

A. Yes, ma'am. That's correct.

JUSTICE ENGLAND: Senator Lewis?

EXAMINATION

BY SENATOR LEWIS:

Q. Agent Ramsey, just pursuing a little bit further, I just wasn't too quick, maybe. You said that the Judge fessed up, the bottom line was he was involved in this whole thing, conspiracy. Did he ever sign a statement to that effect after you got it typed up and written up? Did he ever fess up to that to the extent that he signed his name on a confession?

A. No, he did not. It was never written up for him to read and sign, no, sir.

JUSTICE ENGLAND: Further questions?

(No response.)

JUSTICE ENGLAND: Any reason, Counsel, that this witness cannot be excused?

REPRESENTATIVE RISH: Not so far as we are concerned, Judge.

MR. CACCIATORE: Your Honor, we have no objection to the witness being excused.

JUSTICE ENGLAND: Witness will step down and be excused.

(Witness excused.)

JUSTICE ENGLAND: Mr. Rish?

REPRESENTATIVE RISH: Your Honor, that concludes our witnesses for the day. And we are reasonably certain that tomorrow morning we will rest our case. However, we will not make that announcement until tomorrow morning. We will sleep on it tonight to make certain there is nothing else we would like to put in.

At this time we anticipate the House Managers will have nothing further to offer in this proceeding except by way of rebuttal if we need it.

JUSTICE ENGLAND: Recognize Senator Brantley.

SENATOR BRANTLEY: Yes, Mr. Justice, on advice of Mr. Cacciatore, his witnesses are not able to be here until 9:00 o'clock tomorrow morning. So I would like to modify the previous announcement, if I might, Mr. Justice, that instead of convening at 8:00 o'clock, that we convene at 9:00 o'clock.

JUSTICE ENGLAND: Any objections?

(No response.)

JUSTICE ENGLAND: Any announcements that have to be made this evening?

(No response.)

JUSTICE ENGLAND: If not, the Senate will stand in recess until 9:00 a.m. tomorrow.

The Senate, sitting as a Court of Impeachment, adjourned at 6:50 p.m. to reconvene at 9:00 a.m., Friday, September 15, 1978.



Journal of the Senate

Number 6

September 15, 1978

SITTING AS COURT OF IMPEACHMENT

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of the State of Florida, convened at 9:00 a.m.

The Chief Justice presiding

The Managers on the part of the House of Representatives, Honorable William J. Rish, Honorable H. Lee Moffitt and Honorable Ronald R. Richmond, and their counsel, Honorable Marc H. Glick, were present at the Managers' table.

Counsel for the Respondent, Honorable Ronald K. Cacciatore and Honorable Robert H. Nutter, were present at the Respondent's table.

The following Senators were recorded present—35:

Barron	Gordon	McClain	Thomas, Jon
Brantley	Gorman	Myers	Thomas, Pat
Chamberlin	Graham	Peterson	Tobiassen
Childers, Don	Hair	Plante	Trask
Childers, W. D.	Henderson	Poston	Vogt
Dunn	Holloway	Renick	Ware
Firestone	Johnston	Scarborough	Williamson
Gallen	Lewis	Scott	Wilson
Glisson	MacKay	Skinner	

Excused: Senator Wilson at 11:35 a.m.

Senator Spicola was recorded present at 9:32 a.m.

MR. SECRETARY: Quorum present.

JUSTICE ENGLAND: Will the Senate rise for a prayer by Senator Poston.

SENATOR POSTON: Let us bow our heads.

Dear Heavenly Father, help us today in our deliberations to be fair and to do what is right measured by all that we know is right. Some of us have labored here long and hard. We have had more glory heaped on us than we deserve. And we have been blessed many, many times by the friendships and by those that are around us.

Help us to be grateful for all that we have enjoyed. Help us to know that everything that happens to us normally is for the best.

In our deliberations today, help us to go home, satisfied that we measured our contribution by Thy Son. Amen.

JUSTICE ENGLAND: Mr. Rish?

REPRESENTATIVE RISH: Mr. Chief Justice, if I could test the sentiment of the Senate for just a moment, and of the Court, of the Judge. We anticipate that we can conclude in the entirety this matter by 3:00 or 4:00 o'clock this afternoon at the latest but, hopefully, by 2:00 o'clock.

If it be the wishes of the Senate that we go to that time, we will just all make our preparations to go on through. And I thought that you might want to discuss a lunch break at this time or the absence of one or whatever you wanted to do. I didn't know whether people had an 11:00 o'clock plane or what.

JUSTICE ENGLAND: Mr. President?

SENATOR BRANTLEY: Mr. Justice, and those for the prosecution and the defense, I would think that perhaps the Senate would want to hit the ground running this morning just as hard as we could get at it and make those decisions relative to breaks at the point in time we approach the appropriate hour, Mr. Justice, because I sense from the Senators in conversation that their desires are trying to complete it but be as fair as possible. If both of you would put on your track shoes this morning, I think perhaps you could satisfy the Senate real well and do justice.

REPRESENTATIVE RISH: Senator Brantley, in response to that, Your Honor, we would like to respectfully submit to this august body that the State rests on behalf of the Managers.

SENATOR BRANTLEY: Fantastic.

JUSTICE ENGLAND: Thank you, Mr. Rish. Before we begin the case for the defense, I would like to note the presence of the Board of Managers on the part of the House of Representatives and their counsel, note the presence of counsel for Respondent, Mr. Cacciatore, and Mr. Nutter. And I would like to recognize Mr. Cacciatore for a remark in that regard.

MR. CACCIATORE: May it please the Court, I would like to announce to the Senate that Sam Smith will not be present for any of these proceedings inasmuch as he is relying on the advice of his two physicians that it would be a danger and a risk to his personal health for him to be present and participate in these proceedings. And, if I may, Your Honor, inasmuch as these proceedings are different in nature than a normal trial, I am not certain whether or not a motion for a directed verdict is proper.

However, in an effort to make sure and certain that the record is protected, I would like to renew all motions, all objections previously made and ask the Court to dismiss these proceedings.

JUSTICE ENGLAND: Mr. Cacciatore, at this time are you asking for a ruling from the Chair on prior motions which would then be subject to any Senator calling for a review of the Chair's ruling?

MR. CACCIATORE: Sir, again, I am not familiar with impeachment proceedings as the Court knows. And I am just not certain whether or not the record is preserved in the manner that I desire it to be preserved, in an effort to protect the rights of my client. In effect what I am doing, Your Honor, is making a motion for a directed verdict of acquittal but asking the Court to consider not only the facts of the case but also the legal arguments that have previously been argued.

In other words, what I am saying as simply as I can is that the Board of Managers has failed to establish a prima facie case. As a matter of fact, and as a matter of law, this proceeding should not be ongoing inasmuch as the Senate doesn't have jurisdiction.

JUSTICE ENGLAND: All right. Mr. Cacciatore, the precedent of the Senate in impeachment matters supports a motion to dismiss following the conclusion of the Managers' case. I construe your motion to be in that nature which would, if precedent is followed, call for a ruling subject to the Senate then voting, should any Senator so desire to overrule the Chair.

In that light, I would deny at this time your motion to dismiss the proceedings and to discharge the articles. And if any Senator cares to call that question, he may at this time do so.

(No response.)

JUSTICE ENGLAND: There being no indication to overrule the Chair—

SENATOR BARRON: May it please the Court.

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: I am, again, concerned about the procedural aspects that we're in. And in the absence of objection by any Senator, I would move that the Senate confirm the ruling of the Chair or the Court so that the Senate at this point will vote on that matter and urge the Senators to vote in the affirmative to confirm it in light of the fact that no evidence contrary to the case put on by the House Managers has been heard, in my judgment, to justify dismissal at this time, the House having gone forward with its obligation of proof. But I just want to be sure that we try to keep the record straight. I would move that the Senate confirm the ruling of the Chair.

At this point in the proceedings, of course, pointing out to the members, that they will have an opportunity at the conclusion of all of the evidence to vote any way that they want to on impeachment.

JUSTICE ENGLAND: The motion is in order. Senator Scarborough?

SENATOR SCARBOROUGH: Before you put the motion, Mr. Chief Justice, I wonder if you will allow me to ask a few questions, procedural questions as a non-lawyer, as many of us in the Chambers this morning as non-lawyers are uncertain about. First of all, I am very disappointed that Judge Smith will not be able to be here.

One question, Mr. Chief Justice, is can we try the man in absentia?

JUSTICE ENGLAND: Senator Scarborough, I have already ruled as a legal matter you can and confirm the ruling—

SENATOR SCARBOROUGH: Yes.

JUSTICE ENGLAND: Yes. The answer is yes.

SENATOR SCARBOROUGH: In order to afford the individual all the due processes of law, in light of some of the testimony that was given under oath yesterday, would we not be on strong legal grounds, Mr. Chief Justice, if we allowed the Defendant the opportunity to answer these charges through written interrogatories?

JUSTICE ENGLAND: Senator Scarborough, had it been Judge Smith's intention to respond directly with personal observations, the responsibility was his and his counsel's to bring that to you at this time. I think it would be inappropriate, for example, to adjourn for that purpose. I take it from Mr. Cacciatore's statement that Judge Smith has made the personal decision to abstain himself in these proceedings for medical reasons which he believes are valid. I think that he had to take into account in making that decision, the choice of whether to appear personally, or submit written statements which was available to him through the processes of discovery which are open in this proceeding. And I think that in the absence of doing so, his counsel obviously has counseled with him on these

kinds of matters, it is not appropriate for the Senate to direct him to answer—

SENATOR SCARBOROUGH: It's not appropriate what, Mr. Chief Justice?

JUSTICE ENGLAND: For the Senate to direct him to submit them, if that's what you are requiring. I think that he as any other person in a proceeding of this type or any judicial proceeding has a responsibility with his counsel to decide on the course of his defense and the manner of his presentation.

SENATOR SCARBOROUGH: I was wondering, Mr. Chief Justice, if it would be within the scope of the Senate's authority to order the Judge here.

JUSTICE ENGLAND: Senator, I think it would not.

SENATOR SCARBOROUGH: Well, if we can't order him here, then you don't think it would be appropriate to—I guess the only other way that he could answer the charges would be through an interrogatory process, if that would be appropriate.

JUSTICE ENGLAND: Through his counsel in his defense, the manner that he apparently has selected in consultation with his counsel. Is there any discussion of Senator Barron's motion to confirm the ruling of the Chair which was to the effect that the articles not be dismissed at this state of the proceeding?

(No response.)

JUSTICE ENGLAND: There being no indication of discussion, would the Senators please vote on that question? Would the Secretary unlock the machine and all Senators record their vote. If you vote in the affirmative, that is an indication that you do not wish to dismiss the articles at this stage of the proceeding. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: The Secretary will lock the machine and record the vote.

Yeas—34

Barron	Gorman	Myers	Thomas, Pat
Brantley	Graham	Peterson	Tobiassen
Chamberlin	Hair	Plante	Trask
Childers, Don	Henderson	Poston	Vogt
Childers, W. D.	Holloway	Renick	Ware
Dunn	Johnston	Scarborough	Williamson
Gallen	Lewis	Scott	Wilson
Glisson	MacKay	Skinner	
Gordon	McClain	Thomas, Jon	

Nays—None

MR. SECRETARY: 34 Yeas, no Nays.

Vote after roll call:

Yea—Firestone

JUSTICE ENGLAND: The motion is adopted. Senator Dunn.

SENATOR DUNN: Mr. Chief Justice, you in response to a question by Senator Scarborough I think indicated that you thought it was inappropriate for the Senate to compel the attendance of the Judge, is that correct?

JUSTICE ENGLAND: Correct.

SENATOR DUNN: Your Honor, in any respect, that is not a ruling from the Chair, is it, because if we are establishing a precedent for future impeachment proceedings and if it is a ruling of the Chair that the Senate does not have the in-

herent authority to subpoena a suspended official, I would like to be heard on that question.

JUSTICE ENGLAND: Senator, I do not consider that to be the request or a ruling. That was a point of inquiry that I did not consider to be in the nature of a ruling. I think I would have not given the same answer had it been put a different way with regard to the subpoena power of the Senate, the arrest powers of the Senate or any other legal processes. I thought I was answering the inquiry which was much more informal.

SENATOR BARRON: May it please the Court.

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: Judge, I understood the import of the Court's remarks that were we to compel him to be here, which in my judgement we cannot, if he is not physically able to be here, but were he here we could not compel him to testify.

JUSTICE ENGLAND: That also is the case, Senator.

SENATOR BARRON: And we cannot compel him to give a deposition.

JUSTICE ENGLAND: That is also the case.

SENATOR BARRON: Because he would be compelled to testify against himself and that would be a violation of his constitutional rights.

JUSTICE ENGLAND: Senators, at this point in the proceedings the Respondent, through his counsel, has reserved the opportunity to make an opening statement at the conclusion of the Managers' case. At this time I would ask Mr. Cacciatore if you care to make an opening statement.

MR. CACCIATORE: May it please the Court, Respondent waives the right to an opening statement. And if it's agreeable with the Court, we are now in a position to go forward with the Respondent's case.

JUSTICE ENGLAND: You may begin. Call your first witness.

MR. CACCIATORE: At this time on behalf of the Respondent, we will call Agent Charles Queener of the FBI.

JUSTICE ENGLAND: While Mr. Queener is coming to the stand, I would remind counsel for both sides again that all witnesses are "under the rule" indicating that they should not overhear testimony, be present in the gallery during any other witness' testimony. And counsel is responsible to secure their isolation for that purpose.

MR. CACCIATORE: Your Honor, so the record will be clear, we would like to advise the Court that we have already advised our witnesses of the ruling of the Court and the rule has been invoked and that the witnesses while they are remaining in the witness room are not to discuss their testimony with one another.

JUSTICE ENGLAND: Thank you, Mr. Cacciatore. Swear the witness.

CHARLES REED QUEENER

having been produced as a witness and first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CACCIATORE:

Q. May I have your full name, sir?

A. Charles Reed Queener.

Q. Where do you live, Mr. Queener?

A. Jacksonville, Florida.

Q. How are you employed, Mr. Queener?

A. I am an agent with the Federal Bureau of Investigation.

Q. How long have you been employed in that capacity?

A. Approximately 13 years.

Q. In your capacity as an agent with the Federal Bureau of Investigation, did you have the opportunity in December of 1976 to interview an individual by the name of Duke McCallister who resides in Live Oak, Florida?

A. Yes, sir.

Q. As a result of that interview, did you cause to be prepared what is known as certain 302 notes?

A. Yes, I did.

Q. And in the preparation of those 302 notes, were they done in a manner that you would normally do 302 notes?

A. Yes, sir.

Q. In other words, you made notes when you interviewed this witness. Then thereafter you dictated, and as a result of your dictation, from that come the 302 notes?

A. That's correct.

Q. Did you interview this witness in a manner that you would normally interview any other witness?

A. Yes, sir.

Q. In other words, you didn't do this interview any different than any of the, I assume, hundreds you have done in the past?

A. That's correct.

Q. When you first approached Mr. McCallister, did you identify yourself?

A. Yes, sir.

Q. Were you by yourself?

A. Yes, I was.

Q. There was no other FBI agent with you?

A. That's correct.

Q. Did you advise him of his constitutional rights?

A. Yes, I did.

Q. Did you ask him to sign a waiver of his rights?

A. Yes, sir.

Q. Is there any doubt in your mind at this time as to whether or not he knew who you were?

A. No doubt whatsoever.

Q. He understood the form that he signed?

A. Yes, that's correct.

Q. Did he generally tell you about a meeting that he had had with an individual by the name of Poss Lee and another individual by the name of Sam Smith?

A. Yes, sir.

Q. And do you recall upon what date he said this conversation and meeting was held?

A. As I recall it was the latter part of August, early part of September, 1976.

Q. He was not able to give you the exact date?

A. That's correct.

Q. Again, latter part of September or early October?

A. Latter part of August, early part of September.

Q. All right. And where did he tell you this meeting took place?

A. At the office of Poss Lee in Live Oak, Florida.

Q. Did he tell you who did the talking at the time of that meeting that's between the individuals that he mentioned?

A. Yes, sir.

Q. Who was that?

A. That would be Mr. McCallister and Poss Lee.

Q. In other words, he indicated to you that although Smith was there Lee did the talking.

A. That's correct.

MR. CACCIATORE: You may inquire.

CROSS-EXAMINATION

BY REPRESENTATIVE RISH:

Q. Mr. Queener, do you remember asking him specifically whether or not there was any conversation with Smith or whether or not he was there?

A. Yes, I did.

Q. Did he say that Smith was there?

A. Smith was there, yes.

Q. Did he tell you that Smith didn't say anything to him? Do you remember?

A. He said at that time to the best of his recollection, Smith did not say anything other than exchanging pleasantries and that type.

Q. Smith was in the proximity of he and Poss Lee when the conversation was going on about the dope, the best you understood?

A. Yes, sir.

Q. And Smith was part of that conversation in this—

A. He was present, yes.

REPRESENTATIVE RISH: Just a second.

(Short pause.)

BY REPRESENTATIVE RISH:

Q. Mr. Queener, did you call Mr. Duke McCallister to make an appointment with him that day?

A. No, sir.

Q. Where did you go to see him?

A. He had a small pulpwood place there in Live Oak, Florida.

Q. And you just walked to the front door?

A. That's correct.

Q. You said, I'm the FBI, I want to talk to you?

A. That's correct.

Q. Mr. Duke McCallister told us that you scared him just about to death when you walked in that front door. He didn't know what in the world was going on. Did he act like he was a little disturbed on that occasion?

A. I would say that's a correct statement.

Q. Okay. Did you think Mr. — did he try to cooperate with you the best he could?

A. Yes, sir.

Q. Did you take him to be an honest, honorable man?

A. Yes, I did.

JUSTICE ENGLAND: Is that all you have, Mr. Rish?

REPRESENTATIVE RISH: Yes, sir.

JUSTICE ENGLAND: Mr. Cacciatore?

MR. CACCIATORE: We have no further questions of the witness, Your Honor. Unless the — unless the Board of Managers has some objection, this witness can be excused.

JUSTICE ENGLAND: I'd like to give the Senate an opportunity to inquire.

MR. CACCIATORE: I'm sorry, excuse me.

JUSTICE ENGLAND: Do any Senators have any questions of this witness?

(Short pause.)

JUSTICE ENGLAND: In that case, the witness may be excused.

(Whereupon, the witness was excused.)

JUSTICE ENGLAND: Call your next witness.

MR. NUTTER: Your Honor, we call Mr. Fred Morrison.

JUSTICE ENGLAND: Mr. Fred Morrison to the stand, please.

WHEREUPON,

FRED MORRISON

was called as a witness, having been first duly sworn, was examined and testified as follows:

JUSTICE ENGLAND: You may proceed, Mr. Nutter.

MR. NUTTER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. NUTTER:

Q. Would you state your full name, please?

A. Fred Jack Morrison.

Q. And where do you reside, Mr. Morrison?

A. McAlpin, Florida.

Q. How long have you resided there?

A. A little over 14 years.

Q. Mr. Morrison, what is your occupation?

A. I'm a nurseryman. I'm on a six months' leave of absence from the Public Service Commission.

Q. What were your duties with the Public Service Commission when you were actively engaged with them?

A. I was Investigator for the Transportation Department.

Q. How long were you an investigator?

A. Approximately 14 years.

Q. And where were you located when you were an investigator for Public Service Commission?

A. Our district office was in Lake City but I was stationed in the Live Oak area.

Q. Okay. Did you have occasion to know Sheriff Robert Leonard?

A. Yes.

Q. During this period of time?

A. Yes, sir.

Q. How long have you known him?

A. All the time I was with the Public Service Commission. Approximately 14 years.

Q. Fourteen years. Did you know him prior to him being the sheriff or have occasion to work with him?

A. Yes, sir. He was a weight trooper for the Florida Highway Patrol. I knew him during those years and worked closely with him during those times.

Q. And have you had occasion to work with him since he's been sheriff?

A. Yes, sir. We work through the Sheriff's Department. They receive bonds and handled cases for us.

Q. All right. Did you have a good rapport with him? Did you talk with him and discuss the case with him?

A. Yes. Yes, sir.

Q. Mr. Morrison, do you have children?

A. Yes, sir, I have three.

Q. Have you had a problem with one of the children over there recently with respect to some—

A. Yes, sir. Approximately eight months ago my — it was during the last school term — maybe — might have been six months. Six to eight months.

Q. All right. What was the situation with the — what happened?

A. Well, this boy's 17 years old. And he's got like most 17 year old boys, become pretty smart and we become not too smart, I guess. And he played hooky from school. Three boys together and they had a shotgun. They went down the road and see if they could hit a mailbox. They shot a mailbox. And they went on down the road and they stole a goat. And they said to put it in the schoolhouse corridor during the lunch hour. But they — Deputy Beach overtook them and made a charge against them and made them carry the goat back. And

it was to a colored person. And they carried his goat back. It was — some of it was funny but it wasn't funny. It was — he went ahead and there was an old car that had been stolen. And this car was abandoned at what they call the flats of the swamp or I don't know. It's a low part of the county where it's awful muddy. And evidently it had been abandoned for maybe a few days or a week, I don't know. I saw the car. The car was completely demolished. It was terrible.

Well, my boy and these boys went out there and they decided they wanted to see what was in the trunk. And they shot the lock off the trunk and they, according to all of the testimony, they didn't bust the windows out and such as that. The only shots that he did was shoot the lock out of the trunk. Then when they got in there they found some tractor parts but they didn't want them. They just left them where they were and went on. So he was arrested and carried before the Juvenile Judge which was Judge Cannon. And he was represented by Randall Slaughter who has since deceased. And—

Q. Mr. Morrison, let me — let me interrupt you just a minute. There weren't any hard feelings between you and Sheriff Leonard with respect to this episode were there?

A. Definitely not. Sheriff Leonard had called me and asked me what I thought about it and should the boy be prosecuted. And we both agreed that he should be. No, there's no hard feelings whatsoever.

Q. All right. Mr. Morrison, were you acquainted with an individual by the name of Poss Lee?

A. Yes, sir.

Q. And do you know him well or just casually?

A. Yes, sir, real well.

Q. All right. And did you have occasion after the news came out that Sam Smith had been arrested to talk to Sheriff Leonard about these things?

A. Yes, sir. First conversation I had with Sheriff Leonard was, we were having a road block on US 129. I was working there north of Live Oak at the inspection station. And I made a case against a driver. Called the Sheriff's Department for a deputy and they sent Sheriff Leonard to — or he came. Might not have sent him, but he came to receive the bond. And we talked about this at that time.

Q. What was your conversation with the Sheriff about the case then?

A. Well, one of our men had apprehended the little marijuana on a two-ton truck. And we were discussing that. It seems that in the newspapers and on the TV that it had indicated that Judge Smith had said that Poss Lee had approached him. That he hadn't approached Poss Lee. I asked Sheriff Leonard if this was the way it was. And he said it was.

Q. In other words, Sheriff Leonard indicated to you that what was reported by Judge — to be said by Judge Smith in the newspaper was correct. That is that Poss Lee had approached him.

A. That's true.

MR. NUTTER: You may inquire.

CROSS-EXAMINATION

BY REPRESENTATIVE RISH:

Q. Mr. Morrison, I — just by way of clarification, Poss Lee — the Sheriff said Poss Lee contacted who?

A. The Sheriff said that Poss Lee contacted Sam Smith.

Q. Do you know if he was involved—did the Sheriff indicate that he was at those places when Poss or Smith contacted each other?

A. Would you rephrase that, please?

Q. Yes, sir. Did the Sheriff indicate to you that whoever contacted whomever, that the Sheriff was present during those conversations between Poss Lee and Sam Smith when the contacts were being made originally?

A. He indicated that he—that he knew that Sam—that Poss Lee had approached Sam Smith.

Q. When did you say your boy was arrested?

A. Probably—it was during the last school year. I don't know exactly. Right prior to Randall Slaughter's death.

Q. Did you—did you tell the Federal Court in Jacksonville what you're telling us this morning about the conversation with Leonard?

A. No, sir, I was not asked.

Q. You were not asked?

A. I was not asked.

Q. And that's the reason you didn't tell him?

A. Yes, sir.

Q. I thought you just told us that that happened after the first trial.

A. Sir?

Q. When did this—when did this—

A. This happened—

Q. When did you and the Sheriff talk?

A. This happened, I don't know the exact date, but it—it was on a Saturday, the day that Poss Lee was released from jail. It had to be in November of—what year was it that this took place? '76? I believe that's right. I believe it was about November, maybe the 20th through 23rd or somewhere right along in there was when this happened.

Q. Did—all right, sir. You're a law enforcement officer I believe; is that correct?

A. Yes, sir.

Q. You do the same kind of investigative work that Poss Lee does?

A. Well, no, I don't think not, no, sir.

Q. Did you when he was a public defender? Did you all do the same type of investigative work?

A. No, sir, he—he worked with people that were arrested, defending them on investigating—

Q. What sort of investigative work do you do?

A. Transportation officer. Buses, trucks, taxis, for hire transportation.

Q. Are you and Poss friends?

A. Yes, sir, we've been friends for a number of years.

Q. And the reason you didn't tell—did you tell anybody about this incident? Did you relay this to them in New Orleans in court? Did you testify there?

A. Yes, sir, I testified there. But no, sir, I did not, I was not asked.

Q. And you just didn't think this was relevant enough to ever tell anybody about it?

A. I'll answer any questions you ask me, sir.

Q. Well, I'm asking you, did you not think that this had—was enough credibility—

A. Well, I did—this is, I guess this is one of the reasons that I got involved because—you want me to elaborate, sir?

Q. Well, I'm asking you, did you not consider it at the time of enough importance to tell the FBI, FDLE or anybody else, any law enforcement people? And you're an investigator for the State of Florida yourself. And now it's become important. You didn't think it was relevant then?

A. Sir?

Q. You did not think it was relevant or important at that time?

A. Yes, sir, I did think it was relevant.

Q. Well, why didn't you tell somebody about this?

A. Well, one reason is that it came from Sheriff Leonard who was right in the middle of this investigation. I figured that they knew about this.

Q. I see. Was it—does that—was this ever mentioned in any of the previous trials to your knowledge?

A. Not by me. Not that I know of, sir. It was invoked, the rule, and I wasn't in there.

Q. You never knew of any of this coming out?

A. No, sir, I know of none of it coming out.

Q. And your recollection that Sheriff Leonard said that Poss had made the first contact rather than Sam Smith; is that right?

A. Yes, sir.

Q. Propositioned Smith.

A. This was—it was odd to me that Sam Smith had said this in the paper. And this is the reason I asked him the question. Because I had two friends that I was talking to there.

Q. Who were those two friends?

A. Well, Robert Leonard was my friend and Poss Lee, both, was my friend.

And I couldn't understand the connection. But Poss Lee had worked with Sheriff Leonard on numerous occasions.

Q. Okay. Now what you're now telling us is that the Sheriff told you—you tell us he told you before the trial and before the incident with your son?

A. Yes, sir.

Q. But you had knowledge of that at both trials?

A. Yes, sir.

REPRESENTATIVE RISH: Just a second.

(Short pause.)

BY REPRESENTATIVE RISH:

Q. Mr. Morrison, when are you going back to work with the PSC?

A. The reason I'm off is I've got a leave of absence for six months due to throat problems. I've had throat problems for approximately two years. I'm talking better today than I have in two years, too.

Q. So, it's a health problem. You're going back whenever you get able?

A. Probably so. I don't know yet. I'm in another business, too.

(Short pause.)

REPRESENTATIVE RISH: Thank you, sir.

JUSTICE ENGLAND: Mr. Cacciatore or Mr. Nutter.

REDIRECT EXAMINATION

BY MR. NUTTER:

Q. Mr. Morrison, so that I'm clear about this, the reason that you didn't say anything regarding this particular incident is because you felt that it was known because Sheriff Leonard was the one that told you that; is that correct?

A. That's true. That's true.

MR. NUTTER: I have no further questions.

RECROSS-EXAMINATION

BY REPRESENTATIVE RISH:

Q. Mr. Morrison, what would be your response if you were told that when Sheriff Leonard was asked if he told you, you said that he told you, that Poss Lee made the first contact with Smith rather than the other way around that you would be a liar; what would be your comment to that?

MR. CACCIATORE: Your Honor, I'm going to object at this time. Hopefully, even though this is not a regular court of law, it would seem to me that there has to be some restrictions upon the way we proceed. Now, he could have asked that on cross-examination. It's my position that the Board of Managers is limited. This is now recross.

REPRESENTATIVE RISH: We withdraw the question.

JUSTICE ENGLAND: Questions from the Senate. Senator Barron.

SENATOR BARRON: I just want to put this witness in the same position that the other witnesses have been in. Did you know that Sheriff Leonard testified here that two people told him about committing crimes and he didn't tell anybody about it? Would that be a surprise to know that Sheriff Leonard has told us that he knew about two serious crimes he didn't tell anybody about? I just want to remind Mr. Rish of that.

JUSTICE ENGLAND: That doesn't call for a response. That's a rhetorical question.

Senator Dunn?

EXAMINATION

BY SENATOR DUNN:

Q. That's a unique aspect of these proceedings. Juries ask the question and at times they're rhetorical. I need to ask you a question about this—the statement you made and I'm unclear as to whether you've ever testified as to when this contact was made. And it seems to me your testimony is that Poss Lee contacted Judge Smith; is that correct?

A. This is what I was told.

Q. Yes. Now were you told when that contact was supposed to have been made?

A. The reason I asked the question to start with is because it was on TV and in the newspaper. And I thought it sort of odd. And I asked the Sheriff if this was true or false and he said that this was true. That Poss Lee did contact Sheriff—Judge Smith. Now just when this happened, I don't know.

Q. In other words, you don't know whether Poss Lee contacted Judge Smith in July or August or September?

A. No, sir, I do not.

Q. So it's possible that the contact by Poss Lee to Judge Smith could have been in September or August; isn't that correct?

A. Or June or July, I don't know.

Q. Okay. Now you say you have worked with Sheriff Leonard for how many years?

A. Oh, approximately 14 years.

Q. And you consider him to be a friend?

A. Yes, sir.

Q. Okay. Are you familiar with Sheriff Leonard's reputation in the community of Suwannee County for truth and veracity as an honest person telling the truth?

A. Yes, sir.

Q. Is that reputation good or bad?

A. It was for approximately 14 years with me. And at this date I'm not so sure.

Q. Well, that is right today as far as you're concerned.

A. Right.

Q. How do you think he's perceived in the community as being a person who tells the truth or does not tell the truth?

A. I don't think I'm qualified to say other than what I think. I couldn't say what you think and I can't say what my neighbors think. I can only say what I think.

Q. So, what do you think?

A. Today? No, sir, I don't have that much respect for him.

Q. Well, I'm not asking whether you have respect for him as a law enforcement officer or any other of his capacities. What I'm asking you is whether you know the reputation that that sheriff has in the community for truth and veracity. Do you know that reputation?

A. Yes, sir.

Q. Is that reputation in the community good or bad?

A. Are you asking me how I feel or how the community feels?

Q. No, I'm asking you how the community feels. Good or bad?

A. To my knowledge I can't answer that question because I really don't know. I try to tend to my business as much as I can and I can't answer that to tell the truth.

Q. All right. Let me ask you something. If Sheriff Leonard were to testify under oath about a matter would you believe him?

A. No, sir, I don't believe I would.

Q. And why not?

A. Because I don't think it is high standards that he—I thought that he had for 14 years is exactly what they are today.

Q. All right. When did you come to the position that you now have about his lack of high standards?

A. During this complete trials, investigating and talking. I'm sorry to say this, also. It's a disappointment.

Q. Did it have anything to do with the fact that your son was arrested?

A. No, sir, that was the best thing that could happen to my son. I'm for law enforcement. I got Randall Slaughter to defend that boy because Randall was a real good friend of mine and sometimes some people else, some other person can do more for your son than you can. And he can bring out a lot of talk.

Q. I agree.

A. What?

Q. I have one, too. I understand what you're saying.

A. No, there's no hard feelings whatsoever, I can assure you, between me and Sheriff Leonard because of that boy or any other law enforcement officer that gives him a ticket for speeding or anything else. Because that's what we got them for.

Q. Okay. But you know it's kind of an important thing to this Senate, at least I think it is, to know why you feel that Sheriff Leonard would not tell the truth where he's sworn to tell the truth and ask questions. You said you wouldn't believe him. Can you be specific as to why you wouldn't believe him?

A. Well, I—off the top of my head, I've got—there's a lot of things happened. Poss Lee and Sheriff Leonard was close friends for a number of years. They had dinner together and their families stayed together three or four days a week, nights, they rode together. Poss Lee worked with him, he did odd jobs for him. Finding out on the criminal side who had done things. In his work he represented a criminal element but still he could—maybe there's four people committed armed robbery. I'm just using this for the example, now. This is not a specific case. But it's a type of thing that did happen. Maybe one of these people he talked to and found out maybe where the evidence was. A lot of this information he relayed to Robert Leonard. And they were—they had been together for quite a while and what disturbed me with Robert Leonard is this. Maybe I can make myself clear. Say that we're friends and we are together day and night. And for the sake of argument that I come to you and you're the high sheriff in the county, the chief law enforcer. And I tell you, say look, let's do so and so. And I'm your friend. If I was in the sheriff's position the first thing I'd tell you is, I'd say look here bud, huh uh. No, sir, don't you ever mention it to me again. And this is not the way that happened.

Q. You're also a friend of Poss Lee you say.

A. That's true. Yes, sir, I'm a friend of both of them.

Q. Did Poss Lee ever tell you about the meeting at Scotty's about the middle part of—around the second week in July, 1976, when he and Sheriff Leonard first talked about the marijuana situation?

A. Yes, sir, he did.

Q. What did he tell you?

A. He told me that he met with—now the times—the time of—I can't remember exactly because this has been—when

he told me this it was on a Sunday after he got out of jail in 1976. And it don't stay with you that—that close.

Q. I understand, sir.

A. But they met somewhere in the early part of the afternoon or night. And they rode around until somewhere, 3:00 or 4:00 o'clock in the morning. I remember it was—it was in the wee hours. And that they had discussed politics, marijuana, disposing of marijuana and I really don't know. I wasn't in that car. I don't know exactly what was said. I didn't talk to Robert Leonard about this. The only one I talked to was Poss Lee about it. And—

Q. Did Poss Lee—

A. —he indicated that the Sheriff at that time wanted to dispose of marijuana. Now that's what he told me.

Q. Did he tell you that during the course of that conversation Judge Smith's name came up?

A. He told me at that time that he was told to go to Judge Smith and get a court order.

Q. Do you feel that the relationship between Poss Lee and Sheriff Leonard and the subsequent contact of Sheriff Leonard in regard to the investigation of this marijuana case and particularly as it relates to Poss Lee, is one of the bases of your opinion that you now hold about the Sheriff's—

A. Definitely so.

Q. And is it fair for me to assume and to say that you feel that the Sheriff was unfair to his friend Poss Lee?

A. Definitely so.

Q. And is it further fair to assume and say that the unfairness is a fact that Poss Lee, his friend, was ultimately prosecuted, charged and convicted and sentenced; is that right?

A. There's more to it than that, sir.

Q. Well, that's certainly part of it; isn't it?

A. Yes, sir.

SENATOR DUNN: I have no further questions.

SENATOR BARRON: Please the Court.

JUSTICE ENGLAND: Senator Barron?

SENATOR BARRON: I just think in fairness that, I don't know what it has to do with this case, but I'd like to ask this witness some questions.

EXAMINATION

BY SENATOR BARRON:

Q. Then Sheriff Leonard has testified that Poss Lee came to him and told him about a deal to—for the Judge to buy and sell this marijuana. And that Poss Lee was his friend and that he could have caught Poss Lee. And although he had tape recordings of everything, had it set up, he said, we're not going to catch you Poss. We'll wait and catch the Judge the next time we testify. I found that disturbing for the Sheriff. Is that one of the things that you think was wrong? The Sheriff knowing that Poss Lee was involved and then not arresting him. That that was not very good for the chief law enforcement officer.

A. There was a number of things, sir.

Q. You also testified a man named Ratliff came to him and confessed of a crime or tried to and he said, don't tell me.

I'm just a sheriff. Go tell the FBI. Do you think that's becoming of the Sheriff?

A. No, sir, I do not.

JUSTICE ENGLAND: Senator Thomas?

EXAMINATION

BY SENATOR PAT THOMAS:

Q. Mr. Morrison, you say your son was convicted?

A. Oh, yes, sir. He paid a—he paid restitution, he replaced the mailbox and—

Q. Prior to that you said that the sheriff had come to you and asked you if you thought it would be proper for him to make a charge and that you did concur?

A. Yes, sir, I did concur because that's what it's all about.

Q. Did you sense that if you had not concurred that your son would not have been charged?

A. I suspected I could have been opposed, yes.

Q. Are you trying to say that the Sheriff would make charge for—only against those for whom he doesn't share a friendship?

A. The conversation was like this. He said, "Fred, I think that you can handle Terry but there's two more boys that need to go—need to be charged. What do you think?" I said, "Charge them all." That's exactly what the conversation was about. And to my knowledge other than that I don't know. But I do know that he was charged. I think it's the best thing that could have happened.

Q. What other conditions besides your health existed on your taking a six-month leave of absence?

A. What other conditions?

Q. Yes, sir.

A. That was the biggest condition.

Q. What were the others?

A. What was the other? Not any as I know of, sir, other than I needed six months' leave of absence.

Q. There were no conditions beyond your health that you took a six months' leave of absence?

A. I think that if you'll look in the records that you'll find out that I was issued a six months' leave of absence due to my condition, yes, sir.

Q. Your evaluation reports were satisfactory?

A. Above satisfactory, sir.

JUSTICE ENGLAND: Senator McClain?

EXAMINATION

BY SENATOR McCLAIN:

Q. Yes. You started to say something about in response to Senator Barron's question and in response to Senator Dunn's question and you were cut off, about there were other factors that caused you to believe the Sheriff was unfair and you never got to say what it was. You were interrupted. Could you tell us this morning what these other factors are?

A. To me a sheriff should be above reproach. If a man breaks the law he should be arrested. I was told, now, by Poss Lee that FDLE was running an investigation on a stolen boat and the

particular conversation that you asked me about, it seems that the Sheriff knew that this investigation was going on and he sent word in the same night that he asked me about, the conversation back in June or July whenever it was, about Poss Lee to go see a Mott boy and tell him to get rid of the boat. The FDLE was going to do something about the boat. I don't know anything about the boat but if there was a stolen boat, that was wrong. There's a number of things. I think that you just have to be above board with the whole deal. This—

JUSTICE ENGLAND: Any further—

Senator Poston?

EXAMINATION

BY SENATOR POSTON:

Q. Mr. Morrison, is the primary concern you have with the Sheriff that you think he betrayed a friend?

A. Yes, sir, one thing. Yes, sir, definitely.

Q. Do you feel that he betrayed more than one friend?

A. This I don't know, sir. I—the only one that I know was a close friend was Poss Lee.

Q. And you think that Poss Lee was betrayed?

A. Yes, sir, I do.

Q. You feel—have you felt closer to Poss Lee over the years than you have the Sheriff?

A. No, sir, I don't think so. Poss' reputation has done him more harm than anything else. He's a—

Q. What kind of reputation does he have?

A. He's a boisterous type of person. This—this boisterous type of character that he has. In his job as a public defender investigator did him a lot of good because in the element that he was working with most of the people were under arrest. And he could get information when most people couldn't get information. When I first went to Suwannee County, I was warned about Poss Lee before I ever got there. They said you better watch out for that boy, he'll get you. And I was perfectly ready to be caught when I got there. But it didn't work out that way. And through the years we—instead of becoming enemies we became closer friends. And the only reason, I'll lay this on you too, the only reason that I got involved with this to start with was through the friendship of Poss Lee. He came to my house on a Sunday after he got out of jail on a Saturday and I was sick. This is when I first got started with my throat infection. And he literally stood up there and cried telling me about what happened. And that's the reason I got involved. Because it was none of my business to start with.

Q. Well, what—he got out of jail and he was incarcerated because of his involvement in this particular case?

A. Well, yes, sir. You know, he was arrested. I believe the charge was conspiracy, sir. And this is what the Jacksonville trial was about. I was a witness—

Q. In your opinion, he was set up?

A. Yes, sir, I think so. I—that's the only thing I can think.

Q. You don't believe that he had—he was part of the complexity of the crime?

A. I'm—I'm not knowledgeable if he was, sir.

Q. Well, in your part of the county, though, friendships run pretty deep, don't they?

A. It does in Live Oak, yes, sir.

Q. And when a person betrays a friendship one takes it rather seriously.

A. Yes, sir, I sure do.

Q. Thank you.

JUSTICE ENGLAND: Senator Vogt?

EXAMINATION

BY SENATOR VOGT:

Q. Yes. You just testified that you think that Poss was set up. You've also testified that Sheriff Leonard told you that Poss had approached Judge Smith.

A. True.

Q. Do you believe Sheriff Leonard's statement?

A. Do I believe his statement that Poss Lee approached Sam Smith?

Q. Yes.

A. Yes, sir.

Q. You consider a man that approached someone on a criminal matter as being setup if law enforcement brings it into—

A. Approached who, sir?

Q. Well, if Poss Lee approached Sam Smith on the idea of this marijuana conspiracy and in effect you believe he instigated the whole situation, do you believe he was then setup?

A. Did I indicate that he instigated the whole operation?

Q. You said you believe Sheriff Leonard's statement that Poss Lee had approached Sam Smith.

A. I didn't make a comment as to where Poss Lee came from to go to Sam Smith, did I?

Q. No, sir. Do you think he came from somewhere else?

A. I think he came from somewhere else.

Q. Do you think he came from Sheriff Leonard?

A. Yes, sir, I do.

Q. Okay. Are you aware of the tape recordings that were of conversations between Sheriff Leonard and Judge Smith?

A. I have never heard these tape recordings, sir.

Q. I don't know how much has ever been in the newspapers, but let me ask you this. Some tape recordings that we've heard clearly, I believe, have to be the strongest evidence probably in the trial in Jacksonville and in New Orleans would seem to—would seem to implicate Judge Smith very strongly. Do you think there was conspiracy to get marijuana out of the jail for purposes of selling it?

A. It's a—yes, sir. Now, in my personal opinion I think so, yes, sir.

Q. And do you think—

A. Not from this either. I've heard other things that lead me to believe this.

Q. Well, then at least two of the principals have been convicted in two courts now, Poss Lee and Judge Smith. Do you believe those two are guilty of conspiracy?

A. Yes, sir, I believe that maybe Robert Leonard was guilty, also. And maybe some other people. I don't know. If I understand conspiracy it's any time that you touch it you become a conspirator; is that right?

Q. Well, right. If they're planning an operation in which, an illicit operation, that would be conspiracy by my laymen's law. Well, regardless of whether Poss contacted the Judge or the Judge contacted Poss, do you consider one—do you distinguish any difference in that? Does it make Poss more guilty or the Judge—

A. The only thing that told me was, if this was true, the contacts were being made from Sheriff Leonard's side rather than Sam Smith's side. That's the only thing that that told me. Because—

Q. Did Poss tell you that—well, why would you think Sheriff Leonard had initiated the contact with Poss?

A. Well, according to what Poss had said.

Q. And when did he tell you this?

A. Well, he had told—

Q. When he got out of jail?

A. He had told me about meeting at the restaurant and them riding around all night and talking about politics, marijuana and all this.

Q. This was in late November sometime?

A. No, this was back in June, July somewhere along in there.

Q. Oh, well, according to testimony that we've had that conversation took place early in July sometime.

A. Well—

Q. Early to mid-July of 1976.

A. Well, I'm not sure about the dates, sir. I don't know.

Q. Do you think Poss told him to ride around with him?

A. Yes, sir. It was sometime in June or July. I do not know which month.

Q. And Poss told you that Sheriff Leonard had approached him on wanting to get some marijuana out of his jail. Presumably—

A. This is what he indicated.

Q. Are you aware of the testimony by the FBI that shows that when Sheriff Leonard talked with the FBI on July the 27th that he did not mention Poss Lee. He only mentioned Judge Smith.

A. There's so much of this thing that I don't know.

Q. Would you attach any significance to that if the Sheriff met with the FBI on July 27th, approximately two to three weeks after this conversation took place with Poss Lee and he did not mention Poss Lee but mentioned only Judge Smith. Would you attach any significance to that?

A. If that and other things. I have made several talks with Robert Leonard during this period of time. He indicated that the FBI had told him that Poss Lee would not be arrested. He told me that he didn't think Poss at any other time would be arrested. And it's my understanding that the FBI did threaten him with obstruction of justice if he didn't arrest him or put him involved in it. This is my understanding. Whether it be true or not, I don't know.

Q. Well, do you think—why do you think Sheriff Leonard would go to the FBI if he had instigated the whole thing? He could have just let it drop. What did he have—or what would Judge Smith possibly want to do?

A. You don't know Poss Lee like I know him.

Q. I don't know him at all.

A. Well—

Q. I'm learning a lot about him, though.

A. Poss Lee is the type of fellow that if I went up to him and asked him, said, "Poss, would you mow my yard?" He was liable to say, yes, I'll do it. But your grass liable to be up to your waist before he did it. He don't do anything today that he can put off until tomorrow. He would do anything in the world to help anybody but this is—sometimes can be detrimental. If I was in a deal of this respect, which I wouldn't be, but if I was and I had somebody as an in between or a go between and I had told them that I wanted them to do something I'd expect it done pretty quick. But he's not that type of fellow. And I sort of believe that the time lag was too long. In between the time that they met and the time that this all transpired some more things came out that could have possibly caused Robert Leonard to be a little scared. One of these being that Poss Lee's, I believe it's his first cousin, was a Chief Deputy, Cecil Bond. Unbeknowing to the Sheriff on a Friday after his day off on Thursday he qualified to run against Robert Leonard for Sheriff, which I think that the Sheriff had got Poss Lee on numerous occasions to go to Cecil and to find out if he was going to run. And Cecil had said no the whole time. And after he qualified for sheriff, there's always a possibility. I'm not saying that this is what happened but there is a possibility that he got scared. Because that's Poss' kinfolks. He might of thought he was on the end of being set up. I don't know this.

Q. But since he had possession of the marijuana in his jail, all he had to do is not do anything.

A. That's true. That's true. But the thing is going down at that time, I guess.

Q. Well, then are you—do you seem to believe then that Sheriff Leonard instigated this entire thing? That he was trying to and did not mention Poss Lee's name when he went to the FBI. And then had conversations with you saying Poss would not be arrested. Is it your feeling then—do you think Sheriff Leonard was trying to set up the Judge?

A. Yes, sir.

Q. Do you think that was the motive in the first place or do you think that became a secondary motive?

A. I sort of think it was, sir.

Q. You think the whole scheme all along was to set up the Judge?

A. Yes, sir.

Q. And that he was unable to protect Poss Lee in the meantime?

A. I think that's what it was. Poss Lee is a colorful character. I believe anybody would tell you that.

Q. Well, do you think it was necessary to even get Poss Lee in the middle of it? Why would he get Poss Lee involved in the first place?

A. Well, it takes more than one to be a conspiracy.

Q. Well, there were two with the Sheriff and with the Judge. And that's whose conversations were recorded.

A. Well, that's true.

JUSTICE ENGLAND: Senator Tobiassen?

EXAMINATION

BY SENATOR TOBIASSEN:

Q. Mr. Morrison, in the taped testimony statements made by Sheriff Leonard that he's lived in a trailer for 12 or 14 years. Do you know if he still lives in that trailer?

A. No, sir, he lives in a great big log house.

Q. I see. Was it an expensive house or what?

A. That I do not know, sir. It's a nice home I'm sure.

Q. Let me ask you this. When they had the 1500 pounds of marijuana that was picked up by someone else, they lost the two vehicles and found them the next day but they had never found 600 pounds of marijuana. Have you ever heard anything about these 600 pounds that's never been found?

A. It disappeared, sir. I don't know what happened to it. No, sir, I never heard this.

JUSTICE ENGLAND: Further questions? Senator Lewis?

EXAMINATION

BY SENATOR LEWIS:

Q. I listened to Senator Barron and Senator McClain. Each time I had a feeling that you may have cut off. So that you don't have the opportunity to cut off, in your own words, what do you mean by many other things that are going on down there? Define in your own words what you really mean by that? I am just curious to know what that is. Take your time and give us—you know, let it all hang out.

A. You know, to recall everything that happened in the past two years is an awful hard job up here. Sheriff Leonard had a chief deputy. His name was Leon Beach. He has since deceased. I don't cherish the thought of getting up here and saying anything about Mr. Beach because he is not able to defend himself.

But I think he was a good man to a certain extent. But he was right quick to jump to conclusions to try to make cases. And he didn't care what sources that he went to do it.

There's a particular case that happened out close to my home. There's a little boy named Donny Ray Skinner. His daddy was killed working for the county and run over by a mowing machine. And these two little boys, Donny and his brother. Donny got up to be a teenager. Someone broke into a house. Immediately I think the man that owned the house said that Donny Ray Skinner had to do it. Deputy Beach immediately went to the field. The boy was putting out some anhydrous ammonia to the corn. He picked him up. He arrested him for breaking and entering. I don't know what all.

He carried him to the jail approximately 9:00 or 10:00 o'clock in the morning. He kept him in the jail until I went in there, I took a defendant in there, in the middle of the afternoon, late in the afternoon and the boy was still there. I didn't know it. I was kidding him. I said, "Boy, what kind of birds is it can't fly" because he was a neighbor boy. He said, "A jailbird, I guess." I said, "What you in here for?" He said Mr. Beach arrested him for breaking and entering.

I said, "Did you break and enter?"

He said, "No, sir, but he thinks I did."

Well, it seems that at 5:00 o'clock that afternoon Mr. Beach walks in, pats him on the back and tells him, said, "Donny, I know you didn't do it," but said, "I figured you knew who did."

Now I don't know but that's not the way to do law enforcement work. On numbers of occasions I was around Mr. Beach. And he was mighty quick to jump the gun. And I think the Sheriff's responsibility is to see that these things don't happen. That boy was carried in. He was mug shot, he was assigned a docket number. I went through the jail register to find out if he had been registered in jail. He had not. He was never charged but held there all day and questioned and photographed and fingerprinted. And I don't think that's the way to run a railroad.

And so when you boil down to what makes me think that things are not right, then I have to go back and look at a number of things. A defendant was in there serving a five-year sentence, Billy Pope. During that five years' sentence, he spent more time walking up and down the street than he did in the jailhouse. He went to church on Sunday, which I think that was mighty good. He needed to go. But he became a very Christian man during the time of being in jail.

His wife was allowed in and out of the jail like a revolving door. And to me, this is no way to run a jail.

At one time the Sheriff had a man that was convicted of second degree murder. I believe it was second degree. His name was Mixson—Dixon, I believe. He had shot his wife and put her in the trunk of his car and rode her around for a day or two and finally came into the jail and give himself up. And he made him a trusty. He was on the streets of Suwannee County.

And so when you ask me these questions, it would take a long time for me to really figure out the things that made me think that he's not right exactly what I like.

SENATOR LEWIS: Thank you.

JUSTICE ENGLAND: Senator Wilson.

EXAMINATION

BY SENATOR WILSON:

Q. Just one question, Mr. Morrison. A followup on Senator Vogt's question to make sure I understand exactly when Poss Lee told you about having met with the Sheriff at whatever the name of that restaurant was and rode around half the night where they discussed politics and where they discussed getting rid of marijuana and what-have-you, did you say that Poss came and told you that in July at or near the time or the day after or close right after when it actually happened?

A. No, ma'am. He told me that—I can't tell you the day it was.

Q. What I am trying to find out was—let's say they rode around last night. Did he come to you in the next few days or was it after the trial was all over that he told you all this?

A. No, it was after the arrest. He was arrested, I don't know what day of the week.

Q. Okay. I see.

A. And he got out of jail on Saturday. And he came to my house on Sunday.

SENATOR WILSON: That answers my question. Thank you.

JUSTICE ENGLAND: Senator Scott, did you have a question?

SENATOR SCOTT: Yes, I do, Mr. Chief Justice.

EXAMINATION

BY SENATOR SCOTT:

Q. Mr. Morrison, you seem to have in-depth knowledge about the Sheriff's operations over there. Do you have any official position in the county that would cause you to have all this knowledge about the operation of the Sheriff's office?

A. I have been working in and out of the Suwannee County jail for 14 years. And during the course of a year, I would average over 100 arrests. And each one of those I go into the jail, some part of the courthouse I have to go at some time or other if I make an arrest, either through the form of a disposition to see what happened to it, court. A lot of times we carry the defendant to the jail for the bond to be posted or incarcerate the man.

I at that time had a Sheriff's radio in my car which was—I could listen to a lot that went on. Yes, sir. I did have reason to know a lot about the Sheriff's department.

Q. Were you involved in the election for sheriff in 1976?

A. Yes, sir.

Q. Who were you supporting?

A. My wife voted for Robert Leonard and I voted for Ed Rewis. This is to tell you how I voted. Now let me tell you why.

Q. Excuse me. I would like you to just answer the question, who you supported for sheriff. That was the question.

A. Oh, Ed Rewis.

SENATOR SCOTT: Thank you.

JUSTICE ENGLAND: Further questions from the Senators? Senator Plante.

EXAMINATION

BY SENATOR PLANTE:

Q. Thank you, Mr. Chief Justice. Mr. Morrison, this is all nice but the only problem is the Sheriff isn't on trial.

A. Sir?

Q. The Sheriff isn't on trial.

A. I agree.

Q. But I would like to ask you a question. Do you have any knowledge or evidence that you can give to this Senate dealing with the activities of Judge Smith involving the case of marijuana that he had been convicted of?

A. Sir, I don't know Judge Smith. I was in his court one time approximately eight or nine years ago with a defendant on a bond reduction hearing. And to my knowledge that's the only time I have ever seen the Judge.

Q. So you have no knowledge or information or evidence?

A. I have no knowledge whatsoever.

SENATOR PLANTE: Thank you very much.

JUSTICE ENGLAND: Further questions?

(No response.)

JUSTICE ENGLAND: Counsel, is there any reason this witness cannot be excused?

REPRESENTATIVE RISH: I would like to ask him a question if I may.

JUSTICE ENGLAND: Mr. Cacciatore, would you permit Mr. Rish to ask further questions? Are you reserving the same right?

MR. CACCIATORE: Yes, Your Honor. I have no objection to Mr. Rish asking him questions.

JUSTICE ENGLAND: All right. Brief questions.

RE-CROSS-EXAMINATION

BY REPRESENTATIVE RISH:

Q. Mr. Morrison, was it your testimony that you thought that Poss Lee had not been treated exactly right by Sheriff Leonard?

A. Yes, sir.

Q. Was it also your testimony that if somebody did something wrong he ought to be punished?

A. Yes, sir, me included.

Q. How about Poss, does that apply to him?

A. Yes, sir.

JUSTICE ENGLAND: Mr. Nutter, for brief questioning.

MR. NUTTER: Thank you.

REDIRECT EXAMINATION

BY MR. NUTTER:

Q. Mr. Morrison, from your testimony I gather it's your belief that Sheriff Leonard used Poss Lee to set up Judge Smith?

A. This is the way I see it.

MR. NUTTER: I have no further questions.

JUSTICE ENGLAND: All right. Mr. Morrison, you may be excused. Step down.

(Witness excused.)

JUSTICE ENGLAND: Mr. Cacciatore, have you another witness?

MR. NUTTER: Yes, Your Honor.

JUSTICE ENGLAND: Mr. Nutter?

MR. NUTTER: Your Honor, we call James Taylor.

JUSTICE ENGLAND: James Taylor to the stand, please.

Mr. Nutter, for the benefit of the Senate, do you at this time have an estimate of how many witnesses you expect to call?

MR. NUTTER: Your Honor, this will be the last witness that we would call. I believe Mr. Cacciatore will have an announcement to make after this witness, though, with regard to a witness that we have under subpoena. But I would rather let him state that.

JUSTICE ENGLAND: All right. At the conclusion of this witness' testimony, for the benefit of the Senate, I will have a short recess. Counsel have asked some time to prepare their closing arguments. So we will have approximately a 10-minute recess at the conclusion of this witness' testimony.

SENATOR BARRON: Senator Childers has asked me to make an announcement that anything that I have said, any questions

I have asked should not be construed that he has any feelings bad towards Poss Lee. And I want to make the announcement that if I have said anything bad about Poss Lee, I want to strike it from the record. Because I asked the Managers about Poss Lee, never having seen him. And they told me when he went out for football practice, they said, "What can you do, son?" He put his head down and ran through the chain link fence. So, I don't want to say anything bad about Poss Lee.

JUSTICE ENGLAND: Thank you, Senator Barron, for clarifying the record in that regard. Swear the witness, please.

JAMES R. TAYLOR

having been produced as a witness and first duly sworn, was examined and testified as follows:

JUSTICE ENGLAND: Mr. Taylor, you are going to have to lean a little bit into that microphone as you speak so you can be picked up.

DIRECT EXAMINATION

BY MR. NUTTER:

Q. Will you give us your full name, please?

A. James R. Taylor.

Q. Mr. Taylor, you are with the Florida Department of Criminal Law Enforcement, aren't you?

A. Yes, sir, that's correct.

Q. How long have you been an agent with the Florida Department?

A. Five years, eight months.

Q. Where have you been located during this period of time?

A. Approximately three years in the Fort Walton Beach Field Office, approximately almost three years in Live Oak Resident Office.

Q. Who else works with you out of the Live Oak office that's with the FDCLE?

A. Agent J. O. Jackson.

Q. What are your duties over in Live Oak? What are you supposed to do?

A. General criminal investigations, any violation of Florida laws.

Q. Is your office involved with the laws of the State of Florida where the Controlled Substance Act is violated?

A. Yes, sir.

Q. Do you investigate these cases and take testimony from witnesses and that sort of thing?

A. Yes, sir.

Q. Are you acquainted with an agent with the FBI by the name of Gary Ramsey?

A. Yes, sir, I am.

Q. Have you had occasion to work with him on any of these cases?

A. Yes, sir.

Q. Now do you know Sheriff Robert Leonard?

A. Yes, sir.

Q. Do you work with him on cases over there in Live Oak?

A. Yes, sir.

Q. Have you had occasion to work with him in the past on marijuana cases where the marijuana is brought to the inspection stations?

A. Yes, sir, I have.

Q. Have you taken cases to trial and testified in those trials?

A. Yes, sir.

Q. Now do you recall sometime in June of 1976 that Sheriff Leonard came and talked to you about an incident and some marijuana in his jail?

A. Yes, sir. The best I recall that was in approximately June of '76. The exact day, I am not positive of. There were several times when we conversed about that.

Q. What was your conversation with him at that time?

A. He gave me very general information regarding criminal activity that was suspected of Mr. Smith.

Q. And he talked to you about that in June of '76?

A. As I said earlier, I don't recall the exact date but from June, July and August of '76 that information was told to me, yes, sir.

Q. Were you aware that Sheriff Leonard had had some difficulty with marijuana in this jail, marijuana getting out of the jail?

A. No, sir.

Q. You weren't aware of any trustees or anybody that had gotten into the marijuana he had there in the property room, where he had problems with that?

A. No, sir. I had no firsthand information regarding that.

Q. Were you brought into this case by the FBI, on Judge Smith?

A. No, sir. As far as being brought into the case, I would say more so by Sheriff Leonard.

Q. You weren't contacted by the FBI where they asked you to assist them in the case?

A. Yes, sir.

Q. And when was your contact with them with regard to that?

A. I think during August of '76 as well as September of '76, the initial arrangements, discussion and coordination was made with the FBI.

Q. Did you happen to be present and involved in a conversation where Sheriff Leonard had advised Mr. Ramsey that he didn't want to be involved with this case any further, sometime in September?

A. Yes, sir, I was.

Q. What took place at that meeting?

A. We discussed the various ways that the case could be conducted. We discussed continuing the case with Sheriff Leonard, what we expected to do, the persons arrested and that sort of thing.

Q. What occurred when Sheriff Leonard indicated he didn't want to go forward with the case?

A. Agent Ramsey said okay and more or less agreed and spoke with Sheriff Leonard at the time and advised him that Mr. Ken Walton of the FBI would probably come and talk with him that same day also.

Q. What did he tell him he would talk with him about?

A. Sir?

Q. Did he tell him what Mr. Walton would talk with him about?

A. Yes, sir. In general terms that the FBI and our Department wanted him to continue in the investigation.

Q. Did he advise him or talk to him about obstruction of justice?

A. You are speaking of Agent Ramsey?

Q. Yes.

A. Yes, sir.

Q. What did he tell him about obstruction of justice?

A. The very last part of the conversation at which myself, Sheriff Leonard and Agent Ramsey was present, Agent Ramsey made a casual remark more or less at the end of the conversation that Sheriff Leonard should continue with the investigation or that he might be in obstruction of justice.

Q. In November 1976 was your office involved in a surveillance of any marijuana that was set up at the landfill out there outside of Live Oak?

A. No, sir. We were not actually involved in the surveillance.

Q. Was your office or any of your agents asked to participate in that?

A. In the surveillance itself?

Q. Yes, sir.

A. No, sir.

Q. Was your office or any of your agents asked to participate in any way to track any individuals that may have left from that area with marijuana?

A. No, sir.

Q. Was your office involved in making any arrest on this case?

A. Regarding the Smith case, no, sir, we were not.

Q. Was your office involved in interviewing any of the defendants after they were arrested?

A. No, sir.

Q. Mr. Taylor, does your office get along with the FBI here?

A. Yes, sir.

Q. Have you had any problems with the FBI?

A. No, sir. Well, I would say we have had some but they were more or less coordination problems, things of that nature. We have resolved those issues since that time.

MR. NUTTER: May I have a moment?

(Short Pause.)

MR. NUTTER: I have no further questions. I tender the witness, Your Honor.

JUSTICE ENGLAND: Mr. Rish?

REPRESENTATIVE RISH: No questions.

JUSTICE ENGLAND: No questions. Do any Senators have any questions of this witness? Senator Hair.

EXAMINATION

BY SENATOR HAIR:

Q. Mr. Taylor, is your office—you know Judge Smith?

A. Yes, sir.

Q. And how do you know Judge Smith? What is your contact with him?

A. I was reared in Lake City and just before I got into law enforcement I knew who he was and, you know, his occupation. Since that time when I moved my residence from Lake City I haven't kept up with Judge Smith. I met him again, saw him again once I moved back to the Live Oak area. As far as knowing him personally or socially, I didn't.

Q. Has your office ever conducted any investigation with reference to Judge Smith and his involvement with marijuana?

A. I'm not exactly sure of the scope of the investigation. I know there was some knowledge or some general intelligence information regarding some of his activities before I moved to the Live Oak area. As far as myself and the agent I work with, no, we have not.

Q. You yourself have not personally been involved in any investigation of him with reference to marijuana?

A. No, sir, other than regarding the present case.

SENATOR HAIR: I don't have any further inquiry.

JUSTICE ENGLAND: Senator Scarborough.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. Yes, Mr. Chief Justice. Did I understand you correctly to say a moment ago that the FBI did ask the FDCLE to assist in the conspiracy investigation?

A. No, sir. We were not asked directly by them to participate in the investigation. If I might explain, I think that, you know, Sheriff Leonard and myself talked about the case in the very early stages. And during the latter part of 1976 the FBI became directly involved with Sheriff Leonard. We were there working the case with him up through November of '76.

Q. Well, then, the FDCLE was involved in assisting the FBI in the case?

A. Yes, sir.

Q. Yesterday I asked Agent Ramsey twice if the FDCLE was involved and he said no. Can you think of any reason why he would have said that you were not, your agency was not involved?

A. No, sir, other than the fact that in the very beginning we were working independently of the FBI with Sheriff Leonard. Once the FBI entered the investigation, they more or less worked directly with Sheriff Leonard. We were knowledgeable of the investigation. And in September we had quite a bit of coordination in working with the FBI. Up through November 16th, more or less, we were knowledgeable of the investigation also and what had been planned. After that date, we did not participate in the case.

JUSTICE ENGLAND: Further questions? Senator Dunn.

EXAMINATION

BY SENATOR DUNN:

Q. Mr. Taylor, referring to the meeting in September at which Sheriff Leonard indicated that he did not want to go forward with the case or did not want to be—his testimony was—directly involved with it, do you recall whether during that meeting Sheriff Leonard indicated why he did not want to be directly involved in the case?

A. Yes, sir. One portion of the conversation that we had with Sheriff Leonard that day, he made the statement to the effect that there were other people, innocent people, that did not need to be involved in the case that were being drawn into it and that he did not think that that was right, more or less that he would like to cease the investigation of some degree at that point. I think that was probably why he was a little hesitant.

Q. Did he mention who those other persons might be?

A. No, sir. I don't recall that day or since then where he has told me directly who he was talking of. I know that in subsequent conversations with him he mentioned the fact that, you know, he had his family there in Live Oak. He was a little bit leery at that time of something happening to his family.

Q. Do you know Poss Lee?

A. Yes, sir, I do.

Q. Did his name come up at that meeting?

A. I am speaking of the meeting of September 17.

Q. Yes, sir.

A. No, sir. His name did not come up. Most probably the inference that he was involved came up or the terminology that Sheriff Leonard used during the meeting was one of middle man, the middle man. He never did name him directly.

Q. Can you recall when FDCLE opened an active investigative case, if at all, with regard to the Smith marijuana conspiracy?

A. The case was opened, as best I recall, in September of 1976. Up to that point it had been—we had been making attempts to gather enough data to feel sure that we had enough data to open a criminal case on.

Q. So you didn't open the case until September?

A. Yes, sir, that's correct.

Q. Your participation with the FBI was on the basis of a coordinated investigation?

A. Yes, sir.

Q. The FBI had the lead of the case, though, did they not?

A. Yes, sir, they did.

Q. When FDCLE opened the case, the FBI had already a case open, did they not?

A. Yes, sir, they did.

Q. And is it not customarily in the field of law enforcement investigation to defer in terms of case management to the case—to the agency that has a lead in the case?

A. Yes, sir.

Q. In other words, if they were going to conduct a surveillance, they would ask you if they needed your assistance?

A. Yes, sir.

Q. And if they didn't ask you, you would assume they didn't need your assistance, is that right?

A. Yes, sir, that's correct.

Q. Did you find anything unusual about the fact that they held surveillance within your service area and did not ask you to participate in their surveillance?

A. No, sir, I did not, as of that day because Sheriff Leonard and myself were involved in another active investigation. The FBI agents that were there were knowledgeable of that investigation. And the next day, on Wednesday, the 17th, Sheriff Leonard and myself had to travel up to Georgia. So they were aware, I think, that that was going on, as well as the case at hand.

Q. You have worked with Sheriff Leonard for some period of time, haven't you?

A. Yes, sir.

Q. Are you familiar with his reputation in the community for truth and veracity?

A. Yes, sir, I am.

Q. Is that reputation good or bad?

A. It's very good, sir.

Q. Would you believe him where he would testify under oath?

A. Yes, sir, I certainly would.

Q. With regard to Gary Ramsey, the FBI agent, have you similarly worked with him in a professional capacity for some period of time?

A. Yes, sir, for about the last two years, I would imagine, off and on.

Q. Are you familiar with his reputation in the general community for truth and veracity?

A. Yes, sir.

Q. Is that reputation good or bad?

A. It's good.

Q. Would you believe him under oath?

A. Yes, sir, I would.

SENATOR DUNN: No further questions.

JUSTICE ENGLAND: Senator Gordon.

EXAMINATION

BY SENATOR GORDON:

Q. Could you tell me if you have participated in any investigations of violent crimes while you have been in Live Oak?

A. Yes, sir. We have participated in several murders, other violent crimes.

Q. These were because the Sheriff's Department didn't have the personnel to do that?

A. Yes, sir, that's correct. They have not had for some time an investigator assigned to the Sheriff's Department. So when

the more serious crimes happened, Sheriff Leonard requested myself or Agent Jackson to assist him and his department.

Q. Is that also true in investigating these various drug-related crimes, if they don't have the personnel to do it?

A. Yes, sir. Any time it goes out of the county, more so than when it is localized within the county, he pretty well handles his own. When it goes out of the county, he does ask us quite often to help him.

Q. In this matter relating to Judge Smith, most of that activity took place within the county didn't it?

A. Yes, sir.

Q. As a matter of fact, it didn't go out of the county until you weren't able to follow him out of the county or the FBI wasn't able to follow him out of the county. How did you—how is it that you felt it necessary to be involved in that case, that if the Sheriff ordinarily took care of his own cases on drugs, related things in the county?

A. Sir, it had gone out of the county prior to November as best I recall. There was some investigative work done over in the Lake City area. Within the county, I assume that, you know, had Sheriff Leonard desired that we be more active in the investigation that we would have known from him.

Q. Part of my question is simply to determine what extent, as I do with you, what extent the taxpayers of the State are subsidizing Suwannee County's Sheriff's Department by putting a unit of the FDCLE. Some of us aren't—you know, we're paying a lot of taxes for our own law enforcement people, we don't get assistance. But the other question I would like to ask is what do you think happened to the 600 pounds of marijuana that was missing after they chased it down?

A. I think most probably, sir, when they arrived at the warehouse, as best I can figure out, they must have sold it or shipped it out of there to some other place where they could never recover it.

Q. Did you all ever conduct an investigation on that?

A. No, sir. We were not involved in that with the FBI.

Q. What do you mean you are familiar with the situation in which 600 pounds which is worth, I don't know, a couple of hundred thousand dollars, it just walked away from a warehouse in Alachua County and you just don't bother to pay any attention to it. What is the level at which you get involved? Is it 1,000 pounds? I understand the U. S. Attorney's office in Miami doesn't prosecute less than a ton. They just can't handle all those cases. I am just curious what your level is. But, seriously, why you would just not pay any attention to that. That's all.

A. Well, sir, our primary area is the six counties in the area there. And the Gainesville area would have been worked by Gainesville already normally. At this particular investigation, since the FBI was more active, they had more agents involved, it was in essence them leading the case. They were the ones that were more concerned with that. And they did not request our assistance. We were not knowledgeable of the marijuana at the time it disappeared exactly. We only found out about it during later weeks of the investigation. We were not knowledgeable at the time it actually disappeared.

SENATOR BARRON: I have one question.

JUSTICE ENGLAND: Senator Vogt was on the speaker.

EXAMINATION

BY SENATOR VOGT:

Q. When Sheriff Leonard came to discuss this matter with you about Judge Smith and this marijuana conspiracy, he approached you on the subject, is that right?

A. Yes, sir.

Q. Did he tell you at that time about his conversations or a conversation with Poss Lee?

A. He did not name him by Mr. Lee's name. He used the terminology that I think was a middle man had been sent to him, wanting Sheriff Leonard to release the marijuana. He didn't use his name until later stages of the investigation.

Q. Do you happen to recall when this conversation took place between you and the Sheriff?

A. The best I recall, June, July, August. It was not—it was not a point where Sheriff Leonard sat down with me and gave all the details. The first conversation, you know, something to the effect that "I have a case that maybe ya'll need to work and I will tell you about it when the time is right." And perhaps three or four weeks later he discussed with me, "You recall the case that I talked with you about, I have some more information on it. I will get with you." The elections were going at the time and he wanted to make sure I assume that everything was in order before we opened the criminal case.

During another three or four weeks, we were having another very short conversation regarding it. I think probably about the third conversation he said there might be a judicial official involved and he would give me more information later, more or less build up from a point of very little information until we became knowledgeable of the entire scope.

Q. So do you think maybe by the time he mentioned judicial official it was later summer rather than sometime—

A. Yes, sir, very late summer.

Q. Do you know at what point he went to the FBI when he was having his conversation with you.

A. No, sir, I am not exactly sure.

Q. You say you all participated in the investigation, FDCLE did participate in the investigation with the FBI?

A. Yes, sir.

Q. Then—but you did not participate in the stakeout on November 16th I believe?

A. No, sir. We recorded the conversation between Sheriff Leonard and Judge Smith on the afternoon of November 16th. I advised the FBI agent that was in our office that day when we were recording the conversation that we were available for surveillance and that we had night vision equipment and other investigative tools on hand that would be available if needed. We didn't receive any request for help from them.

Q. And did that in effect—did your participation in the case terminate on November 16th?

A. Yes, sir, active participation did.

JUSTICE ENGLAND: Further questions?

Senator Holloway.

EXAMINATION

BY SENATOR HOLLOWAY:

Q. Yes, sir. Sir, from that November 16th tape recording between Sheriff Leonard and Judge Smith, Judge Smith says, "But I thought if I, if I hadn't had complete a hundred, a hundred percent faith in ya, Robert. 'Cause somebody came in after you came to my house and talked to me that time. Somebody told me that you and Arthur and Gary Ramsey and the Florida Department of Criminal Law Enforcement were trying to set me up. He said that he didn't know what it was all about but just he had gotten just enough information that he was convinced that ya'll were trying to set me up." Was the FDCLE trying to set him up, set up Judge Smith?

A. Sir, in September of 1976 we had another 600 pounds of marijuana, approximately, that was set up in much the same fashion as the thing that occurred in November. The marijuana was not bargained for by Judge Smith or his associates. So we had in fact given him an opportunity once before. We were trying to catch him if he was involved in illegal acts, yes, sir.

Q. What I am trying to determine, sir, is this. The only three parties that I—or three agencies that I am aware of that had knowledge of this setup was the FDCLE, the Federal Bureau of Investigation and Sheriff Leonard. Now apparently somebody went to the Judge's home and talked to the Judge about this and related to him that Arthur and Gary Ramsey and the FDCLE were setting him up. Do you think this leak could have come from your particular activity?

A. No, sir. There was a fourth agency that was also knowledgeable. The State's Attorney's office, Third Judicial Circuit. I don't know where the leak came from or who was involved but there were four agencies that were knowledgeable of it at that particular time.

Q. You said the State's Attorney's office as well now was also involved?

A. Yes, sir.

Q. So that's the fourth?

A. Yes, sir.

Q. No other that you have knowledge of being involved in this?

A. No, sir, not that I know of.

Q. But you did know that the Judge had said someone had come to his home, right, to inform him of this?

A. Yes, sir. At the beginning of the conversation that we taped that day, that was in the first part of the conversation.

Q. Did you make an attempt to determine who this was?

A. Yes, sir. At the time State Attorney Arthur Lawrence was also present with myself and FBI Agent Gary Ramsey—I'm sorry—FBI Agent Don Baldwin. The three of us were in our office and we discussed at that point who it could possibly have been.

As far as investigation, I'm sure that Mr. Lawrence talked to people involved in his agency and probably Sheriff Leonard also. But we never found out who the individual was who was talking about it.

SENATOR HOLLOWAY: Thank you.

JUSTICE ENGLAND: Further questions?

Senator Thomas.

EXAMINATION

BY SENATOR JON THOMAS:

Q. Mr. Taylor, you have mentioned—I wasn't clear when you spoke about your meeting with Gary Ramsey and Sheriff Leonard when he wanted to remove himself from the case. I wasn't clear on was he just trying to remove himself from the case or was he also trying to discontinue the investigation?

A. I'm not certain, sir. Knowing Sheriff Leonard, it would be my judgment that he did not want to stop the case completely. He would have wanted it carried through to a successful conclusion. I think he might have had some reservation since his family was in the area, maybe other things involved that I am not aware of with him personally. But I don't think that he was trying to just shut down the case. He would have wanted the case to continue. I think he might have had a desire for a less active part in it.

JUSTICE ENGLAND: Senator Peterson.

EXAMINATION

BY SENATOR PETERSON:

Q. Yes, Mr. Taylor, your area of coverage is in six counties?

A. Yes, sir.

Q. Have there been cases of smuggling marijuana in all six counties that you know of?

A. Yes, sir, possibly with the exception of one. Lafayette County, we haven't worked on that.

Q. And the confiscated marijuana that's been kept as evidence in the case in one way or another in all six counties, sometimes in the jailhouse, sometimes in other places and so forth?

A. Yes, sir. The method that we use at the time being is an immediate weight and destroy it as soon as possible and only retain samples.

Q. That's what I was getting at. Is there a pretty standard method of holding and keeping samples and getting rid of it as quick as possible or is it left up to the individual sheriff to do this or is there some sort of standard?

A. I wouldn't say it is left up to the individual sheriff the way that he would like to do it. As far as our department, we're directed to take samples from it and destroy it after obtaining a court order as soon as possible.

JUSTICE ENGLAND: Senator Scarborough.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. One question, Mr. Chief Justice. Did I understand you correctly, you said that you put some bait out there one time and the Judge didn't take it. Is that what you said?

A. Yes, sir, that's correct.

Q. Why didn't he take it?

A. I think most probably that direct contact was not made between Sheriff Leonard and Mr. Lee at that particular time.

Q. Then I understood you to say that you put the bait out there the second time and he did take it?

A. The second time, sir, was the deal in November 16th.

Q. You baited the trap twice and he finally took it. What is your personal definition of entrapment?

A. That would be where we would—

Q. Put out some bait?

A. No, sir. I guess further than that—putting out some bait—but then trying to persuade an individual to take it.

Q. Enticing him maybe to take it?

A. Yes, sir.

Q. Send somebody down to the cafe with news there's a big load of marijuana back in the back of the jail. I am really amazed at some of the things that are being brought out about this whole thing. I'm further amazed that our Florida Department of Criminal Law Enforcement would be involved in putting bait out for anybody. I want you to expand on that a little bit for me.

A. As far as putting bait out, we would have to have some sort of idea that, you know, there was some criminal conduct before we would do that. After we're fairly well assured that there was some sort of criminal conduct, then something like this could be done as best I understand it.

JUSTICE ENGLAND: Further questions? Senator Barron.

EXAMINATION

BY SENATOR BARRON:

Q. I want to ask along the lines Senator Gordon asked. Are you familiar, Mr. Taylor, with the sinkhole murder cases?

A. Generally, sir. I am not real familiar. I didn't work on it any.

Q. You know of the notoriety and it's in the department and the department was involved, the FBI was involved, the State's Attorney's office was involved?

A. Yes, sir.

Q. Bodies were found over in your area somewhere?

A. Yes, sir. They were found in Taylor County, yes, sir.

Q. It's my understanding that at least FDCLE, the FBI, State's Attorney's investigative forces were involved in that marijuana bust or they at least had some knowledge about it. They didn't know where it was coming down. It came down at Sandy Creek. If I am wrong, correct me. But what's really curious to me is that in this case where you have a recording that you took on a sheriff and the sheriff had knowledge of it, FDCLE had knowledge of it and the FBI had knowledge of it and there were four people involved that got away being chased by 14 people—sounds like Keystone Cops—why you elected not to get involved in this case if you were so heavily involved in the sinkhole murder case. And you should know that I am concerned about the multiple law enforcement. But that is probably more for legislative reasons. But is there a difference somewhere there?

A. No, sir. As I said earlier, I am not that familiar with the sinkhole cases as to, you know, how the different agencies got involved in it. In this particular case, you know, we offered our assistance to the FBI and were willing and wanted to be a more active part in the investigation even after November. They had several agents in the area that were doing a great number of things investigatively. We were not aware of all of them. We didn't know what they were doing exactly at that time. It would have been difficult for us to try to take a more active or lead role in the investigation at that time.

JUSTICE ENGLAND: Further questions? Senator Glisson.

EXAMINATION

BY SENATOR GLISSON:

Q. Yes. You may or may not be familiar with these statistics, and certainly not meaning any reflection on you, but in that district where Judge Smith served, with people with small amounts of marijuana, say, less than an ounce, through the Florida Department of Criminal Law Enforcement and through the reports we get back from Washington in that area what was the general record there of prosecuting people as far as sentencing them with small amounts? Do you have any type of record on that or do you recall it now? I can call and get it but do you have—can you recall from memory from that area? Do they give stiff sentences for like four grams, five grams, six grams of marijuana like a year or two years to kids in that area?

A. I'm not familiar with the statistics, Senator Glisson. But I, you know, from talking with other law enforcement officers in the area, Judge Smith in particular had a reputation, more or less, for giving stiff sentences. I am not personally aware of that.

Q. Well, I made a call this morning just to ask. And I don't have any statistics. I am sending for them now, that he was a tough law and order judge and that for six and seven grams you could get, you know, a couple of years real easy for it. I just want to see if you had knowledge of those facts. I will get them before we conclude our hearing today.

A. Yes, sir. Generally, you know, I had heard that from other officers. I am not personally aware of it. The cases that we have made over there, he did not sit on ones that we had made.

Q. How would you compare six or seven grams with 1500 pounds? I mean, I myself am confused. What would be the weight limit compared to say six or seven grams to 1500 pounds? Is there a lot of difference there?

A. Yes, sir, a vast difference.

Q. You mean like a big old pile and a little old pile?

A. Yes, sir.

SENATOR GLISSON: Thank you.

JUSTICE ENGLAND: Seeing no further questions, counsel, do you have any reason this witness cannot be excused from the subpoena? I do not want to open him back up to questioning. You have had your opportunity to do that. The question is whether there is any reason he should be retained under the subpoena. Do you intend to recall him for any purpose?

MR. NUTTER: Your Honor, I would request to ask one question or two questions of the witness.

JUSTICE ENGLAND: Well, that was an extraordinary procedure last time. I think you have had the opportunity and the Senate has been able to listen to the questions. That would be out of order at this time. Is there any reason you intend to recall this witness for either side?

MR. NUTTER: No, Your Honor. We have no intention to do that.

JUSTICE ENGLAND: All right. You're excused at this time.

(Witness excused.)

MR. CACCIATORE: Your Honor. I would like to put an objection on the record. The last witness, of course, I had no objection to the Board of Managers asking a question—

REPRESENTATIVE RISH: I have no objection now.

MR. CACCIATORE: So we just object to the procedure and would like the record to reflect that.

JUSTICE ENGLAND: I understand, Mr. Cacciatore. Sometimes you expect things to happen and when the other side doesn't ask the right questions you don't get an opportunity to bring back questions that you might want to have considered.

I understand, Mr. Cacciatore, you had an announcement with respect to other witnesses or subpoenas?

MR. NUTTER: Your Honor, I would like to announce that we did have one other witness under subpoena. We have subpoenaed Poss Lee to testify on behalf of the Respondent. But as early as this morning, about 7:30, we were contacted by his attorney and advised that if he did appear he would take the Fifth Amendment, his privilege against self-incrimination. Therefore, we don't feel it would be appropriate to bring him over here to do that. So we just wanted to make that known for the record.

JUSTICE ENGLAND: You have no further witnesses at this time?

MR. NUTTER: That's correct, Your Honor.

JUSTICE ENGLAND: All right. At this time the Senate will stand in recess until approximately 10 to 15 minutes from now at which time we will commence closing arguments by counsel.

The Senate recessed at 11:15 a.m. and was called to order at 11:30 a.m.

JUSTICE ENGLAND: Senators, please indicate your presence.

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

MR. SECRETARY: Quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: Senators, if you will take your seats, please. In the spirit of cooperation, which you have seen exhibited to this point between counsel, they have again agreed on the manner and the times for closing arguments. Counsel for both sides have agreed to limit themselves to not more than 30 minutes. And they have agreed that the first presentation will be made on behalf of the Respondent to be followed by the closing on behalf of the Board of Managers of the House.

Mr. Cacciatore, you are recognized for closing remarks.

MR. CACCIATORE: Thank you, Mr. Chief Justice. Before I get into my thoughts on the matter that everyone has been gathered here for the last few days, I would be derelict in my duty if I did not thank the entire Senate for the cooperation and particularly the courtesy that's been extended to both Mr. Nutter and I, not only by the Senators but by the staff. Everyone has made a very difficult situation less difficult by trying to assist us in every way in terms of phone calls, helping us obtain material and so forth. So I would like to take this opportunity to thank you for those courtesies that have been extended to us.

At this point in the proceeding, I always feel the same. This, obviously, is not a jury trial. I learned that earlier when I saw the jurors asking all kinds of questions that I can never ask. And it's very interesting because many of you asked questions that I would liked to have asked.

In every jury trial I have ever been involved in, though, I have often wondered what can I do or say now that's going to in any way affect the outcome of this proceeding. I have often thought that sometimes it's a complete waste of time for a lawyer to stand before a group of people and try to express his views about what has occurred and about the evidence. But I guess we're all like the old fire horse. When we hear the bell ring, we try to do our best.

I want to assure you that if I, in this argument, make any misstatement concerning the facts that have developed during the course of these proceedings, it's not a matter of my intending or wanting to mislead you in any way. It's just the way I remember it.

I just wonder after hearing all of this whether we can say that we're proud of the manner in which this case is handled, if we're proud of one of our governmental agencies known as the FBI. I for one am not. In my humble opinion, if there was ever a case of classical entrapment, this is it, where the government set out deliberately to ensnarl and to trap someone.

This is not like a situation, Senators, where someone is burglarizing some structure and they are caught in the act. We have a situation here where government marijuana was supplied in an effort to arrest someone. We have a situation here where 600 pounds of government marijuana was distributed within our State and no one seems to know what happened to it. There have been no arrests, really, no logical explanation for what happened to it.

And I think that that situation really indicates to you the matter of the entrapment because these people set out on a course of conduct where they didn't give a damn what else occurred as long as they got Sam Smith. And that's what they did. I just think it's atrocious. I think in this country that this type of conduct should not be tolerated.

When our forefathers met many, many years ago, they adopted a little document called the Constitution. And when the Constitution was adopted, it's my opinion that our forefathers had determined that it should be difficult for government to prosecute the citizen. And the Constitution was adopted for the sole purpose to protect the individual from big government.

Unfortunately, as the years have gone by, too many people on too many occasions have considered our Constitution to be mere legal technicalities. Unfortunately, on too many occasions our judges have done that. I think it's a crying shame that we allow ourselves to be used and abused by government.

Now let me talk to you a minute about the theory and the issue of entrapment. In this case you have heard several witnesses. As far as I am concerned, there has not been a clear resolution as to who Poss Lee was working for. I think there is a doubt there. And if you find from the evidence that Poss Lee was an agent of the Sheriff, then you really don't have a conspiracy between Lee and Sam Smith.

Now when Agent Taylor testified someone, one of you Senators asked what is entrapment. In a conspiracy you need two or more people. But in order for there to be a viable, living, breathing conspiracy, you can't have one of those people being in law enforcement. And in this situation, I submit to you, that when you consider all the evidence and all the mess

that existed in the Third Judicial Circuit including inept law enforcement, callous law enforcement, that there is really a reasonable doubt.

If you find that Lee was in effect sent out to ensnare and entrap Sam Smith, then in reality you don't have a conspiracy and in reality there has been established a clear case of entrapment.

Now I want to make sure that all of you understand in this situation there has been no testimony, no evidence, that Sam Smith ever had any marijuana. Now you have gotten some testimony from a fellow named Ratliff, although he didn't testify because of the rules of this Honorable Body but information was allowed to come out. And, quite frankly, and very simply, I would state to you that in considering his testimony, I think you should remember—and you saw this man's demeanor when he testified—that here's a fellow that basically for 30 pieces of silver, which was the plea negotiation, where he got to walk while everybody else went to jail, he made a deal with the government, made a deal.

It seems to me and I think it would seem to you that anyone that makes a deal so he can stay on the street is going to have a tendency to give testimony in a manner that is going to be acceptable and desirable by those prosecutors that have made this golden deal so that he can walk the streets and not be punished. So I don't really believe you can give any credence to what Homer Ratliff has said through other witnesses.

Now let's consider for a moment the testimony of Mr. McCallister. And I am not going to suggest to you that this man did not tell you the truth. He is a very fine person, obviously getting up in age. And he is testifying, he testified here yesterday to matters that occurred more than two years ago or approximately two years ago. And in response to that, we presented the testimony of Agent Queener of the FBI. His remarks were certainly different than the remarks of Mr. McCallister.

If you will recall Queener's testimony, and he saw him shortly after these events unfolded, Mr. McCallister told him that Poss Lee did all the talking, Poss Lee did all the talking.

So I think, again, getting back to the conspiracy and the entrapment, it shows the involvement of Lee being in a situation where he, as an agent, trying to set up Sam Smith.

Sheriff Leonard appears to me to be an honorable person. And I know several of the Senators, for whatever their reasons, asked questions so as to elicit the reputation of this sheriff in this community. We have the testimony of one man, Mr. Morrison. As far as I am concerned, his credibility has not been impugned. His honor has not been impugned. And he said that the sheriff told him that it was right, that Lee went to Smith.

I think another witness who was interesting, and I think perhaps the prime reason we called him was perhaps clouded in some way by other questions, was an agent of the State of Florida, Mr. Taylor. Now you go back in time with me and recall Gary Ramsey's testimony and you recall Agent Taylor's testimony. And, quite frankly, Senators, there's a conflict there because Ramsey would have you believe that the first contact on this case was to him, the FBI. It didn't happen that way. The first contact was to Taylor. And then for reasons that perhaps we will never know because the questions really were not answered, Florida Department of Criminal Law Enforcement was cut out of this investigation and the FBI took over. And my, didn't they do a wonderful job. Fourteen guys at a

dump, all kind of sophisticated equipment, all kind of expert training and they couldn't follow a little old country pickup and lost that marijuana. I think that's just amazing, just amazing. One can even conclude that they didn't really care where it went, as long as it was picked up because they figured they had made their case.

And you have heard some tape recordings. And there is no need in my commenting on that except to say isn't it interesting that with all this sophisticated equipment and the honor and integrity of the United States and these various bureaus that they couldn't do that when they arrested Sam Smith in his Chambers. They could have done that and there would have never been a doubt. It would have been preserved forever what Smith said. I just find it interesting that while these people had all kind of agents in the area, recorded these conversations between Leonard and Smith, that that couldn't be done when he was arrested.

I find it interesting, also, and I contend that it was the purpose and the objective of the Federal Bureau of Investigation to set out to purposefully embarrass a local official. They could have arrested that man in his home without embarrassing him there in the courthouse. It sort of makes you wonder about the motives.

Let's go back again to this conspiracy. I would submit to you that there are probably, at least and perhaps more, two theories that you could consider in this matter. If you find from the evidence that there is a doubt as to whether or not Lee was an agent of Leonard and that Lee contacted Smith, then I think regardless of what happened, you can find that there is entrapment. If you find, however, that maybe Smith was greedy and Smith had a criminal intent in September, you still have entrapment for this reason.

You don't have a situation where you have matters going down day after day after day. So if you find that, okay, in September we think Smith wanted to do this bad thing. It's obvious to me by the passage of time that if he was in fact a member of a conspiracy, that he voluntarily withdrew from that conspiracy because nothing happened. Each time there was a recorded conversation, did Sam Smith call Leonard? No. Leonard, at the insistence of the FBI, called Smith. And that can't be refuted by the Board of Managers in any way. Each time something occurred where there was a recording, it was at the urging of the government. It wasn't Sam Smith dropping in and saying, "Sheriff, let's talk about some marijuana." It was where it was set up and planned for them to make the contact.

What happens after September? Now we have heard some stories here about the word didn't get out and this didn't happen and that didn't happen. I don't think we will ever know the whole truth. But we know this, that again there was some marijuana placed out there for three days. And there were FBI agents crawling all over buildings rather than at a dump and nobody took the bait. From September until November there was no conversation between Smith and Leonard or Smith and anyone, the passage of over a month and a half, approaching almost two months. And then again, the government comes up with this grandiose idea, the scheme to trap Sam Smith.

They bring the marijuana down, government marijuana, stage a fake arrest and Leonard calls Smith. So as far as I am concerned, you have a classic case of entrapment.

I know that the Senate will not in any way hold it against Sam Smith because he decided to rely on the advice that he has received from his physicians not to be here. I know that you simply won't do that.

Let me talk about conspiracy again for a minute. And as I understand, there aren't many attorneys in this chamber and hopefully there aren't many here who have been investigated by some law enforcement agency. But just very briefly I would say this to you. If ever there was a law conceived by man that is basically unfair in its application to those who have been charged with the commission of it, such a law is the law of conspiracy. And I could stand before you and read to you quote after quote from people like Learned Hand and other legal scholars and let you know what they think about this law. Instead, I will just read from one person that I consider to be somewhat of a scholar and somewhat of a man that knows what he's doing. And I would quote to you briefly from Clarence Darrow in his book, "The Story of My Life." And he said, "If there are still citizens interested in protecting human liberty, let them study the conspiracy laws of the United States."

You get caught up in a trap and because of this law there is simply no way to get out of it. Unfortunately, prosecutors rely on this law when they know they can't charge someone with the commission of a substantive crime.

Back in May and just the other day, the Respondent, through his various counsel, has argued to you, albeit unsuccessfully, that there's really no reason for all of us to have been here this week. And the papers have indicated, the press has said that the whole reason we're going through this is because of Sam Smith's pension. And I am not telling you that Sam Smith will get his pension. But what I am telling you, Senators, is that decision, simply is not going to be resolved by your convicting him of the Articles of Impeachment. There is no doubt in my mind that many of the laws that come into question on the issue of jurisdiction, the statute dealing with the Governor's right to refuse someone's resignation just will not stand the light of day in courts.

So I know that there is pressure on each one of you. And I would suggest to you that it doesn't take much courage to vote for conviction. It does take courage to tell the government, to tell the FBI that you don't like what they have done in this case. It does take courage to tell the people of this state that unfortunately we really can't do much about the pension.

I wish that I had those persuasive powers to bring tears to your eyes but I don't. I would ask you to consider the evidence that the Respondent has presented and hopefully your consciences will be moved to vote an acquittal in this matter. Thank you.

JUSTICE ENGLAND: Mr. Rish.

REPRESENTATIVE RISH: Mr. Chief Justice, members of this Honorable Senate, Mr. Cacciatore, Mr. Nutter, and all the other people who have been called upon to participate in these proceedings, on behalf of the Board of Managers and the full House of Representatives, we wish to thank you for your cooperation and your help and your assistance. This happened to be a job that none of us volunteered for except Mr. Nutter and Mr. Cacciatore. They're to be commended for it, when we so frequently see the arch that we want to be the first to condemn a group or condemn an individual. Mr. Cacciatore, the people of the State of Florida thank you and Mr. Nutter for volunteering your services in representing this defendant we are trying to impeach today.

This has not been a very pleasant task for you or for us. But it was a job that we were given and we tried to do it the best that we know how in the shortest period of time that we could do it in, keeping in mind your constraints of time and

ours and the fact that every minute and every day we stay here means money to the people of the State of Florida. But that's not the most important issue.

The most important issue is whether or not an individual ought to be impeached by this Senate. And I told you a few days ago that misdemeanor in office meant one thing. That meant that the conscience of two-thirds of the Senate thought that a misdemeanor in office had been committed.

Now defense counsel has done an admirable job. And Mr. Cacciatore and I were in law school together. Annie Clark and other notable legal scholars used to tell us that when we go to a proceeding, boys, first of all you try the facts. And if the facts are not on your side you try the law. And if the law is not on your side, try the attorney on the other side or somebody else. And let me tell you Mr. Cacciatore learned that lesson well because I want to point out to you what we have done today.

We have tried Sheriff Leonard. We tried one deputy who is dead and can't come defend his honor. We tried the FBI, the FDCLE, Homer Ratliff and some of you even wanted to try Poss Lee. That's not what we're here for, ladies and gentlemen. That wasn't what we filed Articles of Impeachment about.

I don't personally know the state of affairs of the law enforcement and the state of affairs of the morality of the people in the Live Oak and Lake City area except what I have read and observed and come in contact with during these proceedings. But that wasn't what the Speaker of the House charged us with several months ago. He said go inquire into the impeachment of Samuel Smith, a judge, and see if he is guilty of a misdemeanor in office. And if he is, bring it back to the House and then we will take it down to the Senate and see if they want to impeach him. But nowhere in my charge and nowhere in your charge is it to try somebody else that might have done something wrong down there. And I admit there have been some mistakes. And if ya'll want to indict some of these other folks, go ahead and have at it. That's your business but it's not my business here today to do that. And I may inquire into some of those things in the future.

I have got to comment on entrapment, though. The law of entrapment in the State of Florida is so clear until we don't need a bunch of lawyers to decide that. Entrapment is where the government goes out and plants the seed to commit an evil act in the mind of a fellow who was not otherwise going to do it. Now let me tell you what the court said it was — or when it's not present.

"If at the time of the encounter the defendant only had an intent and a predisposition to commit the offense or character charged, his conviction will not be vitiated by government agents' contact furnishing an opportunity to commit that act."

Now what is the court saying here in this case of *Timmons v. State*? They're saying that if you, the government, start the whole thing and carry through with it, it's entrapment. But if you find a mind out there that's ready to go anyway and all you do is assist him, that's not entrapment. Now what did we find?

Well, we found, first of all, that Poss Lee came to Sheriff Leonard and said, "Robert, it's going to cost a lot of money to run that election this time." It turned out it didn't cost as much as everybody thought because he beat about three or four of them in the first primary. "It's going to cost a lot of money and Judge Smith is interested in some of that marijuana down there. He has got a way to dispose of it."

Now, I have got to tell you that Poss Lee and Sheriff Leonard were friends and have been all of their life. And I don't know

of a more embarrassing situation that anybody can be put in than having a friend come up and say, "Hey" — especially if you are sheriff, bad enough wherever you are, but you are the sheriff and your friend comes up and says, "The Circuit Judge and I want us to commit a little bit of a felony, take some marijuana out of the jail."

Now nobody has testified, even this morning with the gentleman who was here and had some problems because he thought Poss Lee had been mistreated and his son had had some problems with Sheriff Leonard. But even he didn't say that the sheriff went and started this. He said that Poss did. Poss made the first contact with Sam Smith.

Now there has never been any indication or evidence that I found by anybody where Leonard was the motivating factor or anybody even accused him of being. But it's whether or not Sam Smith went to Poss or whether Poss went to Sam Smith. And it doesn't make a dime's worth of difference who went first in what we are doing here today.

But, anyway, after those initial contacts, now let me ask you this. Who next went to the Sheriff's office? They would have you believe that we ran down Sam Smith in the woods and caught him and talked to him about this proposition. Who next went to the Sheriff's office? Two people, Poss Lee and Sam Smith.

Now I guess that we would be led to believe that Sam Smith as a Circuit Judge would just sit there and listen to all this conversation taking place and be no part of it and never tell anybody if he was such of pure hands and innocent heart. But he sat there and participated in the conversation.

Now we called Mr. Ratliff up here to tell us about his role in this. And Mr. Ratliff said, "It really shook me up because I went in there, the Judge wanted to talk to me. And he said, 'Can you dispose of some marijuana.' And I got out of there fast as I could." But then he took the Fifth Amendment and said he wasn't going to tell us anything else. And that's his privilege not to do that. But one of the agents hooked it up to tell us that after he had taken the statements and the confessions that in fact Ratliff went to the dump after being told by Judge Smith that the key would be under the mat of the truck, that he could unlock it and get the marijuana out, that he took his crew and went down there and in fact got the marijuana. So that fit the whole thing in place. There was really no need of us immunizing or putting into the record that whole box of books down there.

And Sheriff Leonard went on through with this thing. And I'm sure that it was terribly distasteful to him. But another fellow got involved in this now. One of the most honorable, nicest fellows I ever saw. Nobody ever beat him for sheriff. He just quit and left the process. Now retired, timber man, good honest man, you can look at him and tell that you couldn't with a wet rope beat him over the head and make that man lie to you. And I am talking about Duke McCallister.

He said that FBI agent scared him when he came in there that it shook him up because that guy just came in there and threw that great big badge and said, "I'm from the FBI." And he said, "I shook all over." And he said, "I ain't sure what I told him." That he stuck to that and said, "Yes, I saw Sam Smith and I would know him anywhere. I had seen him, I had worked with him. I was his sheriff for several years and he was the judge in that circuit and he was judge and I saw him cross the street" and all this, that and the other. "And I didn't know what was going on but Poss called me and said the sheriff wanted to see me. And they got me down there to Poss' office." And there weren't any cars parked out front and

he noticed that, you know, I guess something unusual about it. But he parked in front or the side and went in and here is the circuit judge and Poss Lee. And they want him to go get his buddy Robert Leonard to go along with it because Leonard had told them during the interim that he didn't want to take any further part in it.

Now Duke McCallister, why would he want to lie to us about it? He went straight home and told his family, said "I don't know what in the world is happening but I have got to tell somebody about it." He worried about it that day and the next and he discussed it with his son, who is in the timber business. And he said, "I have got to tell somebody else about it." And he said, "Daddy, go tell Robert Leonard about it. Let's tell the Sheriff." So he did. Now nobody has ever accused Mr. McCallister of anything except being the salt of the earth dead rock pillar in that community on which everybody looks to for leadership and guidance and moral principles. And he said he wishes it had never come up at all, terribly embarrassing, but he has got to tell what happened.

And we put the agent on the stand to tell us that the plan was carried through so far as getting the marijuana was concerned and getting away to the dump with it.

Well, if we look at these simple points of how Poss Lee went to the sheriff, how then the Judge and Poss Lee went to the sheriff, how the tapes were set up, how Mr. McCallister became involved, how the agents carried through and the marijuana was actually distributed so far as the conspiracy was concerned. We could take that testimony that we have just reviewed and forget all of this diversionary tactics about what Sheriff Leonard ought to have done. We have all got such good 20/20 hindsight, what Ratliff ought to have done, what Duke McCallister and everybody else ought to have done. But you have one of these experiences one of these days and a circuit judge calls you in and says, "Do you want to buy some marijuana" and tell me what you are going to do that day. You try that. I haven't had that experience but I can imagine, my Lord, have mercy, if it ever happened, I wouldn't know what to do either.

And so in retrospect, don't we have good 20/20 hindsight, all of us. But if we had all that and said, "Well, that's sufficient to vote out impeachment of Sam Smith, I think we would be on perfectly safe grounds because maybe somebody else ought to be impeached, somebody else maybe ought to be put in jail." That's not what we're here for. But let me give you this final thing that I want you to think about for a minute.

If you forget everything else, some conversations that were had between some public officials, "Yea, well, of course, the return moneymoneywise would, would be geared directly to the poundage that you could let go."

"Well, Judge, I know that, but you know those newspapers, they keep up with it pretty close, you know. And, oh, yeah. On them deals. Right. And, you know, we got the 5,000 pounds the other day, that it went to the lab and it came back."

"Five thousand pounds? Over 5,000 pounds. It was 5300 and something pounds of it. Where is it now? It's at the lab. They're fingerprinting some sacks and it will come back over here."

"God Almighty. Good God Almighty. Five thousand pounds. Let's think about this 5,000 pounds. I understand if we can get a lick like 2,000 pounds, by God, they can take this job I've got and go with it. You can do the same thing because, my God, you have got enough money to live on the rest of your life and you and I can handle 2,000 pounds just as easy as I can handle 500 pounds."

I asked you a few days ago to listen very carefully to the testimony of the witnesses, to consider the tapes that were made surrounding this entire event and then to vote your conscience. I am perfectly willing to leave that on your desk this morning, ladies and gentlemen of the Senate, to ask you to consider these facts, vote your conscience and we will be satisfied with your vote. Thank you very much.

JUSTICE ENGLAND: Thank you, Mr. Rish, Senator Brantley, it is now 12:10. Do you have a recommendation for whether we break for lunch or not?

SENATOR BRANTLEY: Mr. Chief Justice, it would be my recommendation with the approval of the court and both prosecutor and defense that we continue with the debate of the Senate, keeping a little bit of pressure on and perhaps our arguments won't be quite as long with your approval, sir.

JUSTICE ENGLAND: It has my approval unless I hear a reason to the contrary.

(No response.)

JUSTICE ENGLAND: Fine. We will proceed. Senator Hair?

SENATOR HAIR: Mr. Chief Justice, in a minute I will have a motion to make. But before I do that, Senators, I think I need to take a few moments here as Chairman of the Special Rules Committee and thank those who have participated in these proceedings.

I first would like to start with the Chief Justice as presiding officer of this Court and tell him that we appreciate the manner in which he has conducted these proceedings. I feel certain that the other members of the Senate feel the same feeling of appreciation for the high quality of judicial leadership that you have demonstrated in this Chamber and that you have always characterized in your career. So we thank you for your time and service, Mr. Chief Justice, to the Senate.

I would also like to thank our staff, particularly Mrs. Alberdi who has spent many hours in getting the trial ready for our proceedings. And also the House Managers, Mr. Rish and the other members of his committee and staff. We appreciate all of you.

And I think we would certainly be remiss, Senators, if we did not thank Mr. Ron Cacciatore and Mr. Robert Nutter for the services that they have provided, not only for the Senate but to the State of Florida and to Judge Smith in agreeing to serve as his counsel. As you know, their task was certainly a difficult one. The demands on their time have been very great. I know that they have spent many weeks getting ready for this trial. Both of these men are practicing attorneys in Tampa. They have taken time away from their private practices to come here and present this case to us. And it's been both a sacrifice, personally and financially, to both of them. They accepted this responsibility without any compensation for their legal services.

Mr. Cacciatore and Mr. Nutter are both outstanding members of their legal community. I am just going to briefly tell you about what they have done and the kind of people they are. Mr. Cacciatore is a past president of the Criminal Law Section of the Florida Bar. He served as an Assistant State Attorney and he has also served as President of Hillsborough County Bar Association.

Mr. Nutter served as the Chief Prosecutor for the first State-wide Grand Jury. He was an Assistant State Attorney for four years and he served as Chairman of the Criminal Law Committee of the Hillsborough County Bar Association.

Senators, I realize it would be impossible for us to properly compensate these gentlemen. However, I know each of you join me in expressing our gratitude and our sincere thanks to them for the commendable job that they have done. Thank you very much.

JUSTICE ENGLAND: I think Senator Brantley has a few comments. Senator Brantley.

SENATOR BRANTLEY: Yes, Mr. Chief Justice, at the urging of several Senators and with the support and help of myself and the minority office, there is a resolution on the desk. I would move the reading of the resolution.

JUSTICE ENGLAND: The Secretary will read the resolution.

MR. SECRETARY: I don't have one.

SENATOR BRANTLEY: Senators, before we read the resolution, it's already signed and on the way to the desk, but I think Senator Hair did a commendable job of recognizing those that have given of their time and their talents in this proceeding, recognizing as everyone has agreed that this is a part of our job that we don't particularly like. You and I and the House Managers have not only a constitutional but an elective duty to carry through and do the job we best can. Our staff, of course, by virtue of their own job has an obligation. Everyone I think has done an outstanding job, particularly Senator Hair and his special Rules Committee on these proceedings, have stayed right with it. The Chief Justice certainly has. Our staff has, the House Managers have and their counsel. But more specifically we wanted to thank the defense counsel because they did, as a matter of fact, volunteer their time. They were the true volunteers.

Another group that was greatly helpful to us, along with several others was the Florida Medical Association. We were under the impression that we were going to have to have resuscitators, emergency equipment, doctors, et cetera, and so forth here in the event the Respondent was in need of medical attention. And they volunteered to do that. We did have, of course, doctors standing by to do it. We had emergency equipment standing by and technicians standing by to do that. So in the resolution, we just simply want to express our appreciation for those that have given of their time and talent to make this proceeding perhaps a little better than it would have been otherwise. Do you have the resolution on the desk?

JUSTICE ENGLAND: The Secretary will read the resolution.

The following resolution was read by the Secretary:

A Senate Resolution expressing appreciation for those who assisted in the impeachment trial of Judge Samuel S. Smith.

WHEREAS, the State of Florida is the recipient of many invaluable services rendered on behalf of the Respondent and the Florida Senate while sitting as a Court of Impeachment for the trial of Judge Samuel S. Smith, and

WHEREAS, outstanding defense attorneys, Ronald K. Cacciatore and Robert H. Nutter, volunteered their services, gave unselfishly of their time and talents, and expertly represented Respondent Samuel S. Smith in the protection of his rights, and

WHEREAS, the House Managers, Representatives William J. "Billy Joe" Rish, Ronald R. Richmond, and H. Lee Moffitt, with the assistance of attorney Marc H. Glick, did skillfully and ably perform their grave constitutional duties in prosecuting this cause, and

WHEREAS, Dr. John L. Wilson, M.D., patiently provided expert medical advice to the Florida Senate and made recommendations to safeguard the health of Respondent Smith, and

WHEREAS, the Florida Medical Association and Tallahassee Memorial Hospital graciously provided the recommended equipment and assistance, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate publicly recognizes that the defense counsel, the House Managers, and Dr. Wilson performed their services in a skillful and professional manner at great personal sacrifice to themselves but for the benefit of the people of the State of Florida, and that the Florida Senate expresses its deepest appreciation to Ronald K. Cacciatore, Robert H. Nutter, William J. Rish, Ronald R. Richmond, H. Lee Moffitt, Marc H. Glick, John L. Wilson, the Florida Medical Association, and Tallahassee Memorial Hospital for their invaluable and generous contributions which helped assure fairness and justice during the impeachment trial of Judge Samuel S. Smith, September 13-15, 1978.

JUSTICE ENGLAND: Senators, prepare to vote. All in favor of the adoption of the resolution, please signify—let's have a recorded vote. Will the clerk unlock the machine. Secretary unlock the machine and Senators vote. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Secretary will lock the machine and announce the vote.

Yeas—36

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Nays—None

MR. SECRETARY: 36 Yeas, no Nays, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Hair?

SENATOR HAIR: Mr. Chief Justice, at this time I would like to make a motion. The motion is that the impeachment articles be sustained as to each article and that the Senate does find that Samuel S. Smith is guilty of a misdemeanor in office and that he be disqualified to hold any office of honor, trust or profit and that an appropriate judgment be entered by the presiding officer reflecting the same.

Mr. Chief Justice, I would like to add, under our rules we are required to vote on each of these articles separately. And I would like to suggest that we do vote on those separately and also on the final question as to whether or not he be disqualified to hold any office of honor, trust or profit.

JUSTICE ENGLAND: The motion is recognized. Any discussion on the motion to consider the Articles of Impeachment and the further question of disqualification from office? Any discussion?

Senator Plante.

SENATOR PLANTE: Would Senator Hair take the floor and yield to some of the Articles of Impeachment?

SENATOR HAIR: I yield.

SENATOR PLANTE: Senator, in reading through them and trying to underline the different parts of it, I came across many things that in my own opinion I don't think that the House even brought evidence about.

SENATOR HAIR: I agree. And as we came to each of those articles, I thought I might stop and comment on it. I believe in each of the articles that you refer to there are sufficient allegations by other witnesses who proved the allegations which would in my opinion make it sufficient.

SENATOR PLANTE: We will take it up article by article, I will do it at that time.

JUSTICE ENGLAND: Yes, as I understand your motion at this time, Senator Hair, it is to consider the articles one at a time and then if necessary a further consideration of the question of disqualification and future—

SENATOR HAIR: That's correct.

JUSTICE ENGLAND: Seeing no further discussion, if you favor Senator Hair's motion that the Articles of Impeachment be considered, you will vote Aye. If you oppose that motion, you will vote No. Secretary will unlock the machine. Senators will record their votes. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Secretary will lock the machine and announce the vote.

Yeas—36

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Nays—None

MR. SECRETARY: 36 Yeas, no Nays.

ARTICLES OF IMPEACHMENT

Articles of Impeachment of the House of Representatives of the State of Florida in the name of themselves and all of the people of the State of Florida against Samuel S. Smith who was heretofore elected, duly qualified, and commissioned to serve as a Circuit Court Judge of the Third Judicial Circuit of the State of Florida.

ARTICLE I

CONVICTION OF A FELONY

That Samuel S. Smith, a duly commissioned Circuit Court Judge of the Third Judicial Circuit of the State of Florida, was convicted of a felony on April 29, 1977, by a jury, before a court of competent jurisdiction in the case of the UNITED STATES OF AMERICA v. SAMUEL S. SMITH, et al, United States District Court, Middle District of Florida, Jacksonville Division, Case Numbers 77-14 Cr-J-R and 77-14(S) Cr-J-R, and sentenced to three (3) years incarceration on June 3, 1977, for willfully and knowingly combining, conspiring, confederating, and agreeing with others, to commit an offense against the United States, to wit: to distribute and cause to be distributed marijuana, a Schedule I controlled substance under Title 21, United States Code, Section 812, and in furtherance of the conspiracy, Judge Samuel S. Smith performed certain overt acts, knowingly and intentionally possessing with intent to distribute and causing to be distributed, in excess of approximately 1500 pounds of marijuana, all in violation of 21 USC 841(a)(1) and 846, and 18 USC 2.

WHEREFORE, Samuel S. Smith, by such conduct is guilty of misdemeanor in office and warrants impeachment and re-

moval from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE II

CONSPIRACY TO UNLAWFULLY OBTAIN AND DISTRIBUTE IN EXCESS OF APPROXIMATELY 1500 POUNDS OF MARIJUANA

That Samuel S. Smith, a duly commissioned Circuit Court Judge of the Third Judicial Circuit of the State of Florida, individually and by use of his status as a judicial officer of the State of Florida, did set into motion and actively participate in a conspiracy to illegally obtain and unlawfully distribute for the purpose of sale in excess of approximately 1500 pounds of marijuana, a controlled substance under the Laws of the United States and the State of Florida, seized by the Sheriff of Suwannee County, Florida; and that Circuit Court Judge Samuel S. Smith of the Third Judicial Circuit of the State of Florida committed the following acts in furtherance thereof:

(1) On or about Friday, August 6, 1976, Circuit Court Judge Samuel S. Smith met with Suwannee County Sheriff Robert Leonard and Grover Lamar (Possum) Lee, an investigator with the Public Defender's Office of the Third Judicial Circuit of the State of Florida, in Leonard's office in Live Oak, Florida, and engaged in a conversation about obtaining marijuana which the Sheriff had seized in pursuance of his duties as a law enforcement officer. Smith, as part of the scheme, offered to produce a Destruction Order to cover the removal of the marijuana from the Sheriff's evidence vault.

(2) Approximately one week later Circuit Court Judge Smith, upon meeting Sheriff Leonard in the Suwannee County Courthouse, inquired whether the Sheriff had given any more thought to the deal.

(3) On or about Wednesday, September 8, 1976, Circuit Court Judge Samuel S. Smith called Bondsman Homer F. Ratliff into his chambers in the Columbia County Courthouse and told Ratliff he had access to some marijuana and wanted to know if Ratliff knew anyone who could handle it for Smith.

(4) On or about Thursday, September 9, 1976, Sheriff Leonard talked with Judge Smith by phone relative to the marijuana deal, and a meeting was set for the following day at Judge Smith's home.

(5) The next day, on or about Friday, September 10, 1976, Sheriff Leonard met Judge Smith in the driveway of Smith's home in Lake City, Florida, Smith made reference to the deal and stated that for 500 pounds of marijuana \$150,000 could be netted and assured Sheriff Leonard a Destruction Order would be provided. Smith further discussed obtaining 5000 pounds of marijuana which was seized by Sheriff Leonard on September 3, 1976.

(6) On or about Wednesday, September 15, 1976, Judge Smith and Grover Lamar (Possum) Lee met with Duke McCallister, former Sheriff of Suwannee County, and prevailed upon him to persuade Sheriff Leonard to enter into the marijuana scheme.

(7) On or about Thursday, September 16, 1976, Judge Smith called Assistant State Attorney of the Third Judicial Circuit Virlyn Willis into his chambers in the Columbia County Courthouse and offered Willis a share of the marijuana deal in exchange for a guarantee of protection from prosecution.

(8) On or about Friday, September 17, 1976, Judge Smith called Willis and asked him to his home. On that same date Willis visited Smith at Smith's home and was told that Sheriff Leonard had refused to cooperate.

(9) On or about Monday, September 20, 1976, Judge Smith called and told Willis that the marijuana was gone from Sheriff Leonard's possession.

(10) On or about Tuesday, September 21, 1976, Judge Smith went by to see Sheriff Leonard, who was not in.

(11) On or about Wednesday, September 22, 1976, Sheriff Leonard called Judge Smith.

(12) On or about Tuesday, November 16, 1976, Judge Smith and Sheriff Leonard had a phone conversation setting up an afternoon meeting in Sheriff Leonard's office.

(13) On that same day, after noon on or about Tuesday, November 16, 1976, Judge Smith met Sheriff Leonard in his office to discuss plans for Judge Smith to obtain in excess of approximately 1500 pounds of marijuana. The plans were set and the marijuana was to be left by Sheriff Leonard that night at the Live Oak landfill in a truck with the key to the lock on the back of the truck under the mat on the driver's side of the truck.

(14) On or about that same afternoon, Tuesday, November 16, 1976, Judge Smith went by Assistant State Attorney Willis' office.

(15) Later in the afternoon on or about Tuesday, November 16, 1976, Judge Smith called Homer Ratliff. Ratliff returned his call and a meeting was set in the Columbia County Courthouse parking lot that afternoon.

(16) Early in the evening on or about Tuesday, November 16, 1976, Judge Smith and Homer Ratliff met as planned. Smith instructed Ratliff to get some help and a vehicle and pick up some marijuana between 10 and 11 p.m. that night from a truck parked at the Live Oak landfill. Smith told Ratliff that the key to the lock on the back of the truck would be under the mat on the driver's side of the truck.

(17) On or about the night of Tuesday, November 16, 1976, Sheriff Leonard delivered the marijuana to the landfill and placed the key to the lock on the back of the truck under the mat on the driver's side of the truck as agreed with Judge Smith.

(18) Ratliff arranged for the marijuana to be picked up and it was picked up as per Judge Smith's instructions on or about the night of Tuesday, November 16, 1976, between 10 and 11 p.m. by Ratliff, Richard Bradley and Charles Ethridge.

(19) On or about the night of Tuesday, November 16, 1976, after 11 p.m., Sheriff Leonard retrieved the truck from the landfill, as arranged with Judge Smith, and the marijuana was gone.

(20) On or about Wednesday, November 17, 1976, Ratliff phoned Judge Smith and told him everything was all right.

WHEREFORE, Samuel S. Smith, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE III

ATTEMPTED BRIBERY OF OFFICERS OF THE STATE OF FLORIDA TO INFLUENCE PERFORMANCE OF THEIR OFFICIAL DUTIES

That Samuel S. Smith, a duly commissioned Circuit Court Judge of the Third Judicial Circuit of the State of Florida, did in furtherance of the conspiracy outlined in Article II offer bribes to the Sheriff of Suwannee County and the Assistant State Attorney of the Third Judicial Circuit to influence per-

formance of their official duties with respect to the unlawful distribution of seized marijuana in violation of the laws of the State of Florida as follows:

(1) On or about September 10, 1976, in Lake City, Florida, Samuel S. Smith did corruptly offer and promise to Robert Leonard, a public servant, having knowledge of said public servant's official capacity, to wit: Sheriff of Suwannee County, Third Judicial Circuit, a valuable share of \$150,000.00 good and lawful money of the United States of America with the intent and purpose to influence the performance of said public servant in properly disposing of marijuana in said Sheriff's custody, which performance Samuel S. Smith believed to be within the official discretion of said public servant, in violation of a public duty, and in performance of a public duty.

(2) On or about September 16, 1976, in Lake City, Florida, Samuel S. Smith did corruptly offer and promise to Virlyn B. Willis, Jr., a public servant, having knowledge of said public servant's official capacity, to wit: Assistant State Attorney for the Third Judicial Circuit, \$350,000.00 good and lawful money of the United States of America with the intent and purpose to influence the performance of said public servant by requesting that Willis provide information to Samuel S. Smith resulting from any criminal investigation into Samuel S. Smith's unlawful efforts to obtain marijuana in the custody of the Sheriff of Suwannee County, which performance Samuel S. Smith believed to be within the official discretion of said public servant, in violation of a public duty, and in performance of a public duty.

(3) On or about November 16, 1976, in Lake City, Florida, Samuel S. Smith did corruptly offer and promise to Robert Leonard, a public servant, having knowledge of said public servant's official capacity, to wit: Sheriff of Suwannee County, Third Judicial Circuit, a valuable share of \$100,000.00 good and lawful money of the United States of America with the intent and purpose to influence the performance of said public servant in properly disposing of marijuana in said sheriff's custody, which performance Samuel S. Smith believed to be within the official discretion of said public servant, in violation of a public duty, and in performance of a public duty.

WHEREFORE, Samuel S. Smith, by such conduct is guilty of a misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE IV

SUBVERTING THE JUDICIAL PROCESS

That by his conduct Samuel S. Smith, a duly commissioned Circuit Court Judge of the Third Judicial Circuit of the State of Florida, in furtherance of the conspiracy outlined in Articles II and III, did subvert the judicial processes of the Third Judicial Circuit Court and the State of Florida, to wit:

(1) That on or about Friday, August 6, 1976, Samuel S. Smith did offer Suwannee County Sheriff Robert Leonard a Destruction Order to cover the removal of marijuana from Sheriff Leonard's evidence vault, marijuana which Samuel S. Smith intended not be destroyed but obtained and distributed in contravention of the laws of the United States and the State of Florida.

(2) That on or about Friday, September 10, 1976, Samuel S. Smith assured Sheriff Leonard that he would provide a Destruction Order to cover the removal of 500 pounds of marijuana from Sheriff Leonard's evidence vault, marijuana which Samuel S. Smith intended not be destroyed but obtained and distributed in contravention of the laws of the United States and the State of Florida.

(3) That between September 16, 1976, and November 17, 1976, in Suwannee County, Samuel S. Smith, by attempted bribery, did willfully endeavor to obstruct, delay and prevent Virlyn Willis, Assistant State Attorney of the Third Judicial Circuit, from communicating information relating to violations of criminal statutes of the State of Florida to the State Attorney of the Third Judicial Circuit authorized to conduct and engage in investigations of violations of said statutes.

WHEREFORE, Samuel S. Smith, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, and profit.

ARTICLE V

CONDUCT UNBECOMING A JUDICIAL OFFICER RESULTING IN LOWERING THE ESTEEM OF THE JUDICIARY

That Samuel S. Smith as a Circuit Court Judge of the Third Judicial Circuit, in his conduct as a duly commissioned judicial officer of the State of Florida, has by his infamy and the reasonable and probable consequences of the acts or conduct enumerated in the foregoing Articles debased and degraded the office of Circuit Court Judge and the court of the Third Judicial Circuit into disrespect, scandal, disgrace, discredit, disrepute, and reproach to the prejudice of public confidence in the administration of justice therein, and to the integrity and impartiality of the State Judiciary, placing a stigma thereon so as to render him unfit to continue to serve as a judge or public officer:

(1) In that he was convicted of a felony, by a jury, before a court of competent jurisdiction; and,

(2) In that he set in motion and participated in a conspiracy to illegally obtain and unlawfully distribute marijuana; and,

(3) In that he did offer bribes to officers of the State of Florida to influence performance of their official duties; and

(4) In that he did by his conduct subvert the judicial processes of the Third Judicial Circuit and the State of Florida.

WHEREFORE, Samuel S. Smith, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

JUSTICE ENGLAND: Senators, as we approach the discussion and vote on each of these, I want to read to you from your Rule 23. "No member shall speak for more than 10 minutes on the final question of whether the impeachment is sustained, unless by consent of the Senate, to be had without debate."

I would comment that not once since I assumed the rostrum has it been necessary for me to admonish the Senate in any way with regard to decorum, length of time, limitation of debate or in any other way. And I am highly pleased that you have conducted yourselves the way you have. This last part will be as difficult as the preceding parts. At this time I would recognize Senator Hair for a motion.

SENATOR HAIR: Okay. Mr. Chief Justice, then I move that the first article, that it be sustained, that the Senate does find that Samuel S. Smith is guilty of a misdemeanor in office. This is under Article I. And I might go ahead and explain what that article is.

JUSTICE ENGLAND: I think you should do that with each article, Senator.

SENATOR HAIR: All right, sir. The first article is the conviction of a felony. It merely says that Samuel S. Smith was convicted of a felony on April 29, 1977 by a jury before the court of competent jurisdiction in the case of *United States of America versus Samuel S. Smith*. And then it has the Federal Middle District Court of Florida Case citation to which it refers in the article. And that was introduced. I believe certified copies of that have been introduced in evidence.

JUSTICE ENGLAND: Senators, I should say to you that in prior impeachment proceedings, both in this chamber, that the presiding officer allowed written comments to be placed in the journal or in the record of the proceedings by Senators who wished after the vote to explain or qualify their vote. It will be my intention to give you the same privileges so that without regard to the debate today you will be privileged to enter remarks in the journal following the impeachment vote to explain or qualify your votes.

Is there any discussion on Senator Hair's motion that the Senate will sustain Article I of the Articles of Impeachment? Senator Williamson.

SENATOR WILLIAMSON: Mr. Chief Justice, could I ask a couple of questions of you pertaining to the law relative to Article I?

JUSTICE ENGLAND: Proceed.

SENATOR WILLIAMSON: The first question would be what would the effect of us voting to sustain Article I be if the Court of Appeals reverses the conviction, that is the basis of Article I?

JUSTICE ENGLAND: That action would have no effect whatsoever on your decision to find a basis to sustain the charge brought in Article I. Article I, as I ruled in an earlier legal motion, charges a misdemeanor in office by reason of the action in Federal Court and even a reversal of that conviction would not have altered the state of the situation in which the Articles were brought or the conduct that they charged which the House has deemed to constitute "a misdemeanor in office."

SENATOR WILLIAMSON: All right. The other question would be what the law is of the State of Florida relative to a person's guilt or innocence when he has been convicted and when his case is still on appeal.

JUSTICE ENGLAND: That was argued extensively to you at the May proceeding and there is a disagreement of Counsel on that. I probably ought to preface what I say with the observation that it is quite clear under the law of the State of Florida that one need not have been convicted or successfully convicted of a crime to have been guilty of a misdemeanor in office. That is a broader term under the precedents of the Senate and all precedents that have come from the Federal government.

Your specific question whether one —

SENATOR HOLLOWAY: Mr. Chief Justice?

JUSTICE ENGLAND: Senator Holloway.

SENATOR HOLLOWAY: As a layman, again, and not an attorney, am I to understand now that our action will be based on the decision of the Federal Court and not on the findings of this Senate?

JUSTICE ENGLAND: Senator Holloway, no, no one is suggesting that. I don't believe that is what Mr. Williamson was suggesting with his question by way of clarification. He simply wanted to know for information, at least as I understood his

question. It was whether there will be any infirmity in the impeachment process should the conviction be reversed. My answer to that was there will not.

SENATOR HOLLOWAY: I'm sorry, sir, but to continue this—I misunderstood Senator Hair—as opposed because I understood that we were going to vote and this was based on the fact that the Federal Court had found this man guilty of misdemeanor in office and as I read this Constitution, you know, it says in Section C, Article III, Sections 16 and 17, it says: "All impeachments by the House of Representatives shall be tried by the Senate." It doesn't, to me, infer that we would use some decision by some other court. But everything that we do today and all of these decisions that we make now should be based on all testimony and everything that was presented to this Senate and as a result of a trial by the Senate; is that what we are doing?

JUSTICE ENGLAND: That is the nature of this proceeding.

SENATOR HOLLOWAY: Thank you.

JUSTICE ENGLAND: Senator Scott.

SENATOR SCOTT: Mr. Chief Justice, as I understand this, if we vote in favor of Article I and the other Articles should not be sustained which are going to be voted later that Judge Smith would be removed from office based on Article I which is a conviction in a Federal Court that is on appeal; is that correct?

JUSTICE ENGLAND: No, Senator Scott, he would be removed from office by reason of your vote here.

Under Article III Section 17 of the constitution which appears on Page 50 of the Desk Book.

SENATOR SCOTT: But Mr. Chief Justice, if I may, Article I is solely based on the fact that he is convicted in a Federal Court proceeding which is on appeal and has not been finally determined. So my question is if we vote in the affirmative on Article I and the others should not be sustained, will he be removed from office just based on Article I?

JUSTICE ENGLAND: If your vote sustains a conviction on Article I, he will have been removed from office. Again, I would call your attention—I probably should have done this before—to your Rule 25 for these proceedings which reads: "The degree of proof required and necessary to support a conviction is that which is necessary to move the conscience of two-thirds of the Senators present."

I would recognize Senator Wilson.

SENATOR WILSON: A procedural question, Mr. Chief Justice. Article I as printed in our Desk Book before us has certain language and refers, of course, to the case in the Federal Court, the case numbers. It then goes on to describe the overt acts, knowingly and intentionally and possessing with intent and so forth. If we vote yes on Article I, are we voting this exact language or is this just been lifted from what he was convicted of there and we would be voting yes, we consider all or part of this as a misdemeanor in office? My point being are these exact words are we voting yes on or is an amendatory process available to the Senate? For instance, do we base our yes vote or no vote on what we have heard here in these chambers and what we are convinced of, our conscience moved or based on the evidence presented here exactly?

JUSTICE ENGLAND: Senator Wilson, you're surely voting on what you have heard in these proceedings. This is the charging document though it is not amendable by the Senate; it is not amendable. If you were to vote on the basis of

materials that you observed or heard during the course of the last several days, through this entire proceeding and you felt it was at odds with the materials here, whether for or against this article, it would be your explanation in the journal that would be the appropriate place to be able to bring that up.

SENATOR WILSON: In other words, if a portion of what they allegedly found him guilty of was not proven here by the evidence we could still say, okay, he was found guilty and we consider that a misdemeanor in office or whatever. But knowing of our own evidence that they proved all of these charges.

JUSTICE ENGLAND: In the journals of the Senate for August 15, 1957 and the journal of the Senate for September 24, 1963, you will see explanations by Senators of votes that they cast for or against Articles of Impeachment in which they said I believe such and such but on the basis of something else, which I have heard or seen, this is how I voted and why.

Senator McClain.

SENATOR McCLAIN: Yes. Mr. Chief Justice, have we a definition in our law of Florida relative to the meaning of the term misdemeanor in office? Of course as you and I both know under the criminal laws a misdemeanor is something less than a felony. Of course he was convicted, has been convicted twice, as I understand under the First Article, of a felony. But my puzzlement is where do we go for a definition of misdemeanor in office? It doesn't say conviction. It just says misdemeanor in office. I'm in somewhat of a quandary as to what that term means or if it's ever been interpreted by the courts of this State or somewhere else.

JUSTICE ENGLAND: Senator, I want to be very careful with what I say because the questions so far are putting me on the spot and I don't wish to characterize anything that has occurred or the charge. I don't wish to prejudice the Respondent in an interpretation that you might—any of you might choose to place on the charging document or the proof related to it. Therefore I'm going to confine my response to your last question to an order which I entered on pretrial motions which appears in your Desk Book, I believe it's at about Page 46, in which I said in passing upon a motion to dismiss Article I, this article, that what constitutes a misdemeanor in office for purpose of Article III, Section 17(a) of the Florida Constitution is a matter of Florida law determinable by the House of Representatives.

Then quoting from the 1957 Supreme Court Advisory Opinion, this language was used, quote:

"The House of Representatives is clothed with the sole power to impeach and all impeachments are to be tried by the Senate. Since the House of Representatives is clothed with the sole power of impeachment of an official it necessarily follows that it has the power to determine whether the charges brought against him amount to a misdemeanor in office as contemplated in the Constitution."

I simply don't know what more to tell you with the question you asked me.

Senator Scarborough.

SENATOR SCARBOROUGH: Mr. Chief Justice, I want you to try to help us here as much as you can. A few months ago I helped assist and prepare and ultimately adopt by the Senate a resolution dealing with some of our Senators and financial disclosure which I hope you're familiar with the contents of the resolution in which we expressed our opinions quite strongly

that the Senate would take no final disposition as to possible removal from office or resignation of the Senators involved until final and until their case had reached its final disposition in the courts of law. And I think that's a proper approach to it.

What troubles me now is that if we vote for Article I which in effect on the bottom line removes Judge Smith from office, we are doing that prior to final disposition of his legal case.

Are we in conflict by adopting that?

JUSTICE ENGLAND: Senator Scarborough, I'm going to decline to answer that because although I know generally what the resolution was that you adopted, I really have never read it and I would not want to give you an opinion on whether there is a—

SENATOR SCARBOROUGH: I don't have a copy of it.

JUSTICE ENGLAND: Even if I had it, I don't think I would want to give you an opinion on whether that conflicts. I think the Senate knows far better than I and that really isn't a question within my competence to answer.

Senator Dunn.

SENATOR DUNN: Mr. Chief Justice, I would like now to move a substitute motion.

The substitute motion is that the Senate dismiss Article I being the charge of conviction of a felony as an impeachable offense in this proceedings. I would like a moment to explain.

JUSTICE ENGLAND: Senator Dunn, is that the obverse of the motion that Senator Hair made? My question goes to the rules of the Senate. As I understand we do not allow the opposite to be—

SENATOR DUNN: No, sir, I don't view it that way because I believe we can address the question of guilty versus not guilty by a determination of the facts that we have heard. Were we to sustain the charges here in Article I, it seems to me we would have found first as a matter of law that we agree with the House that the charges are an impeachable offense, a misdemeanor in office.

Secondly, we would have found as a matter of fact as triers of fact that the facts exist to support that accusation.

Now I'm moving to dismiss. My explanation as to the grounds will relate to legal grounds and not factual grounds. So I believe I'm going to part of his motion, the antithesis to part of his motion hoping the Senate will agree with me to dismiss Article I on legal grounds which I would like to elaborate on.

JUSTICE ENGLAND: Please go ahead and explain.

SENATOR DUNN: Mr. Chief Justice, I understand the Court's ruling and was one of those Senators who, at the time the matter was presented to us, concurred in a motion to ratify and confirm the Court's ruling as to this order. I believe that the law is as the Court has advised us that the House of Representatives under the precedents and laws of this State and other states has the authority to determine in the first instance what are impeachable offenses. And by that defined, if you will, for our State what a misdemeanor in office is.

In this particular case, the House appointed a committee and that committee determined and ultimately the full House determined that in their opinion it was an impeachable offense for a public official subject to impeachment to be convicted and sentenced irregardless of whether that conviction and sentence was on appeal or whether, if you will, it had become final.

Now I have convinced myself and would urge the rest of this body that were we to follow the position advanced by the House, we would be taking a tack and adopting a precedent that in my opinion is unacceptable, because the misdemeanor in office relates to certain facts. There is no question about the fact that he was arrested, there is no question about the fact that he was convicted, there is no question about the fact that he was sentenced. Now we can say those facts are impeachable if we want to. I would rather say that those facts are impeachable if they're final, as a matter of law, final. If appeal has been exhausted or never exercised, then the conviction is a fact we can take cognizance of and proceed on.

I'm not saying that the Governor or anybody else can't remove temporarily from office or that the House inappropriately exercised their jurisdiction to get the man out of office if necessary but I'm saying that as of today after we have heard the evidence that the appropriate thing is not to remove from office, enter a final judgment of conviction and ouster, if you will, on the basis of a conviction that is not now final.

So I would urge the Senate to adopt the substitute motion which is to dismiss Article I grounded upon the conviction of a felony that is not now final.

JUSTICE ENGLAND: Further discussion on the substitute motion? Senator Plante.

SENATOR PLANTE: Mr. Chief Justice, I think Senator Dunn made a nice try but I think it's an illegal motion. We have a motion to move the adoption of Article I and his is a motion to move the defeat of Article I. My question would be that if it takes a two-thirds motion—two-thirds vote to pass Senator Hair's motion, what does it take to pass Senator Dunn's?

JUSTICE ENGLAND: According to your rules, Senator, all motions except that on the conviction of an Article of Impeachment are by mere majority.

SENATOR PLANTE: So that we can pass one by majority to defeat and the other one you could accomplish the same thing by one-third voting against it.

JUSTICE ENGLAND: Yes, but that's not inconsistent with the precedent, if you will recall, in the prior trial, the impeachment trial of Judge Kelly, that's precisely what happened at the conclusion of the Managers' case a motion to dismiss was adopted by a majority, I believe it was 23 to 20, which concluded the proceedings.

SENATOR PLANTE: Mr. Chief Justice, I would say, though, that a motion having been made to adopt, that a substitute motion being made to reject the same item is not in order. We should go forward with the first one and accomplish the same thing Senator Dunn wants to by defeating the first motion with less votes.

JUSTICE ENGLAND: You're raising a point that the substitute motion is out of order?

SENATOR PLANTE: That's what I am raising.

JUSTICE ENGLAND: That's what I was afraid of.

(Laughter.)

JUSTICE ENGLAND: May I have a moment to confer with the Secretary of the Senate.

(Short pause.)

JUSTICE ENGLAND: Senators, we will come back to order.

SENATOR BARRON: Mr. Chief Justice?

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: I don't know what you're fixing to rule but I think that the Senate in its great wisdom is fixing to get you out of that box, if you will recognize Senator Hair.

JUSTICE ENGLAND: I will be happy to recognize Senator Hair.

(Laughter.)

SENATOR HAIR: Mr. Chief Justice, I believe there is—I'm going to withdraw my motion that we take up Article I at this moment and request—Senator Dunn may have to withdraw his but this is my intention that we will take up Article V first and consider that Article and then we might proceed forward and maybe Article IV, III, II and then I last.

JUSTICE ENGLAND: Am I correct that that takes a unanimous consent of the Senate to withdraw and for Senator Dunn to withdraw the substitute?

SENATOR DUNN: I will join in the motion to withdraw the substitute and with the consent to withdraw.

JUSTICE ENGLAND: Any objections? For the moment, at least, you will never know what my ruling was going to be.

(Laughter.)

JUSTICE ENGLAND: Senator Hair, do you have another motion?

SENATOR HAIR: Mr. Chief Justice, at this time I move then that we take up Article V and ask that it be sustained, that the Senate does find that Samuel S. Smith is guilty of a misdemeanor in office. I would like to explain that that Article is conduct unbecoming a judicial officer resulting in lowering the esteem of the judiciary. And you can see the allegations which are set forth there. There are four paragraphs on Page 11 of that Article.

JUSTICE ENGLAND: Senators, you will find that at Page 19 continuing to Page 21 of your Desk Book dated September 13th. Is there any discussion on the motion of Senator Hair to adopt Article V of the House Articles of Impeachment?

(Short pause.)

JUSTICE ENGLAND: Senator Wilson.

SENATOR WILSON: I have a question, Mr. Chief Justice. Would our vote on Article V first bring about a problem in that the wording of it refers to the foregoing Articles?

JUSTICE ENGLAND: Senator, that was also the subject of a ruling which is in your book, let me go back to my order. There was a motion made by Counsel, if I could find it, in your Desk Book, of September 13, at the bottom of Page 47 where I was asked to dismiss that Article asserting that that charge in V is multiplicitous and a repeat, simply, of Article I through IV.

The legal response given was that it was not—I declined to dismiss that Article on that ground and of course the Senate by its action later approved that. Does that answer your question?

SENATOR WILSON: Not exactly. What I'm anticipating is a problem and I don't think it will be but what if the Senate should adopt Article V and then refuse to sustain the other four Articles and this one in its wording refers to the foregoing Articles; would it make this one then insufficient?

JUSTICE ENGLAND: No. The answer to that is no, that there would be no basis for consistency in that. It would not

necessarily be inconsistent. Again, it could be explained in the individual comments of those who felt that they were in need of an explanation.

Senator Graham.

SENATOR GRAHAM: Mr. Chief Justice, there is also language in this Article that relates to evidence that was apparently not presented to us. What is our latitude in terms of modifying the Articles or must we vote on the Articles in the totality of the factual status that they are presented?

JUSTICE ENGLAND: Senator Graham, you have no modification powers whatsoever. You are dealing with, again, under your Senate Rule 25 for these proceedings which is on Page 7 of your Desk Book that the degree of proof required for conviction under that Article or any other is the two-thirds vote necessary to move the conscience of the court.

Senator Spicola.

SENATOR SPICOLA: Mr. Chief Justice, in order to concur in Article V must we feel that every allegation within that Article has been proved or sustained?

JUSTICE ENGLAND: The degree of proof required for some or all of the allegations is not as relevant as is the degree of proof necessary to sustain the Article in its entirety as presented to you based on your conscience.

Senator Graham, again.

SENATOR GRAHAM: Mr. Chief Justice, the concern that I have in this is Page 17, Paragraph 2 and previously referred to in the introductory paragraph—I'm sorry, Mr. Chief Justice, I was—we are on Article V.

JUSTICE ENGLAND: We are on Article V beginning on Page 19 of your Desk Book.

SENATOR GRAHAM: Thank you.

JUSTICE ENGLAND: Senator Williamson.

SENATOR WILLIAMSON: Mr. Chief Justice, is there anything in the Article that is material and immaterial allegations insofar as my understanding of the material and nonmaterial allegations is an information or a grand jury indictment?

JUSTICE ENGLAND: No. Senator Williamson, I do not believe that's the case.

Gentlemen, I sense that you're perceiving the difficulties which jurors have when citizens are brought in and asked and told by the court that this is the law, now apply the facts to it and this is the charge, is he guilty of it, and I'm sure every juror goes through the same concerns. In a strictly judicial proceeding judges never explain what the legal relevance of all these related matters are. I think you now understand why. It's very difficult to explain. I'm not sure I can be terribly much more helpful. This proceeding is very much like a jury trial and I sympathize with the difficulties that you're having.

Senator MacKay.

SENATOR MacKAY: Mr. Chief Justice, this is in the nature of an inquiry. I was told that the House Managers have passed out some written material and I think if that's going to be done at this stage of the proceeding it either ought to be passed out to all of us or done formally so that the Defense could interpose an objection if that would be appropriate.

JUSTICE ENGLAND: Senator, let me inquire. I was not aware that there was anything being passed out.

REPRESENTATIVE RISH: Mr. Chief Justice, let me tell you what did happen and it has stopped now. Two or three Senators came and asked us if we had a definition of a misdemeanor in office and without my knowledge it was—two or three of them picked it up. I had written earlier to ask the Court could I suggest that we have a definition from our Florida courts if it would be proper to do that but I told Mr. Cacciatore that—I apologized to him and I'm very sorry that it happened. But it shall not happen again.

Senator MacKay, I apologize to the Senate. It was just a mistake.

SENATOR MacKAY: Representative Rish, it was not intended as a criticism.

JUSTICE ENGLAND: Senators, I want you to confine yourselves to everything within your knowledge or range of the research you have done in becoming prepared for today and the materials that have been submitted to you. But the presentation of evidence is closed as is the presentation of argument by Counsel and that includes their interpretation of anything that's come in front of you or any explanation that they want to make. So I would ask you not to inquire further of Counsel for either side in that regard.

Senator Johnston.

SENATOR JOHNSTON: Mr. Chief Justice, may I speak briefly in favor of the motion by Senator Hair?

JUSTICE ENGLAND: You are so recognized.

SENATOR JOHNSTON: Senators, on Article V it's very simple, conduct unbecoming a judicial officer. Look on Page 19 and Page 20. On Page 20 are the four areas in which the House Managers feel that this conduct is unbecoming. I think if you go down them there is ample proof in the record to support this Article.

JUSTICE ENGLAND: Senator Scott is recognized.

SENATOR SCOTT: Mr. Chief Justice, Senators, I agree with Senator Johnston. I think that if we look at it and we feel that anything in there amounts to conduct which subverts the judicial process and it will be the same way with the other Articles, maybe there will be allegations in paragraphs for whatever reason there was no direct evidence on it. But if we feel that the charge is sustainable then we should vote on it and I don't think that we are accountable for the fact, for example, that one of the four paragraphs may or may not have had evidence presented on it.

JUSTICE ENGLAND: Senator Vogt.

SENATOR VOGT: Along the same lines, Mr. Chief Justice, I just wanted to inquire of you; is there any impediment to our decision of an affirmative vote on an impeachable offense if, for instance, there are several Articles or several things enumerated in one Article; perhaps one of them has had no evidence presented to back it up or has not—could not be proven. Could someone in their own conscience then vote on the basis if they agree with three out of four?

JUSTICE ENGLAND: Senator, I would have to conclude that the rules you have adopted on the standard of proof would allow that, yes.

Senator McClain.

SENATOR McCLAIN: Mr. Chief Justice, Senators, I think that we are kind of getting over-technical on this. In the first place, I'm convinced that if a person is convicted beyond and to the exclusion of a reasonable doubt by a court of this State,

in this case the Federal Court, that cloak of innocence he may have had prior to the conviction is gone. Now we don't know whether this conviction, and I think we're talking about Item 1 here on Page 20, will be sustained or not. But misdemeanor in office constitutes whether that conviction is sustained or not by the appellate court, constitutes unfitness, I think it constitutes a broad variety of things as well as misfeasance, non-feasance and malfeasance. So I don't think we have any problem.

When you got down to 2 they are talking about conspiracy. I think where you have sufficient evidence to reach a conclusion on that, one way or the other. Offered bribes; there is no question that there was talk about, well, you would get some of the money from the marijuana sale, ultimately, which constitutes, I would think, a bribe. And then also the conduct, subverted the judicial process of this circuit, in which this particular individual served. I see no problem with any of the language that's couched by the House Articles on Page 20 and I just would like to get on with the vote.

JUSTICE ENGLAND: Further discussion of Senator Hair's motion? Senator Brantley.

SENATOR BRANTLEY: Mr. Chief Justice, if I may have just a moment to urge the adoption of the motion by Senator Hair and relate to you that about 12 years ago Senator Scarborough and myself and others, of course, but the only remaining two Senators from Duval County, offered ourselves for public service and one of the prime motivations of my seeking membership in the House of Representatives at that time was because we had great numbers of both county and city officials in Jacksonville, Duval County, under indictment for misuse and abuse of public office.

We found that there was no law at the time, Senators, that would allow anyone to remove an indicted official from office. Those officials blatantly continued to serve in that capacity, spend money, make decisions that affected the lives of everybody in their respective jurisdictions of Duval County.

I can represent to you that the first talk I ever made in my life on the floor of a legislative body was during an organizational session, Senator Spicola, as you recall, of 1967 when in fact I urged a special session for the purpose of adopting a law to remove an indicted official. And as you recall for the first time and since the turn of the century, we did get a sufficient number of signatures from members of the House of Representatives and from members of the Senate to cause—under the provisions of the old constitution—to cause the Secretary of the State to poll both houses to determine whether or not that would be a sufficient reason to call a special session. We fell short in the Senate just slightly.

But nonetheless, I felt very strongly that those that would misuse and abuse a public office ought not to have the privilege to serve. And one of the first laws I passed in 1967 by both houses of the Legislature and laid on the desk of the Governor was one to allow the Governor to remove an indicted municipal official who was under indictment.

And I think it's ironic, Mr. Justice and Senators, that I find myself in the position today ending my 12-year legislative career speaking on the very subject that I came into office on.

I feel very strongly, Senators, that the position that any public official holds is a position of public trust and that that position belongs to the people. To abuse it and misuse it, in my judgement, is the strongest conceivable grounds to be kicked out of that office.

Mr. Cacciatore and co-counsel have done an excellent job and I agree with some of his closing arguments that, yes, I

think our law enforcement people on occasion did bungle and I had a real question in my mind with regard to that entrapment situation. But nonetheless, Senators, that circuit judge was in one of the highest positions of public trust. His job, his constitutional and statutory obligation, was one of dispensing justice. And yes, Senator Glisson, here was a lot of difference in a little pile and a big pile. A person that is not in public office that commits a crime should be punished. It's even worse for a public official to do that. And more specifically I will take it a step higher. Most of us who are nonjudicially trained look to our courts as the highest possible position inclusive of the chief executive of our State because they wear that robe of honor and they dispense justice.

I have got to tell you, Senators, I'm going to be well pleased today to cast a vote to kick Sam Smith out of office because I'm convinced from the testimony that we've heard that he misused and abused his public office and I would urge you to join me to put that individual out of office who has corruptly abused a public trust.

Thank you, Mr. Chief Justice.

JUSTICE ENGLAND: Further discussion?

Senator Scarborough.

SENATOR SCARBOROUGH: Mr. Chief Justice, it's only—I don't think the word is fitting—I think the word I'm looking for it's only natural that Senator Brantley and I disagree on his almost last day in public office. It's going to be a difficult thing to serve in the Legislature without him. His comments ring so clear of those early days in our legislative careers beginning in 1967 and he brought to you an illustration of exactly the dilemma that we faced in Duval County because of a lack of mechanism to suspend, to suspend indicted public officials until the final disposition of their legal problems.

I find myself in somewhat of a dilemma as I suspicion many of you do in that there is very little doubt in my mind about the conduct of Judge Sam Smith. I think, Senator Brantley, that there is reasonable grounds to impeach him from office because of his conduct. And I would find it very difficult not to vote to impeach him on that basis.

But I find it inconsistent, I also find it against everything I've always grown to know about the judicial system in America that a person would be removed from office, which is about as severe a penalty as you can impose on any man or woman, because of an alleged violation of the law until that individual has had their final day in court. And that's what concerns me with Article V. I find it very little different from Article I in that it says that among the reasons that we are impeaching Judge Smith, the first reason is, that he was convicted which we all know that to be the fact. But we also all know that that conviction is upon appeal at this very moment.

I think quite candidly that we could be, I hope not, but looked upon by our constituents if we follow this course of action as imposing dual standards of justice, one standard on ourselves and another standard on other public officials. I, like all of you, had no idea when we adopted our resolution several months ago, which I firmly believe was the right thing to do, I would do it again tomorrow if the question was before us, but need not I remind you that our course of action then was emphatically that every public official, judicial, executive, legislative was entitled to their due process in the courts before removal from office.

I would hope that the Senate, I don't know how, Mr. Chief Justice, we can do this because it's a very difficult situation. I don't know how we can dispose of this unless we can amend

the Articles to say proviso language that he is not removed from office or impeached because he was convicted while his conviction is upon appeal. If the Senate wants to amend the Articles to say some of the other things which I concur with, then I think we would be consistent and I think we would be doing for Judge Smith what we have done for ourselves. I don't know, Senators, how we get to that position but I hope before we conclude our deliberations and cast a final vote on this very delicate matter today that at least we attempt to.

JUSTICE ENGLAND: Senator McClain.

SENATOR McCLAIN: Well, I guess I would rather be on the minority on that point but, Mr. Chief Justice, Senators, I think we have to look at this proceeding as what it is. This is an impeachment trial. I think Senator Barron aptly pointed out we are not really a, you know, part political, it's part—it probably could even be considered judicial and certainly it's legislative what we are doing here. But we are not a court of criminal law in the sense that we are not held by the same degree of proof. I don't think that anybody in this body thinks that every allegation in an impeachment trial has to undergo the same burden of proof as in a criminal case, which as you know, is beyond and to the exclusion of any reasonable doubt. We are not here, really, to act as a court to decide the pension issue nor are we here to punish Judge Smith. We are here to decide whether there is sufficient evidence before this body to impeach.

Now in the record, as I recall, there was a copy of actually two convictions but there was a copy of a conviction in Jacksonville that I think is the question. That's in Item 1 on Page 20 in that he was convicted of a felony. Now let me say this to you. A person once convicted by a jury of his peers beyond and to the exclusion of reasonable doubt loses the cloak of innocence. Now the House, apparently, from Judge England's ruling, is to decide what is a misdemeanor in office and they have so found that this is a misdemeanor in office. And this is what we have before us. But our duty is to say does that conviction under that test that was in the criminal court shock the conscience of this Senate, that standing alone? And I think it does.

I see no infirmity in Article V with respect to subparagraph 1 which deals with the felony charge. I know Senator Dunn perhaps disagrees with me and obviously Senator Scarborough does. But I think that that charge is rightly before us to be considered as a misdemeanor in office, I think the cloak of innocence is gone and I think we can vote on it, however your conscience dictates. I would urge that we go ahead and put it to a vote and go ahead and decide this one way or the other. I know how I'm going to vote and you probably know how you're going to vote. But I think we need to move on with the process.

Thank you, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Dunn is recognized again.

SENATOR DUNN: Mr. Chief Justice, members of the Senate. I think, very briefly, two matters should be clarified. First, on the motion to dismiss or strike Article I. It is my position that Article V is founded exclusively on a finding of fact that an individual was convicted at a given time and circumstance, period. It is not predicated on any other facts or circumstances. A simple conviction is the basis under Article I for permanent removal.

It's my view, I strongly hold this view, it's something that I believe very strongly in and I believe we ought to adopt it as a precedent, that we ought not look at the question of con-

viction as the sole and exclusive basis for removal until that conviction has been final.

Now, Senators, the subtle distinction is this: If we look at a conviction what we are doing is looking at the product or the conduct of the judicial branch and the executive branch operating on an individual. Okay.

If we step back and say it is our responsibility as guardians of the public trust to assure that an individual who's charged with a felony or a misdemeanor is promptly impeached if appropriate. We don't need a conviction in court to base a decision for removal. We can look at the same facts and circumstances that the jury looked at and remove the man from office. That's the kind of conduct that we ought to do.

What I'm saying is we ought not follow the rather blind lead of the judicial branch or a jury in determining whether those facts exist. And were we to follow Article I, that's what we would have been doing.

Now there is no inconsistency, in my opinion, in taking the position that I have as to Article I and voting in favor of Article V as I intend to do. For this reason, first of all, we are not held as was pointed out by Senator McClain and others, to a literal and strict requirement of the absolute proof of everything in the impeachment articles.

We, like any jurors, are subject to finding substantial compliance sufficient to move our conscience. There has been, in my opinion, no material variance between those facts alleged and those facts proved. And I don't just mean, members of the Senate, proved from the mouths of a witness in here. I am talking about facts that are proved by the reasonable inferences from the facts in evidence. In other words, what do we reasonably conclude happened based on the facts as they were presented to us?

In Subparagraph 1 on page 20, in that he was convicted of a felony. We are not founding the basis for removal in Article V on the simple exclusive fact of conviction. We are predicating in Article V the basis on a much broader statement of facts, the statement of facts that goes to show that he in fact brought discredit of substantial proportions to a member of the judiciary. I think it has been shown and I think we ought to vote in favor of sustaining Article V for those reasons.

JUSTICE ENGLAND: Further discussion on the motion?

(No response.)

JUSTICE ENGLAND: Question recurs on Senator Hair's motion that the Senate do adopt Article V of the Articles of Impeachment presented by the Florida House of Representatives. Secretary—

SENATOR BARRON: Mr. Chief Justice, before we vote, I am very concerned about the position of Senator Scarborough. And I want to understand the position of the Court as I heard it deliberated a moment ago. And that is that if we—if the House has proved the material allegations contained in Article V, whether they proved them all or not, then you can vote to remove. Is that what you said a moment ago?

JUSTICE ENGLAND: I indicated that you were not held to a standard which requires that each and every item alleged has been demonstrated to your satisfaction but that the article in its entirety has been—the sense of your conscience—proved. Senator Scott.

SENATOR SCOTT: Senators, Mr. Chief Justice, let me suggest to you that if you do still have a problem with the fact that it is a conviction, it's not found, you can explain your vote and that's what I intend to do because I do not intend to vote for impeachment based on a conviction in a court proceeding which is not found. So you can put an explanation in the Journal.

JUSTICE ENGLAND: All right. Senators, we're prepared to vote. If you vote to impeach Judge Samuel S. Smith for the charges of the House of Representatives lodged in Article V, conduct unbecoming a judicial officer, you will vote yes on this motion. Senator Holloway.

SENATOR HOLLOWAY: Yes, Mr. Chief Justice, parliamentary inquiry again. I am a little bit confused to this extent that if we have five Articles of Impeachment that were passed in a resolution by the Florida House of Representatives, I see nothing in the Constitution that says that this Senate must act on any one of those or all of them or any part of them. All I can see in Section 17 of Article III again is, as you said, that we're required to either act or dismiss or we either vote to impeach by two-thirds of the majority of this Senate. And once this person has been impeached by this Senate, then it further says a judgment or conviction in cases of impeachment shall remove the offender from office and in the discretion of the Senate may include disqualification to hold any office including honor, trust and so forth.

Now the point that disturbs me now is the fact that suppose we have two-thirds majority vote on Article V but when we get to Article IV, we don't have it. When we get to Article III, we have a different one. Where do we end up? What do we do concluding? Do we have one final vote on all four or all five articles?

JUSTICE ENGLAND: Senator Holloway, your inquiry has been resolved by an earlier motion you adopted which is that the Senate do vote on each article individually. I suppose it would have been open to the Senate to vote collectively but you earlier approved Senator Hair's motion that we vote on the individual Articles of Impeachment one at a time and if necessary on the disqualifications. So the inquiry is there will be five votes and then if necessary a vote. If there is any one conviction on any one article, it will be open to the Senate to consider a further vote on the matter of future disqualification. Does that answer your inquiry?

SENATOR HOLLOWAY: I understand what you said, Honorable Sir, but I think it's ridiculous.

JUSTICE ENGLAND: I am comforted by the fact it was the vote of the Senate.

SENATOR HOLLOWAY: I still think it is ridiculous.

JUSTICE ENGLAND: Senators, it is time to vote. Again, if you vote yes for this motion, you will be voting to remove Judge Sam Smith from office based on the charges in Article V. The Secretary will unlock the machine and all Senators will cast their vote. All Senators please vote. Have all Senators voted?

(No Response)

JUSTICE ENGLAND: Secretary will lock the machine and record the vote.

Yeas—36

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Nays—None

MR. SECRETARY: 36 Yeas, no Nays, Mr. Chief Justice.

Explanation of Vote

I cast my vote for Article V "conduct unbecoming a judicial officer resulting in lowering the esteem of the judiciary" with full knowledge that his conviction is on appeal, however, with sufficient evidence being provided at this trial to impeach Samuel S. Smith.

Jon C. Thomas, 30th District

JUSTICE ENGLAND: By your vote you have approved the impeachment of Judge Sam Smith for conduct unbecoming a judicial officer. And a judgment in an appropriate form will be entered to that effect. Senator Plante.

SENATOR PLANTE: Make a motion.

JUSTICE ENGLAND: State the motion.

SENATOR PLANTE: Mr. Chief Justice, I move that the Senate reject or do not concur in Article I through IV of the Impeachment Articles.

JUSTICE ENGLAND: Discussion on Senator Plante's motion. Senator Dunn.

SENATOR DUNN: I'm not really sure that I can understand the purpose to be served by the motion unless Senator Plante believes that the allegations in Articles I through IV have not been proven to the satisfaction of this Senate. What I am concerned about is a situation that may arise where this case is subjected to some sort of appellate review and some court were to come by and review our evidence, which I hope is beyond their review, but in the event some jurists and court determine that it was and if for some reason the conviction on the basis of Article V is not sustained because of some appellate found infirmity, I would think that we ought to go ahead and for those Articles that are in fact shown from the proof here, we ought to take appropriate action and vote them up or down.

JUSTICE ENGLAND: Senator Gallen, did you wish to be recognized?

SENATOR GALLEN: Yes. I was going to make a substitute motion that would accomplish the same thing that Senator Plante was attempting to accomplish and that would be that—I am not making this motion—but it was going to be my intent when I arose that we just adjourn. But I think that we have other action that we have to take before we do that. And I would like to suggest that perhaps we would go to that action which would be to decide whether or not this impeachment would prohibit him from holding other office and make that decision.

So I would like to move at this time, in a substitute motion, that this impeachment carry with it the prohibition that the Respondent be prohibited from further holding office.

JUSTICE ENGLAND: Senators, you have heard Senator Gallen's substitute motion that—Senator Hair.

SENATOR HAIR: Mr. Chief Justice, the only comment I would like to make is we took a vote earlier that the Senate would take up each of these articles and that we would do so separately. That was adopted by unanimous vote. I realize, of course, we can change our mind at any time. And, of course, the motion before us now is that we do take up the article and consider it. Senator Plante's motion, I guess, is the substitute motion which I assume is in order, although we already have voted earlier that we would take them up individually. I just wanted to point that out.

JUSTICE ENGLAND: Senator Hair, I considered that either a substitute or a motion to reconsider. That Senator Gallen's

substitute motion is certainly in order even under the original motion because that included individual vote on the articles plus if there was a conviction on any, the getting to the matter of disqualification. So, Senators, you have before you Senator Gallen's, I think, proper substitute motion that on the basis of the conviction of Article V the Senate as allowed by Article III, Section 17(c) of the Florida Constitution a vote of disqualification of Judge Sam Smith to hold any office of honor, trust or profit. Senator Gallen, have I correctly stated your substitute motion?

SENATOR GALLEN: That's correct, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Trask.

SENATOR TRASK: Inquiry of the Chair. Your Honor, in reading these various Articles it appears that that "wherefore" paragraph at the very end of each one of them says the same thing. I thought we were voting that as we voted on the Article. I thought that was part of the Article. And that says that we find him—that he cannot in the future hold any office of honor, trust or profit. So I thought that was part of what we just voted on.

JUSTICE ENGLAND: Senator Gallen.

SENATOR GALLEN: Mr. Chief Justice, under Section 17 of Impeachment, Subparagraph c, it would appear that it would require a separate vote of the Senate. And I think that it would be appropriate that we do make that a separate decision because the last sentence states "Judgement of conviction in cases of impeachment shall remove the offender from office and in the discretion of the Senate may include disqualification to hold any office of honor, trust or profit." The second being a permissive discretion of the Senate. That was the purpose of my motion, substitute motion, to put that directly before the Senate for the record.

JUSTICE ENGLAND: Senator Trask, further amplification of your inquiry, Senator Gallen is correct. We have first, of course, the motion of Senator Hair originally brought which was the five Articles of Impeachment and the conviction and then leading to the other. But also your Rule 24 clearly contemplates that if the impeached officer shall be convicted, then the Senate shall proceed. And it would appear that this other is a separate individual motion, what with the Constitution and your rules. Further discussion on the substitute motion? Senator Plante.

SENATOR PLANTE: Mr. Chief Justice, I was not aware. Senator Hair told me he had made a motion earlier to take up Article IV. And that the substitute motion was made to take up Article V, which we have voted on. And therefore, mine would be a substitute motion.

JUSTICE ENGLAND: No. As I understood it, his first motion was withdrawn with the consent—

SENATOR PLANTE: That's what I had thought but I wasn't sure.

MR. SECRETARY: He did. Both of them were withdrawn, his and Senator Dunn's. No, that was on Article I.

JUSTICE ENGLAND: I believe we are in proper posture. Senator Vogt.

SENATOR VOGT: Is the substitute motion merely to prevent him from holding future office?

JUSTICE ENGLAND: Yes.

SENATOR VOGT: It does not address Articles I, II, III, and IV?

JUSTICE ENGLAND: That's correct. It implements the last provision in Article III, Section 17(c) of the Constitution to bar holding any office of honor, trust or profit. That is the substitute motion. Senator Scott.

SENATOR SCOTT: Mr. Chief Justice, I am concerned that by voting on this matter now we are precluding any consideration of the other articles. And I think because the Rule 24, as you read it a while ago, says that then we would proceed to determine whether he would be disqualified to hold any other office.

JUSTICE ENGLAND: Senator Scott, you are not precluded from doing that because you adopted Senator Hair's motion which called for a vote on five Articles plus this question. No sequence was described. This is in order to implement that earlier motion. Any further discussion on the substitute motion?

(No response.)

JUSTICE ENGLAND: Senators, we will vote on that at this time. All those who indicate affirmative will be voting to disqualify Samuel S. Smith from holding any office of honor, trust or profit as that term is described in Article III, Section 17 of the Florida Constitution. Would the Secretary unlock the machine and all Senators record their vote. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Senator Gallen, for an inquiry.

SENATOR GALLEN: After you announce the vote, I would like to be recognized for a motion.

JUSTICE ENGLAND: The Secretary will lock the machine and record the votes.

Yeas—36

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Nays—None

MR. SECRETARY: 36 Yeas, no Nays, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Gallen.

SENATOR GALLEN: Mr. Chief Justice, I move that we adjourn.

MR. SECRETARY: It's nondebatably and it's the highest priority motion.

JUSTICE ENGLAND: I am told that that is a nondebatably motion which is the highest priority motion you have. I think that is correct under the rules that you have adopted. I think I am obliged then to call for the question on—Senator Scott.

SENATOR SCOTT: Point of order.

JUSTICE ENGLAND: I'm not sure a point of order—

SENATOR PAT THOMAS: Mr. Chief Justice, before you make a decision on that motion, can I go back to the motion made by Senator Hair that each of the Articles be treated as separately and if that were to be, would not we be under a constitutional mandate to vote on those issues? Wasn't that the point of call? Have you responded to the—

JUSTICE ENGLAND: No, point of parliamentary inquiry. The answer is no. We're on Senator Gallen's nondebatably motion to adjourn which is in order. Senator Scott, point of order?

SENATOR SCOTT: I respectfully submit to you that we have a duty to vote on these Articles that were sent over here by the House of Representatives one way or another.

SENATOR GALLEN: That's not a point of order.

SENATOR SCOTT: Well, I am submitting to you that we cannot adjourn as Court of Impeachment without a vote. It would be the same as if we adjourned this morning and had not done anything. We haven't completed it. And I believe that we—

JUSTICE ENGLAND: Senator Scott, your point is that the motion is out of order. I do not believe that motion is out of order to adjourn.

SENATOR DUNN: Point of inquiry.

JUSTICE ENGLAND: Point of inquiry, Senator Dunn.

SENATOR DUNN: Mr. Chief Justice, if we vote in favor of the motion to adjourn, we would in effect be adjourning without taking any action on Articles I, II, III and IV. And, therefore, those Articles would not have been decided one way or the other by the Senate. Is that the effect of the motion?

JUSTICE ENGLAND: That is certainly the effect. Senator Vogt, did you rise for a point of constitutional inquiry?

SENATOR VOGT: Yes, sir.

JUSTICE ENGLAND: You are recognized.

SENATOR VOGT: Thank you. What is the significance to his motion to adjourn of Rule 24 of this Impeachment which says on the final question the Yeas and Nays shall be taken on each Article of Impeachment separately? Have we precluded ourselves from adjourning and not voting on each Article?

JUSTICE ENGLAND: You have but these rules were amendable by majority vote.

SENATOR VOGT: By majority vote. So you are saying that if the majority voted to adjourn, that in effect amends the rules?

JUSTICE ENGLAND: I believe that would be a correct interpretation. Senators, unless there is another point of high constitutional inquiry—Senator Brantley.

SENATOR BRANTLEY: Mr. Justice, if in the event the motion to adjourn prevails, would it be the intent of the Chief Justice to have at least something inserted into the record that this Senate did not either agree nor disagree but simply took no action on the first four Articles of Impeachment?

JUSTICE ENGLAND: Your comment just now would be inserted into the record.

SENATOR BRANTLEY: That's the reason I asked it, sir.

JUSTICE ENGLAND: The Senate will vote on Senator Gallen's motion to adjourn. The Secretary will unlock the machine and all Senators will record their vote. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: The Secretary will lock the machine and record the vote.

Yeas—6

Gallen	Holloway	Scarborough	Wilson
Gordon	Plante		

Nays—30

Barron	Gorman	Myers	Thomas, Pat
Brantley	Graham	Peterson	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Johnston	Scott	Ware
Dunn	Lewis	Skinner	Williamson
Firestone	MacKay	Spicola	
Glisson	McClain	Thomas, Jon	

MR. SECRETARY: 6 Yeas, 30 Nays.

JUSTICE ENGLAND: The motion fails of adoption. Recognize Senator Hair.

SENATOR HAIR: I would like to move Article IV, that we take that up, that it be sustained and that the Senate does find that Samuel S. Smith is guilty of misdemeanor in office.

JUSTICE ENGLAND: Discussion on Article IV of the Articles of Impeachment which appear in your September 13 Desk Book at page 18.

SENATOR HOLLOWAY: Will Senator Hair yield to a question?

SENATOR HAIR: Yes, I yield to the question.

SENATOR HOLLOWAY: Senator Hair, straighten me up now. Did Article V include Article IV? Does it have the same language? Does it or does it not?

SENATOR HAIR: It does not have exactly the same language. It does say there that he conduct—a conduct which has subverted the judicial processes of the Third Judicial Circuit. That is one of the allegations in Article V.

SENATOR HOLLOWAY: Is the answer yes or no?

SENATOR HAIR: Article V does have some of the language.

SENATOR HOLLOWAY: Thank you.

SENATOR HAIR: I would like to point out, Mr. Chief Justice, in Article IV, I think you can read what the Article is. It is a very judicial process. The allegations of Paragraph 3 of that Article were not proven. There was no evidence presented by Mr. Virlyn Willis but in my opinion and, Mr. Chief Justice, you might want to comment on this, it's my opinion that as long as there is sufficient evidence presented which would sustain that article, even though all the allegations have not been proved, that it would be sufficient to—

SENATOR VOGT: Talking about III or IV?

SENATOR HAIR: Talking about IV. Yes, it is, under paragraph 3.

JUSTICE ENGLAND: Further discussion on Article IV? Senator Trask.

SENATOR TRASK: Your Honor, just a little inquiry going to the question that was just asked, wasn't this what we just did? I would like to inquire of you an opinion, if we did not go ahead and adopt those articles of which we agree, wouldn't we be in grave danger of a conflict here because actually Article V is simply a recap of the first four? I find from the discussion we have had here there is great disagreement on Article I. And I think that, you know, just judging, we probably would find that it would not be approved.

JUSTICE ENGLAND: Senator Trask, the answer is no. I say an earlier ruling I had to make a preliminary legal determination that Article V was not a recap, simply a repeat of the first four Articles. And I did in the order which is in your desk book on page 46 which ruling was approved by the Senate

earlier in these proceedings. So, no, there is no danger of conflict. You can accept or reject any of the other individual Articles without concern on that.

SENATOR TRASK: Then on any appeal, the fact that we might reject Articles I through IV could not be used individually to rebut the fact that we approved Number V?

JUSTICE ENGLAND: I will answer your question yes, but I will have to say that I know of no appeal that can be taken from an impeachment process. Further discussion on Senator Hair's motion that the Senate adopt Article IV of the House? Further discussion?

(No response.)

JUSTICE ENGLAND: Senators, prepare to vote. Will the Secretary unlock the machine—excuse me, Senator Scarborough.

SENATOR SCARBOROUGH: I thought that was just on the motion. I would like to make a brief observation, if I may.

JUSTICE ENGLAND: Absolutely.

SENATOR SCARBOROUGH: Senators, Judge Smith is impeached and removed from office already. In Article IV, Subsection 1, it says that "On or about Friday, August the 6th, 1976 Samuel S. Smith did offer Suwannee County Sheriff Robert Leonard a destruction order to cover the removal of marijuana from Sheriff Leonard's evidence vault." I have some grave—I don't know. I don't know. I don't think it was proven at all during this impeachment procedure that that took place.

The second paragraph in Article IV says that "On or about that same day the Judge assured Sheriff Leonard that he would provide a destruction order." I think there is room for sufficient doubt about the veracity of that statement. But more importantly, the third and final paragraph in that Article says that the Judge attempted willfully to endeavor to obstruct Virlyn Willis from communicating information. We never heard from Virlyn Willis. I don't see how we could in good conscience vote to sustain this particular Article when those three facts which are the whole article were never proven whatsoever before the Senate.

JUSTICE ENGLAND: Further discussion on Article IV? Senator Vogt.

SENATOR VOGT: Mr. Chief Justice, I would just say along those lines that not only this article but on any of them where there are multiple allegations, in this case any of the three would be a crime. And if you believe any of the three was substantially shown to move your conscience to believe that it happened, then you could justify voting for the article on any one of them and not necessarily all of them.

JUSTICE ENGLAND: Further discussion on Article IV?

(No response.)

JUSTICE ENGLAND: Question recurs on the motion of Senator Hair to adopt Article IV of the House Articles of Impeachment. All Senators prepare to vote. The Secretary will unlock the machine and Senators record your vote. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Secretary will lock the machine and announce the result.

Yeas—32

Barron	Chamberlin	Childers, W. D.	Firestone
Brantley	Childers, Don	Dunn	Gallen

Glisson	Holloway	Peterson	Thomas, Jon
Gordon	Johnston	Poston	Thomas, Pat
Gorman	Lewis	Renick	Tobiassen
Graham	MacKay	Scott	Trask
Hair	McClain	Skinner	Vogt
Henderson	Myers	Spicola	Ware

Nays—3

Plante Scarborough Williamson

MR. SECRETARY: 32 Yeas, 3 Nays, Mr. Chief Justice.

JUSTICE ENGLAND: Article IV having been by your vote adopted by the requisite two-thirds is also approved. Senator Hair?

SENATOR HAIR: Chief Justice, I move that we take up Article III, and that it be sustained that we do find that Samuel S. Smith is guilty of a misdemeanor in office. This Article III is an attempted bribery of officers of the State of Florida to influence performance of their official duties. I would like to point out to the Senators that paragraph 2, there are some allegations there by Mr. Virlyn B. Willis. Those allegations were not—there is no evidence of those allegations, however, there are allegations of paragraphs 1 and 3.

JUSTICE ENGLAND: Further discussion on the motion?

(No response.)

JUSTICE ENGLAND: Senators, prepare to vote. The Secretary will unlock the machine. The Senators will vote for the motion of Senator Hair that the Senate do adopt Article III presented by the House Managers. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Secretary will lock the machine and record the vote.

Yeas—33

Barron	Gordon	McClain	Thomas, Jon
Brantley	Gorman	Myers	Thomas, Pat
Chamberlin	Graham	Peterson	Tobiassen
Childers, Don	Hair	Plante	Trask
Childers, W. D.	Henderson	Poston	Vogt
Dunn	Holloway	Renick	Ware
Firestone	Johnston	Scott	
Gallen	Lewis	Skinner	
Glisson	MacKay	Spicola	

Nays—2

Scarborough Williamson

MR. SECRETARY: 33 Yeas, 2 Nays, Mr. Chief Justice.

JUSTICE ENGLAND: Having adopted Article III by your vote by more than two-thirds, I find it and a judgment will be properly entered in due course removing Judge Smith from office on the basis as charged in Article III. Senator Hair?

SENATOR HAIR: Mr. Chief Justice, I move that we now take up Article II, that it be sustained that the Senate does find that Samuel S. Smith is guilty of a misdemeanor in office. I would like to point out this is an allegation out of conspiracy to unlawfully obtain and distribute in excess of approximately 1500 pounds of marijuana. If you will look at paragraphs 7, 8 and 9, paragraphs 14, 15 and 16 and paragraphs 18 and 20, there was no proof with reference to the allegations contained in those paragraphs.

JUSTICE ENGLAND: Further discussion? Senator Plante.

SENATOR PLANTE: Will Senator Hair yield to a question?

SENATOR HAIR: I yield.

SENATOR PLANTE: Maybe you can refresh my memory, Senator. The very first statement that Samuel S. Smith, duly commissioned Circuit Court Judge of the Third Judicial Circuit of the State of Florida individually by use of the statute, judicial officer of the State of Florida, did set into motion—can you remember any direct testimony that really showed that he individually was the person who did all this to start it out? We had some allegations of people that didn't testify, allegations of a man who took the Fifth Amendment. And then we also had testimony from another individual who said that Mr. Lee went to the Judge first. But we never had any direct things except for the one time with Mr. Ratliff in his Chambers of being a direct approach by the Judge. And then we had other testimony that said it started weeks earlier. That bothers me.

SENATOR HAIR: Senator Plante, my concern, the allegations I think when you get down to the specifics of the allegations which are contained in paragraphs 1, 2 and 3 and the conversations with Judge Smith and Sheriff Leonard, in my opinion would constitute that. If you were looking at allegations 1, 2 and 3, I think there are sufficient allegations in my mind, my conscience is so moved that in my opinion I do feel that he did set it into motion and actively participated in that.

SENATOR PLANTE: Would the Senator further yield for another question?

Senator, speaking about a date in 1 of August 6th, we had testimony that this began back in July. Speaking in 2, 3 in times in September. Speaking of 4 of September, 5 of September, 6 of September, 7 of September, about something we never ever heard any evidence about. Eight of an incident that we have no evidence of, 9 of an incident that we have no evidence of. And yet in the very opening statement he is accused of individually having initiated this. And I remember no testimony to my knowledge that could really prove to me that he was the first person to make contact. Now whether he should be removed from office, I have already voted on that. He ought to be. But in this particular case I know of no evidence that was shown.

SENATOR HAIR: My only response to you, Senator Plante, is this. The article alleges, and I think it's summarized in the beginning. It says conspiracy to unlawfully obtain and distribute in excess of approximately 1500 pounds of marijuana. By your voting for this article, in my opinion, you are not saying that everything alleged in that article has been proven. What you are saying is that there was a conspiracy to unlawfully obtain and distribute in excess of 1500 pounds of marijuana. And the Judge participated in that conspiracy. And in my opinion that would be sufficient to sustain Article II.

SENATOR PLANTE: Well, my last question, if I could, Mr. Chief Justice, is where do you draw the line? If 10 percent of it you are not convinced of, I guess you can vote because of the other 90, 20 percent because of the other 80. But when it begins to cross the halfway mark of where almost 50 percent of the allegations in here were never even testified or even brought up in the hearing and where the opening statement was never proved, do you think that a Senator could still vote for that even though less than 50 percent of it was ever proved?

SENATOR HAIR: Senator, I think the answer to that is what moves your conscience. My opinion, my conscience has been moved. And I do feel that a conspiracy to unlawfully obtain and distribute in excess of approximately 1500 pounds of marijuana was committed by Judge Smith.

JUSTICE ENGLAND: Senator Holloway.

SENATOR HOLLOWAY: Will Senator Hair yield for another question?

SENATOR HAIR: I yield.

SENATOR HOLLOWAY: Senator Hair, will the record reflect then, it's the opinion that you as Chairman of this Select Rules Committee that when I vote for these Articles now, that I am voting for those titles like a conspiracy to unlawfully obtain and distribute in excess of approximately 1500 pounds of marijuana but I am not attesting to anything that's written below that and the record will reflect that?

SENATOR HAIR: Senator, I think the record reflects only what I have stated and what you have stated. As I have indicated, I have tried to point out to the Senators the allegations which were not presented which were not proven. It's also my opinion, however, that there are sufficient allegations which were proven in the article that you do and can vote for Article II.

JUSTICE ENGLAND: Further discussion?

(No response.)

JUSTICE ENGLAND: Senators will vote on Senator Hair's motion to adopt Article II. The Secretary will unlock the machine and the Senators please record their votes. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: Secretary will unlock the machine and announce the results.

Yeas—33

Barron	Gordon	McClain	Thomas, Pat
Brantley	Gorman	Myers	Tobiassen
Chamberlin	Graham	Peterson	Trask
Childers, Don	Hair	Poston	Vogt
Childers, W. D.	Henderson	Renick	Ware
Dunn	Holloway	Scott	Williamson
Firestone	Johnston	Skinner	
Gallen	Lewis	Spicola	
Glisson	MacKay	Thomas, Jon	

Nays—2

Plante Scarborough

MR. SECRETARY: 33 Yeas, 2 Nays, Mr. Chief Justice.

Explanation of Vote

I voted yea on each Article on the assumption, which I consider tenuous at best, that Samuel Smith is still a circuit judge. It is my opinion that the courts will eventually determine that his resignation was effective when offered. In that event he would not have been impeached since impeachment only applies to officeholders.

Jack D. Gordon, 35th District

JUSTICE ENGLAND: Senators, by your vote of more than two-thirds, you have adopted Article II submitted by the House Managers. Senator Hair.

SENATOR HAIR: Mr. Chief Justice, I now move that we take up Article I, that it be sustained, that the Senate does find that Samuel Smith is guilty of a misdemeanor in office.

JUSTICE ENGLAND: Discussion on Article I. Senator Dunn.

SENATOR DUNN: Mr. Chief Justice, I move a substitute motion. The substitute motion is that the Senate dismiss Article I as a proposed Article of Impeachment.

JUSTICE ENGLAND: Senator Dunn, I am going to rule that motion out of order without regards to what reasons may have been given by the House or in the thinking of the Senators,

sustain, that is in fact, just the opposite of the motion. And I think under your Rules that's prohibited. So I rule that out of order.

SENATOR DUNN: I have another motion I would like to put.

JUSTICE ENGLAND: A substitute motion?

SENATOR DUNN: Yes, sir, of higher priority. It's a motion of precedence. I move that we do now adjourn.

JUSTICE ENGLAND: That's that nondebatable motion again of the highest dignity. Senators, I think it's in order to consider that motion at this time. I think we are obliged to vote on that. Before we do, without anticipating the outcome, there is something that I want to say to the Senate that I have not had a chance to say. And I'm sorry to interrupt the trend of what's happening. But I have got to say this.

Apart from any consideration of what's happened today, the merits of anything that you have done, I want to say that these have been extremely difficult proceedings. They have tested your individual consciences as representatives of a collective conscience of the people of the State of Florida. This has been a rare and unique and a rather awesome proceeding calling for each of you, some as your last action as Senators in this State, to exercise perhaps one of the highest forms of public duty.

I have to commend you personally on your patience and the attentiveness that you gave to these proceedings. Your conduct has been exemplary. But even beyond that, Senators, as you know, I came into this proceeding from a vastly different branch of government. I came not as a visitor, not as an observer but by Constitution directly into your proceedings as a participant. So far as I can determine, there is no other occasion or area provided for in the Constitution of this State that permits one member of one of the three coequal branches of government to come into another branch as a full participant day in and day out, from start to finish.

Having now had that opportunity, I want to say to you, Senators, as a personal footnote to this experience, that as never before I am proud of the Florida Senate in the way they have conducted their business. I am impressed with the seriousness, the diligence with which this body has carried out the rigors of its duties. I am very grateful for the cooperation I was given, the respect I was accorded and the assistance I received at every stage of the proceeding by every official and by every employee of the Senate.

I only wish there were some way that each of you here could observe as closely the processes and deliberations of our Court so that you could by the same indelible first-hand experience realize that the judiciary of Florida also cares, very seriously cares, when it performs the high and awesome tasks which it is assigned in this tri-party governmental arrangement which the people of Florida have established.

As a final matter, I want to make it a matter of public record on behalf of the judicial branch of government and personally, and I know I speak for the Senate because you have already expressed it, but thanks to the Board of Managers of the Florida House of Representatives, Representatives Rish, Richmond and Moffitt and their counsel, Marc H. Glick, for their courteous, their thorough, their responsible conduct in discharging the function which they were by law assigned. And to Ronald Cacciatore and Robert Nutter, two Florida attorneys who had no stake at all in this proceeding and who ennobled, in my opinion, the legal profession, by their patience and competence in the face of unimaginable difficulties. They have, gentlemen, exemplified the highest, the most cherished notions that we have in the legal profession. I thank you all, sincerely and personally.

The Secretary will now unlock the machine and record the vote on the motion to adjourn.

All those in favor of the motion and opposed, please cast your votes. Have all Senators voted?

(No response)

JUSTICE ENGLAND: The Secretary will lock the machine and announce the vote.

Yeas—15

Barron	Dunn	Poston	Tobiassen
Brantley	Gallen	Scarborough	Trask
Chamberlin	Lewis	Thomas, Jon	Ware
Childers, W. D.	Plante	Thomas, Pat	

Nays—20

Childers, Don	Graham	MacKay	Scott
Firestone	Hair	McClain	Skinner
Glisson	Henderson	Myers	Spicola
Gordon	Holloway	Peterson	Vogt
Gorman	Johnston	Renick	Williamson

MR. SECRETARY: 15 Yeas, 20 Nays, Mr. Chief Justice.

JUSTICE ENGLAND: By your vote, we do not now adjourn. The motion recurs, discussion on Senator Hair's motion that the Senate adopt Article I. Further discussion on Article I?

SENATOR BARRON: Yes, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: Mr. Chief Justice, and members of the Senate, I should like to vote against this motion because in the other articles we have at least had included in them, all of them, proof of some of the material allegations in the articles. I would refer you to the rules of the Florida Senate, not necessarily the rules that we have adopted for this trial but the rules that we use relative to all of the other people who are suspended from office, Rule 12.7. It says, "An executive suspension of a public official who is under indictment who has pending against him criminal charges shall be referred to the Committee of Executive Business or Special Master and shall be held in abeyance until after the trial of that official or any appeal that he might take to the court of final jurisdiction."

Now this charge here is that Sam Smith was convicted of a felony. And in my judgment we need not reach that in order to remove him from office. I think the evidence presented by the House has been overwhelming, especially the taped recordings, that he violated the duties and conduct and the high standards of his office very sharply, to convince me. I, too, am critical especially of law enforcement officers or judges who participate in the violation of the law. But we do not remove other people from office. The Governor removes them and we hold that removal in abeyance until they have their final day in court. I think that is fair because you might finally win on appeal. As long as that person is not holding public office or an office of public trust and thereby inflicting any wrong to the public. And rather than write that down and put it in the record, I thought I would just say it here. Thank you.

JUSTICE ENGLAND: Senator Gallen?

SENATOR GALLEN: Mr. Chief Justice and Senators, I agree a great deal with what Senator Barron has said. But there is a distinction in that I would hope that the Senate wouldn't establish a precedent in this area, in that we are compelled and I am afraid on a jurisdictional ground to try a Respondent within a six-months' period. And if an appeal should take longer than that to be resolved, then the House in their wisdom were to send us Articles based on one Article involving a conviction of this

nature, that we may have established a precedent here. That's why I thought it would be a great deal simpler for us to avoid that question and by having voted to adjourn and leave that to some subsequent body with a more difficult question than we have now.

JUSTICE ENGLAND: Senator Ware.

SENATOR WARE: Mr. Chief Justice and Senators, the reading of Article I doesn't restrict itself to just the conviction of a felony. It sets forth that Judge Samuel Smith was convicted of a felony of conspiring to commit an offense to distribute a controlled substance. And in furtherance of that conspiracy, Judge Smith performed certain overt acts, knowing and intentionally possessing with intent to distribute and causing to be distributed 1500 pounds of marijuana. Now we have just gone over every other one of these articles and they contain things that we may not have agreed with. But when you agree with some of it, I think that's a sufficient basis. And there is no question in my mind that the Judge was convicted of a felony. And to me that's sufficient but to those of you that are concerned about it, I just point out to you it's not restricted to that and there are other bases established in Article I upon which you can support it.

I voted to go home a moment ago because I think this is duplicitous and unnecessary. But, Senators, let's not continue unnecessarily. I think we can bring this matter to a vote and dispense with it and go home and I urge you to do that.

JUSTICE ENGLAND: Senator McClain.

SENATOR McCLAIN: Mr. Chief Justice, Senators, I just want to reiterate very briefly what I said before. We're not a court of law. We're here to make a decision that only the Senate can make on this trial. You have got a serious felony conviction that has been placed in the record whereby Judge Smith has been convicted by a jury of his peers where the burden of proof was much stronger than you even have here which was to the exclusion of a reasonable doubt.

Now it was not a minor offense. It wasn't something that you could say, "Well, it wasn't really that serious of a crime." But, it was a crime. And the cloak of innocence does disappear. Sure, he is entitled to appeal. He could appeal this thing to the Fifth Circuit. He could appeal it to the Supreme Court or take certiorari. It could take years. And I don't think we're setting a bad precedent. It could be reversed on a technicality. And the evidence that was adduced for the original conviction could still be the same but on some technical basis.

So I would submit to you, we do have a duty, if this shocks the conscience of this Senate, if this appeals to your conscience, to go ahead and vote on the first Article. And I would hope that we would vote in favor of impeachment on that basis.

JUSTICE ENGLAND: Further discussion on Article I? Further discussion? Senator Plante.

SENATOR PLANTE: Make a motion.

JUSTICE ENGLAND: Make your motion.

SENATOR PLANTE: Mr. Chief Justice, I move that we do now adjourn.

JUSTICE ENGLAND: I guess that's in order. I am advised that other business having transpired, that motion is in order. We will now have a vote on whether the Senate shall now adjourn. The Secretary will unlock the machine. All Senators record their vote. All Senators vote on Senator Plante's motion to adjourn. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: The Secretary lock the machine and announce the vote.

Yeas—20

Barron	Firestone	Lewis	Scott
Brantley	Gallen	Myers	Thomas, Jon
Chamberlin	Gordon	Plante	Thomas, Pat
Childers, W. D.	Holloway	Poston	Tobiassen
Dunn	Johnston	Renick	Trask

Nays—14

Childers, Don	Hair	Peterson	Ware
Glisson	Henderson	Skinner	Williamson
Gorman	MacKay	Spicola	
Graham	McClain	Vogt	

MR. SECRETARY: 20 Yeas, 14 Nays, Mr. Chief Justice.

JUSTICE ENGLAND: By your vote you have approved the adjournment.

The following Order was entered:

IN THE FLORIDA SENATE

IN THE MATTER OF THE :
 IMPEACHMENT TRIAL OF THE :
 HONORABLE SAMUEL S. SMITH, :
 CIRCUIT JUDGE, THIRD :
 JUDICIAL CIRCUIT :

FINAL JUDGMENT OF THE COURT OF IMPEACHMENT

The Senate of the State of Florida, having tried Samuel S. Smith, Circuit Judge of the Third Judicial Circuit, upon the Articles of Impeachment exhibited against him by the House of Representatives of the State of Florida, and more than two-thirds of the Senators present having found him guilty of the charges contained in Articles II, III, IV, and V, and more than two-thirds of the Senators present having further voted to disqualify him from holding any office of honor, trust or profit pursuant to Article III, Section 17(c) of the Florida Constitution, it is

ORDERED AND ADJUDGED, that Samuel S. Smith is convicted of the charges set forth in Articles II, III, IV, and V

of the Articles of Impeachment, and is disqualified from holding any office of honor, trust or profit of the State of Florida.

DONE AND ORDERED September 15, 1978.



Arthur J. England, Jr.
 Chief Justice
 Supreme Court of Florida
 Presiding Officer

ATTEST:

Joe Brown
 Secretary of Senate

The following statement was filed by the Board of Managers: The case presented by the House in the Impeachment Trial of Third Judicial Circuit Judge Samuel S. Smith reflected the efforts of a great many more than the Managers and their Counsel.

The untiring and selfless efforts of Frederick J. Breeze, Fred O. Dickinson III, Martha Eaton, Kandy Hill, Almyra Mathis, Stevan T. Northcutt, Linda Procta, Marcia Robinson, Jane St. Amand, Victoria Weber, and Glenda Wilson supported the Managers in every way. We pray that their dedication and excellence not be obscured by their lack of visibility. The Managers' case was the combination of all their efforts.

William J. Rish, Chairman
 Board of Managers

Marc H. Glick, Counsel
 Board of Managers

CORRECTION AND APPROVAL OF JOURNAL

The Journal of September 14 was corrected and approved as follows:

Page 123, column 1, line 7, strike period and insert: , I'll park it where you can get to it.

The trial of Samuel S. Smith, Circuit Judge of the Third Judicial Circuit, by the Senate of the State of Florida was concluded and the Senate, sitting as a Court of Impeachment, adjourned sine die at 2:00 p.m.

CERTIFICATE

THIS IS TO CERTIFY that the foregoing pages numbered 1 through 192, inclusive, are and constitute a complete, true and correct record of the proceedings of the Senate of the State of Florida sitting as a Court of Impeachment, April 18, 1978 through September 15, 1978, both dates inclusive.

Joe Brown
 Secretary of the Senate

Tallahassee, Florida
 September 15, 1978