

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

A Yes.

Q How long have you known him, sir?

A Since November, 1961.

Q Have you ever had an occasion to handle any cases before Judge Richard Kelly?

A Yes.

Q What was the nature of the case and, briefly, what were the facts in the case?

A The first case I handled before Judge Kelly was a domestic relations case; it was a divorce proceeding.

Q What was the style of the cause and, briefly, what were the facts surrounding the case?

A The style of the case was Kondenor vs. Kondenor. It was a divorce proceeding by the Plaintiff husband, wherein he sought a divorce from the Defendant wife, and asked the Court to award him custody of two of the five minor children. He alleged in his complaint that, of the five minor children, only two were his; and he also asked for some real property which was tenancy property, belonging to both husband and wife in St. Petersburg, Florida.

Q What party did you represent? The husband or the wife?

A I represented the Plaintiff husband.

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

A Yes.

Q What occurred in that trial of that cause?

A Basically, after the Plaintiff and Defendant were at issue by complaint and answer, and the cause was set for final hearing, I went to the Judge's Chambers - - -

Q Mr. Routh, will you move up a little bit closer to the microphone. I don't know whether the Senators can hear you or not in the back.

A I went to the Judge's Chamber with my client, the Plaintiff husband, and two witnesses to corroborate his testimony, and arriving at the Judge's Chambers at the appointed time, his secretary instructed me that - - - to go into the Judge's Chambers. I went into the Judge's Chambers, and the Judge was talking on the telephone. I went to the left side of the Judge's desk, where he keeps Southern Reporters, all the judges' chambers generally have Southern Reporters in them, and took a book from the shelf to reflect on it for a moment, thinking that I may cite to the Court this particular case, and to refresh myself on this case, placed it back into the shelf, went back around to the counsel table, which is immediately in front of the Judge's desk, and took out my file, and the Judge was talking on the telephone during this period of time. The Court Reporter came in, set up her equipment to transcribe the testimony, and at this point the Judge concluded his telephone conversation and turned to the Court Reporter and told her that she was in contempt of his court for being late, and concededly she was two or three minutes late. The Judge told the Court Reporter that he would fine her \$25 at this point for being in contempt or if, at a later date, she was again late, that he would fine her \$50. The Court Reporter told the Judge that she had no money, and he told her that, "All right, the next time you are late, I'll fine you \$50." Then we proceeded with the hearing.

Q What happened after that, sir?

A There was a brief exchange between myself and the Court. Then I called my witness, the Plaintiff husband, to testify, and when the - - - I asked him the preliminary questions, of his name and address, the Court Reporter couldn't pick up his answers for reason of the fact that the door to the Judge's Chambers was open, and the Judge's secretary, right outside the Chambers, was typing on an electric typewriter. I got up to close the door, so that the witness could hear and

respond, and the Court Reporter could pick up the testimony. At this point the Judge admonished me for closing the door; then proceeded to explain that the building was not adequately air conditioned, and it was a necessity to keep the door open, and that the witness should move closer to the Court Reporter, which the witness did. During the course of my investigation of the witness, during the preliminary questions, such as address and name, etc., I led the witness leading questions. It was a non-adversary proceeding, in that the Defendant, nor Defendant, through counsel, had appeared at the hearing. The Judge admonished me for leading the witness and threatened to hold me in contempt of court for this. At this point - - - this was one of the first hearings I ever had after I had graduated and was admitted to the Bar - - - I was admitted in October of '61, and this was November of '61, and my first hearing, and I was visibly shaken, and I asked the Judge at this point if he wouldn't give me a ten-minute recess, so that I could have one of the other members of the firm continue with the hearing, because I didn't feel that I could do my client justice by continuing at this point. The Judge refused to give me a ten-minute recess, admonished me again; and so, I attempted to proceed further with the hearing. After struggling with it, we finally concluded it. All during this proceeding the Judge admonished me three or four different times, about various things. Then, at the conclusion of the hearing, in my opinion, the Judge refused to rule in keeping with established legal principle on the points, or on the facts established, and my client was a - - - in effect, an insolvent Plaintiff, couldn't perfect an appeal. So, of necessity, we couldn't go on appeal. The whole proceeding was bad, from start to finish. I can't recall any worse experience during the course of my practice.

Q Mr. Routh, let me ask you a question right there. Do you feel that the Court has a right to admonish the Court Reporter?

A. I think perhaps the Court would have a right to admonish the Court Reporter if the nature of the offense was against the dignity of the Court or in hindrance of the furtherance of justice to be administered by the Court. Personally, I did not feel that the Court Reporter should have been admonished at this point, because the hearing was not ready to proceed. The Judge was on the telephone.

Q All right, sir. Do you further agree that the Court has a right to admonish counsel?

A I think perhaps the Court may have the right to instruct counsel. I don't like the word "admonish" counsel; but certainly not in the presence of counsel's client or in the presence of witnesses. I think that if this were done it should be done in privacy, as opposed to in public.

Q How many times in these proceedings did Judge Kelly threaten you with contempt?

A I think, during the course of the proceedings, he threatened me on three different occasions with contempt.

Q How many children were involved in these proceedings?

A If I recall correctly, there were five children involved. The Plaintiff, as I understand, alleged that only two of the children were his. The uncorroborated testimony before the Court was to the effect that only two of the children were his.

But the Defendant wife had written a letter to the Plaintiff husband where she admitted that only the first two children born of the marriage were his. This letter was introduced into evidence. So the only evidence before

the Court was that, of the five children, only two belonged to the Plaintiff husband.

Q Pardon me.

A I was going to point out that the Court refused to follow the established principle of law in decreeing that only two of the children were in fact the husband's, but refused to rule on this point.

CHIEF JUSTICE DREW: Mr. Routh, so that I may understand you, he refused to rule on what point, now?

THE WITNESS: Refused to rule on whether or not all five children were the Plaintiff husband's, or only the two which he alleged and established by evidence were his.

MR. O'NEILL: But in fact - - - excuse me.

CHIEF JUSTICE DREW: You mean the three additional children were by a previous marriage?

THE WITNESS: No, Your Honor.

During the course of the marriage, the Defendant wife was guilty of adultery. The facts, as established by the testimony, were to the effect that she had been having an illicit affair with a third party. The Defendant wife admitted in a letter written to the Plaintiff husband that only the first two children born of the marriage were, in fact, his; and the other three belonged to the third party.

CHIEF JUSTICE DREW: Were the children conceived during the marriage?

THE WITNESS: Yes, Your Honor.

CHIEF JUSTICE DREW: Proceed.

BY MR. O'NEILL:

Q Did the final decree provide for any support money to be paid for these children?

A The final decree provided that support money should be paid for only the first two children born of the marriage; and the other three children were not provided for in the final decree.

Q Was there any ruling or judgment as to the paternity or who the last three children belonged to in the final decree?

A No sir.

Q Mr. Routh, have you handled other cases before other courts or other Judges in the Sixth Judicial Circuit?

A Yes.

Q Do you know the reputation of Judge Kelly, among the members of the bench and the bar and the community, as to how he conducts his cases and handles his Court?

A Yes.

Q What is that reputation?

A The reputation is generally bad.

Q Upon what do you base that, sir?

A Conversation with other members of the bar and litigants; the public generally.

Q How many members of the bar have you been in conversation with or heard conversation carried on by, relating to the reputation of Judge Kelly in connection with his Court?

A I would approximate twenty-five or thirty.

Q How many lay people - - - other than members of the bench and bar - - - have you heard or been in conversation with or had conversation going on in front of you, relating to this reputation?

A I would surmise about ten or fifteen.

Q How many clients?

A About four, I suppose - - - three or four. I have, on occasion, had at least three or four clients, when we were discussing litigation, state that they hoped that their case was not assigned to Judge Kelly.

Q Did Judge Kelly, at any time during the proceedings in this case, place any epithet to you, as to your ability to practice law before his Court?

A I don't remember him doing that, particularly. He admonished me about leading my witness; about the introduction of certain documents into evidence.

Q Did he call you any names, sir?

A No, I don't think so.

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

CHIEF JUSTICE DREW: At this point, counsel, I would like to state that one of the Senators has suggested that it may be improper to inquire as to the Judge's reputation among the "bench"; on the idea that only a member of the bench could testify as to that reputation. Do you have any comment to make as to that?

MR. O'NEILL: If it please the Court, the question propounded to this witness is the question framed by the Presiding Officer to be propounded to witnesses in these proceedings. It appears in the transcript and we have taken that and followed it; and, therefore, that was the reason for the framing of the question exactly as it has been done.

CHIEF JUSTICE DREW: Very well. That answers the question. If I framed it that way, I think you had a right to ask it.

MR. NICHOLS: Your Honor, I would like to respectfully request, if it was in error, that it be corrected.

MR. O'NEILL: We will not do that any more unless they actually have talked to members of the bench; but, as I said, that was the reason for framing the questions as they have been.

CHIEF JUSTICE DREW: I must say I do not recall. I will check. I will not say I made that ruling or I didn't make the ruling. I thought my ruling was the general reputation in the community. I don't know whether I made the ruling. I will check it. I think both sides must concede that it is a good point, and as I understand it, there will not be any further inquiry.

I have a question from Senator Price; this is directed to the witness: "Have you ever appealed a decision handed down by Judge Kelly? If so, did the higher Court reverse Judge Kelly's ruling?"

THE WITNESS: No. I only had this matter before Judge Kelly, plus one more matter which was subsequently settled. It was a standard mortgage foreclosure suit, and it was subsequently settled between the parties. This case I did not appeal. My client could not afford to appeal, was the sole reason for my not taking an appeal in this case.

CHIEF JUSTICE DREW: From Senator Blank to the witness:

"To whom did Judge Kelly award custody of the children?"

THE WITNESS: The custody of the children remained in the wife.

CHIEF JUSTICE DREW: Was the divorce granted to your client by Judge Kelly?

THE WITNESS: Yes.

CHIEF JUSTICE DREW: What relief sought by your client was not granted in the divorce case to which you referred?

THE WITNESS: Custody of the two first born minor children of the parties. A decree giving the Plaintiff husband the real property belonging to the parties situate in St. Petersburg, Florida. The wife had subsequently removed herself to Alabama, where she was living. I asked for the custody of the two first born children, which was not given to my client as prayed for. The property in St. Petersburg, Florida, was not given to my client as prayed for. The decree that he should not pay support for the three last born children, I think the Court did grant this; that he was not required to pay support for those. I think that was the only relief granted to the client.

CHIEF JUSTICE DREW: For the sake of clarifying my mind, did you seek a decree as to the legitimacy of the three additional children, in this proceeding?

THE WITNESS: I don't remember exactly how I framed the complaint, whether I asked the Court to determine the legitimacy of the children or I only asked that he obtain custody of the two first born and let her have the three last born, with no alimony payment or no child support payments from him for the three last born. I don't remember whether I asked the Court to determine the legitimacy of the children or not.

CHIEF JUSTICE DREW: Senator Davis of the 40th would like to know: "Do I understand that in your complaint you were asking the Court to divide property owned jointly by the husband and the wife?"

THE WITNESS: That is true. I was not asking him to divide it. I was asking him to give all of the property held jointly by the husband and wife, to the husband.

CHIEF JUSTICE DREW: Senator Hollahan of the 43rd would like to know: "Where were the children at the time of the hearing?"

THE WITNESS: They were in Alabama with the Defendant wife.

CHIEF JUSTICE DREW: All of the children?

THE WITNESS: All five children, yes.

CHIEF JUSTICE DREW: Senator Johns of the Fifteenth District requests an answer to the following question:

SENATOR JOHNS: Your Honor, that is addressed to you personally.

CHIEF JUSTICE DREW: I am glad you called my attention to that. That is not a question. You may proceed with cross examination.

MR. MASTERSON: Mr. Routh - - -

MR. O'NEILL: Just a minute, counsel. May it please the Court, I was in error. I have checked the transcript, and I apologize to the Court. You did not put "the bench"; but in a later part of it the bench had come in and it was included at that time but not in the original.

CHIEF JUSTICE DREW: Was the question raised?

MR. JONES: Yes sir.

MR. O'NEILL: It was raised later on. But I apologize. It was not a direct quote from the Chief Justice. I wanted that clear.

CHIEF JUSTICE DREW: I will grant myself a second rehearing and hold myself in error in the latter. You may proceed.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Routh, I am still not entirely clear on what you were seeking in this *Kondenor vs. Kondenor*. It was a divorce proceeding?

A That's right.

Q And you represented the husband?

A That's right.

Q There were five children?

A If I recall correctly, there were five children, yes.

Q All of whom lived with the Defendant wife, who was in Alabama?

A Yes.

Q And you were seeking, in part, to have an adjudication that three of those children were not the natural children of your client, the husband?

A I don't recall if I prayed for that specifically in the complaint or not. I perhaps did.

Q Well, in the decree - - - you didn't want the husband to have to support these three children, did you?

A That is correct.

Q So what you are trying to say is that, in your petition to the Court, was that three of the children were not the natural children of your client?

A Right.

Q So you were seeking to have three of the children adjudicated to be illegitimate?

A Is that a question?

Q Yes sir.

A What I was, in effect, asking the Court to do was declare the three latter born children illegitimate?

Q Yes sir.

A I don't remember whether my prayer for relief asked the Court to do this or not.

CHIEF JUSTICE DREW: Would you read the prayer for relief? If you have the file?

MR. MASTERSON: All right, sir.

CHIEF JUSTICE DREW: I think we can determine that. The pertinent portion.

MR. MASTERSON: I will just read the prayer, Your Honor.

"Whereupon, the Plaintiff prays the Court

(1) that this Court take jurisdiction of this cause and of the parties hereto;

(2) that an accounting be made of the property of the parties and that said property be given outright to the Plaintiff;

(3) that, upon final hearing of the cause, this Honorable

Court make and enter its order granting the Plaintiff a decree of divorce, a vinculo matrimonii, and for such other and further relief as this Court may deem proper."

BY MR. MASTERSON:

Q Certainly, under this article, Number 4, you were seeking any other relief that the Court would grant, is that right?

A That's right. I was in Chancery and I was asking for relief for a Plaintiff in a Court of Equity. So any relief that the Court could grant, I was asking for, yes.

Q At any rate, you felt that three of the children, not being the children of your client, should not be supported by your client?

A That's right.

Q And the Court did not wish to rule on this question of the legitimacy of the children at this point?

A Obviously not.

Q And entered an order, as a matter of fact, requiring him to support only two of the children?

A That's right. But I point out to you that he left it open for subsequent hearing, wherein the wife could come in and claim child support for the three other children.

Q You feel that was proper, don't you?

A Do I feel it is proper? I didn't want him to do this, no. I wanted him to close the door from the wife's subsequently coming in and asking for child support for three bastard children.

Q Can the Court ever close the door on the rights of minors?

A If the Court finds that the minors do not, in fact, belong to the Plaintiff, I think the Court could properly close the door in that regard.

Q You feel that the children would have no right to appear before this Court, either by representation or in any other manner, and have their rights adjudicated?

A Subsequently?

Q Yes sir.

A I think the Court could have adjudicated those rights of the children. The wife was given an opportunity to come in and to allege whatever defenses she had. Adequate notice was given. I think the Court could have properly ruled.

Q But, in any event, this Court refused to close the door on those children?

A Did it in fact? That's right, it did.

Q We will move on to another point. Now, as a matter of fact, at this hearing in which the Court admonished you, did you not make the statement that you were in doubt as to whether or not the Court wished to hear the case?

A I did, yes; because of the tirade of the Court, directed at the Court Reporter, I thought that the Court was perhaps in a bad mood. I was visibly shaken and I was scared. I asked the Court if he would not rather hear this case at another time. I didn't know if he wanted to hear it this morning or not.

Q Mr. Routh, wasn't it right at the outset of the hearing, right after this door incident that you have described; right after that very incident?

A Was that a question? Would you repeat it, please?

Q I am asking you, was it right after this matter about whether the door should be open or closed, whether you did not inquire of the Court whether he wished to hear this hearing; you didn't know whether the Court wished to have the hearing that morning?

A That's right, I asked the Court if he would rather have the hearing at another time.

Q So there had not been any argument up to that point, had there?

A If I recall correctly, there had been, an exchange between myself and the Court.

Q Mr. Routh, I am going to hand you the transcript and we will see. We will check the record on it.

CHIEF JUSTICE DREW: Would you identify what you are handing the witness?

MR. MASTERSON: Yes sir, I am handing the witness a transcript of testimony in the case of Kondenor vs. Kondenor, which was filed May 18, 1962. I direct the witness' attention to Page 2 of the transcript. The first one is made up of purely formal matters, and the second page commences the hearing. Now, would you read for us, please, Mr. Routh, the first four lines - - - or the first eight lines following the direct examination, which open the transcript?

THE WITNESS: The first conversation picked up by the Court Reporter was between myself and the Court, starting with questions by myself.

"Q Will you state your name, please?

"A (Unintelligible to Reporter)

"The Reporter requested the witness to repeat his answer.

"THE COURT: No, don't close the door.

"MR. ROUTH: I don't know if the Court this morning feels as if it doesn't want to hear this case or not.

"THE COURT: What is your name?

"MR. ROUTH: George Routh.

"THE COURT: Mr. Routh, do you want to be found in contempt of this Court?

"MR. ROUTH: No, Your Honor.

"THE COURT: Then this Court will tolerate no further such suggestion and you may proceed at this time."

BY MR. MASTERSON:

Q So actually, the inquiry by you, as to whether or not the court felt as though it wanted to try the case that morning, was made at the very outset of the proceedings?

A That's right.

Q Now, Mr. Routh, you also mentioned that there was a Court Reporter who was present, and I think you said something about the Judge imposing a fine upon her, or threatening to?

A The Judge definitely imposed a fine on her.

Q Who was that Court Reporter? Was her name Doris Lane?

A I think so, I think the name was Doris Lane. She's a Court Reporter from St. Petersburg, if I remember correctly, a young girl, about twenty years old, twenty-two.

Q Miss Lane is a young girl, about twenty-two years old?

A If I remember correctly. She appeared to be young; she may have been older.

Q And have you seen her since that proceeding?

A I don't recall.

Q You feel that what the Judge did to the Court Reporter was improper?

A I think so, yes.

Q Have you inquired of her whether she feels that she was benefitted by this, or in any way resented what was done?

A No. I think that it created animosity between her and the court.

Q Would it change your opinion if I told you that this reporter will testify in this proceeding?

MR. O'NEILL: We object to the question.

MR. MASTERSON: I withdraw the question.

BY MR. MASTERSON:

Q You're testifying about her feelings, and I thought I'd better inquire a little further - - -

MR. O'NEILL: May it please the Court, we object to the argument of counsel.

MR. MASTERSON: I withdraw the question.

BY MR. MASTERSON:

Q Now, Mr. Routh, you had another proceeding before Judge Kelly, did you not?

A That's right.

Q And this was a mortgage foreclosure proceeding?

A Just standard mortgage foreclosure proceeding, very common.

Q And you were good enough to talk to me about this proceeding before you came here, weren't you?

A Yes.

Q And would you tell the members of this Body what you told me about how you were treated on that occasion?

A Well, subsequent to this one particular hearing, the senior member of the firm, I told him I would never appear before Judge Kelly again, and he persuaded me to, stating that I had to practice law in that county, I couldn't avoid him; therefore, it's best to take it on the chin and go in and try to make amends. I went in to this mortgage foreclosure proceeding defending a corporation and a private individual. The hearing was handled very properly. I've got no objection whatsoever about the way the proceeding went. The Judge's demeanor was excellent; it couldn't have gone more smoothly. The matter was subsequently settled.

Q I believe you told me also, Mr. Routh, that you felt that the matters of law involved in that matter were rather complex, and that you were very agreeably surprised by the way the Judge attended to that matter and understood your problem?

A That's right. The questions of law involved in the proceeding were obscure questions of law, in fact, and I felt that the Judge grasped them, he understood what I was talking about, which surprised me.

Q Now, Mr. Routh, I believe you stated on direct examination that during this misunderstanding that you had with Judge Kelly in the Kondenor case, no epithets were hurled at you or to you by the Court?

A No, no.

Q Epithets?

A Will you explain what you mean by "epithets"?

Q Unkind names?

A No, I didn't do it out of fear, and he didn't do it.

Q He didn't do it. So, isn't it fair to say that under the charge that is stated in Article VII, that "Circuit Judge Richard Kelly threatened the said George A. Routh with contempt of court and began to harass and embarrass him throughout the hearing, referring to Mr. Routh as a 'dunce'" is not true?

A The reference to him referring to me as a dunce is not true. I don't recall him calling me a dunce, either on or off the record.

MR. MASTERSON: That's all I was inquiring about. Thank you.

CHIEF JUSTICE DREW: I have these questions, that you might prefer me to ask first, Mr. O'Neill.

MR. O'NEILL: Yes sir, go ahead, sir.

CHIEF JUSTICE DREW: Now, this is a question, Mr. Witness, from Senator Mathews, of the 18th: "Is there any way children conceived and born in wedlock can be declared illegitimate?"

THE WITNESS: Yes.

SENATOR MATHEWS: Would he explain that, Your Honor?

CHIEF JUSTICE DREW: Would you please explain that?

THE WITNESS: Well, if the Plaintiff can establish, by competent evidence, that the children, notwithstanding they are born during coverture, that they are not, in fact, the children of the person making the allegation, or the Plaintiff, then the court can decree that they are not his children.

CHIEF JUSTICE DREW: Mr. Witness, have you ever found a case to support that?

THE WITNESS: Do I know of any case to support the fact that the court can decree?

CHIEF JUSTICE DREW: I didn't get your answer.

THE WITNESS: Well, I'm trying to think. I can't recall a specific case, no.

CHIEF JUSTICE DREW: Senator Askew, of the 2nd, directs me to ask: "Unlike most questions of fact, when only one side of the evidence is presented in court, is there not a presumption that all children, either conceived or born in wedlock, are legitimate?"

THE WITNESS: There is a presumption in law that all children born of a marriage are legitimate children. However, this is a rebuttable presumption that can be overcome by sufficient evidence.

CHIEF JUSTICE DREW: A further question from Senator Askew: "Isn't, in fact, is not the law clear that this is the strongest presumption known to the law?"

THE WITNESS: I wouldn't say it's the strongest presumption known to the law. It is a very strong presumption; of necessity, it must be this way, but I wouldn't say that it is the strongest presumption known to law. It is very strong, yes.

CHIEF JUSTICE DREW: Senator Ryan asks this question: Did you have personal and constructive service on the Defendant wife?

THE WITNESS: I had constructive service - - - I attempted constructive service. However, the Defendant wife submitted herself to the jurisdiction of the court by filing pleadings in the cause which, in effect, submitted her to the jurisdiction of the court without the constructive service.

CHIEF JUSTICE DREW: Senator Barron asks this question: Did the evidence establish that the parties were living together as man and wife when all five children were born?

THE WITNESS: I think the evidence established that four of the children were born while they were living together.

CHIEF JUSTICE DREW: How long were they separated with the other child? More than nine months or less than nine months?

THE WITNESS: I don't recall. I think - - - I was trying to think of - - - I don't recall.

CHIEF JUSTICE DREW: Senator Barron, I believe your second question, sir, has been answered; that was with reference to whether it was to establish paternity, and so forth. Do you wish me to ask it again?

SENATOR BARRON: No sir; I don't want you to ask that last question either, Judge, especially that last word, but I wish you would ask this one I'm sending up.

CHIEF JUSTICE DREW: Would you like me to ask another question, changing the word?

SENATOR BARRON: No sir.

CHIEF JUSTICE DREW: You waive your last question?

SENATOR BARRON: Yes sir, definitely.

CHIEF JUSTICE DREW: Another question from Senator Barron: Do you not feel that it would have been highly improper and legally and morally wrong for the Judge to make a finding that the children were illegitimate and, thereby, mark them for life when this issue was not even raised by your pleadings?

THE WITNESS: I think that the latter part of the question - - - if I remember correctly, the issue was, in fact, raised by my pleadings. If I remember correctly, one of the allegations in the complaint informed the court that the children, only two of the children, the first born two belonged to the Plaintiff; so, the issue, if I remember correctly, was raised by the pleadings.

Secondly, I believe that it would have been morally and legally right for the court to decree that the latter three minor children were not, in fact, those of the plaintiff.

CHIEF JUSTICE DREW: Did you say "legally right" or "legally wrong"?

THE WITNESS: I think that it would have been morally and legally right.

CHIEF JUSTICE DREW: The Presiding Officer would ask the question: Were the children represented at the hearing by guardian ad litem or otherwise?

THE WITNESS: No, the children were represented at the hearing through their mother. The parents being the natural legal guardian of the children, the children were represented when the wife filed her pleading and submitted herself to the jurisdiction of the court, the children were also submitted to the jurisdiction.

CHIEF JUSTICE DREW: Senator Connor asks this question: Did not the wife admit in a letter that her husband was not the father of the three children?

THE WITNESS: Yes, she did. If I remember correctly, the letter, which is a part of the file, was introduced into evidence. The wife wrote to the husband, and in the letter she admitted that only the first two born children were, in fact, his.

CHIEF JUSTICE DREW: You may proceed with the redirect.

MR. NICHOLS: Before that, sir, for my own information, could we just get the ages of these children?

MR. O'NEILL: If it please the Court, I intend to hand the witness the court file and ask him to read three paragraphs out of the complaint, without reading the whole part; so, I think that would establish the ages of the children.

MR. NICHOLS: I just wanted to know the ages of them, whether they're young or old.

CHIEF JUSTICE DREW: You may proceed to have him read it.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Mr. Routh, before you start reading, would you look at - - - do not read, but look at Paragraphs 3, 4, 5 and 11 of the bill of complaint.

A Yes, sir, I have read them.

Q Do the four paragraphs, 3, 4, 5 and 11, deal with the children and their ages and the allegations as to paternity?

A Yes, it does.

Q Would you read paragraphs 3, 4, 5 and 11 in that order, please?

A "The Plaintiff alleges that there have been two children born of the parties hereto as a result of this marriage. Said children are John, a son, born January 30, 1952, and Deborah, a daughter, born May 13, 1953. Said children are, to the best of Plaintiff's belief and knowledge, in the care and custody of the Defendant."

Allegation 4 says:

"That the Defendant bore two additional children during the time the parties lived together" - - -

SENATOR ASKEW: Mr. Chief Justice, I wonder - - -

CHIEF JUSTICE DREW: Senator Askew.

SENATOR ASKEW: - - - I wonder if the names of the children are there, and if we might just make them A, B, and so on.

MR. O'NEILL: We have no objection to the omission, Senator, but the names - - - well, counsel for the Respondent - - -

CHIEF JUSTICE DREW: This is not a sealed file, is it?

MR. O'NEILL: No sir.

MR. NICHOLS: No, Your Honor.

THE WITNESS: No sir.

CHIEF JUSTICE DREW: All right, does that satisfy the Senator from the 2nd?

SENATOR ASKEW: I thought it might be sealed.

CHIEF JUSTICE DREW: You may proceed.

THE WITNESS: Is it the instruction to refer to the children as A, B and C?

MR. O'NEILL: That would be better.

CHIEF JUSTICE DREW: Yes, that's right, I think.

THE WITNESS: In Allegation 3, that I've just read, the Plaintiff says that children A and B, born in 1952 and '53, respectively, are the Plaintiff's children.

In Allegation 4, the Plaintiff said "the Defendant bore two additional children during the time the parties hereto lived together, these children being C, born January 15, '57 and D, born June 7, 1958, but Plaintiff has reason to believe that C and D are not his children, but are the result of an adultress behavior on the part of the Defendant with another man. To the best of the Plaintiff's belief and knowledge, said C, and D are in the custody of the Defendant."

Allegation 5 states:

"The Defendant bore a fifth child, E, born February 15, 1960, but said child was born after separation of the parties hereto, and Plaintiff denies parentage of said E, who, to the best of Plaintiff's knowledge and belief, is in the care and custody of the Defendant."

Allegation 11 says:

"That the Defendant has entered into an improper and adultress relation with another man, has given birth to children sired by this man, a fact she tells without apparent shame to other persons, including the sister of Plaintiff, and Plaintiff charges the Defendant is guilty of those elements required under and for the ground of divorce contemplated by Florida Statute Section 65.04 (3), that is, adultery."

CHIEF JUSTICE DREW: Would you establish, Mr. O'Neill, the date of separation?

MR. O'NEILL: I'm going to see if I can now.

SENATOR PRICE: Mr. Chief Justice, may I ask a question.

CHIEF JUSTICE DREW: Senator Price.

SENATOR PRICE: From the testimony the witness just read, would the witness mind repeating the dates of birth of children C and D?

CHIEF JUSTICE DREW: The dates of birth of children C and D.

MR. O'NEILL: I think that's in paragraph 4.

THE WITNESS: Yes. C and D were born in '57 and '58, respectively; January 15 and June - - - January 15, '57 and June 7, '58, C and D were born.

CHIEF JUSTICE DREW: In view of the allegation with reference to the date of separation, it might be important.

BY MR. O'NEILL:

Q Would you see if there is an allegation on the date of separation, the lower part of the complaint? I believe it's around Paragraph 14.

A Allegation 2 sets up the time of separation. The Plaintiff says that:

"That the Plaintiff and Defendant were married to each other on the 8th day of May in 1949, in Saratoga Springs, New York, and they lived and cohabited, one with the other, until on or about the middle of July, 1959, at which time, through no fault of the Plaintiff, and without foreknowledge of the Plaintiff of any intent by the Defendant to leave the home, the Defendant abandoned the Plaintiff, left the home of the parties hereto, and the Plaintiff and Defendant have remained separate and apart ever since."

Q Now, I think it would be in order if you would

repeat the allegations as to the dates of birth of - - - well, E, I think it would be, if that's sufficient.

A E was born February 15, 1960.

Q All right, sir.

SENATOR CLEVELAND: Mr. Chief Justice, was there an answer filed in this cause?

MR. O'NEILL: That's what I was trying to ascertain.

CHIEF JUSTICE DREW: What is it, Mr. Senator?

SENATOR CLEVELAND: Was there an answer filed in this cause?

CHIEF JUSTICE DREW: No, it was constructive service.

MR. O'NEILL: No, there was an answer filed.

THE WITNESS: There was an answer filed.

SENATOR CLEVELAND: I think it would be proper, if he could read the appropriate portions of the answer, the requirement of these two paragraphs, as to these three children.

MR. O'NEILL: That's what I'm doing now, Senator. I want to see if I can find the place.

THE WITNESS: The answer was filed and signed by both the Defendant and the Defendant's attorney. The answer sets up,

"1. That at the time this suit was filed the Plaintiff had not been a bona fide resident citizen of Florida for more than six months;

"2. That the Plaintiff cannot recover any judgment against the Defendant for property since the Defendant is a non-resident of Florida;

"3. The Plaintiff cannot recover or obtain the custody of the minor children in the possession of the Defendant for, at the time the suit was filed, said children were not in Florida, nor within the jurisdiction of this Court;

"4. The Defendant respectfully prays for a divorce."

SENATOR FRIDAY: Mr. Chief Justice, did I understand this witness to say that this was signed by an attorney and the Defendant?

CHIEF JUSTICE DREW: Was that signed by an attorney and the Defendant?

THE WITNESS: Yes, it was signed both by the Defendant and attorney for the Defendant, Roy D. McCord.

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

BY MR. O'NEILL:

Q Then, is there any denial of the allegations in Paragraphs 3, 4, 5 and 11 in that answer?

A No, there's no denial of those allegations at all; therefore, they are being admitted under the rule.

Q Now, you previously testified that there was also a letter. Would you look through the file and see if that letter is in there, sir?

A Yes, the letter is in the file, sir.

Q I think it might be appropriate if you will read it. Is it a long letter?

A No, it's a single page letter.

Q I wish you would read the letter, sir, without stating who it's addressed to at this time. Then we'll ask you that later.

A The letter is - - -

"I am asking you to send me some money to take care of your kids. I can't do it all. You got to do it. If you don't help me by sending me money I will take it to a lawyer and have you made do it. If you just send me \$20 a week, ten for Johnny and ten for Deborah" - - - Johnny and Deborah were the two first born children - - - "I don't ask for any money - - - I don't ask for any more. If you can't do that much I will go to the law and make you do it."

Q What is the date of that letter, now, sir?

A 4/19/62.

Q That's April of 1962, is that what you mean, 4/19/62?

A No, I'm sorry. The letter is not dated; this is Plaintiff's Exhibit 4/19/62.

Q All right, sir. Was there any testimony as to the date of the letter, the date it was received by the Plaintiff in this case?

A Yes sir, there's an envelope which the letter was received in. It's in the file.

Q What is the date on the envelope, the postmark, if there is one?

A November 19, 1959.

Q Then this E, the child, E, was born at that time, or not? I've forgotten the date, there? Was it born after that time?

A I think so. If I remember correctly, E was born after that time - - - E was born in February, February 15, 1960.

Q Now, on cross examination, Mr. Masterson asked you to read from Page 2 of the transcript. I'll ask you this question: The conduct of the Court and what was said at the time he was on the telephone, the Court Reporter had not actually set up her machine to take down the testimony, had she?

A At the time - - -

MR. MASTERSON: May it please the Court, I again request that counsel be instructed not to lead the witness, and the statement of counsel, which is not in evidence.

MR. O'NEILL: I'll restate the question.

BY MR. O'NEILL:

Q Had, in fact, the Court Reporter set up her equipment at the time that Judge Kelly was on the telephone?

A I think she set it up just immediately prior to him concluding his telephone conversation. If I remember correctly, she had set it up, and he concluded his telephone conversation almost instantaneously with her concluding her setting up of the stenographic machine.

Q Did the Court Reporter take down what Judge Kelly had said to her?

A No, she did not.

Q Had there been prior conversation with the Judge and you before she started taking it down?

A If I remember correctly, there was some little conversation before she started transcribing.

Q Will you review the transcript and see if it doesn't appear affirmatively in there that you asked the Court Reporter to take down all comments in the future?

A Yes sir, the Court, at one point, said, "Excuse me

just a minute." Then, there was a short recess. Then I told the Court Reporter,

"MR. ROUTH: I want the record to pick up all comments until I direct you that we are off the record. Will you do that, please?"

At this point I asked the Court Reporter, because the Judge had admonished me, to pick up all further questions and answers or conversations between myself and the Court.

Q Is it your complaint as to the conduct of the Court, and not the technical pleadings involved in this case, Mr. Routh?

A Yes.

MR. MASTERSON: If it please the Court, this is leading and repetitious, and I - - -

MR. O'NEILL: If it please the Court, there's nothing leading about the question.

CHIEF JUSTICE DREW: He's already answered it. The witness should wait a reasonable length of time for opposing counsel to have an opportunity to object.

SENATOR MAPOLES: Mr. Chief Justice, would you allow the attorneys to read that letter again? As I understood it, there were only two children mentioned in it. I was just wondering.

CHIEF JUSTICE DREW: I was going to ask if that was all. Would you please read the letter again? It will be repetitious but I request you to do it.

MR. O'NEILL: Does the Senator want me to read it? Or the witness?

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

MR. O'NEILL: Attached to the letter is the previous envelope testified to:

"John, I am asking you to send me some money to take care of your kids. I can't do it all. You got to do it. If you don't help me by sending me money, I will take it to a lawyer" - - - I suppose it is - - - it is 'l-o-w-e-r,' "and have you made do it. If you just send me \$20 a week, \$10 for Johnny and \$10 for Deborah, I don't ask for any more. If you can't do that much, I will go to the law and make you do it."

Signed - - - it looks like Tina - - - is what it looks like.

CHIEF JUSTICE DREW: Were there two children referred to, for the information of the Court, the two older children?

THE WITNESS: Yes sir, the two children referred to were children A and B.

CHIEF JUSTICE DREW: Also, for information, was this the letter in which you stated that the wife admitted the three children to be illegitimate?

THE WITNESS: Yes, this letter - - - there was a third letter, Your Honor, or a second letter that I attempted to introduce into evidence where the mother had gone to the support agency in St. Petersburg and informed them - - -

CHIEF JUSTICE DREW: Don't tell what the letter is. There will be another letter so we will get to that letter.

MR. O'NEILL: No, there will be no other letter, Your Honor. It was not in the file.

CHIEF JUSTICE DREW: Well, you couldn't testify

about it without having the letter here. It would be hearsay evidence.

MR. O'NEILL: Is there any place in the transcript that refers to this letter, Mr. Routh?

THE WITNESS: Where I attempted to introduce it into evidence in the transcript, the transcript will reflect that I attempted to introduce it into evidence.

MR. O'NEILL: Does it state the contents of the letter in the transcript? Will you check that?

MR. MASTERSON: Is this the second letter?

MR. O'NEILL: Yes.

MR. MASTERSON: Or the letter just mentioned?

THE WITNESS: No, the transcript does not reflect the contents of the letter.

MR. O'NEILL: All right, sir.

THE WITNESS: Only that it was written by the Welfare Department in St. Petersburg.

MR. O'NEILL: All right, sir. No further questions.

MR. MASTERSON: No further questions.

CHIEF JUSTICE DREW: Now, Mr. Witness, come down; you will still remain under the rule until released by counsel for both the State and the Respondent.

(witness excused)

MR. DANIEL: Your Honor, I think we have a witness who will fit very nicely in the remaining time that we have before the lunch period.

Mr. Secretary, please call Circuit Judge Collins.

CHIEF JUSTICE DREW: How long do you think this witness will take, Mr. Daniel?

MR. DANIEL: My part won't take long. Of course I don't know about the cross examination, but I would anticipate probably about a half hour. Perhaps not that long.

Thereupon,

JUDGE THOMAS J. COLLINS,

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

CHIEF JUSTICE DREW: Judge, would you help us by speaking directly into the microphone and not face counsel for either the State or the Respondent, please sir.

THE WITNESS: Yes sir.

DIRECT EXAMINATION

BY MR. DANIEL:

Q This being my first experience in examining a Circuit Judge, under oath, I will proceed with caution. Please state your name, address and occupation or profession, sir.

A Thomas J. Collins, Circuit Judge. Residence, St. Petersburg, Florida.

Q Would you get just a little closer to the microphone, please sir?

CHIEF JUSTICE DREW: Judge, if you want to pick that machine up. You can pick it up.

MR. DANIEL: It comes right out of the bracket.

THE WITNESS: I think it is close enough.

MR. DANIEL: Yes, fine.

CHIEF JUSTICE DREW: If any of the Senators don't hear, please raise your hands.

BY MR. DANIEL:

Q How long have you been a Circuit Judge?

A The 3rd of January, 1961.

Q Were you appointed or elected to that post?

A Elected.

Q Is that Circuit Judge of the Sixth Judicial Circuit?

A Correct.

Q Were you elected as a Democrat or as a Republican?

A Republican.

Q Presumably, since the Constitution requires that Circuit Judges are attorneys, you are an attorney as well, is that correct?

A Yes sir.

Q How long were you an attorney before being elected to the bench?

A I was admitted in June of 1925.

Q Where did you practice prior to the time of being elected to the Circuit Judgeship?

A St. Petersburg.

Q And you have practiced there since 1925?

A Actively, up until the time I went on the bench.

Q Do you know Judge Richard Kelly?

A I do.

Q Have you ever had occasion to discuss with Judge Kelly the rulings or proposed rulings in matters that he was handling?

A Yes.

Q Was this consultation or conversation at Judge Kelly's invitation, or at your invitation?

A It was at Judge Kelly's.

Q Would you relate the nature of this conversation and where it was held and how it came about?

A It was held in the Chambers of Judge Hobson in the County Building at St. Petersburg, at the invitation or instance of Judge Kelly. He was talking to me at the time about the proposed contempt against Mr. Luckie and, I think, one or two other attorneys of the Dade City Bar; and was asking me what I thought about it. And I told him.

Q What did you tell him, Judge?

CHIEF JUSTICE DREW: Judge, may I interrupt here just to say - - - to ask you whether you are here pursuant to a subpoena?

THE WITNESS: I am.

MR. DANIEL: I apologize, Judge, for not bringing that out. It was not my purpose to embarrass the witness.

BY MR. DANIEL:

Q Now, what did you tell him, Judge?

A I told him that in my opinion, as a matter of law, that I did not think he could hold these gentlemen in contempt, upon the affidavits which had been filed on the recusement.

Q Did you give him any other advice, either voluntarily or at his request at that time?

A That was all that was said at that time; only that he made a reply to my recommendation.

Q What was Judge Kelly's reaction to your recommendation or advice to him?

A He stated to me that he felt duty bound to go forward in the matter.

Q Did you attempt to either converse with him or advise him further after that?

A No sir.

Q Now, in your service on the bench - - - and I use that term in the broadest sense, as meaning your Chambers or even in the Court House when you might not even be on the bench at the time - - - have you been present when members of the bar have engaged in discussion with Judge Kelly?

A Yes.

Q Now, from your previous conversations with Judge Kelly, and from being present at the time attorneys were discussing Judge Kelly, do you know Judge Kelly's reputation among the bar in the handling of his duties as Circuit Judge?

A Yes.

Q What is that reputation, sir?

A Not good.

Q And, if you would like the opportunity, would you briefly relate exactly what this answer is based on?

A It is based upon discussions that have been made in my presence. I won't say that any attorney has ever singled me out to come to me and discuss the question of Judge Kelly's competency in any way at all; but, oftentimes, when you are between hearings and a group of attorneys are around the Judge, they will start engaging in some kind of conversation. It may be light and it may be worthy. But at least, Judge Kelly's name occasionally would come into play and they would discuss him at that time and express themselves as to whether or not they were satisfied or dissatisfied with him, and his competency or incompetency; and it is from those conversations that I have expressed my opinion.

Q All right, sir. Do you have any opinion, or have you expressed any opinion as to Judge Kelly's judicial temperament?

A The question is have I expressed an opinion?

Q Do you have one or have you expressed an opinion?

A I do have an opinion, yes sir.

Q What is that opinion?

A His judicial temperament, in my opinion, is not good.

MR. DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Judge, you have mentioned the fact that you have based your opinion of "not good" on the lawyers who have been in your presence and talking with you?

A That is correct, yes sir.

Q Can you tell us, sir, please, approximately how

many lawyers you would say you have heard discuss the matter?

A Approximately twenty-five. May I add, sir, that those lawyers came from Pasco County, from Clearwater, and from St. Petersburg; because I was on assignment in Clearwater for about nine or ten months of the year 1961.

Q Now, Judge, you have been going over to Pasco County and presiding there, helping to take care of the business over at Pasco County, have you not?

A That is true.

Q And that is where part of the conversation with lawyers, concerning Judge Kelly's reputation that you have spoken of, occurred?

A Yes sir.

Q And have you been going over there since the impeachment of Judge Kelly, to help take care of matters there in that area? Pasco County?

A Yes sir.

Q Judge, I believe that you are single, are you not?

A Did you say "single"?

Q Yes.

A I am a widower, yes.

Q You are a widower?

A Yes.

Q Have you offered to swap with Judge Kelly and take Pasco County and let Judge Kelly work in Pinellas County?

A I have, yes sir.

Q Now, Judge, I would like to ask you approximately how long the blind filing system for cases that are filed in Pinellas County has been in existence in your area?

MR. DANIEL: I am going to object to that question as not being in proper cross. I don't know in which direction Mr. Nichols is heading, and I have not made the objection; but I do request the right to make it later.

CHIEF JUSTICE DREW: You had better make it now, counsel.

MR. DANIEL: I will object, then. I don't want it to lead into a blind alley.

CHIEF JUSTICE DREW: I will sustain it as not being in cross.

MR. NICHOLS: Judge, we have had some testimony about this. We now have an official, a Judge of that Circuit, who can tell us the facts about it. I would hate to call this Judge all the way back to give just a few pieces of information.

CHIEF JUSTICE DREW: Let me inquire of counsel for the State: Counsel for the State, do you object to Mr. Nichols' making him his witness at this time, on that point?

MR. NICHOLS: These men are busy and they have trials, and ---

MR. DANIEL: Judge, if I can briefly confer with Mr. Nichols, I may be able to accommodate him. I have always been told never to let anybody lead a witness blindly, and I am fearful of his doing that. If he will tell me exactly what he wants to develop ---

MR. NICHOLS: That is the only question I want to put.

MR. DANIEL: You just want to ask him that one question?

MR. NICHOLS: That question at the moment, yes.

MR. DANIEL: Well, I will continue my objection.

CHIEF JUSTICE DREW: Do you object?

MR. DANIEL: Yes, on the ground that it is not in cross of anything asked on direct.

CHIEF JUSTICE DREW: Now, for the benefit of Judge Kelly, and the administration of his duties, do you object - - well, I don't want to put you on the spot. You object on the ground that it is not in cross?

MR. DANIEL: Not in cross.

CHIEF JUSTICE DREW: Do you object to Mr. Nichols' making this man his own witness at this stage of the proceedings?

MR. DANIEL: When he concludes his - - - after we have finished with this witness - - - that is to say, after he has finished with his cross and after we have finished with him on redirect - - - and after the Senators have presented their questions - - - at that time I will state whether or not I object to his making him his witness.

CHIEF JUSTICE DREW: Very well. You may proceed.

MR. NICHOLS: All right. I will move on to some other phase of it. That is still the only question that I have asked, that I want to ask the witness directly.

CHIEF JUSTICE DREW: Have you concluded?

MR. NICHOLS: No sir.

BY MR. NICHOLS:

Q Judge, do you find, from being associated around Judge Kelly, that he is industrious or diligent and hard working?

A I would say that he carried on his duties most sedulously.

Q Sir?

A He carried them on most diligently.

Q And is he a hard working Judge?

A A hard working Judge, yes.

Q Does he make himself available to the litigants and to the lawyers?

A Yes sir.

Q Is there any question of this man's integrity or honesty involved, from your observations?

A Not in my opinion.

Q Now, moving in to something that you said Judge Kelly, I believe, was discussing with you in Chambers, about the Luckie contempt proceeding; that was a casual conversation, wasn't it? You didn't have the file there, or any of those matters there before you, did you?

A I did not have any files before me, no sir.

Q You did not have the contents of a forty-two page affidavit or the verbiage that was used one way or the other?

A No sir.

Q Would you say, Judge, that the opinion that you expressed was a kind of horseback opinion?

MR. DANIEL: Objected to, Your Honor, as not being in proper cross.

BY MR. NICHOLS:

Q And off-the-cuff opinion? I think we lawyers understand that.

CHIEF JUSTICE DREW: I think the Senate would understand the word "horseback" opinion, probably better than I would. Judge, you understand what we mean by "horseback" opinion - - - was it that sort of thing?

THE WITNESS: Yes sir. It was, and it was buttressed, however, by the opinion of a former Circuit Judge who had made a study of that, and probably that influenced me to some extent in my expression.

BY MR. NICHOLS:

Q But, Judge, as far as you were concerned, you had not researched the law and you didn't have the petition present, or otherwise, did you?

A No, I was largely influenced, as I say, by the opinion of a former Circuit Judge, of our circuit.

Q You were not being asked to make a decision formally about it. All you did was discuss the matter casually?

A It was rather casual, yes.

Q Now, you were aware that, generally speaking, the bar - - - meaning the lawyers - - - opposed Judge Kelly's election, were you not?

MR. DANIEL: Objected to, as not being in cross of anything brought out on direct.

MR. NICHOLS: Yes, it is, because he expressed an opinion about the bar and an opinion about the criticism of Judge Kelly.

MR. DANIEL: Nothing with respect to the election. That was not discussed in the direct testimony of this witness.

CHIEF JUSTICE DREW: What was the question, gentlemen? I was reading a question from a Senator, and I did not understand.

MR. NICHOLS: May I rephrase the question?

MR. DANIEL: I would prefer that the Reporter read it, unless you want to withdraw it.

MR. NICHOLS: I will withdraw it, sir, and restate it, to speed this along.

BY MR. NICHOLS:

Q You, I think, in your direct testimony, referred to your opinion being based partially on what lawyers had told you about Judge Kelly. Is that correct?

A Yes sir.

Q All right, sir. Now, isn't it a fact that the lawyers of Pasco County, generally speaking, and the bar, generally speaking, opposed Judge Kelly in his election?

MR. DANIEL: Objected to on the ground that it is not in cross of anything brought out on direct of this witness.

CHIEF JUSTICE DREW: He said that it was based partly on his conversation with the attorneys. I think that opens the door to determine what else it was based on. I will overrule the objection.

THE WITNESS: Shall I answer the question, Judge?

CHIEF JUSTICE DREW: Yes sir.

THE WITNESS: I would say that the Bar of Pasco County and Pinellas County, the majority of the members of the bar, were in opposition to the election of Judge Kelly.

BY MR. NICHOLS:

Q So this feeling of the lawyers about Pasco County preceded him coming to the bench, didn't it?

A That I cannot answer, sir. I know that they were - - - as for Pasco County, I know they were in favor of Judge Dayton, almost preponderantly.

Q Judge Dayton had a fine reputation in the circuit, did he not?

A He did have, yes.

Q Among you lawyers and Judges?

A Yes sir.

Q Now, Judge, do Judges make mistakes in rulings?

A I think it is rather axiomatic. Actually, the question almost answers itself. We do, yes.

Q You do make mistakes?

A Yes. That is why we have our Appellate Courts.

Q Now, the mistakes of law of our Judges are appealable to the District Courts, aren't they?

A Yes sir.

Q And if the mistakes are of personalities of people, they are available to the people to correct at election time, aren't they?

A I think that is true.

Q That is our system, isn't it?

A Yes sir.

MR. NICHOLS: Thank you very much, Judge.

CHIEF JUSTICE DREW: I will ask these questions. It might suggest some questions to you on redirect. Senator Galloway asks - - - these are questions, Judge Collins, that are sent up to me to be asked on behalf of Senators - - - Senator Galloway requests that I ask you:

"Do you think integrity, honesty and hard work are all the qualifications that a Circuit Judge should possess?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: If not, explain other qualifications a Circuit Judge should possess?

THE WITNESS: Aside from being industrious or hard working, I think that judicial temperament is probably one of the most important items that should be an attribute or a characteristic of a Circuit Judge.

CHIEF JUSTICE DREW: Do you think Judge Kelly measures up to these qualifications?

THE WITNESS: As to judicial temperament?

CHIEF JUSTICE DREW: Yes.

THE WITNESS: I would say that Judge Kelly, with that driving force of his, which is a dynamic force, but yet withal has been lacking in the tactfulness and diplomacy and finesse which would make for a good Circuit Judge. It may come later but it was not present, I mean, when he went on the bench.

CHIEF JUSTICE DREW: Would you like to explain to the Court, Judge, what you mean by "judicial temperament"? Answer that, if you wish to explain it.

THE WITNESS: Well, I think the matter of your judicial temperament is your ability to work in harmonious relationship with the attorneys who appear before you, to be able to treat them with courtesy and consideration, taking care of the young lawyer, who doesn't know his

way about; your ability to be able to listen to the counsel and advice of others, not arrogating or imputing it to yourself, infallibility; I think the ability to treat jurors who appear before you witnesses who appear before you as human beings, with dignity and courtesy, and treat them as your equals. It's almost impossible to be able to completely fence in or hem in all of these things that would be embraced within judicial temperament. I have merely used this as illustrative matter.

CHIEF JUSTICE DREW: Senator Barron requests the answer to this question: "Judge, in your opinion, is it necessary for a judge to be liked by the members of the Bar in order to be an able judge and to conduct his court in an efficient manner?"

THE WITNESS: Not necessarily, but I believe that, however, he reaches his maximum degree of efficiency or ability if he is liked by the members of the Bar. It makes for a rapport between him and the members of the Bar; the working arrangement, it certainly would develop the best within that judge.

CHIEF JUSTICE DREW: A question from Senator Campbell, of the 39th: "Have you had Mr. Charles Luckie Jr. represent parties to a litigation before you?"

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Have you ever held or threatened to hold Mr. Luckie in contempt in your court?

THE WITNESS: No sir.

CHIEF JUSTICE DREW: How many other attorneys or persons have you ever held in contempt, if you know, Judge?

THE WITNESS: One.

CHIEF JUSTICE DREW: Do you want to - - - never mind, I will not ask you that. Was it an attorney?

THE WITNESS: Yes sir.

CHIEF JUSTICE DREW: Senator Stratton asks this question: "Would not the same temperament apply to attorneys, such as respect, conduct and matters of that nature?"

THE WITNESS: I think it's a two-way street, yes sir.

CHIEF JUSTICE DREW: Senator Askew, of the 2nd, asks this question: "What are the requirements set up by the people of Florida, through their Legislature, for a person to qualify for the office of Circuit Judge? What are the Constitutional requirements"; I assume Senator Askew means age, and so forth.

THE WITNESS: I'm not conscious of any age limitation upon it at all; if you're 21 years of age or over. Of course, you must have, first of all, have been a citizen of the State of Florida, duly qualified to vote, or be an elector, and to get the majority of your votes; that's about the biggest thing that I know of, sir.

CHIEF JUSTICE DREW: For the sake of the Court, and to answer the question, get it into the record, Section 13 of Article 5 of the Constitution provides:

"No person shall be eligible for the office of Judge of the Circuit Court or a Criminal Court of Record who is not twenty-five years of age and a member of the Florida Bar." Those are the requirements, aren't they, Judge?

THE WITNESS: I must plead my ignorance in not being cognizant, or having overlooked that element.

CHIEF JUSTICE DREW: Well, I didn't know myself, without reading it.

SENATOR PRICE: Mr. Chief Justice, I'd like to waive my question, please.

CHIEF JUSTICE DREW: Senator Cleveland waives his question.

SENATOR PRICE: Price.

THE WITNESS: I might add - - -

CHIEF JUSTICE DREW: Senator Price, I beg your pardon. I apologize to both of you.

Senator Parrish, of the 37th: "Are violations of the Canons of Ethics for judges a disqualification for Circuit Judges?" If you care to express an opinion, Judge.

THE WITNESS: I don't know, sir, whether a complete violation of all of them, I mean, would constitute grounds for impeachment. I really don't know, sir.

MR. NICHOLS: May I ask the Judge a few additional questions?

CHIEF JUSTICE DREW: It would be - - - under our rule, it would be your opportunity.

MR. DANIEL: Well, I was waiting until the Senators' questions had been completed.

CHIEF JUSTICE DREW: Senator Campbell, of the 39th: "is there any way to enforce the ethics governing judges except in impeachment proceedings?"

THE WITNESS: No sir.

MR. NICHOLS: Now, Judge - - -

MR. DANIEL: I believe the Chief Justice ruled that it would be - - -

MR. NICHOLS: Well, let me complete mine. I haven't completed mine, and I have a few additional questions.

CHIEF JUSTICE DREW: Do you agree that he may continue cross examination, or would you prefer - - -

MR. NICHOLS: You're going to have the last rebuttal.

MR. DANIEL: Go ahead.

MR. NICHOLS: All right, sir.

BY MR. NICHOLS:

Q Now, let me get it established, Judge, how long you've been on the Bench?

A It was the early part of January, around the 4th or 5th of January of '61.

Q Would you talk just a little louder into the microphone; I'm having a hard time hearing you.

A Yes sir.

Q Now, you've been on the Bench, sir, how long?

A Early January of 1961.

Q Since 1961?

A Yes, the first Tuesday after the first Monday, to be exact, yes.

Q All right, sir. Now, have you ever been before Judge Kelly as a Judge, had any legal matters before him?

A No, because Judge Kelly and I were elected at the same time, and we went on the Bench at the same time.

Q Then you have never had the privilege of being before him to observe how he handles the matters, legally, or his temperament in his Court Room, have you?

A I have not.

Q So you're expressing an opinion about his judicial temperament without ever having seen any judicial acts of his?

A It's been principally hearsay with me, upon which I have arrived at that conclusion.

Q Well, do courts travel very much on hearsay and gossip?

A That's dependent on what court you are in, sir.

Q All right, sir. Now, Judge, a question was asked you, and I think the statute read, concerning the qualifications of judges to be elected. Is there anything in that statute that says anything about the personality that you've got to have to be a judge?

A No sir.

Q Is there anything in that statute that says anything about your temperament that you have to have to be a judge?

A No sir.

Q And isn't it in truth, a fact that those things are left to the public to decide, as to the type of personality that they want to be their judge?

MR. DANIEL: Object to that as being argumentative, Your Honor.

CHIEF JUSTICE DREW: I think it's pure argument. I think the Senate knows as much about that, Mr. Nichols, as you could possibly get a group of men to know.

BY MR. NICHOLS:

Q Now, you mentioned about a rule of ethics, in answer - - - that a rule of ethics, that a violation of some rule of ethics; what was the question, or the answer you gave about being - - - impeachment being the only proceeding to eliminate the judge?

A I said there was only one of which I had knowledge.

Q The elimination could take place at the polls, couldn't it?

MR. DANIEL: Objected to as argument.

CHIEF JUSTICE DREW: I sustain the objection. Mr. Nichols, again, I'm sure that these forty-four men know all about elections and the results of them. I don't think we need any testimony along that line.

BY MR. NICHOLS:

Q I want to go back to the question of ethics; I just want to be sure that I don't leave the wrong impression. Do you feel that any violation of the Canons of Ethics, either by a lawyer or by a judge, makes it an impeachable offense?

A I think that is why this group is here, to determine that very point.

Q You've been a life-long friend, have you not, of the Dayton family?

MR. DANIEL: Objected to as not in cross of anything brought out on direct.

MR. NICHOLS: It was brought out about the Dayton family.

MR. DANIEL: There's nothing in that - - - nothing about that in the direct testimony of this witness, Mr. Chief Justice.

MR. NICHOLS: Well, Your Honor, I can go into the prejudice or lack of prejudice or friendship with others, to show the matter of interest or lack of interest, or bias or lack of bias.

MR. DANIEL: Well, I'll withdraw the question, if you want to pursue that - - - withdraw the objection.

CHIEF JUSTICE DREW: That relieves the Chair of the necessity of ruling on it. You may proceed.

THE WITNESS: I first met O. L. Dayton, Sr. in 1924, in Clearwater. He was connected with a murder trial at that time. It was not long thereafter before I met the other members of his family. Of course, I've known them ever since that time.

BY MR. NICHOLS:

Q And you all have been friends, as well as known each other over a long period of time, haven't you?

A Well, I know that I'm a friend of theirs, and I hope that they are friends of mine.

MR. NICHOLS: That's what I mean. Thank you very much, Judge.

MR. DANIEL: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Just a minute. I have another question.

Senator Blank asks this question: "Was Judge Kelly, in your opinion, overreaching in seeking assignment of cases to himself which had been pending before other judges of the Circuit?"

THE WITNESS: I would say, not overreaching, sir. In connection with that answer, I would like to say that in the assignment of cases to the four circuit judges in St. Petersburg, of whom I was one, that Judge Kelly approached me and asked if I would permit him to take over one of the weeks that had been assigned to me. It was my information that he also approached my three brother judges down there and asked them if he might take over one of each of their weeks. I acquiesced at his request. I wouldn't say it was overreaching; I was approached in a courteous manner.

CHIEF JUSTICE DREW: If your answer was "yes," do you know why he sought such assignments to himself?

THE WITNESS: That I do not know, sir.

CHIEF JUSTICE DREW: Did he ever explain to you why he did seek such assignments?

THE WITNESS: No sir.

MR. NICHOLS: May I have - - - may I ask one additional question as a result of that, sir?

CHIEF JUSTICE DREW: Is that agreeable to the State?

MR. DANIEL: Yes sir, I don't care to restrict Mr. Nichols. Let him go on.

BY MR. NICHOLS:

Q Judge, did he explain to you that he had been elected as a circuit judge in the Sixth Circuit, which includes Pinellas County in those discussions?

A No sir, not in those discussions. I have heard him make that statement at other discussions.

Q Well, he's entitled to be a judge in that area, is he not?

A Well, I believe that the law answers that, Mr. Nichols.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Any redirect?

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Judge Collins, was any of the opinions expressed by you, or any of the answers given by you based on your friendship with the Dayton family?

A No sir.

Q Do the Circuit Judges in the Sixth Judicial Circuit hold Circuit Judge meetings, or within the Circuit from time to time?

A Do the Circuit Judges hold meetings?

Q Yes sir, a Circuit Judge meeting.

A Yes sir, they do. We do have.

Q Have you attended these meeting at the same time that Judge Kelly was also attending such meetings?

A Yes sir.

Q And you have observed him to be there?

A I have, yes sir.

Q You mentioned a former circuit judge as having given his opinion with respect to the contempt proceedings against Mr. Luckie and others. Who was that former circuit judge?

A Judge ---

MR. NICHOLS: I object to that unless the Judge knows himself.

MR. DANIEL: He opened the door on cross examination, Your Honor.

CHIEF JUSTICE DREW: The question, as it's presently framed, as presently framed, is who the judge was. I'll permit him to answer that question.

THE WITNESS: Judge Victor O. Wehle.

BY MR. DANIEL:

Q Now, also on cross examination, Mr. Nichols referred to your conversation with Judge Kelly with respect to the Luckie matter as being casual, and you agreed. Even if casual, was it at the suggestion of Judge Kelly?

A It was at his request, yes.

Q And even casual, was your answer any less sincerely given than if it had been a formal meeting?

A No.

MR. DANIEL: That's all, Judge.

MR. NICHOLS: Now, Your Honor, I would like to make this witness my witness for the purpose of asking one question about that assignment matter.

MR. DANIEL: If there are no further Senate questions, we will not object.

CHIEF JUSTICE DREW: Let me ask one other question from Senator Gibson: "Have you ever sought assignments of any of the other judges' cases?"

THE WITNESS: I have not.

CHIEF JUSTICE DREW: "Do you know of any judge who has ever sought the cases with other judges?"

THE WITNESS: Not to my knowledge, sir.

MR. NICHOLS: Judge ---

CHIEF JUSTICE DREW: Another question: "Do you think it is proper for a judge to seek cases before other judges?"

THE WITNESS: I wouldn't do it, sir.

MR. DANIEL: Your Honor, if Mr. Nichols, at this time, is going to make this witness his witness, I want the record to clearly show that he is his witness, and

not --- in such testimony as may be adduced now from the witness, the witness is not a witness of the Board of Managers.

MR. NICHOLS: All right, sir, fine. You'll have your time --- when that time comes ---

MR. DANIEL: I appreciate that, but I just don't want to be bound by what the judge says as your witness, one way or the other.

MR. NICHOLS: All right. Judge Collins ---

CHIEF JUSTICE DREW: Just a minute. Let's get the record straight. Judge Collins is now testifying, by consent of counsel, out of order as a witness for the Respondent.

You may proceed.

Thereupon,

JUDGE THOMAS J. COLLINS,

produced and sworn as a material witness on behalf of the Respondent, testified as follows:

DIRECT EXAMINATION

BY MR. NICHOLS:

Q Please tell us, sir, approximately how long the blind filing system has been in effect in Pinellas County?

A I can't answer that with accuracy. I know that it's been for a substantial period of time, before my elevation to the Bench.

Q And that was before the elevation of Judge Kelly to the Bench, too, wasn't it?

A That was simultaneous with my elevation to the Bench.

MR. DANIEL: I believe I have not had the opportunity to object to leading questions, since this is on the direct examination of the Respondent's witness.

CHIEF JUSTICE DREW: You certainly have that right.

MR. DANIEL: And I do object.

CHIEF JUSTICE DREW: The question was leading.

BY MR. NICHOLS:

Q Can you tell us approximately how long before Judge Kelly ever assumed the Bench --- give us some idea, Judge, or your best recollection of about how long the blind filing system has been over there?

A I don't know whether it's been one year or two years or three; that's as definitely as I can answer you.

Q All right, sir, but it was some several years before you and Judge Kelly took the Bench?

A Yes.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: One more question, by Senator Askew, from Senator Askew: "Did Judge Kelly seek assignments of specific cases by name, or ask to have a week of trial of cases which included several cases?"

THE WITNESS: Well, speaking as for myself, he merely asked if he might take over a certain week. It did not mean any one particular case, but whatever cases were scheduled for trial within that week.

CHIEF JUSTICE DREW: And did he not ask to handle weeks for other Circuit Judges?

THE WITNESS: So I am told.

MR. DANIEL: We have no questions on cross examination and, if agreeable to counsel for Respondent, we'll discharge this witness from his subpoena.

MR. NICHOLS: Yes sir, I'm glad - - - that's perfectly all right with us, but I do want to ask one other question as a result of the last question about weeks of cases.

CHIEF JUSTICE DREW: All right.

BY MR. NICHOLS:

Q Judge Kelly had nothing to do with the cases that were being assigned on those respective weeks, did he?

A Well, as a matter of fact, at that particular term of court, when that particular term of court was sounded, I, personally, sounded the calendar.

Q You sounded it; you didn't know whose case was coming up, one way or the other, did you?

A Well, that I do not know, sir.

Q I'm just talking about relieving judges for a trial, a week of trial, is that correct?

A He made a request that he might relieve me for that one week, but he knew, I mean, what cases - - - if he read the calendar, what cases were scheduled for trial for that particular week.

Q Well, just to clarify that answer, the answer to that question, he could check the docket and determine what cases were up, couldn't he?

A That is correct, yes.

CHIEF JUSTICE DREW: Judge Collins, you are excused, with the thanks of the Court, and you may return to your duties in St. Petersburg.

THE WITNESS: Thank you, sir.

(Witness excused)

CHIEF JUSTICE DREW: Court is recessed until 2:30.

Whereupon, at 1:00 o'clock P.M., the trial was recessed until 2:30 o'clock P.M., of the same day.

AFTERNOON SESSION

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

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

CHIEF JUSTICE DREW: You may call your next witness.

MR. DANIEL: The Managers will call Mr. William Allison.

Thereupon,

WILLIAM ALLISON,

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

DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you please state your name, residence and occupation or profession?

A William Allison.

Q I live in St. Petersburg, 4907 Fourteenth Avenue North. I am an attorney.

Q Will you please get closer to the microphone? Do you practice law in St. Petersburg?

A Yes sir.

Q How long have you practiced?

A Oh, about eleven years.

Q Where did you obtain your law degree?

A Stetson University.

Q In what courts are you admitted to practice?

A All the State Courts and the Federal District Court.

Q What is the general nature of your practice?

A General practice. Everything except criminal practice.

Q Generally, what type of cases do you conduct and try, predominantly, in your practice?

A Negligence cases, contested civil matters. Divorce cases.

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

A Yes sir, I am a member of the Grievance Committee of the Sixth Judicial Circuit.

Q Is that an official committee of the Florida Bar?

A Yes sir.

Q As such, it would be incumbent upon you to familiarize yourself with such Canons of Ethics?

A Yes sir.

Q Do you know Judge Richard Kelly?

A Yes sir.

Q How long have you known him?

A I have known him since he was an Assistant District Attorney for the Federal Court. About - - - I think about five years; six years, maybe.

Q Have you had occasion to appear - - -

A Yes.

Q - - - before Judge Kelly, as an advocate?

A Yes.

Q What was the occasion of your appearance before Judge Kelly, Mr. Allison? And if there were more than one, so testify.

A I have appeared before Judge Kelly more than once. I have appeared before Judge Kelly on a divorce case; two negligence cases; a condemnation - - -

Q Let me call your attention to a Pre-trial Conference set before Judge Kelly. Do you recall that?

A Yes sir.

Q Relate the incidents of that, please.

A I was scheduled to appear before Judge Kelly on Saturday morning at twelve o'clock, noon. On this occasion, Bob Williams and I were pre-trialing a negligence case for trial, I believe the next week or two weeks later. That is the occasion when Mr. Williams - - -

Q Is that the same Bob Williams who has been here in Tallahassee and has heretofore testified in this cause?

A Yes sir, I think he testified about last Wednesday or Thursday.

Q He is a law partner of Richard T. Earle?

A Yes sir.

Q All right. Did anything unusual occur at this pre-trial conference or immediately following it?

A There was nothing unusual in the manner in which the pre-trial conference was handled. Immediately after we had concluded pre-trialing the case, Mr. Williams and I started to close up to leave and Judge Kelly asked us to remain, and asked us what our opinion was of the matters regarding the attempt to either move Pasco County out of the Sixth Judicial Circuit, or the impending impeachment proceeding before the House. It was just at that particular time.

Q Did you or Mr. Williams reply to that inquiry?

A Mr. Williams and I - - - Mr. Williams answered and told Judge Kelly that he tried not to think about it (period); and I gave some other evasive answer. I don't remember.

Q An evasive answer, you said?

A Yes sir.

Q Did Judge Kelly pursue the matter?

A Yes sir. He told us that he didn't think it was right, and also told us that these lawyers would have to be punished.

Q Did you get an understanding of who was to be the punisher?

A It was my understanding - - - he never actually made the statement who would be the punisher - - - I felt that he meant - - -

MR. MASTERSON: Objected to, Your Honor. We are not interested in what Mr. Allison felt. It is an assumption and conclusion on his part.

BY MR. DANIEL:

Q Did he indicate specifically anyone that he thought should punish the lawyers?

A No sir, he did not.

Q Now, did you also have another matter before Judge Kelly with respect to a pre-trial that had been assigned from Judge Hobson to Judge Kelly?

A Yes sir, I did. I had a case in which a pre-trial had been set in the middle of the week, and I was trying a condemnation proceeding in Titusville and could not get back; and we called and cancelled the case - - - the pre-trial - - - explaining to the Judge that I was over on the East Coast in the middle of a trial. And the Judge then transferred the pre-trial to Saturday morning at nine o'clock. When I arrived back in town on Thursday morning and consulted with my client and with the attorney for the Plaintiff, we reached a settlement in the matter.

Q Prior to the time the pre-trial was scheduled?

A Yes sir. This would be on Thursday. So Thursday, after we reached the settlement, we then drew up a joint motion to dismiss, with a stipulation between the attorney for the Plaintiff and myself; and took the motion over with an order to Judge Hobson, whom the case had originally been assigned to.

Q Why did you take it to Judge Hobson?

A The case was originally assigned to Judge Hobson. In this particular sounding of the docket, our docket was extremely overcrowded, and the Circuit Judges adopted the policy of assigning a set number of cases to each Judge for trial, and they just started at the top

of the docket and the first ten cases they assigned to one of the Judges and went down that way. Therefore, all the Judges were trying cases which had not been originally assigned to them.

Q Was Judge Kelly available on that Thursday when you arrived at the settlement?

A I do not know whether he was available. We drew the motion and the order and took it over to Judge Hobson on Friday, and Judge Kelly was not in St. Petersburg or Pinellas County on Friday; he was up in Dade City, I assume. I don't know where he was. We presented it to Judge Hobson. He entered the order. We then took the order out to Mrs. Songard, who was at that time serving as secretary for both Judge Hobson and Judge Kelly, and I believe Judge Collins too, at that time. I am not sure about Judge Collins. Anyway, she was the secretary in charge of Judge Kelly's calendar. We then had it removed from Judge Kelly's calendar for Saturday morning, and I do know that Mrs. Songard called Dade City to attempt to have it removed from his copy of his calendar in Dade City. However, I do not believe she got hold of anybody in Dade City.

Q You advised Judge Kelly's secretary, in Judge Kelly's Pinellas County office, that the matter had been settled?

A Yes sir, she was his secretary.

Q Did anything further transpire with reference to that case?

A Yes sir, Saturday morning, about 9:15, I was, in fact, still in bed, and the phone rang, and I answered the phone, and a voice on the other end said, "Mr. Allison?" I said, "Yes sir," or "This is he," and he said, "This is Judge Kelly, and if you are not in my court within fifteen minutes you will be in contempt." Well, naturally - - -

Q That's the way the conversation on the phone went?

A Yes sir.

Q You've related the conversation?

A Yes. I was a little taken aback, and I asked why, and so on, and he said, "You are scheduled for a pre-trial in front of me and you have not shown up." I then went on to explain to Judge Kelly exactly what had happened, and that an order dismissing this case had been entered. He informed me that that could not be done. I explained to him again that it had been done and that, as far as I was concerned, the courts had no more jurisdiction over this case, the case was settled, finished and closed, as was the docket, as far as I was concerned.

Q Did Judge Kelly give any comments as to that?

A He discussed about the fact that I had not shown up, and said that he had come down here to have these pre-trials, and so forth, and - - - but not anything in particular. I explained to him that I wasn't coming down because I did not feel there was any need, or there was nothing that could be accomplished.

Q Did you advise him that you had advised his office and his secretary why?

A Yes sir. I told him it was not on the St. Petersburg calendar, because I had watched the secretary scratch it off myself.

Q Mr. Allison, based upon your experience as an attorney for, I believe you said, eleven years - - -

A Something like that.

Q Well, let me ask this question: Have you appeared before other judges of the Sixth Judicial Circuit?

A I have practiced before every judge in the Sixth Judicial Circuit with the exception of Judge Bird, because I do no criminal practice, and Judge Phillips, who has offices in Clearwater.

Q Now, based upon this practice, and your knowledge of the legal profession, do you know Judge Kelly's reputation among the Bar and the community, in respect to the manner in which he conducts his hearings and handles his court?

A I believe I do.

Q What is that reputation?

A It's a reputation that you cannot have any idea of how he is going to react. He's liable to go off the deep end on some subject, blow up, or carry on a hearing for extended periods of time. Basically, I do not think that the members of the Bar feel that he is properly conducting his court.

Q Well, what would that reputation be, good or bad?

A It would be a bad reputation.

Q Now, other than what you just said in answer to the question, what else do you base that on?

A Well, on not only my - - - not as much my own experience, because I have only appeared in front of him, maybe, three or four times, the three or four times that I mentioned, but what the other attorneys have point blankly told me, and the stories that they tell regarding his reactions.

Q What about the members of the public or the community, other than lawyers?

A I have not discussed the judge or his conduct with any of the public.

Q Have any of the public discussed it with you?

A I have had some people discuss it with me, yes sir, and they can't understand how a circuit judge could do some of the things that they have heard.

Q Could you give an educated estimate or guess on how many members of the public have discussed this with you or in your presence?

A Two or three.

Q So that your knowledge of that reputation is based primarily upon conversations had with you, or in your presence, by members of the Bar?

A Practically exclusively.

MR. DANIEL: You may inquire.

MR. MASTERSON: Mr. Allison - -

CHIEF JUSTICE DREW: May I ask a question? I think we'll, perhaps, save time.

MR. MASTERSON: Yes sir.

CHIEF JUSTICE DREW: Mr. Allison, this question comes to you, sir, from Senator Herrell: "What type of punishment did the witness refer to?"

THE WITNESS: He just used the word "punishment"; said, "These men have to be punished." He did not say what form, manner, anything else, sir.

CHIEF JUSTICE DREW: Who could invoke punishment or penalty except the judge in the case?

THE WITNESS: As far as I know, no one. The Griev-

ance Committee, if a man had committed something that would come under the Code of Ethics, could invoke a punishment through the Supreme Court, but only the judge, excluding that.

CHIEF JUSTICE DREW: All right, sir.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Allison, you mentioned that you had been before the judge three or four times, I believe?

A That's right.

Q Now, have you ever had any unpleasant experience before the judge other than this misunderstanding about the pre-trial conference that you mentioned?

A Basically, nothing, Mr. Masterson.

Q Actually, you and the judge have gotten along reasonably well, have you? You have had lunch together?

A Yes sir. I have nothing personal against the judge. In fact, I've had lunch with him; I've discussed things with him; he's asked my opinion on things at times, and so on. It's not a personal feeling against him at all, sir.

Q And in your cases which you have had before him, they were handled properly, as far as you are concerned?

A Yes sir - - -

Q Your cases?

A Yes sir, my own cases, yes sir.

Q And these members of the public that have formed a low opinion of Judge Kelly, have any of them been before him, or are they judging him on what they read in the newspapers and hear from other people?

A I'm sorry, I don't know, because, as I say, I've only talked to two or three people, and I don't know whether they've actually been in court, or if somebody has told them what happened, or what. I'm sorry, I don't know.

Q Did any of them mention to you that they were afraid of appearing in front of a judge who has altered public records, for example?

A None of the public have. Attorneys have said that they were afraid to go in front of him, but no - - - none of the public, as such.

Q Has there been a lot of publicity at home about the altering of records and doing various unpleasant things that the judge is charged with?

MR. DANIEL: Objected to, Your Honor, as not being in cross of anything brought out on direct.

MR. MASTERSON: Well, his reputation - - -

CHIEF JUSTICE DREW: What do you mean by any publicity?

MR. MASTERSON: I mean this judge has been in the papers, Your Honor, charged with these articles of impeachment and other things, has he not?

CHIEF JUSTICE DREW: We have refused to allow paper comments, and so forth, so far, and I believe it would be better to continue that policy.

MR. MASTERSON: Judge, may I be heard briefly on the point?

CHIEF JUSTICE DREW: Yes.

MR. MASTERSON: My point is this, we did, on our

objection, oppose the introduction of the newspaper articles into evidence, and I'm trying to determine if Mr. Allison does not feel that the constant publicity which Judge Kelly has received in the papers, some of it true and some of it untrue, is not a factor in this reputation within the public eye. Do they have any way of knowing his reputation.

MR. DANIEL: Of course, Mr. Masterson has almost made my argument for me when he states that they themselves have objected to the newspaper publicity; for that reason, I don't think I'd like to have the objection sustained. He can now bring it in.

MR. MASTERSON: Your Honor, I don't want the papers in, and object to their introduction into evidence, but I do think it's proper to go into the public reputation of the man with this witness.

CHIEF JUSTICE DREW: I think, in a most general way from that source.

BY MR. MASTERSON:

Q All right, Mr. Allison, if you know, do these people that you have talked to form their opinion about Judge Kelly in part, at least, upon the articles that appeared in the newspapers?

CHIEF JUSTICE DREW: That is, if you know, Mr. Witness.

THE WITNESS: I can't answer that question, Mr. Masterson. I can tell you approximately when these people talked to me, but I can't tell you how they formed their opinions.

BY MR. MASTERSON:

Q All right, sir. When did they talk to you?

A They talked to me - - - well, I've heard it since the hubbub arose, and I believe the first step was the attempting to move the court of the circuit. Now, it was between that and the time this hearing started. I have not talked to any of the public about this since the hearing before this court started, before this supreme - - - before the Senate started.

Q Have you yourself seen anything in the papers about the changing of public records?

MR. DANIEL: Objected to, Your Honor. Now he's getting into specific - - -

MR. MASTERSON: I will withdraw the question, Your Honor. I withdraw the question.

BY MR. MASTERSON:

Q Now, Mr. Allison, you said that on this particular Saturday morning that the Judge called you at 9:30 a.m. and talked to you about your failure, in his eyes, to appear. He obviously was under the impression that the pre-trial conference had not been cancelled, isn't that true?

MR. DANIEL: Objected to, Your Honor. We don't think this witness could possibly know what the impression of Judge Kelly was.

MR. MASTERSON: Will you rule on that, Your Honor?

CHIEF JUSTICE DREW: Will you read the question?

(Last question read)

CHIEF JUSTICE DREW: Overruled.

BY MR. MASTERSON:

Q Will you answer the question, sir?

A Obviously, he thought that I was supposed to be

in front of him. He didn't ask me anything, he just told me.

Q And he told you that he had driven over from Dade City, a distance of some seventy miles, to accommodate you, didn't he?

MR. DANIEL: Mr. Chief Justice, we object - - -

CHIEF JUSTICE DREW: You're testifying about seventy miles, and so on. I think that we can save time and lots of objections if you could possibly make your questions a little more direct.

MR. MASTERSON: Yes sir. I was just trying to speed things up, and I'm on cross.

BY MR. MASTERSON:

Q Well, he had driven over from Dade City, had he not, Mr. Allison?

A Yes sir.

Q And he was miffed when he came over and no lawyers were there to attend this hearing?

MR. DANIEL: Objected to, Your Honor as asking a leading question, in that it assumes a fact not in evidence.

CHIEF JUSTICE DREW: He can ask all the leading questions he wants to.

MR. DANIEL: The leading part I'm talking about, if the Court please, is not leading in the sense that it's allowed on cross, but leading in the sense that it assumes a fact that is not in evidence.

There are two types of leading questions, and I apologize - - -

CHIEF JUSTICE DREW: I thought the fact was he never - - - I thought it had been discussed in the previous testimony, and I'll overrule the objection.

BY MR. MASTERSON:

Q Would you answer.

CHIEF JUSTICE DREW: Do you remember the question?

THE WITNESS: No sir. I'm sorry, I - - -

BY MR. MASTERSON:

Q I said, obviously, he was miffed that he was here at this hearing, and none of the lawyers that he thought were going to be there were in attendance?

A Yes sir.

Q And after he called you and discussed the matter with you, no penalty was imposed upon you, was it?

A No sir.

Q And your relations with Judge Kelly after that continued to be cordial and friendly, were they not?

A Yes sir.

MR. MASTERSON: I have no further questions.

MR. DANIEL: We'll excuse Mr. Masterson - - - I mean Mr. Allison.

CHIEF JUSTICE DREW: May I admonish this witness not - - - that you are under the rule, all witnesses are under the rule. I am sure you understand that.

Call the witness back a minute, would you?

SECRETARY FRASER: Yes sir.

THE WITNESS: Yes sir, Your Honor.

CHIEF JUSTICE DREW: Would you be seated just a second. A senator would like to ask you a question, Senator Stratton would like to know: "If you have nothing personal against Judge Kelly, and he has handled your cases well, why are you testifying in this case?"

THE WITNESS: To answer your question, Senator, I'm testifying, first of all, because I was subpoenaed to be here; second of all, that I do not believe that it is a judge's duty, or that it is proper for a judge to use the threat of contempt for any member of the Bar or anybody else, as a weapon when, in fact, he doesn't even know what he is talking about on the facts. If he had asked me why I wasn't there, and said, "Mr. Allison, weren't you scheduled to be here?" or some other such statement preliminary to telling me I would be in contempt, then I would say maybe he was right about properly - - - if I wasn't there and should have been, but at that time I had no reason to think I should be before the court, I still don't think I should have. I think that we took all the proper procedures to get off of his calendar, and he did not come there to St. Petersburg on Saturday on my request. I was the Defendant, and Defendants are very rarely eager to try a case. They are willing to sit and let them run.

CHIEF JUSTICE DREW: Senator, do you desire me to ask the second part of the question?

No? That is all. Thank you very much.

(Witness excused)

MR. DANIEL: Will the Secretary call Mr. Davies.

CHIEF JUSTICE DREW: I have the following inquiry from Senator Herrell. He asks the Presiding Officer: "Will you explain to the Court, for the benefit of laymen, how far a Circuit Judge can go by way of invoking a penalty for contempt against a lawyer practicing in his Court?"

With Senator Herrell's permission, I would like to hold that question until I can give you something definite on it at a later time when my present plans are to try to answer questions of the Senators and try to clear up a number of questions of law which you might be interested in. With the Senator's consent.

SENATOR HERRELL: Yes sir.

MR. NICHOLS: Mr. Chief Justice, may I respectfully request that the court explain what a "pre-trial conference" is?

CHIEF JUSTICE DREW: Yes. Is there any objection?

MR. DANIEL: No sir.

CHIEF JUSTICE DREW: Gentlemen, a pre-trial conference is something that all of the attorneys here will know. It is a device used by the Court, after the case is at issue and ready for trial, in which they call the respective counsel in to the Court Room or into their Chambers in order to see how many informal matters - - - such as the authenticity of exhibits, stipulations as to where things took place - - - exactly how much of the trial can be disposed of, how many questions which would arise at the trial can be disposed of prior to the actual trial; in order to save time of the Judge and the Jury in the trial of the issues, and to present the issues more clearly. It is a device that has been used for many years in Florida - - - not in all circuits, I understand, but in most circuits. That is the purpose of a pre-trial conference. And all matters at a pre-trial conference must be agreed upon by stipulation of counsel. It is a method of saving the time that is consumed in identifying the records - - - accepting affidavits and many things

of that kind, that are time-consuming in a trial. They are usually disposed of in a pre-trial conference in which the trial judge enters an order saying that they "appeared before me and have stipulated to the following matters and have agreed upon the following exhibits which shall be introduced without objection," and matters of that kind.

I hope I have explained it satisfactorily. Thereupon,

JOSEPH J. DAVIES,

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

DIRECT EXAMINATION

BY MR. DANIEL:

Q Will you state your name, residence, and occupation or profession, please?

A Joseph J. Davies. My residence is St. Petersburg, Florida. My occupation is attorney at law.

Q Would you come a little closer to the microphone, and restate your name?

A Joseph J. Davies, St. Petersburg, Florida; attorney at law.

CHIEF JUSTICE DREW: I would like to just make one suggestion. To speak into the microphone. And you are under the Rule after you finish. You understand what the Rule is?

THE WITNESS: Yes sir.

MR. DANIEL: That microphone will come out of the bracket, so you can take it in your hand if you want to. It will come out of the bracket.

THE WITNESS: All right, sir.

BY MR. DANIEL:

Q Now, would you answer again? I believe some of them didn't hear you.

A Joseph J. Davies. I am an attorney at law, a resident of St. Petersburg, Florida.

Q How long have you practiced in St. Petersburg?

A Since April of 1950.

Q Where did you obtain your law degree?

A At Stetson University.

Q In what courts are you admitted to practice?

A All Courts of Florida and the Federal District Court for the Southern District of Florida.

Q What does your practice consist of primarily?

A Chancery matters and some real estate and probate.

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

A Yes sir, I am.

Q Do you know Judge Richard Kelly?

A Yes sir, I do.

Q How long have you known him?

A Since shortly after his election. In 1961, I believe it was.

Q Have you ever appeared before Judge Kelly as an advocate in any causes?

A Yes sir, I have.

Q I call your attention to a matter styled Marcelli vs. Marcelli, and ask you if you recall that matter?

A Yes sir, I do.

Q Did you represent either of the parties?

A I represented the Plaintiff's wife, Mrs. Marcelli.

Q She was the Plaintiff, you say?

A Yes sir.

Q Was this matter heard by Judge Kelly?

A Yes sir, it was.

Q What was the nature of the hearing?

A I had filed a suit for divorce and other relief and had requested an accounting for certain monies that had been withdrawn from a joint bank account.

Q These were hearings on motions then?

A Yes sir, we had one hearing on a restraining order, the order used to freeze bank accounts, but the - - -

Q Would you briefly relate all of the motions and what transpired at these hearings?

A Well, I had filed a Complaint for divorce. And the Court then entered the restraining order, freezing all bank accounts that the husband had in the bank in Sarasota County, Florida; and we had a hearing on that restraining order. And, by stipulation of opposing counsel, we disposed of the questions involved in that. Thereafter, the Defendant's attorney filed a motion to dismiss to my complaint, and attached to it a certified copy of a divorce decree - - - I am not sure that it was certified but it was a copy of a divorce decree that the husband had obtained from the wife in Lee County, Florida.

Q All right, what transpired with respect to this motion?

A When we went over to argue the motion to dismiss, opposing counsel, of course, had his argument first, and he presented to the Court a certified copy of the final decree rendered in Lee County. And Judge Kelly looked at me and said, "I guess we will have to dismiss the case." And I asked him for permission to argue my side of it, and he granted me that permission, and I read the rule to him which, in so many words, said that they would have to present this type of a defense through an affirmative pleading in the nature of an Answer.

Q As I understand it, the defense, being presented in the form of a motion, was that the final decree of divorce had been previously entered in another Court?

A Yes sir. And he was defending the divorce action in that manner; when, in fact, the attorney for the Defendant should have filed an Answer for some affirmative type of defense, attaching to it a copy of the Answer.

Q Was there a Court Reporter taking the proceedings from the motions, Mr. Davies?

A Not to my recollection, no sir.

CHIEF JUSTICE DREW: I believe you had better put the microphone back. With your voice - - -

MR. DANIEL: Mr. Reporter, will you read the last question and answer?

THE REPORTER: "Q Was there a Court Reporter taking the proceedings from the motions, Mr. Davies?"

"A Not to my recollection, no sir."

BY MR. DANIEL:

Q Did the proceedings then continue on the motion to dismiss, based on the final decree of divorce from another county?

A There was further discussion at the same time concerning the Defendant filing an Answer and attaching to it a copy of the - - - let me come back on that and get as chronologically in order as I possible can.

The Court again informed the Defendant that he was going to deny his motion to dismiss after the Court had read the rule, and told him to go ahead and file an Answer and attach to it a copy of this decree and he would then dismiss the action.

Q All right, did you make any further proffer at that time?

A Yes sir. I informed the Court that I was going to file a motion to stay the proceedings in this cause so that I could attack the validity of the decree in Lee County. And, prior to this hearing on the motion to dismiss, I had had the opportunity to research the law briefly on it, and was briefly prepared to argue a motion to stay the proceedings. I had prepared a motion to stay the proceedings to file at the same time, but thought better of it until the Answer had been filed.

Q Did you then file this motion to stay the proceedings?

A No sir, I didn't file the motion to stay the proceedings. I had prepared it to file, but I was intending to file it after the Answer was filed.

Q Was any conversation held at this hearing with respect to that?

A Yes sir, there was.

Q Relate that conversation, if you will.

A Yes sir. The Court informed me that he was going to deny my motion to stay the proceedings, even though I had not filed it. And there was a discussion - - -

Q Was there a discussion as to the proper time for filing a motion to stay the proceedings?

A He asked me why I was not filing it then, and I told him that I thought it would be best to file it after the Answer was filed.

Q What was his reply to that?

A There was nothing that I recall on that, of any significance.

Q Did he then deny your motion to stay?

A No sir. The motion to stay has never been filed because the parties reconciled.

Q Did he make any comment with respect to the denial of the motion to stay?

A Yes sir, he informed me that he was going to deny the motion before it was argued. And I told him that I would like to have the opportunity to argue the motion at the appropriate time. And he informed me that it was going to be denied.

Q Did he say what time it would be denied?

A No sir. The only impression I had was whenever the Answer was filed, attaching to it a copy of this decree, that I was going to file my motion to stay the proceedings; and both arguments would be heard at the same time, and I had the impression that it was going to be denied.

Q Did Judge Kelly then make any further comment about either you or opposing counsel, or both of you, in this matter?

A Yes sir, he did. He may not have made it at the same time in the same hearing, but the Court did inform me - - - my best recollection is that the Defendant's attorney was there and both parties were there - - - I am not absolutely certain. But the Court made the remark that we were either not dry behind the ears or we were still wet behind the ears and we did not have the ability to handle a case of this magnitude.

Q How long had you been practicing law at that time, Mr. Davies?

A In the neighborhood of ten years.

Q About ten years?

A That's right.

Q Had you handled - - - approximately at that time, how many Chancery matters had you handled?

A I should imagine I have had five hundred or so.

Q Predominantly divorce matters?

A Very many, yes sir.

Q Or in Chancery?

A Yes sir.

Q Have you had difficulty in any other matters before Judge Kelly? Hearings?

A I would like to relate back to this Marcelli matter, if I might. There is one observation I would like to make.

Q If you feel your answer needs clarification.

A The one observation that I wanted to make was that this conversation between us was not reflected in the file; and, if I should be presented with the problem of taking an appeal on this matter, the file would have been in order - - - it would have been in order for the Appellate proceedings, and none of this conversation would have been reflected and none of this prejudgment would have been reflected in the file.

Q Have you appeared in other matters before Judge Kelly?

A Yes sir, I have.

Q Have you had any difficulty in other matters before him?

A Yes sir, I have.

Q As a result of these difficulties, have you ever had occasion to have a private conversation with Judge Kelly?

A Yes sir, I did.

Q Will you relate the occasion and the conversation?

A As best I can recall, this would have been sometime around June of 1961. I had had perhaps four or five hearings before Judge Kelly; and I couldn't get a common bond of understanding with him. I didn't know exactly where I stood in any matter. And I called his secretary one day, Mrs. Songard, and asked her if he was busy, and she said no; and I asked if she thought that I could come in to see him, and she said, "Come on over and see. I don't know."

So I came on over to the County Building and I presented myself at his office and I asked him if I could talk to him man to man, as opposed to an attorney to the Judge.

Q Would you speak a little louder and perhaps remove your hand from your mouth?

A I requested permission of Judge Kelly to talk to him more on a man to man basis than on the basis of an attorney to the Judge. And he said yes, I could. So we discussed these various and sundry matters that had come up in various hearings, and I explained my objections to some of them, and what have you. I wasn't getting much of a satisfactory result or I wasn't making any headway. With the result that I informed the Court that if I should file a suit that was assigned to him that I was going to nonsuit it; and that, I was going to refile it, and if it was assigned to him a second time, I was going to withdraw as counsel.

Q Is counsel allowed only one nonsuit under Florida Law?

A That is my impression, yes. My impression is that you are entitled to two nonsuits. You can file it the third time, and I am not absolutely certain on that. But I was not going to jeopardize the case by nonsuiting the second time.

Q Based upon your practice before Judge Kelly and your membership in the legal profession, I believe you said for eleven years, in that area; what specifically - - - since Judge Kelly has become a Judge - - - do you know his reputation among the Bar and the public in respect to the manner in which he handles hearings and conducts his trials or his Court?

A Yes sir, I do.

Q What is that reputation?

A I think it is extremely bad.

Q Upon what do you base the answer, "Extremely bad."

A My conversations with other attorneys; their opinions of him; and the fact that, when you get a group of attorneys together and his name is brought up, why, each attorney has something to say about what has happened in his Court - - - what experiences they have had with him.

Q Do you also base it on any conversations that you have had - - - by you or in your presence or asked of you by members of the public, other than members of the Bar?

A The only information I have as to the public is that which was presented to me by my clients that attended hearings - - - one client that attended a hearing.

Q By clients, you say?

A Yes sir.

MR DANIEL: You may inquire.

CROSS EXAMINATION

BY MR. MASTERSON:

Q Mr. Davies, who was present at this conversation in which Judge Kelly made this remark about your inexperience?

A My best recollection is that it was made at the time we were arguing the motion to dismiss. Chronologically, even the motion to stay the proceedings had not been filed at that time - - - there was the discussion on it. There was also the discussion on whether or not the decree should be attacked in Pinellas County or if it should be attacked in Lee County.

Q The persons present were whom?

A My best recollection is that it was James Snelling,

the attorney for the Defendant was there; and that both Mrs. Marcelli and her husband were there.

Q They were the parties Plaintiff and Defendant, is that right?

A Yes.

Q And the remark was directed not just to you, according to your recollection, but to you and to Mr. Snelling?

A Yes sir, that was my impression of it.

Q Was a Court Reporter present?

A No sir.

Q This remark does not appear in the transcript, I take it?

A No sir.

Q Now, Mr. Davies, I would like to explore this suit, this Marcelli suit, with you just a moment, for the benefit of the Senate. As I understand it, you represented the wife in that cause?

A Yes sir, I did.

T. Frank Hobson, Jr., who was - - - had been sharing office space with me, had occasion to represent her, and he was appointed Circuit Judge, and I overtook the representation at that time. Now, there had been some proceeding between these parties, or involving these parties' domestic difficulties prior to my becoming involved in the case.

CHIEF JUSTICE DREW: Counsellor, I think you could answer that question very simply, and not indulge in comment, other than your answer to the question. Then, if you want to explain your answer, you'll be granted permission.

THE WITNESS: Yes sir.

BY MR. MASTERSON:

Q You represented the wife and Mr. Snelling represented the husband, is that correct?

A Yes sir, that is correct.

Q Now, I want to take you procedurally through this case, just a short distance, for a moment, for reasons that will become apparent: And when you filed this complaint for divorce on behalf of the lady, Mr. Snelling filed a motion to dismiss the suit, which was based on the fact that a previous decree of divorce had been entered in Lee County, is that correct?

A Yes sir.

Q And you said Mr. Snelling shouldn't raise that defense by motion, but he should file it in his answer?

A That was the basis of my argument to the court.

Q So that you felt, I take it, that there was something wrong with the decree that had been entered in Lee County?

A Yes sir, I did.

Q You felt these parties were still married, even though a decree of divorce had been entered in Lee County?

A The wife had no knowledge of the Lee County divorce proceeding.

Q Well, we'll get to that in a moment. Do you agree with that statement, that you felt that the divorce in Lee County was invalid?

A Yes sir, I did.

Q Why did you think it was invalid?

A Because the matrimonial domicile of these parties was Pinellas County, Florida. The husband took off without telling his wife where he was going. Prior to his taking off, he had withdrawn considerable sums of money from savings accounts which they held, \$33,000, I believe, to be exact on it.

Q Mr. Davies, maybe I can shorten this a little bit - - -

MR. DANIEL: Mr. Chief Justice, he asked the question, for him to explain why he thought the final decree was invalid, and I think the witness answered it.

MR. MASTERSON: I think he's already answered it, but I think I can shorten this, if the Court wishes.

CHIEF JUSTICE DREW: You'd better let him answer.

MR. MASTERSON: All right.

THE WITNESS: The husband had gone to Sarasota County, which the wife found his address through the Passport Division of the State Department, knowing that he was - - - she knew that he wanted to go back to, I believe it was, France, and when he filed his divorce suit, he went to Lee County, which is still farther south from Pinellas County, and he proceeded on the basis of address unknown.

BY MR. MASTERSON:

Q By that you mean he got constructive service on his wife, is that right?

A Yes, he did.

Q He filed an affidavit in the cause, saying that he had made diligent search for her when, in fact, he had not?

A I have examined that Lee County file, and I do believe there was an affidavit that he had made a diligent search to locate her, yes sir.

Q And your position was that the divorce was invalid because that affidavit was without foundation, in fact?

A I believe that would be a true statement, yes sir.

Q Then he hadn't made a diligent search, even though he had filed an affidavit saying that he had?

A Yes sir, that is correct.

Q And you wanted this judge to recognize that that was the fact, Judge Kelly?

A Yes sir. I told him I was going to attack the validity of the Lee County divorce decree.

MR. MASTERSON: All right, sir. No further questions.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q What is the method of attacking a decree when an affidavit has been fraudulently or perjurally, if there be such a word, filed?

A My research indicated that we would have to file our petition to attack that decree in Lee County, because all proceedings, on the face of them in Lee County, were all right; there, apparently, had been perjury involved on it, and if it were - - - if the proceedings were void on the face, then we could collaterally attack it in Pinellas County but, under these circumstances, the

decree was valid on its face, and we would have to attack it in the court of its rendition.

Q So that, in your opinion of the law, a final decree rendered on constructive service is not final, but is open to attack if anything in the constructive service is wrong, is that right?

A Yes sir, it is, if there has been a fraud worked on the court.

MR. DANIEL: That's all.

MR. MASTERSON: Nothing further, Your Honor.

CHIEF JUSTICE DREW: You may come down, Mr. Witness. Please remain subject to call.

(Witness excused)

MR. JONES: Mr. Secretary, will you call Mr. William M. Goza, Jr., G-o-z-a.

SECRETARY FRASER: Goza.

Thereupon,

WILLIAM M. GOZA, Jr.,

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

CHIEF JUSTICE DREW: Please be seated, Mr. Goza, and will you kindly speak directly into the microphone, and not look at counsel for both sides, and when you have concluded your testimony you will still be under the rule until you have been released by counsel for both parties.

THE WITNESS: Yes sir.

DIRECT EXAMINATION

BY MR. JONES:

Q Would you state your name, please?

A William M. Goza.

Q What is your occupation, Mr. Goza?

A I'm a lawyer.

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

A I graduated from the University of Florida, BS, BA, LLB, 1941.

Q How long have you been practicing law in Florida?

A Twenty-two years.

Q You are admitted to practice in Florida, before all the Florida courts?

A Yes sir.

Q Where do you practice, Mr. Goza?

A Clearwater, Florida.

Q How long have you been practicing there?

A Since May of 1945, right after World War II.

Q Mr. Goza, have you held any official positions at the Bar, the Clearwater Bar?

A I was President of the Clearwater Bar Association 1960, 1961.

Q During the course of your practice, have you handled any cases before Judge Kelly?

A Yes sir.

Q What was the nature of that, or those cases?

A I have had two mortgage foreclosures, representing the Plaintiff, I have had two foreclosures, representing the Defendant.

Q Both, or all four before Judge Kelly?

A Yes sir.

Q I'll ask you, sir, in the first instance of cases that you've handled before Judge Kelly, did anything unusual occur, and if it did, would you please relate that to the Court?

A Yes sir. Upon filing the cases I was aware that the cases were being assigned by rotation among the judges, and that there was a distinct attempt on the part of most of the attorneys to avoid Judge Kelly. I thought to myself, before filing, these are just and due obligations, they are in default, and there's no reason why I should duck any judge. So, without attempting to ascertain what judge the cases would be assigned to, I filed both cases, and in both cases I drew Judge Kelly. There was no appearance in either case. Service was by publication in one of the suits; service was by personal service in the other.

A decree pro confesso was entered in both cases by failure of the defendants to file any answer or defensive pleading of any type; so, the case would be what we normally would call ex parte for proceeding; that is, no notice is necessary for another counsel or party, and you merely, after assigned a judge, go before him to get your final decree. For a period of eight weeks, I believe it is, I called upon Judge Kelly's office, either in person or by telephone, and usually in person, and was unable to find Judge Kelly. He was in the office, but I never had an opportunity to see him. I left messages for him to call me when he was free. Finally, when I was there on one occasion, after about eight weeks, I was able to see Judge Kelly. I presented the matters to him, both matters simultaneously, and in one of the cases he told me that he wished additional proof as to diligent search for the address of the defendant by publication, and also additional proof as to military service under the Soldiers and Sailors Civil Relief Act. I told him that I would supply him with that additional proof, and did, at a subsequent date.

On the other matter, he entered a final decree of foreclosure, and I requested the final decree and file to be handed over to me. Judge Kelly said, "I can't trust the lawyers to take the files back to the clerk's office." Well, that, frankly, struck me as being a bit unusual, because a lawyer is an officer of the court, and I didn't want to argue with him about it, but I said, "Well, Judge, the files are checked out in my name, and I'm going back there anyway. I'll be glad to take it back," and he said, "No, the lawyers are beginning - - - are holding out the final decrees so that they can collect their fees in divorce matters," and he said, "You know, that isn't right." I said, "No sir, it isn't right. When a Circuit Judge signs a decree, it should be filed," but I said, "I would like to point out, without arguing with the Court, that these matters, this mortgage foreclosure is dependent upon a sale for me to get my fee. I can't get a fee until the property is sold, and the property can't be sold until the final decree is filed," and he said, "Well, I'm going to return it anyway." So, of course, I acquiesced to that. I said, "I do have a couple of blanks in there that I would like to be sure are filled in." He said he would take care of that. The blanks were not filled in before the final decree was recorded, I found subsequently, but the errors, I will say, were not fatal to the final decree, the omission; that would be the sole experience I had on that one occasion.

Q Mr. Goza, is it also true that until the final decree in the mortgage foreclosure is signed, and the case is completed, that the parties bringing the suit cannot recover their funds?

A That's right, sir.

Q Approximately how many times during this eight weeks did you go to Judge Kelly's office, if you can tell us?

A Not less than two times a week, nor more than four times; I would say the average would be three times a week.

Q Mr. Goza, you appeared, I believe, in two other matters ---

A Yes sir.

Q --- is that correct?

A Yes sir.

Q Did anything unusual occur in these other matters, and if it did, please relate them to the Court.

A In those other two matters I represented the second mortgage holder. The suit was brought by St. Petersburg Federal Savings & Loan Association for foreclosure of the first mortgage, and there were numerous attorneys representing Lienors in these cases, in --- the two cases were consolidated, actually, they were against the same defendant; and we met in St. Petersburg about 9:30, I would say, "went into session," and Judge Kelly immediately took control of the case by interrogating the lawyers, trying to get them to agree upon the facts in the case. This continued with only a twenty-minute recess for lunch, until approximately 2 o'clock in the afternoon, when we were right back where we were at 9:30 that morning, because in a contested matter of that nature, it's just impossible, where priority of lien is involved, to have everyone agree on the facts. So, all of us felt that the better part of the day had been wasted in that proceeding.

Q Mr. Goza, I'll ask you, sir, if you know the reputation of Judge Kelly amongst the Bar of Clearwater ---

A I do.

Q --- as to the manner in which he handles his cases?

A I do.

Q What is that reputation?

A It is bad.

Q Would you please, sir, explain to the Court why you say it is bad?

A I have gained this impression from conversations, unsolicited with, I would say, over half the lawyers who are members of the Clearwater Bar. They do not believe that Judge Kelly ---

MR. NICHOLS: Now, I'll object to that, stating what other lawyers believe.

THE WITNESS: Right, sir, right, sir.

BY MR. JONES:

Q Go ahead.

A I would say it's based upon conversations with other lawyers --- excuse me.

Q Mr. Goza, would you explain to us what you mean, sir, that his reputation is bad, without giving what, specifically, has been said?

MR. JONES: Thank you, sir. You may inquire.

A That he is not competent to be a Circuit Judge.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Mr. Goza, approximately how many lawyers are there in Clearwater?

A I would say, Mr. Nichols, approximately one hundred five.

Q Now, moving to the question of the hearings, or times that you went over to the Judge's office to see if you could, I presume, have an ex parte hearing --- they were just foreclosure matters ---

A Yes sir.

Q Foreclosures, and what was the other one?

A It was all foreclosures.

Q I thought you mentioned a Sailor and Soldiers ---

A That was involved in the foreclosures, too, Mr. Nichols.

Q All right, sir. Now, he was conducting hearings, of course, and other matters on those occasions that you were there, wasn't he?

A I would presume so.

Q Well, he wasn't loafing around the hall?

A To be honest with you, I don't know.

Q You were trying to catch a time between hearings, or when you could catch him when he wasn't busy?

A That's right, sir.

Q So, during that eight weeks that he apparently was pretty busy, you didn't find the time when he wasn't busy so you could accomplish this?

A I did not.

Q Now, you were talking about the lawyers --- the blind filing system over there, I think over, and you had had that for quite a while, had you not?

A Since Judge Kelly's been there. I believe it may have been prior to that time; I don't recall it.

Q That is basically a system by which suits are filed so that they cut off the routine around the clock, and that no lawyer can pick a judge to have his matter tried before, isn't that essentially correct?

A That would be one purpose of it, yes sir.

Q Now, do you think that it's proper, after the judges invoked such a system as that, for the attorneys to continue to try to select a judge?

A I think that possibly it might be done. I don't know whether it would be proper or not, but it is done, and the reason is not in any attempt to thwart justice, but simply because some judges have a better understanding of some --- one type of case, perhaps, than another.

Q Would that also be because there might be a friendlier judge, so to speak, and you got along easier with him or something?

A I couldn't deny that would be a possibility. I don't think that it would be the only reason, perhaps.

Q And if he's pretty tough about his procedures, or the proof that he needs, you think you ought to avoid him in those instances?

A It would depend upon what you meant by "tough."

Q Now, have the judges ever discussed with the Bar Association the blind filing system, the purpose of it, before the Bar Association, so that the lawyers will know that everybody's being treated fair and square?

A Not to my knowledge.

MR. JONES: We'd like to object to this question, if the

Court please. We have hesitated, but we now object on the basis that the questions are argumentative, and also, they are based on facts that were not brought out on direct examination.

MR. NICHOLS: I'm moving on to another subject, Your Honor.

BY MR. NICHOLS:

Q Now, you testified concerning the file, I believe, that the Judge said he wanted to file some orders, to remain in his office, that he would send it down to the clerk's office, isn't that correct?

A Yes sir.

Q Now, that's not an unusual practice among the Circuit Courts is it, for them - - - so that orders don't get lost, and so that they'll be sure that they go down and actually get into the file?

MR. JONES: Mr. Chief Justice, I would like to object, once again, that this is argumentative. We hate to continue to rise, but when counsel persists in that, we do rise and, therefore, object.

CHIEF JUSTICE DREW: I don't agree that that question is argumentative. You may answer the question.

THE WITNESS: Would you repeat the question, please?

CHIEF JUSTICE DREW: Would you repeat the question?

MR. NICHOLS: Do you want me to repeat it?

THE WITNESS: Yes, I - - -

MR. JONES: I would prefer that the Court Reporter read it back.

MR. NICHOLS: All right, we'll do it Mr. Jones' way.

(Last question read)

CHIEF JUSTICE DREW: Is that an unusual practice, Mr. Goza?

THE WITNESS: I couldn't say, Your Honor. I would say that my objection was his statement that he didn't trust the lawyers; that was the part that I objected to. He could have ordered me to return it, and then I would have had to have returned it, if I had not otherwise been disposed to do so.

BY MR. NICHOLS:

Q Now, then, I believe you said that he tried to make an explanation to you as to why he was keeping the file and the orders and sending them down himself?

A Yes sir.

Q And one of the things he told you was that the lawyers were taking the orders directly to their offices and holding them until they could collect from the clients before they filed it, wasn't that what he said?

A Substantially. I don't believe I said "to their offices," but - - -

Q All right, they took it somewhere?

A Yes sir, right.

Q Do you think that is a good practice for lawyers to do?

A For lawyers to take the decrees? No sir, I agree with Judge Kelly, that it is not proper.

Q What he was trying to do was to keep the files together and in the Clerk's Office and to use the proper procedure?

A I think he could have done it in a much better way than that. All he had to do, if he suspected that I was going to take the file out, would be to tell me not to do so. He wouldn't have to tell me that he didn't trust me.

Q Now, he made a lot of lawyers mad there that didn't like that procedure, didn't he?

A Judge Kelly didn't?

Q Yes.

A I would say not.

Q Lawyers didn't like that procedure about having the Court take the orders down?

A I don't know what other lawyers thought.

Q Well, you were testifying, I thought, of having talked to other lawyers and heard them grumbling and mumbling?

A No sir, not on that particular point.

Q I see. Thank you. Now, in the two matters that you had there, or the matters that you had before him, you got the relief you sought from Judge Kelly?

A Yes sir.

Q I believe you had four matters, instead of two?

A Well, I would say that the two in which I represented the Plaintiff we got the actions we sought. In the others, of course, there was a contest involved among all of the parties and you could not wholly win a matter like that.

Q Now, during the few instances that you have told us about, all of his acts were good acts, as far as they were judicially concerned, were they not?

A I don't recall any other bad ones.

Q That's what I'm talking about. You have given us all the bad things you could think of that he did during those four hearings?

A Well, I have only had those matters before him.

Q That is what I'm talking about.

A Yes sir.

Q You have given us all the bad ones?

A All the bad ones I know about.

Q But he performed some judicial service that could have been good out of those four hearings too, didn't he?

A Yes.

Q Specifically, your testimony deals with just the bad things and none of the good things that he did, doesn't it?

A You are bringing out the good things. Yes sir.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Don't argue with him, Mr. Nichols.

MR. NICHOLS: I will try to keep from doing so. No further questions.

CHIEF JUSTICE DREW: I will ask these questions.

Senator Campbell asks: "Do you know of your own knowledge that lawyers from Clearwater were holding decrees until they collected the balance due on their fees?"

THE WITNESS: I have never heard of any instance where that has been done, except by reference that Judge Kelly made.

CHIEF JUSTICE DREW: This is by Senator Gibson:

"When a lawyer carries a file to his office to hold for collection of fees, how long can the lawyer keep the file?"

THE WITNESS: In my opinion, it would be improper for him to keep it any period of time in order to collect a fee.

The files are checked out to the lawyer for a period of ten days by our Clerk. He may renew the withdrawal for an additional period, but if he holds it beyond the period that he is allowed to, he is subject to being called before the Circuit Judge - - - and it so states on the receipt that you sign - - - that failure to return the file promptly can subject you, in effect, to disciplinary action.

CHIEF JUSTICE DREW: That is according to your local rules, as I understand it?

THE WITNESS: That's right.

CHIEF JUSTICE DREW: A lawyer may remove the file on his own receipt, but under those conditions?

THE WITNESS: That is right, sir.

CHIEF JUSTICE DREW: Senator Connor asks: "Do I understand you to say you left word on several occasions for Judge Kelly to call you, over a period of seven or eight weeks; and, if so, has he ever called you?"

THE WITNESS: No sir. I would like to say this. I left word, yes; he did not call, no.

CHIEF JUSTICE DREW: Senator Askew asks: "Do you feel that Judge Kelly handled your own cases competently?"

THE WITNESS: No sir.

CHIEF JUSTICE DREW: You do not feel that he handled them competently?

THE WITNESS: No sir.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mr. Goza, I would like to ask you, sir, if you can tell us approximately how many times you left word at his office for him to return your call?

A Each time that I went, which would be on the average of three times a week.

Q Who did you leave this word with?

A With his secretary.

Q Mr. Goza, have you ever heard any other Judge in the Sixth Judicial Circuit express distrust for the Bar and the lawyers?

A No sir.

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

MR. NICHOLS: No cross.

MR. DANIEL: You may step down.

CHIEF JUSTICE DREW: You are not excused, Mr. Goza, until you are released by joint consent. You are under the Rule.

THE WITNESS: May we be excused to return to Clearwater?

CHIEF JUSTICE DREW: Yes, you may be; subject to being telephoned.

(witness excused)

CHIEF JUSTICE DREW: Gentlemen, we will stand in recess for ten or fifteen minutes.

Whereupon, at 3:40 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Presiding Officer at 3:55 o'clock P. M.

A quorum present.

Senators Connor and Galloway have asked to be excused for ten minutes to speak to the Sheriff. I hope they will be no longer. Without objection, they will be excused.

You may swear the witness.

Thereupon,

JUDGE CHARLES RICHARD LEAVENGOOD,

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

CHIEF JUSTICE DREW: The witness will speak directly into the microphone and not to either counsel for the State or for the Respondent in answering questions; and, Mr. Witness, try to hold your voice a sufficient distance from the microphone so that we can get the best benefit of what you say, please.

THE WITNESS: I will.

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your name, address and occupation or profession, or official title, sir?

A Charles Richard Leavengood, 1000 Park Street North, St. Petersburg, Florida. I am a Circuit Judge of the Sixth Judicial Circuit and, at the present, Senior Presiding Judge.

Q How long have you been a Circuit Judge in the Sixth Judicial Circuit?

A I am on my ninth year.

Q Did you get appointed to that office in the first instance, or were you elected, sir?

A I was elected in 1954.

Q What year were you admitted to the practice of law in the State of Florida?

A 1946.

Q What political party ticket were you elected upon, sir?

A Republican.

Q Do you know Judge Richard Kelly?

A I do.

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

A He is.

Q How long has he been in that office?

A Since 1961. He was elected in 1960.

Q For what term was he elected? Was it a full six year term or a partial term?

A A full six year term.

Q Has Judge Kelly ever sought any advice from you, relative to the assignment of criminal cases in the Sixth Judicial Circuit?

A Yes, he has. Judge Bird has handled most of the criminal cases, or all of the criminal cases in the Sixth Judicial Circuit, and actually, Judge Kelly wanted to handle at least one-eighth of the criminal - - -

MR. MASTERSON: If it please the Court, if I may interrupt, I believe those Articles of Impeachment concerning this matter have been stricken.

MR. O'NEILL: If it please the Court, the specific Articles that the gentleman speaks of, or that specific charge, were; but I would draw counsel's attention to Articles VII and VIII of the Articles of Impeachment.

MR. MASTERSON: Your Honor, certainly we are not going to prove, under a general Article, a specific Article which has been stricken.

CHIEF JUSTICE DREW: You will, I am sure, confine yourself to the pertinent parts of any Article which is before us, and not introduce testimony under an Article which this Court has stricken and held did not constitute sufficient grounds for impeachment.

MR. O'NEILL: If I may continue, Your Honor, I think I can show the relevance of the question.

CHIEF JUSTICE DREW: You may continue, and then counsel may have a right to object if the question gets out of line.

MR. O'NEILL: This goes to the conduct of Judge Kelly. That is the point that I think would be shown here.

MR. MASTERSON: Any matter having to do with the assignment of cases and the discussion of the Judges with relation to the assignment of cases has been stricken by this Court.

MR. O'NEILL: May it please the Court, the conduct is what we are attempting to get from this line of questioning.

CHIEF JUSTICE DREW: You may proceed.

BY MR. O'NEILL:

Q What was that advice, sir?

A Merely to wait and Judge Bird would probably give him criminal cases.

MR. MASTERSON: I move that the Judge's remark be stricken, Your Honor.

CHIEF JUSTICE DREW: Let me refresh myself on this.

MR. O'NEILL: I think the next question will clarify it. I will ask the question and then he can object.

CHIEF JUSTICE DREW: I will withhold the ruling until you ask the next question.

BY MR. O'NEILL:

Q What was Judge Kelly's reaction to that advice?

MR. MASTERSON: I object to the question on the same grounds that I have previously stated.

CHIEF JUSTICE DREW: Let me read the Articles which were stricken. Do you gentlemen remember which Articles were stricken?

SENATOR HOLLAHAN: Articles III and IV.

CHIEF JUSTICE DREW: Would the Senators turn to their books and read those Articles just for a minute or so.

MR. MASTERSON: Your Honor, specifically, I refer to Article IV, the third paragraph.

CHIEF JUSTICE DREW: Let the Senators finish reading it first, and let me, please sir.

MR. MASTERSON: All right.

CHIEF JUSTICE DREW: I will instruct counsel for the

State that any testimony with reference to Article IV, reading: "Cause friction between himself and the other circuit judges of the Sixth Judicial Circuit of Florida, by disputing with them the assignment of cases generally in the circuit and the assignment of other judges of the circuit to preside over any cases in Pasco County, although the assignment of cases to particular circuit judges is the function and duty of the presiding judge of the circuit and not the said Richard Kelly."

You are not allowed, under the previous action of this Court, to introduce evidence concerning that matter.

MR. DANIEL: Your Honor, just for the purpose of clarifying the ruling.

SENATOR WHITAKER: I move that the Senate now go into closed session.

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

The "noes" seem to have it; the motion failed of adoption.

SENATOR WHITAKER: Mr. Chief Justice, I would ask for an interpretation of Articles VII and VIII.

CHIEF JUSTICE DREW: Is there any question as to whether the "ayes" have it? Does anybody want a roll call?

An interpretation of Articles VII and VIII?

SENATOR WHITAKER: Yes sir.

CHIEF JUSTICE DREW: Gentlemen, you will please turn to Articles VII and VIII. Perhaps we can save time if counsel for the State will advise us what particular part of Article VII and VIII.

MR. DANIEL: Your Honor, by way of an example, may I state it this way: Suppose the House of Representatives had taken each instance that has been testified to here today and, in each instance, made a separate Article out of it, and then had followed it up with an Article collectivizing all of these instances. Foreseeably and conceivably, the Senate could dismiss each selected instant Article and say that each instance, standing alone, might not constitute an impeachable offense; but that collectively, all of them might. I believe that was the ruling, if the Court please, in the impeachment of Judge Archbald in the United States Senate.

CHIEF JUSTICE DREW: As I understand that, when you speak of "collectively," it refers to the Articles which remain in the Articles of Impeachment.

MR. JONES: No sir.

CHIEF JUSTICE DREW: They would not include Articles III and IV.

MR. O'NEILL: No sir, that is not the point at all. Judge Archbald, when he was impeached in the United States Senate was acquitted on all of the Articles save and except one last Article. There were several of them that he was acquitted on, but then they added one collective Article and he was impeached on that.

CHIEF JUSTICE DREW: Gentlemen, I think this is an important question. The Chair has ruled - - - I am going to ask the Court to decide the question under Rule 7. I am going to ask the question and call the roll on whether or not any evidence relating to Article IV which I read - - -

"Cause friction between himself and the other circuit judges of the Sixth Judicial Circuit of Florida, by disputing with them the assignment of cases generally in the circuit and the assignment of other judges of the circuit to preside over any cases in Pasco County, although the

assignment of cases to particular circuit judges is the function and duty of the presiding judge of the circuit" ---

SENATOR WHITAKER: Mr. Chief Justice, as I understand the rule, I cannot debate this question in open session.

CHIEF JUSTICE DREW: That is correct.

SENATOR WHITAKER: I again move that we go into closed session.

CHIEF JUSTICE DREW: Do the Senators want a roll call?

SENATOR WHITAKER: Yes.

SENATOR TUCKER: Roll call.

CHIEF JUSTICE DREW: Mr. Secretary, will you call the roll on whether the Senate shall go into closed session.

Upon call of the roll on the motion made by Senator Whitaker the vote was:

Yeas—34.

| | | | |
|-----------|----------------|------------|-----------------|
| Barber | Davis | McCarty | Stratton |
| Blank | Edwards | Mathews | Tucker |
| Boyd | Friday | Melton | Usher |
| Campbell | Galloway | Parrish | Whitaker |
| Carraway | Gautier | Pearce | Williams (27th) |
| Clarke | Gibson | Pope | Williams (4th) |
| Cleveland | Hollahan | Price | Young |
| Connor | Johnson (19th) | Ryan | |
| Cross | Johnson (6th) | Spottswood | |

Nays—10.

| | | | |
|---------|-----------|---------|---------|
| Askew | Covington | Johns | Roberts |
| Barron | Henderson | Kelly | |
| Bronson | Herrell | Mapoles | |

So the motion was adopted.

Whereupon, at 4:08 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 Blank asked for the following order:

ORDERED: That any evidence offered specifically or directly in support of Articles III and IV, which have been stricken, be held to be inadmissible.

Senator Whitaker moved as a substitute motion that an order be entered allowing this Senate organized as a Court of Impeachment to hear the testimony of Judge Leavengood relating to his relations with Judge Kelly.

The question was put on the substitute motion by Senator Whitaker.

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

Yeas—22.

| | | | |
|-----------|---------------|------------|----------------|
| Boyd | Gautier | Mathews | Tucker |
| Campbell | Gibson | Melton | Whitaker |
| Cleveland | Herrell | Parrish | Williams (4th) |
| Connor | Hollahan | Pearce | Young |
| Friday | Johnson (6th) | Ryan | |
| Galloway | McCarty | Spottswood | |

Nays—22.

| | | | |
|----------|-----------|----------------|-----------------|
| Askew | Clarke | Johns | Roberts |
| Barber | Covington | Johnson (19th) | Stratton |
| Barron | Cross | Kelly | Usher |
| Blank | Davis | Mapoles | Williams (27th) |
| Bronson | Edwards | Pope | |
| Carraway | Henderson | Price | |

So the motion failed of adoption.

The question recurred on the motion by Senator Blank.

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

Yeas—44.

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

Nays—None.

So the order was adopted.

Senator Cross moved that the doors of the Senate Chamber be opened and the doors were opened at 5:20 o'clock P. M., at which time the Senate, sitting as a Court of Impeachment, adjourned on a point of order until 9:30 o'clock A. M., Friday, September 20, 1963, pursuant to the rule.