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Clerk Supreme Court of Appeals  
Richmond, Va.

**Record No. 5696**

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**In the  
Supreme Court of Appeals of Virginia  
at Richmond**

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**ROY TAYLOR HIGGINS**

**v.**

**MARYANN MERRICK HIGGINS**

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FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

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**RULE 5:12—BRIEFS**

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. **SIZE AND TYPE.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**HOWARD G. TURNER, Clerk.**

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 5696**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 6th day of June, 1963.

ROY TAYLOR HIGGINS,

Appellant,

*against*

MARYANN MERRICK HIGGINS,

Appellee.

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From the Court of Law and Chancery of the City of Norfolk  
Walter A. Page, Judge

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Upon the petition of Roy Taylor Higgins an appeal and *supersedeas* is awarded him from a decree entered by the Court of Law and Chancery of the City of Norfolk on the 9th day of January, 1963, in a certain chancery cause then therein depending, wherein Maryann Merrick Higgins was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of thirty-five hundred dollars, with condition as the law directs.

## RECORD

\* \* \* \* \*

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### CROSSBILL.

For his crossbill, the defendant respectfully represents as follows:

1. That he adopts the allegations as set forth in paragraphs 1, 2, 3, 5 and 6 of the Bill of Complaint.

2. That on or about the 13th day of September, 1961, the complainant without cause or justification removed her person and the infant children of the parties hereto from their marital home and has remained as of the filing of this pleading separate and apart from the defendant.

3. That complainant has failed and/or refused to adjust to the demands and duties of married life; and has by actions and verbal statements indicated her unwillingness to so adjust.

4. That complainant has undertaken to make her way in the business world to the neglect of her marital duties and obligation as well as the care and upbringing of the infant children of the parties hereto. Further, the so called demands of her business life have necessitated her keeping company with divers male companions at irregular hours so as to adversely affect the health and welfare of said infant children.

page 5 } 5. That the health, welfare and interest of said infant children would be better served by placing their custody with the defendant with rights of visitation reserved to the complainant.

**WHEREFORE**, defendant prays that he be awarded a decree of divorce a *mensa et thoro* from the complainant to be later merged into a divorce a *vinculo matrimonii*; that he be awarded custody of the infant children with rights of visita-

tion reserved to the complainant; and that he be given such further relief as shall appear equitable and just.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD, p. d.

CHARLES R. CLOUD, p. d.  
406 E. Plume Street  
Norfolk 10, Virginia

Filed 9-27-61.

L. M. CALVERT, D. C.

\* \* \* \* \*

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\* \* \* \* \*

ORDER.

This day came the defendant, by counsel, upon his motion to be granted temporary custody of the infant children of the above parties, after notice and the subjoined consent of the complainant, by counsel, and same was duly argued.

And for good cause shown, it is accordingly ADJUDGED, ORDERED and DECREED that the temporary custody of Lee Higgins and Barbara Higgins be and the same hereby is placed with Roy Taylor Higgins until further order of this court.

It further appearing proper it is ordered that Roy Higgins pay unto Harry Nicholson, attorney for the complainant the sum of \$50.00 on account of attorney's fee and \$50.00 on account of court costs.

CHARLES R. CLOUD, p. d.

Seen and agreed to:

HARRY NICHOLSON, p. q.

Enter Nov. 7, 1961.

W. A. P.



\* \* \* \* \*

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\* \* \* \* \*

## ANSWER TO CROSS BILL.

Now comes Maryann Merrick Higgins, the Complainant and Cross-Defendant, in answer to the Cross-Bill filed against her and states as follows:

1. She denies the allegation as set forth in paragraph 2 of the Cross Bill and calls for strict proof thereof.

2. She denies the allegation as set forth in paragraph 3 of the Cross Bill and calls for strict proof thereof.

3. She admits the allegation in paragraph 4 in that she is in the business world but denies that she has neglected her marital duties and obligations as well as the care and upbringing of the infant children of the parties hereto, and she further denies that the demands of her business has been such as to adversely affect the health and welfare of the said infant children and calls for strict proof thereof.

4. She denies that the health, welfare, and interest of the said children would be better served by placing their custody with the Defendant and calls for strict proof thereof.

WHEREFORE, the Cross-Defendant prays that the said Cross Bill be dismissed.

MARYANN MERRICK HIGGINS  
By HARRY NICHOLSON  
Her Attorney.

Filed 11-15-61.

L. M. CALVERT, D. C.

\* \* \* \* \*

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SUPPLEMENTAL CROSS-BILL.

NOW COMES the defendant by leave of Court and files herewith his Supplemental Cross-Bill and in addition and in connection with the Cross-Bill heretofore filed, further alleges that:

1. On or about the 31st day of May, 1962 the complainant did commit adultery.

2. That said adultery was committed in the Virginia Reel Motel, in the City of South Norfolk, Virginia.

3. That the aforesaid act of adultery was committed after the separation of the above-named parties and same was done without the connivance or procurement of the defendant. Further, that the defendant has not lived with the said Maryann Merrick Higgins since their separation on September 13, 1961 and in particular since the date of the aforesaid act of adultery, and that said adultery occurred within five years before the institution of this supplemental cross-bill.

WHEREFORE the defendant prays that in addition to his prayer set forth in his Cross-Bill that he be awarded a decree of divorce a *vinculo matrimonii* from the said Maryann Merrick Higgins on the grounds of adultery.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Counsel.

Filed 6-4-62.

H. L. STOVALL, D. C.

\* \* \* \* \*

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\* \* \* \* \*

ANSWER TO SUPPLEMENTAL CROSS-BILL.

Now comes Maryann Merrick Higgins, the Complainant and Cross-Defendant, in answer to the Supplemental Cross-Bill filed against her and states as follows:

1. She denies the allegations as set forth in paragraphs one (1), two (2) and three (3) of the Supplemental Cross-Bill and calls for strict proof thereof.

WHEREFORE, the Cross-Defendant prays that the said Cross Supplement Bill be dismissed.

MARYANN MERRICK HIGGINS  
By HARRY NICHOLSON, p. q.

Filed 6-11-62 Court of Law and Chancery.

By H. L. STOVALL, D. C.

\* \* \* \* \*

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\* \* \* \* \*

Filed 11-5-62, Court of Law and Chancery.

By L. M. CALVERT, D. C.

REPORT OF WILLIAM H. SANDS, COMMISSIONER  
IN CHANCERY.

To the Honorable J. Sydney Smith, Jr., and the Honorable  
Walter A. Page, Judges of the said Court:

The undersigned Commissioner in Chancery of this Court, to whom the above styled cause was referred by decree of reference entered herein on the 18th day of December, 1961, respectfully represents that pursuant to agreement of counsel, the undersigned Commissioner did on May 31, 1962, June 19, 1962 and July 9, 1962, proceed to take testimony and to make the inquiries ordered by said decree of reference. Argument of counsel was heard on September 27, 1962. Mr. Harry Nicholson, attorney, appeared for the complainant, and Messrs. Charles R. Cloud and Joseph H. Campbell, attorneys, appeared for the defendant. Filed herewith are the depositions taken at said hearings, and exhibits filed therewith, comprising all of the testimony. The witnesses who testified at said hearings personally appeared before your Commissioner at the time they testified.

Your Commissioner respectfully reports as follows:

**1. WHETHER OR NOT THE PARTIES ARE PROPERLY BEFORE THE COURT.**

Your Commissioner reports that the parties are properly before the Court.

**2. THE FACTS RELATIVE TO WHETHER THE NECESSARY GROUNDS OF JURISDICTION AND VENUE EXIST.**

Your Commissioner reports that the defendant was a member of the Armed Forces of the United States and had been stationed in this State (see exhibit filed with depositions) and living with his wife for a period of one year page 16 } or more in this State next preceding the separation, and that the defendant and his wife continued to live in this State until and at the time this suit for divorce was commenced, and that therefore, pursuant to Section 20-97 of the Code of Virginia, as amended by 1958 Legislature, the parties are presumed to be domiciled in and to have been *bona fide* residents of this State. The parties last cohabited in the City of Norfolk, Virginia.

Your Commissioner therefore reports that the suit was properly instituted in this Court and that the Court has jurisdiction to hear and determine this cause.

**3. THE RACE OF THE PARTIES.**

The record discloses that both the complainant and the defendant are members of the Caucasian or white race.

**4. THE FACTS RELATIVE TO WHETHER A DIVORCE SHOULD BE GRANTED OR REFUSED.**

Your Commissioner reports that the complainant and the defendant were married at Ames, Iowa on May 29, 1948.

The Bill of Complainant alleged constructive desertion by the husband on September 12, 1961. An Answer by the husband denied any constructive desertion and by way of Cross Bill alleged that his wife deserted him on September 13, 1961. An Answer to the Cross Bill denied this desertion.

The first testimony taken before your Commissioner was on May 31, 1962. By leave of Court a Supplemental Cross



Bill was filed by the defendant on June 4, 1962 alleging adultery on the part of the wife on or about the 31st day of May 1962. An answer to the Supplemental Cross Bill denied any adultery.

No testimony was offered in support of the Bill of Complaint so far as the allegation of constructive desertion was concerned, counsel having indicated that he did desire to go into the question of custody of the younger child by cross examination of the witnesses to be offered in support of the Cross Bill and any rebuttal that he might be entitled to thereafter. (p. 3)

The first testimony taken was on behalf of the defendant or cross-complainant on the Cross Bill alleging desertion as of September 13, 1961, and other testimony bearing on the question of custody was taken which pertained to the alleged adultery on the part of the wife, and at subsequent hearings testimony was also taken pertaining to the allegation of adultery in support of the Supplemental Cross Bill.

The material parts of the factual testimony pertaining to the allegations of desertion and adultery, and also pertaining to custody, are as follows:

ROY TAYLOR HIGGINS,

the defendant, Commander, United States Navy, married to the complainant on May 29, 1948 in Ames, Iowa; lived together continuously until September 13, 1961 (Tr., p. 14); one child by the marriage, Barbara, age eleven, and one child of the wife's by a former marriage adopted by defendant, named Lee, age eighteen (Tr., pp. 8, 96); that his wife left him and moved to another residence with the children; that he gave her no reason to leave; that marital difficulties commenced in the Fall of 1958; that at that time his wife admitted that she had spent the night with Mr. Lille, an associate of hers in the real estate business, but claimed she did not know whether there was any immoral act committed because both were intoxicated (Tr., p. 18); that this was during November of 1958; that the defendant did not leave her at that time, but continued to live with her subject to certain stipulations or requirements (Tr., pp. 18, 19), (a) that his wife, if she continued to act in the real estate business, was to have an eleven p. m. curfew, or call up her husband and explain what caused additional time, and (b) that she was to ignore a debt or loan that she had made to Mr. Lille of \$1,000.00; that his wife ignored "my order" and later said she was collecting the loan; that the stipulations had been agreed

to by his wife and they continued living together (Tr., p. 20); that in January 1959 he was ordered to school in Georgia and on several occasions telephoned late at night or early in the morning and got no answer at the house; that in page 18 } the Spring of 1959 Mrs. Higgins continued to stay out later and later, but in most cases called and said why (Tr., p. 20); that he first accepted the explanations but then became more suspicious (Tr., p. 21); that covering the period commencing July 1959 the defendant testified about an auto trip to Wisconsin when his wife was drunk the night before (Tr., p. 23), a visit to Norfolk by his parents when his wife had a real estate appointment (Tr., p. 24), his departure for the Mediterranean in July 1959, his wife's arrival in Sweden in December 1959, her conduct in Genoa, Italy, a liberty port, during the Christmas holidays when he considered her overly friendly with his chief of staff at a New Years Eve party because she was dancing very close to him (Tr., pp. 22, 44), several of his wife's business associates during 1960 and 1961, the fact that she made a practice of coming into the house and mixing herself a drink or two prior to and during the evening meal (Tr., p. 30), how she would stay out late at night supposedly on real estate appointments and that he did not know where she was (Tr., p. 31), the opening of the real estate office known as Higgins Realty on Military Highway in 1961 (Tr., p. 31), and the fact that he made a decision that she must give up the real estate business and be a mother and a wife or he was going to take further action, prior to the announcement of which decision he had talked with his attorney (Tr., p. 32); that one of the men with whom his wife was "associated with" was John Beattie, an attorney from Urbanna, Virginia; that he had seen Beattie at 12:30 A. M. on the morning of the taking of the testimony, at the Virginia Reel Motel. (This testimony by stipulation was applicable to the allegation of adultery to be contained in the Supplemental Cross Bill, as well as to the question of custody. (Tr., pp. 130, 131) That Mr. Beattie was dressed in underwear shorts; that his wife was partially unclothed and in the bathroom; that the Virginia Reel Motel is on Highway 13, approximately ten miles outside of Norfolk; that after his wife had left him in 1961 and moved to Admiralty Acres, that he did some detective work one night when she came home one night with Mrs. English, Mr. Bundy, and another gentleman (Tr., p. 37); that he looked in the bedroom window and saw his wife kissing some man (Tr., p. 38); that he also watched the Higgins Realty establishment on Military High-

way on a number of occasions in 1961 (Tr., p. 39) and from voices heard through the air conditioner he identified Mrs.

English, Mr. Sasser and his wife trying to awake  
page 19 } Mr. Bundy (Tr., p. 40), and heard some off-color  
jokes. He was spotted by a Princess Anne County  
police officer to whom he identified himself (Tr., p. 41); that  
he did attempt to influence the children in regard to custody.

#### LEE HIGGINS,

natural daughter of Mrs. Higgins and adopted by Mr. Higgins (Tr., p. 61). General testimony pertaining to the names of men in the real estate business with whom her mother had been associated; general testimony with reference to the trip to Sweden and Italy, all of which was mostly opinion testimony or which by innuendo, but not by facts, reflected possible impropriety on the part of her mother (Tr., pp. 62 to 72); that she had known John Beattie; that he was an attorney, a friend, and business associate; that he had been at the house frequently; that he had been served drinks and talked business (Tr., p. 74); that her father had asked her mother to give up the real estate business and stated he would "Let her think it over," and her mother had replied that she did not care to think it over, that she would not give up the real estate business (Tr., p. 76); that she and Barbara left with her mother on September 13th; that she remained with her mother for approximately a month (Tr., p. 77); that her mother and Mrs. English were close friends and went around together; that they were in business together (Tr., p. 78); that Mr. Beattie visited the house frequently; that her mother spent Christmas in Urbanna with the Beatties. (Tr., p. 84)

#### E. L. LILLE,

(Tr., p. 108) had known Mrs. Higgins four and a half years, met her in a business capacity, became intimate with her, had sexual relations with her, more than once, three and a half years ago when her husband was at sea; that he was married at that time; that he was drinking heavy; that Mrs. Higgins was drinking to some extent; that he and his wife separated but have gone back together; that his wife is aware of this situation; that he borrowed \$1,000.00 from Mrs. Higgins; that she sued him and a settlement was effected through her attorney. (Tr., p. 111)

JOHNNY ENGLISH,

13 years old; that he had observed Mrs. Higgins in the company of men other than Mr. Higgins; that they  
page 20 } would be sitting together laughing, joking and drinking. (Tr., p. 115)

JOE PERKINS,

(Tr., p. 118) investigator for Schafer's Detective Agency of South Norfolk, employed by Commander Higgins, saw Mrs. Higgins when he went into motel room 30, Virginia Reel Motel, on the night before the taking of depositions; that he had been observing the motel from 11:15 to 12:15; that the room was occupied; that the lights were off; that he went in at 12:20 with Mr. Schafer and two South Norfolk policemen; that Mr. Beattie was dressed in jockey shorts and Mrs. Higgins was in the bathroom, dressed in undergarments, and was trying to put on her bra (Tr., p. 120). On cross examination this witness testified that he did not see the parties go into the room; that the police sergeant knocked on the door; that it was about three minutes before the door was opened; that no one asked who was knocking; that the man who opened the door was in jockey shorts; that the night chain was latched on the inside; that Mrs. Higgins had been drinking.

ELMA SIMMONS,

42 years old, 428 Fenchurch Street, domestic, helped take care of the children, knows nothing about any separation (Tr., p. 133); had taken care of Barbara in the home while the parties were living together; had observed Barbara with her father; that Barbara had acted like she loved to be with her father (Tr., p. 135) that Commander Higgins was a good father; that she later noticed a change in attitude of Barbara toward her father and that Barbara had not continued to speak affectionately toward her father; that she was only a part time worker; that Barbara's change of attitude was on a Monday after visiting her mother on the weekend.

JOHN M. SCHAFFER,

operator of detective agency; that he observed a vehicle parked in front of room 30, Virginia Reel Motel, on May 30, 1962; that it was then 11:15 P. M., lights were off; that he did not remain, but left one of his operators; that he returned at



12:20 A. M., after contacting his client; that the room was still the way he observed it the first time; that the lights were on in the bathroom, and approximately three minutes later Mr. Beattie opened the door; that the police officers went in; that he turned on the night table light; that Mr. Beattie was in his undershorts; that he did not see anyone else in the room; that he remained there about five minutes (Tr., p. 144); that Mr. Beattie had ample time to put on his clothes if he had wanted to. (Tr., p. 148)

JESSE SNOW,

employed by detective agency, followed Mrs. Higgins on the night of May 25th about 8:30 P. M. on Indian River Road; that he saw Mr. Beattie and they both pulled into a shopping center; that Mrs. Higgins left her car at a Gulf Station and got into Mr. Beattie's car, and they went toward Military Highway.

KATHERINE LILLE,

wife of E. L. Lille, occupation medical secretary, has worked in the real estate business, had talked to Mrs. Higgins concerning Mr. Lille in 1958; that she had told Mrs. Higgins that her husband, Mr. Higgins, had been going back and forth to an institution for mental care (Tr., p. 156); that Mrs. Higgins admitted to her that she had had intercourse with Mrs. Lille's husband, and had asked her not to tell Mr. Higgins because he was sick mentally (Tr., p. 157). (The testimony of this witness involved the \$1,000.00 note.)

MARYANN MERRICK HIGGINS,

called as an adverse witness; that on May 25th around 8:00 P. M. that she met Beattie on Indian River Road after she had taken her maid home; that her car was left at a service station for service; that she got in his car and road down through Deep Creek; that her car remained at the service station until Sunday night; that on the Saturday before she went to Urbanna with Mr. Beattie to visit his home, and spent the weekend there; that Mrs. Beattie was at home (Tr., p. 165); that she saw Mr. Beattie on the 29th or 30th and he had come to the house and had dinner; that they left about 9:15 P. M. going to Virginia Beach to have some papers signed for her former associate, Mary English; that Beattie suggested he had better make a reservation at a motel; that

they both then decided it was awfully late to drive to the Beach, so they went to the motel room; that Mr. Beattie stopped and made a phone call to Mrs. English saying he would see her the next day; then both went to page 22 } Beattie's motel room to go over the list of witnesses that Mr. Higgins had subpoenaed for the hearing; that the lights were never off in the bathroom; that Beattie had turned the light off in the room and that she was in the bathroom preparing to wash her hair; that she had taken her blouse off because the neck was high and she had put on an undershirt of Mr. Beattie's (Tr., p. 172), and was just preparing to put her head under the faucet when the knocking came on the door; that they were taken to the South Norfolk Police Station; that they tried to locate a civilian doctor to submit to an examination and then went to the Naval Hospital (Tr., p. 174); that her relationship with Mr. English had been a business relationship, and was severed because of her displeasure in the way he was doing his job; that he had been building a home for her and that she was very displeased with the cost and progress of the construction (Tr., p. 182); that when the English's separated that she was very close to Mrs. English; that they had been in business together.

#### JOE S. ENGLISH,

(Tr., p. 183) had known the parties from ten to fifteen years; had business dealings with Mrs. Higgins; that in the Spring of 1961 in an auto they "nearly became involved in sexual relations" (Tr., p. 185); that Mrs. Higgins and his wife had been close friends; that shortly after the separation of the Higgins the witness told Mr. Higgins that Mrs. Higgins had once tried to seduce him; that he and Mr. Higgins had a friendship of over fifteen years and Mr. Higgins was in the "same boat that he had been in" (Tr., p. 195); that he and Mrs. Higgins were not on friendly or speaking terms. (Tr., p. 199)

#### GEORGE GRAY,

attorney, that his children and Barbara had often played together (Tr., p. 201); that Barbara appeared to be a normal child; that he had observed nothing unusual about her attitude, and that in his opinion Commander Higgins was a fit and proper person to have the custody.

## ROBERT W. BEDINGFIELD,

Chaplain, U. S. Navy, had known Commander Higgins since 1960 (Tr., p. 233); that Higgins was his boss; that Higgins attended religious services regularly; that he had had very little social contact with him; that he had only called at his home once; that this was the only time he met  
page 23 } Mrs. Higgins; that on the basis of his observation over a period of six months, he would say that Commander Higgins was a fit and proper person to have custody of his children.

Respondent rests.

Witnesses for Mrs. Higgins:

## MARGARET A. OSGOOD,

had known Mrs. Higgins four and a half years, visited her frequently; that she is a good mother, very solicitous about the well being of her children (Tr., p. 206); that she is a fit and proper person to have the custody of her daughter; that she has four children of her own from eleven to seventeen; that she did not know Mr. Higgins as well as she did Mrs. Higgins.

## JOHN B. SASSER,

(Tr., p. 214) met Mrs. Higgins at a real estate convention; that Mr. John Bundy is one of his real estate agents; that he had been present in Mrs. Higgins' office at the time Mr. Bundy was there in the night time; that Mr. Wyatt was also there and so was Mary English; that they tried to get Mr. Bundy to a Veterans Hospital; that Bundy had had a brain injury from World War II; that he had gone to the real estate office because he learned that Bundy was sick (Tr., p. 219); that he met Mrs. Higgins through Mrs. English because they were both in the real estate business.

## JULIA HUNTER,

domestic, had known the Higgins for about eight years, worked for them about two years, employed by Mrs. Higgins at the present time; that she was very particular about the way the children conducted themselves; that she liked both Mr. and Mrs. Higgins; that they were good people, good parents.

ROY TAYLOR HIGGINS,

called as an adverse witness (Tr., p. 236). Testimony as to income. However, this is all set up on Exhibit D-1. Has not tried to influence Barbara within the last two or page 24 } three weeks against her mother (Tr., p. 242); that he talked to his daughter on advice of counsel. (Tr., p. 244)

BARBARA HIGGINS,

Tr., p. 257. (Examined by the Commissioner in the presence of only the Court Reporter, by request of both counsel. Tr., p. 256) Eleven years old, born Guantanamo Bay, Cuba, grew up with her half sister, attends Easton Elementary School, sixth grade, attends St. Peters Episcopal Church, has moved around the country with her mother and father because he was in the Navy, now living with her mother, been there about four months, had previously lived with her father about two months; that when her parents separated she went to live with her mother and sister and stayed there about a month and a half and then her sister, Lee, decided that she was going to live with her father so she went along with her sister, then she returned to her mother because her father was hard to live with, he would get grouchy (Tr., p. 260); that her father would get "kind of mad and wouldn't speak and then after a while he was all right"; that if she had her choice she would select her mother to live with; that she loves her father but thinks she loves her mother more; that the fact that her half sister is living with her father would not influence her (Tr., p. 263); that within the last two or three weeks her father had talked to her on the subject, but had not convinced her that it was best for her to live with him (Tr., p. 264); that she had friends and acquaintances in both neighborhoods. (Tr., p. 265)

MARYANN MERRICK HIGGINS,

recalled in her own behalf, presently living at 201 Byrn Brae Drive, in a seven room house fairly new, has been in the real estate business for over five years (Tr., p. 266); that her children have never been neglected; that she is not contesting this divorce on the ground of desertion; that she is asking for the custody of Barbara; that when she left her husband in September of 1961 she moved to a furnished residence in Admiralty Acres; that her eighteen year old daughter has indicated she wants to live with Mr. Higgins, but she considers



that the child is very disturbed and very unhappy; that she would not want to force her to live with her if she does not want to; that Mr. Lille had vowed that he would  
page 25 } get vengeance from her for having collected a debt from him; that both he and his wife had vowed that they would "get even with me" (Tr., p. 274); that Mr. English had made a pass at her while sitting in his car and was rebuffed (Tr., p. 275); that she dismissed English from the job of building a home for her, and is not on friendly terms with him (Tr., p. 275); explained the presence of Bundy in the real estate office when Mr. Higgins had listened through the air conditioning unit, denied anything improper (Tr., pp. 276-278). As to the charge in the Supplemental Cross Bill of adultery in the motel in South Norfolk, denied absolutely any act of adultery on that night or at any other time with Beattie, and explained in detail the circumstances including the effort which was made, after she and Beattie were bailed, to obtain an examination (Tr., pp. 280 to 288); that her husband was insanely jealous and had sworn he would get his revenge and that he was endeavoring to hurt her by depriving her of her children (Tr., p. 288); that she has received no support from Commander Higgins since the separation; that she has not asked for any and that she is not asking for any, but she is asking for support of the child, Barbara, if custody is granted to her (Tr., p. 289) and considers \$75.00 a week a reasonable amount for the support and maintenance of Barbara; that she has a social relationship with the Beatties; other than her business relationship with Mr. Beattie; that the Beatties live in Urbanna, Virginia, and both practice law; that she has spent at least fifteen weekends with them (Tr., p. 291); that she never had an affair with Tommy Jordan, or any other man since she has been married; that Commander Higgins has thought she has had affairs with every man she has ever been associated with (Tr., p. 296).

ROY TAYLOR HIGGINS,

recalled, offered a breakdown marked Exhibit D-1 as to his pay and allowances.

JOHN S. BEATTIE,

(Tr., p. 321), practicing law for eleven years under the name of Beattie and Beattie, known Mrs. Higgins for two and a half years, has visited in her home as has his wife; that Mrs. Higgins has visited in their home, spent numerous weekends, Mrs. Higgins, her mother, her children, her husband and

friends have all visited in his house; discussed in page 26 } detail the incident at the South Norfolk motel and the effort thereafter made to obtain the medical examination; denied any sexual relations whatever and claimed that if an examination had been made it would have proved negative. (Tr., pp. 323-333)

Rebuttal.

PHYLLIS E. GRAY,

married to George Gray, living next door to the Higgins family for the last five and a half years; that her children and the Higgins child played together (Tr., p. 351), and also five others; that in her opinion she thought Commander Higgins was a fit and proper person to have the custody of Barbara; that she knew of nothing to the contrary.

TOMMY F. JORDAN, JR.,

(Tr., p. 353), that he knows Mrs. Higgins strictly in a business way, but one night after a real estate party at the Yacht Club that he kissed her goodnight, and that this was probably a year and a half or two years ago.

DETECTIVE MARIO ASARO,

(Tr., p. 359); that he and Sergeant Sanders investigated the alleged break in when Mrs. Higgins was alleged to have taken a brief case from the house, and as it appeared to be a husband and wife matter, the Police Department had no jurisdiction. (Tr., p. 362)

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CONCLUSIONS.

Your Commissioner reports that the testimony in this suit was exceedingly voluminous. The main point at issue was the question of custody of the eleven year old girl, who is presently residing with her mother.

On the night before, or the early morning of the day on which the first testimony was heard, and through the medium of private detectives, the South Norfolk Police were called upon to visit one of the motels in South Norfolk where they found the complainant and one, John Beattie, a practicing attorney of Urbanna, Virginia. Prior to the second hearing an Amended Supplemental Cross Bill was filed charging the complainant with adultery on that occasion.

The initial Bill of Complaint which was filed by the wife alleged constructive desertion, and there was a Cross Bill alleging desertion by the wife. No testimony was offered in support of the original Bill of Complaint, Mr. Nicholson, the wife's attorney, stating that he would, however, desire to offer rebuttal testimony.

In support of the Cross Bill which alleged desertion, and due to the fact that custody was involved, the respondent and cross-complainant offered much testimony as to various alleged indiscretions and previous conduct of the wife. Proof was offered attempting to show that there had been sexual relations between the wife and a Mr. Lille during the year 1958, though the record further disclosed that subsequent to this incident the husband had condoned any such act, if the same actually took place, and which the wife denies, and the parties had continued to live together until the wife left on September 13, 1961.

The defendant is a Naval Officer in the United States Navy with the rank of Commander, who will be eligible for promotion to Captain in 1964. He is presently attached to the Staff, Commander Operational Test and Development Forces, located in Norfolk, Virginia, and it is anticipated that he will be ordered to a Naval Command when relieved of  
page 28 } this Staff assignment during October 1963. He testified that there was a reconciliation made with his wife subsequent to the alleged Lille incident, but that he imposed certain stipulations that were agreed to by his wife. Mrs. Higgins had been quite active in the real estate business over a period of years and the first stipulation made by the husband was to the effect that if she continued to act in the real estate business there was to be an '11:00 P. M. curfew' imposed upon her, or she was to call up her husband and explain the reason for any modification of the curfew on any particular occasion. The second stipulation imposed by the husband was that his wife was to ignore a debt or loan that had been made to Lille of \$1,000.00. In his testimony along this line he used the expression that his wife had ignored "my order" and his testimony as a whole gave the Commissioner a very definite impression that in his relationship with his wife he expected to exercise command similar to that which he had been accustomed to exercising in the Naval Service and abroad ship.

In July of 1959 the Commander departed for the Mediterranean, and in December of that year his wife arrived in Sweden and later visited him in Genoa, Italy, which was a liberty port, and it was during the Christmas holidays that he considered her overly friendly with his Chief of Staff at

a New Years Eve party because she was dancing very close. After his wife had moved from the home in September 1961, the Commander played detective and, looking through the bedroom window where she was then living, saw his wife kissing some man after she had returned home with Mrs. English, Mr. Bundy, and another gentleman. He also watched the office known as Higgins Realty on Military Highway on a number of occasions in 1961, and on one occasion when several people were present, the Commander stated that though he could not see into the room, that he could identify voices which he heard through the air conditioner.

(These were some of the incidents related in order to establish that the wife was not entitled to the custody of the eleven year old daughter.)

There was no testimony offered by the wife in page 29 } denial of the charge that she had left him on September 13, 1961, for the wife did not contest the suit on the ground of desertion.

With the exception of the motel incident, we have the testimony of the husband *re*:

(a) The Lille incident which was denied by the wife and followed by reconciliation in 1958.

(b) That his wife could not be reached by phone and "ignored" his "order" *re* contacting him during January of 1959.

(c) The Wisconsin auto trip in July of 1959 where he claimed his wife was "drunk" the night before.

(d) The fact that his wife did not meet his parents on their trip to Norfolk.

(e) The New Years Eve party in Genoa in December, 1959, when his wife was dancing too close with another Naval officer.

(f) The fact that he did not like her business associates in the real estate business.

(g) The fact that she would come in the house and invariably mix a drink before dinner.

(h) That after she had left him and established her own residence that he saw her kissing some man.

(i) That he heard voices through an air conditioner at the Higgins Realty office telling some off-color jokes.

The evidence pertaining to the motel incident was at the most only suspicious. It was an indiscreet act on the part of Mrs. Higgins, but the proof falls short of being strict, satis-



factory, and conclusive. (*Colbert v. Colbert*, 162 Va. 383.) The testimony is not clear and positive. (*Holt v. Holt*, 174 Va. 120.) It is insufficient because it does no more than to raise a suspicion of in chastity and the circumstances raise only an inference but not a necessary conclusion. In Virginia suspicious circumstances are not enough. (*Holt v. Holt*, 174 Va. 120; *Martin v. Martin*, 166 Va. 109.)

page 29 } As to the charge of adultery at the motel, there was an absolute denial by the wife (Tr., p. 287), and by Beattie (Tr., pp. 323-333).

Your Commissioner was much impressed with the straightforward testimony of Beattie denying any act of adultery had taken place; that he had gone to sleep, etc. (Tr., p. 327)

Mr. Cloud, of counsel for the husband, stated in argument "that if we fall short of evidence at the motel, we fall short on adultery."

Your Commissioner does *not* believe that the testimony pertaining to what happened at the motel is sufficient to support the allegation of adultery set forth in the Supplemental Cross Bill. (*Holt v. Holt*, 174 Va. 120; *Martin v. Martin*, 166 Va. 109; *Colbert v. Colbert*, 162 Va. 393.)

Your Commissioner further reports that at the request of counsel the testimony of the eleven year old girl was heard in the absence of both parents and counsel.

Your Commissioner was particularly impressed with the infant child, the way she freely responded to all questions, and her attitude and sincerity, and has concluded that the wish of the child with respect to her custody is consistent with her best interests, and therefore recommends that the custody of the child be awarded to her mother, the complainant. (*Mullen v. Mullen*, 188 Va. 259, 269; *Hepler v. Hepler*, 195 Va. 611; *Lawson v. Lawson*, 198 Va. 403.)

Your Commissioner therefore recommends that the Bill of Complaint be dismissed; that the Supplemental Cross Bill be dismissed; and that the husband be granted a divorce *A VINCULO MATRIMONII* on the ground of desertion as alleged in the original Cross Bill as of September 13, 1961.

page 30 } 5. ALL OTHER MATTERS PROPERLY  
RAISED BY THE PLEADINGS, ETC.

Your Commissioner further reports and recommends:

(a) See Exhibit D-1 for income, deductions and take home pay of Commander Higgins, U.S.N. Net amount as shown on exhibit after deluctions is \$814.18 per month.

(b) That custody of the infant child, Barbara Higgins, be awarded to the mother, the complainant.

(c) That the father be required to pay to the complainant for the support of the said infant child the sum of \$50.00 per week.

(d) That the defendant be required to pay to Mr. Harry Nicholson, counsel for the complainant, the sum of \$1,250.00, subject to a credit of any amount heretofore paid pursuant to previous orders of the Court.

(e) That costs be awarded against the defendant, subject to a credit of any amount heretofore paid pursuant to said orders of court.

(f) That your Commissioner respectfully requests an additional Commissioner's fee of \$600.00.

(g) Age of parties—wife—38 years old; husband—39 years old.

(h) Place of birth—wife—Ames, Iowa; husband—Junction City, Kansas.

(i) Occupation — wife — real estate broker; husband—United States Navy.

Respectfully submitted this 2nd day of November, 1962.

WILLIAM H. SANDS  
Commissioner in Chancery.

page 31 } Fee for this report to William H. Sands,  
Commissioner in Chancery, paid by counsel for Complainant .....\$ 25.00  
Additional fee requested by Commissioner, subject to approval of Court ..... \$600.00  
Fee to Phlegar & Phlegar, Reporter ..... \$373.00

\* \* \* \* \*

WILLIAM H. SANDS  
Commissioner in Chancery.

Filed 11-5-62 Court of Law and Chancery.

By L. M. CALVERT, D. C.

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\* \* \* \* \*

EXCEPTIONS TO REPORT OF COMMISSIONER IN  
CHANCERY.

To the Honorable Judges of the above said court:

NOW COMES the defendant and cross-complainant, Roy T. Higgins, and excepts to the report of William H. Sands, Commissioner in Chancery, heretofore filed in the above-named cause. As a specific statement of his exceptions to the aforesaid report, Roy T. Higgins states as follows:

1. That he excepts to the ruling of the Commissioner to the objections interposed by Roy T. Higgins, as set forth in the record for the reasons and upon the grounds as therein stated.

2. That he excepts to the action of the Commissioner in failing to apportion the costs of this cause by reason of the extensive irrelevant evidence introduced in the record by Maryann Merrick Higgins.

3. That he excepts to the ruling of the Commissioner in declining to consider the past history and character of Maryann Merrick Higgins as shown by the evidence in determining whether or not adultery was committed at the time and place as alleged by Roy T. Higgins.

4. That he excepts to the finding of facts as outlined by the Commissioner in his report and states that the evidence as set forth in the record overwhelmingly points to a finding of facts in accordance with the allegations of Roy T. Higgins as set forth in his pleadings.

page 33 } 5. That he excepts to the finding of the Commissioner in regard to Roy T. Higgins in its entirety in addition to the apparent bias and prejudice indicated and expressed by the Commissioner in regard to his conclusions relative to Roy T. Higgins and his endeavors in connection with this cause.

6. That he excepts to the finding of facts relative to the testimony of Lee Higgins and states that the Commissioner wholly ignored the plain and apparent factual situation as testified to by the said Lee Higgins in regard to the fitness of Maryann Merrick Higgins as a mother and the prior improper, immoral and unwholesome acts on the part of Maryann Merrick Higgins.

7. That he excepts to the finding of the facts as to the testimony of E. L. Lille.

8. That he excepts to the finding of the facts relative to Johnnie English.

9. That he excepts to the finding of the facts relative to Joe Perkins.

10. That he excepts to the finding of the facts relative to Elma Simmons.

11. That he excepts to the finding of the facts relative to John M. Schaffer.

12. That he excepts to the finding of the facts relative to Jesse Snow.

13. That he excepts to the finding of the facts relative to Kathryn Lille, and states in more particular, the connotation given by the Commissioner to the testimony of Kathryn Lille is totally incorrect and further fails to report the plain and apparent meaning of her testimony.

14. That he excepts to the finding of the facts relative to Maryann Merrick Higgins and states that the conclusions as set forth by the Commissioner relative to her testimony are entirely unsupported by the evidence as set forth in the record.

page 34 } 15. That he excepts to the finding of the facts relative to Joe S. English.

16. That he excepts to the finding of the facts relative to Margaret A. Osgood.

17. That he excepts to the finding of the facts relative to John B. Sasser.

18. That he excepts to the finding of the facts relative to Julia Hunter.

19. That he excepts to the finding of the facts relative to Barbara Higgins and further states that the Commissioner erred in the manner and form of the questions presented to Barbara Higgins, as well as his failure to more closely interrogate Barbara Higgins as to the meaning, extent and reason for her stated wishes, as well as her expressed change of attitude during the course of erupted marital difficulties between the parties hereto.

20. That he excepts to the finding of the facts relative to the testimony of John S. Beattie and states further that the record clearly reflects a different factual situation, than that reported by the Commissioner.

21. That he excepts to the finding of the facts relative to the testimony of Tommy F. Jordan, Jr. and Detective Mario Asaro and states that the Commissioner totally ignored the purpose of these witnesses toward the impeachment of Maryann Merrick Higgins' testimony, and further that he failed to draw the reasonable conclusion obtainable from the testimony of Tommy F. Jordan, Jr. a married man, and his relation with Maryann Merrick Higgins.

22. That he excepts to the conclusions of the Commissioner in its entirety and states that it is wholly and totally unsupported by the evidence as introduced.

23. That he excepts to the action of the Commissioner in allowing the introduction of and consideration of  
page 35 } evidence pertaining to the actions of Maryann Merrick Higgins and John S. Beattie immediately after the motel incident May 31, 1962 pertaining to their self-serving acts.

24. That he excepts to the action of the Commissioner in failing to consider the effect and reasons behind the voluntary return of Barbara Higgins to her father shortly after the desertion by Maryann Merrick Higgins.

25. That he excepts to the conclusion of the Commissioner to the finding that Maryann Merrick Higgins was and is a temperate user of alcoholics and states further that the overwhelming evidence indicates an unwholesome use of alcohol by Maryann Merrick Higgins to the end that on occasions she has complete mental and physical breakdowns, necessitating outside care and treatment.

26. That he excepts to the determination of the Commissioner that the incidents of marital life as testified to by Roy T. Higgins were nothing more than the normal marital problems experienced by reasonable married couples, and that Roy T. Higgins was unreasonable in his actions and demands made in an attempt to preserve his marital relationship and provide a happy and wholesome home for his children.

27. That the Commissioner erred in his emphasis given to the testimony and wishes of Barbara Higgins and failed to consider those facts as derived from the evidence as an entirety, which showed Maryann Merrick Higgins to be an unfit person for the custody, control and upbringing of Barbara Higgins.

28. That the Commissioner erred in his conclusion that the evidence of Roy T. Higgins and others failed to show an act of adultery on the part of Maryann Merrick Higgins.

29. That the Commissioner erred in his failure to recommend a decree of divorce a *vinculo matrimonii* on the grounds of adultery in favor of Roy T. Higgins.

30. That the Commissioner erred in the awarding of the custody of Barbara Higgins to Maryann Merrick Higgins, thus separating her from her sister.

page 36 } 31. That the Commissioner erred in fixing support payments in the amount of \$50.00 per week for the support of Barbara Higgins.

32. That the Commissioner erred in fixing the sum required to be paid by Roy T. Higgins to Harry Nicholson in the amount of \$1,250.00.

33. That the Commissioner erred in awarding costs against the defendant.

34. That the Commissioner erred in failing to apportion costs.

35. That the Commissioner erred in fixing an additional Commissioner's fee of \$600.00.

WHEREFORE, Roy T. Higgins prays that he be given a hearing on his exceptions to the report of William H. Sands, Commissioner in Chancery, and that an Order be entered in accordance with his prayer of relief as set forth in his pleadings.

ROY T. HIGGINS  
By JOSEPH H. CAMPBELL  
Of Counsel.

Filed 11/14/62.

L. M. CALVERT, D. C.

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#### MOTION TO AMEND SUPPLEMENTAL CROSS-BILL.

Now comes Roy Taylor Higgins, by counsel and shows to the Court as follows:

1. That filed herein is the affidavit of Mary M. English showing several acts of sexual intercourse and adultery by Maryann Merrick Higgins on many occasions with divers men.

2. That said acts were unknown to Roy Taylor Higgins until December 27th, 1962; and that they have not been condoned.

3. That prior to December 27th, 1962, Roy Taylor Higgins had used due diligence to ascertain and obtain competent evidence of said acts, but all of which was to no avail.

WHEREFORE, Roy Taylor Higgins moves for an order allowing him to amend his supplemental cross-bill and to set forth the facts as set forth in the aforementioned affidavit and further that he be permitted to introduce evidence in behalf of such an amended supplemental cross-bill *ore tenus*

before the Court, or in the alternative before a Commissioner in Chancery on a re-reference.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Counsel.

Filed 12-31-62.

H. L. STOVALL, D. C.

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# MOTION TO PROTECT MARITAL RIGHTS OR TO DISMISS.

Now comes Roy Taylor Higgins, by counsel, and shows to the Court as follows:

1. That he is married to Maryann Merrick Higgins; and by reason of same is entitled to certain marital and inheritance rights from his wife.

2. That the proposed decree of this Court does not protect him in his rights, nor does it preserve same.

WHEREFORE, Roy Taylor Higgins moves the Court that in any Decree pertaining to the above matter that, as the innocent party, he be protected in his marital and inheritance rights and that same be preserved, or in the alternative that his bill of complainant be dismissed wherein he prays for a decree of divorce on the grounds of desertion thus leaving the parties hereto in a married state; and that the Court make such orders as appear proper and just for the custody and support of the infant child and the Court costs and attorney's fee incident hereto.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Of Counsel.

Filed 12-28-62.

H. L. STOVALL, D. C.

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MOTION TO TAKE ADDITIONAL TESTIMONY.

Now comes Roy Taylor Higgins, by counsel, and shows to the Court as follows:

1. That filed herewith is an affidavit of Mary M. English describing an extended and continuing illicit relationship between Maryann Merrick Higgins and John Beattie, an attorney at law and officer of this Court.

2. That both Maryann Merrick Higgins and John Beattie have testified to the effect that they were closely associated with Mary M. English, as will appear in the record of the proceedings before William H. Sands, Commissioner.

3. That Roy Taylor Higgins first learned of Mary M. English's knowledge as set forth in her affidavit concerning Maryann Merrick Higgins and John Beattie on December 27th, 1962.

WHEREFORE, Roy Taylor Higgins moves that the Court delay its judgment in this matter upon the report of the Commissioner and take evidence *ore tenus* from Mary M. English, Maryann Merrick Higgins and John Beattie as to the facts set forth in the aforesaid affidavit.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Of Counsel.

Filed 12-28-62.

H. L. STOVALL, D. C.

\* \* \* \* \*

page 43 } Filed 12-28-62.

H. L. STOVALL, D. C.



## AFFIDAVIT.

I, Mary M. English, presently residing at 216 50th Street, Virginia Beach, Virginia, after being duly sworn do hereby freely of my own will make this affidavit concerning Maryann Merrick Higgins, Roy Taylor Higgins and John Beattie in relation to the divorce and custody proceeding now pending in the City of Norfolk, Virginia. I personally know these parties and have been closely associated with them. More particularly, I have been closely associated with Maryann Merrick Higgins and John Beattie since she left Roy Taylor Higgins. I am presently divorced; and my ex-husband and Roy Taylor Higgins have been drawn closely together because of their marital problems. Roy Taylor Higgins was the best man at my wedding. During and after the hearings in relation to the Higgins divorce and custody action, I was very close to Maryann Merrick Higgins. I attended some of the hearings with her and discussed her case freely with her and John Beattie. As could be expected, I did not talk with Roy Taylor Higgins and had never advised him as to my knowledge of the facts pertaining to his marital situation. On December 27th, 1962, Roy Taylor Higgins telephoned me and told me the decision reached in the divorce and custody action. Because of the seemingly unfairness of the decision, as well as my then desire to make known what I knew to be the truth as to the marital situation, I told Roy Taylor Higgins details about the relationship between Maryann Merrick Higgins and John Beattie and further advised him that if necessary I would appear before any Court and testify as to the truth as herein set forth. I might further add that I was prompted in this decision by reason of recent disagreements between Maryann Merrick Higgins and me.

Maryann Merrick Higgins and I became closely associated in the year of 1959 and this relationship continued into 1962.

I, on many occasions left Maryann Merrick Hig-  
page 44 } gins in motels such as the Country Club Motel and  
the Admiralty Motor Hotel in the City of Norfolk,  
Virginia. One occasion I returned in the morning and  
brought clothes to her. During the present divorce and  
custody action, Maryann Merrick Higgins has told me that  
John Beattie has frequently spent the night in her home at  
201 Byrn Brae Drive, Princess Anne, Virginia.

Maryann Merrick Higgins told me, and John Beattie confirmed same, that the first meeting with John Beattie was at the Hampton Manor Motel, Hampton, Virginia, in September, 1959 with a Carrol Baker. Maryann Merrick Higgins awoke in the morning with John Beattie and two other males. Mr.

Baker left and John Beattie brought her back to Norfolk, Virginia.

Maryann Merrick Higgins has told me of her sexual relationship and intercourse with John Beattie for a period of time over three years since meeting him; and has seemingly bragged about living with him more than his wife. Further, she has told of having sexual relations with John Beattie while his wife Harriett was upstairs in bed. Knowing Mrs. Beattie, I am also motivated in my actions of revealing this information because of the unfairness to Mrs. Beattie.

Maryann Merrick Higgins told me that she loaned John Beattie Five Thousand, Five Hundred Dollars and took two notes, one for Five Thousand Dollars and one for Five Hundred Dollars. These were shown to me by Maryann Merrick Higgins with the request that I destroy them if anything were to happen to her.

On numerous occasions, John Beattie and I have talked about the above as to its being morally wrong, etc. Many times these discussions were participated in by John Beattie, Maryann Merrick Higgins and me. John Beattie has freely admitted that he has had sexual intercourse with Maryann Merrick Higgins.

Maryann Merrick Higgins has admitted to me on numerous occasions of her relationships with men other than page 45 } Mr. Beattie such as with Gene Lille and Joe Greenum[sic]. In addition she told me that on making a trip to Italy with her children to visit her husband Roy Taylor Higgins who was on duty, she had sexual relationships with an officer in his command by the name of Mike Valero [sic].

These statements are made without malice or desire to injure either Maryann Merrick Higgins or John Beattie. I feel that as to property rights, support money and visitations, Maryann Merrick Higgins has and is being unfair to Roy Taylor Higgins. As to the question of custody, for what value it might be, I feel that the child Barbara, feeling as she does, along with her desire to be with Maryann Merrick Higgins, should be placed in the custody of Maryann Merrick Higgins.

MARY M. ENGLISH.

State of Virginia,  
City of Norfolk, to-wit:

Subscribed and sworn to before me personally in my City

and State aforesaid by Mary M. English on the 30th day of December, 1962, being an affidavit of three pages.

MILDRED SHIFLET  
Notary Public.

My Commission expires: 1-5-65.

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### DECREE.

This cause in which process has been served on the defendant as required by law, came on the 20th day of December, 1962, to be heard on the Bill of Complaint, Answer to Bill of Complaint; Cross-Bill filed herein; Answer to Cross-Bill; Amended Supplemental Cross-Bill; Answer to Amended Supplemental Cross-Bill; Report of the Commissioner in Chancery and the Motion by the Complainant to strike from the record of this cause Exceptions to the Report of the Commissioner in Chancery filed herein by the Defendant; and was argued by Counsel.

ON CONSIDERATION WHEREOF, the Court determined on the 20th day of December, 1962, that the Bill of Complaint and the Amended Supplemental Cross-Bill be dismissed and the Motion by the Complainant to strike from the record of of this cause Exceptions to the Report of the Commissioner in Chancery filed herewith be denied; and the Exceptions to the Report of the Commissioner in Chancery filed herein by the Defendant and Complainant in this cause be denied and the Commissioner's Report be ratified and confirmed.

Whereupon on the 27th day of December, 1962, counsel for the defendant moved the court to allow him to amend his Supplemental Cross-Bill; to protect the marital rights of the defendant or to dismiss; and to take additional testimony, which said motions were formally filed on December 28, 1962, with a supporting affidavit; to which motions counsel for the complainant filed Answers with supporting affidavits on the 3rd day of January, 1963, and was argued by counsel.

On consideration whereof said motions of the defendant are overruled this 9th day of January, 1963.

page 59 } ON CONSIDERATION WHEREOF, it appearing to the Court that Maryann Merrick Higgins and Roy Taylor Higgins, white persons, were married at Ames, Iowa on May 29, 1948, and there is one (1) child of the union of the marriage, Barbara Higgins; that the Complainant and Defendant have been domiciled in and were actual *bona fide* residents of the State of Virginia for at least one (1) year next preceding the commencement of this suit and were at the time of the filing of the suit residents of Norfolk, Virginia.

ON CONSIDERATION WHEREOF, it appearing to the Court that Maryann Merrick Higgins was guilty of desertion as of September 13, 1961, and the desertion has been continuous and without interruption for more than one (1) year and that a reconciliation is not probable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Bill of Complaint and the Supplemented Cross Bill be dismissed and that Roy Taylor Higgins be and is hereby granted a divorce a *vinculo matrimonii* from Maryann Merrick Higgins on his Cross-Bill.

THE COURT DOTH FURTHER ORDER, ADJUDGE AND DECREE that the said Maryann Merrick Higgins be and she is hereby awarded the exclusive care and custody of Barbara Higgins, the infant child of the parties hereto and that the said Roy Taylor Higgins shall have visitation rights of Barbara Higgins at his home from 5:00 P. M. every other Friday to 8:00 P. M. the following Sunday beginning December 28, 1962, and such other reasonable rights of visitation as the parties may agree on.

THE COURT DOTH FURTHER ORDER, ADJUDGE AND DECREE that Roy Taylor Higgins be and is hereby awarded the exclusive care and custody of Lee Higgins, the child of Maryann Merrick Higgins and the adopted child of Roy Taylor Higgins, and that Maryann Merrick Higgins shall have reasonable visitation rights at reasonable times and between reasonable hours.

THE COURT DOTH FURTHER ORDER, ADJUDGE AND DECREE that the said Roy Taylor Higgins shall pay to Maryann Merrick Higgins the sum of \$100.00 on the 1st and 15th day of each month for the support and  
page 60 } maintenance of the infant child Barbara Higgins, the first payment to be made on January 15, 1963,

and the payments are to be made through the Juvenile and Domestic Relations Court of the City of Norfolk, Virginia.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Roy Taylor Higgins shall pay to William H. Sands, Commissioner in Chancery an additional fee of \$600.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Roy Taylor Higgins shall pay to Harry Nicholson, Attorney for Maryann Merrick Higgins the sum of Fifteen Hundred Dollars (\$1,500.00) as Counsel fees and Forty-One Dollars and Fifty Cents (\$41.50) cost.

Nothing further remaining to be done in this cause it is ordered to be removed from the docket of this Court.

Enter January 9, 1963.

W. A. P.

Seen:

HARRY NICHOLSON  
Attorney for Maryann  
Merrick Higgins.

Seen and objected to:

JOSEPH H. CAMPBELL  
Attorney for Roy Taylor Higgins.

Seen and objected to:

CHARLES R. CLOUD

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NOTICE TO COUNSEL PURSUANT TO RULE 5:1,  
PARA. 3 (f).

To Harry Nicholson, Attorney, Counsel for Maryann Merrick Higgins, 4th floor, Law Building, Granby Street, Norfolk, Virginia:

Pursuant to Rule 5:1, Para. 3(f) of the Rules of the Supreme Court of Appeals of Virginia, you are hereby notified that the undersigned will tender a transcript (of the hearings and proceedings before the Commissioner in Chancery for the above cause as taken by T. Mosby Phlegar, Court Reporter, and heretofore filed in the Clerk's office of the above Court prior to the arguments on the exceptions to the Commissioner's report heard by the above Court, said transcript containing all of the evidence in its entirety introduced in the above cause upon which the Court based its findings) to the Honorable Walter A. Page, Judge of the Court of Law and Chancery of the City of Norfolk, Virginia, at the Courthouse in Norfolk, Virginia on March 6, 1963, at 9:30 o'clock. A. M., for certification thereof as a part of the record in said case. If said matter be not heard, or if heard, be not concluded, it will be continued from day to day at the same time and place until heard and concluded.

The said transcript and other incidents of trial can be examined in the Clerk's office of the above Court in Norfolk, Virginia between the hours of 9:00 A. M. and 5:00 P. M. Monday through Friday.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Of Counsel.

JOSEPH H. CAMPBELL and  
CHARLES R. CLOUD, p. d.  
406 E. Plume Street  
Norfolk 10, Virginia.

This is to certify that a copy of the above notice was mailed to Harry Nicholson, counsel for the complainant on the 4th day of March, 1963.

CHARLES R. CLOUD, p. d.

Filed 3/4/63.

IRA B. WHITE, D. C.

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## NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

The defendant, Roy Taylor Higgins, hereby gives notice pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of his appeal from that certain final judgment entered in the above styled cause on January 9, 1963, in which the Court granted a divorce to the defendant over his objection and granted the custody of the natural child of the parties to the complainant along with an order for support payments and for court costs and an attorney's fee against the defendant.

The following are errors assigned:

(1) That the Court erred splitting the custody of the two infant children and awarding the youngest and natural child of the parties to the complainant in that the defendant was a man of good moral character and could give a proper home and training for said natural child; and in that the complainant was not of good moral character, could not provide a proper home, environment and training for said child; and in that said natural child being a female would be better cared for and happier in the home with her sister (the natural child of complainant by a prior marriage and the adopted child of the defendant), and adoptive father.

(2) That the Court erred in refusing to grant the defendant a divorce on the ground of adultery in that the evidence was clear and convincing that Maryann Merriek Higgins committed an act of adultery with John S. Beattie as alleged in the supplemental cross-bill.

(3) That the Court erred in granting a divorce at the request of the complainant over the objection of the defendant on the defendant's cross-bill in that defendant being the innocent party was entitled to elect whether to receive the affirmative relief of the divorce so along as he was willing and ready to abide by the Court's orders pertaining to custody payments and payments of Court costs and attorney's fee; and in that the complainant was the guilty party and as such entitled to no affirmative relief.

(4) That the Court erred in awarding an attorney's fee to counsel for complainant as well as assessing all court costs against the defendant in that defendant was the innocent party and complainant was shown to be a business woman fully competing in a man's world, and as such not entitled to the comfort, aid and favorable position a mother and wife in the true sense and meaning are given in a Court of Equity.

(5) That in the alternative the Court erred in the amount

awarded counsel for the complainant as an attorney's fee, and in failing to apportion costs in that said fee was excessive and not properly raised in the pleadings and proceedings; and irrelevant and excessive testimony and evidence was introduced in behalf of the complainant in spite of the warnings made by the commissioner before whom depositions were being taken.

(6) That the Court erred in failing to expressly save and protect the marital rights of the defendant by its order in that the defendant being the innocent party was entitled to any and all marital rights in the property of the complainant by reason of their marriage and cohabitation, and the wrongful and voluntary act of the complainant could not deprive the defendant of said rights and privileges.

(7) That the Court erred in failing to expressly save and protect the inheritance rights and privileges of the defendant by its order in that the defendant being the innocent party was entitled to any and all inheritance rights in the property of the complainant by reason of their marriage and cohabitation, and the wrongful and voluntary act of the complainant could not deprive the defendant of said rights and privileges.

(8) That the Court erred in the allowance and consideration of evidence to the effect that Complainant and John S. Beattie attempted to obtain a medical examination subsequent to the alleged act of adultery in that same is self-serving and irrelevant in that no such examination was had, or available.

(9) That the Court erred in not considering evidence as to past history, character and conduct of Maryann Merrick Higgins along with other evidence to show adultery with John S. Beattie as alleged in that the total effect of same was to show the propensity of complainant to commit adultery as well as to negative the explanation given by complainant for being in the motel room of John S. Beattie at the time and page 65 } under the circumstances as shown by the evidence introduced in this cause.

(10) That the Court erred in ratifying and confirming the Commissioner's Report in this cause in that said report clearly shows bias on the part of the Commissioner, and said report when compared with the depositions and record shows that the Commissioner failed to accurately, fairly and objectively report on the evidence and draw conclusions therefrom.

(11) That the Court erred in allowing the Commissioner a fee in the amount of \$625.00 in that same was excessive and not fairly *representational* of the services rendered.

(12) That the Court erred in its order of visitation for the defendant with the natural child of the parties in that the



record discloses that by reason of the close relationship of the defendant father with said child, both in the present and past, visitation should be more frequent; and in that the record clearly discloses that requiring the parties to agree independently of the Court on visitation is not workable and will lead to dissention and disagreement between the parties.

(13) That the Court erred in denying defendant's motion to amend his supplemental cross-bill and to introduce in behalf of same as requested in that it was newly discovered and by reason of its pertaining to an officer of the Court should be done to avert public distrust and suspicion of the Court and its procedures.

(14) That the Court erred in denying defendant's motion to take additional testimony in said cause pertaining to his pleadings and the question of custody in that it was newly discovered evidence obtained from an admitted close and personal friend of the complainant, and further in that it pertained to John S. Beattie, an officer of the Court, was necessary to avert public distrust and suspicion of the Court and its procedures, especially in view of the failure of John S. Beattie to file a denying affidavit.

ROY TAYLOR HIGGINS  
By CHARLES R. CLOUD  
Of Counsel.

Filed 3/4/63.

IRA B. WHITE, D. C.

\* \* \* \* \*

page 65½ }

\* \* \* \* \*

### ORDER OF CONTEMPT.

THIS DAY, after due notice, the above cause came on to be heard upon the rule to show cause issued against Maryann Merrick Higgins, the said Maryann Merrick Higgins being before the Court in person. It appearing from the evidence that Maryann Merrick Higgins was on the 23rd day of February, 1962, before this Court and at such time informed of the injunctive order heretofore entered in this cause; and further that Maryann Merrick Higgins did on the 26th day of February, 1962, wilfully violate the terms of the aforesaid injunctive order, it is hereby ADJUDGED, ORDERED and

DECREED that Maryann Merrick Higgins is in contempt of this Court's Order;

It is further ordered that Maryann Merrick Higgins purge herself of her contempt by returning all the personalty removed in violation of this Court's Order within five days of the entry of this decree.

It is further adjudged, ordered, and decreed that the defendant be and he hereby is enjoined from disposing of the personal property located at the former residence of the parties, to-wit, 5801 Lathan Road, Norfolk, Va. until further order of this Court.

Enter March 16, 1962.

W. S. P.

\* \* \* \* \*

Comm. Hrg.  
page 2 }

\* \* \* \* \*

The Commissioner: Gentlemen, is this hearing today by agreement of counsel?

Mr. Nicholson: Yes, sir.

Mr. Cloud: Yes, sir.

The Commissioner: Mr. Nicholson, I believe you filed a bill of complaint. Are you ready to proceed on your bill of complaint?

Mr. Nicholson: Yes, sir—no, sir.

The Commissioner: Which do you mean: "Yes" or "No"?

Mr. Nicholson: As to the bill of complaint, we wish to abandon the taking of any testimony on behalf of the allegations as to constructive desertion, but we reserve our right to cross examine all witnesses and put on rebuttal witnesses.

The Commissioner: You mean to cross examine witnesses who might be offered in support of the cross-bill?

Mr. Nicholson: That might be offered in support of the cross-bill, for the purpose of showing the fitness of Mrs. Higgins as to the custody of the child. We are still asking for custody.

\* \* \* \* \*

Comm. Hrg.  
page 6 }

\* \* \* \* \*

ROY TAYLOR HIGGINS,  
the defendant, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Q. What is your name, please?  
Comm. Hrg. A. Commander Roy Taylor Higgins.  
page 7 } Q. What is your occupation?  
A. I am a naval officer in the United States

Navy.

Q. What is your rank?

A. Commander.

Q. When will you be eligible to make captain?

A. Approximately in 1964.

Q. Commander Higgins, you are the defendant in your wife's bill of complaint. Is that correct?

A. That is correct.

Q. And you also filed a cross-bill of complaint against her alleging desertion?

A. That is correct.

Q. When were you and Maryann Merrick Higgins married?

A. On the 29th of May, 1948.

Q. Where were you married?

A. Ames, Iowa.

Q. Tell me whether or not you had been continuously living together since that date up until September of 1961.

A. We had been living continuously together up until September 1961.

Q. How many children do you have?

Comm. Hrg. A. Two children.

page 8 } Q. What are their names and ages?

A. Barbara, age 11; Lee, age 17.

Q. Do you know Lee's birthday?

A. Lee's birthday is the 23rd of October, 1944.

Q. Where was she born?

A. I believe she was born in Ames, Iowa.

Q. Is it correct that she is the daughter of your wife and not your natural daughter?

A. That is correct.

The Commissioner: Was there an adoption?

By Mr. Campbell:

Q. Have you adopted Lee?

A. Yes, I did.

*Roy Taylor Higgins.*

The Commissioner: You had better bring the date out, Mr. Campbell.

By Mr. Campbell:

Q. When was that done and where?

A. It was done in Ames Iowa, shortly after we were married. I cannot recollect the date.

The Commissioner: There is one child by the marriage?

Mr. Campbell: Yes, sir.

The Commissioner: That is the older child?

Mr. Campbell: The younger child.

Comm. Hrg.

page 9 } By Mr. Campbell:

Q. When and where was Barbara born?

A. Barbara was born in Guantanamo Bay, Cuba, the United States Naval Base, in 1950, September 23rd.

Q. And she is the natural child—

A. September 21st.

Q. She is the natural child of you and Mrs. Higgins?

A. That is correct.

Q. Of this marriage?

A. Yes.

Q. Where are you stationed, Commander?

A. I am on the staff of the Commander Operational Test and Evaluation Force, Naval Base, Norfolk 11, Virginia.

Q. How long have you been stationed in the State of Virginia?

A. Since 1952; October 1952.

Q. Where do you live?

A. 5801 Lathan Road, Norfolk, Virginia.

Q. How long have you been living there?

A. Since October 1957—November 1957.

Q. Is that in the City of Norfolk, Virginia?

A. It is presently.

Comm. Hrg. Q. Had you and your wife lived together  
page 10 } there until the separation last September?

A. Yes, sir, except when I have been at sea.

Q. Was she living there when you were at sea?

The Commissioner: Let me explain this jurisdiction and venue, Mr. Campbell. We will want to know where these

*Roy Taylor Higgins.*

parties last cohabited, what city; if not Norfolk, then there are other things which I will tell you about which are provided by the Code.

On the question of jurisdiction the commissioner will want to know whether you are proceeding under the first part of the paragraph of the Code or the presumption which is provided by the latter part of the paragraph. If you are not familiar with it I can show it to you.

Mr. Campbell: Since he is in the military services I think the presumption allowed by statute will cover it.

The Commissioner: Do you have the wording of it before you?

Mr. Campbell: Yes, sir.

The Commissioner: It is 20-97. Let's find out if there is any question about venue and jurisdiction before we go any further. Of course that is only presumption and may be rebutted.

Comm. Hrg.

page 11 } By Mr. Campbell:

Q. Commander, you testified that you are in the Armed Forces of the United States. Is that correct?

A. That is correct.

Q. Had you been stationed in this state and had you lived with your spouse, Mrs. Higgins, for a period of one year or more in this state next preceding the separation between you and Mrs. Higgins?

A. I had.

Q. Do you and your wife still continue to live in the state?

A. Yes.

The Commissioner: The suit was commenced on September 15, 1961, wasn't it?

Mr. Campbell: Yes, sir.

The Commissioner: That is the end of that sentence, if you want to put that in the record.

Mr. Campbell: Yes, sir.

Q. Did you continue to live at that address with your wife until September 16, 1961?

A. That date September 16th is incorrect.

Q. How about until September 12th?

The Commissioner: Mr. Campbell, to what are you refer-

*Roy Taylor Higgins.*

ring? I didn't want to confuse you, but the Comm. Hrg. Code says "—continued to live in the state un-  
page 12 } til and at the time a suit for divorce or legal  
separation was commenced." The date of the  
suit is September 15, 1961, so the question is: Did he and his  
wife both continue to live in the state until September 15,  
1961?

A. Yes, sir, we did.

The Commissioner: There is one requirement which we  
will have to fulfill a little later, and that is a copy of the or-  
ders which brought this individual into the State of Virginia.  
For the record let me ask him at this time:

By the Commissioner:

Q. Where were you stationed before you were stationed  
in Virginia?

A. In the State of Massachusetts, sir.

Q. What were you on in Massachusetts?

A. I was on temporary duty under instructions at the  
C. I. C. school in Boston.

Q. Were you ordered from the C. I. C. school in Boston to  
Norfolk, Virginia?

A. Yes.

Q. Do you have a copy of those orders?

A. I can produce them.

Q. Will you furnish them to your attorneys so they in turn  
can turn them over to the commissioner?

A. I will.

Comm. Hrg.

page 13 } The Commissioner: Proceed.

By Mr. Campbell:

Q. Are you a resident of Virginia?

A. Will you define the term "resident," please?

Q. How long did you say you have lived here?

A. Approximately 11 years.

Q. Do you own real estate in Virginia?

A. Yes.

The Commissioner: I do not think, Mr. Campbell, if you  
are proceeding to get that in with the first part of the para-  
graph that you can establish it that way. What you should do

*Roy Taylor Higgins.*

is to find out whether his permanent home is in Virginia, where his domicile of birth was, and where his present domicile is.

Mr. Campbell: I think we have already covered that.

The Commissioner: I do not think the venue question has been answered yet.

By Mr. Campbell:

Q. Where did you and your wife last cohabit together?

A. Norfolk, Virginia.

Comm. Hrg. Q. You and your wife lived together until page 14 } when?

A. I believe the date was the 13th of September, 1961.

Q. Where were you living at that time?

A. 5801 Lathan Road, Norfolk, Virginia.

Q. Tell us what happened on that date.

A. I received a call from Mrs. Higgins upon my return from work stating that she had in effect taken the girls and had moved to another residence.

Q. Did she say what her intentions were as far as living with you anymore?

A. She stated in effect that she was leaving me.

Q. Since that time have you and your wife lived together any?

A. No.

Q. Did you give her any reason to leave?

A. I did not.

Q. When did you and Mrs. Higgins first start having marital difficulties?

A. The first serious marital difficulties were in the fall of 1958.

Q. Of what did they consist?

Mr. Nicholson: If Your Honor please, I object to that. He is going back to '58. He is alleging desertion as of September 1961.

Mr. Campbell: Your Honor, I have established the grounds as far as this witness is concerned I believe for desertion. I am now going into matters which have to do with the claim of custody as to Barbara.

The Commissioner: You mean that your purpose for endeavoring to establish difficulties in the marital relationship prior to the time you claim the wife left is for the purpose

*Roy Taylor Higgins.*

of making that available to the court in consideration of the question of custody?

Mr. Campbell: Yes, sir; to show a pattern of conduct showing that the complainant is an unfit mother.

The Commissioner: Let's proceed and we will see how far we go. I will overrule your objection at this time.

Mr. Nicholson: I note an exception.

By Mr. Campbell:

Q. Go ahead, Commander.

A. Early in the spring of 1958 I had reason to suspect the social conduct of my wife, culminating in an accusation of her and another gentleman. Mrs. Higgins Comm. Hrg. denied this accusation. I left the house and page 16 } went to the ship that I was stationed on as the executive officer, the USS SHADWELL.

Mrs. Higgins contacted me and pleaded with me to come back, that the children were disturbed by my absence, particularly my younger daughter. I agreed to meet with her on a Sunday morning, I believe in the month of October or November.

By the Commisisoner:

Q. You will have to give us the year.

By Mr. Campbell:

Q. What year was that?

A. 1958.

The Commissioner: One question, Mr. Campbell. When you use the word "custody" are you referring now to both of these children or only the one by virtue of the marriage? Are you referring to the adopted one, too?

Mr. Campbell: Well, Your Honor, we are in this position, as I understand it. The complainant is not claiming custody of the older daughter. Custody of that child is now by order with Commander Higgins.

The Commissioner: Let's find out from Mr. Nicholson.

Mr. Nicholson: Yes, sir, that is true.

Comm. Hrg. We are not asking for the custody of the older page 17 } daughter.

The Commissioner: You are not seeking the custody of the 17 year old daughter, which is the adopted daughter?



*Roy Taylor Higgins.*

Mr. Nicholson: That is right.

The Commissioner: Then the only question before the commissioner at this time is the question of the custody of the 11 year old daughter?

Mr. Campbell: Yes, sir.

The Commissioner: Very good. Let's proceed.

Mr. Cloud: Did you understand? It is the complainant's natural daughter.

The Commissioner: The record shows it. That is the one that Mr. Nichols is not seeking custody of.

Mr. Cloud: That is correct.

The Commissioner: He is only seeking custody of the 11 year old.

Mr. Nicholson: Yes.

By Mr. Campbell:

Q. Proceed.

Comm. Hrg. A. Mrs. Higgins finally admitted that she  
page 18 } spent the night with a certain man, an associate  
of hers in the real estate business. However, she  
claimed that she does not know whether there was any immoral act committed in that both of the parties were too drunk to know what was going on.

By the Commissioner:

Q. What year are you talking about?

A. 1958, sir.

By Mr. Campbell:

Q. Was that September or October?

A. I believe it was November.

Q. November 1958?

A. Yes.

Q. Go ahead on her conduct from there.

A. I was concerned mainly with the children I still loved my wife at this time, though I was very upset, and had been upset for a period of about six months. I had definite proof that this affair was going on, which I would have brought forth if necessary but Mrs. Higgins told me that she was sorry and asked me to please not leave. I told her that I would not leave, that I still loved her, and that in the interest of the children also that we would try to continue on with the marriage. I believe Mrs. Higgins was sincere at this time.

*Roy Taylor Higgins.*

However, I made certain stipulations: that in Comm. Hrg. order for her to continue in the real estate business as a saleslady she was to have an 11 o'clock curfew, or either call me up and let me know what the problem was that caused additional time. Also that she was to ignore a debt or a loan that she had made to this individual—

Q. Tell us that individual's name.

A. Mr. Gene Lille.

Q. How much did she say she had loaned him?

A. She told me that she had loaned him only \$1,000.00.

Q. Did she say whether or not that loan was repaid?

A. At a later time she said that she ignored my order and that she was collecting the loan.

By the Commissioner:

Q. One minute. You used the word "stipulation" and the next minute you used the word "order." I don't follow you.

A. It was a requirement, General, of mine that she forget this debt in order that I come back.

By Mr. Campbell:

Q. In other words, the loan that she had made to Mr. Lille, you did not want that repaid?

A. That is correct.

Comm. Hrg. The Commissioner: I am interested in finding out if that was something that the husband ordered or whether it was something agreed upon.  
page 20 }

A. It was agreed upon by Mrs. Higgins.

By Mr. Campbell:

Q. After this agreement with her did you go back and start living with her?

A. I forgave Mrs. Higgins. I was unable to forget it. I went back to living with Mrs. Higgins. I made an attempt to look at my position and be a better husband. I made every effort that I could to save the marriage.

Q. Tell us about her conduct thereafter.

A. In the month of January 1959 I was ordered to a school in George, a Navy school. On several occasions I called late

*Roy Taylor Higgins.*

at night or early in the morning and got no answer at the house.

By the Commissioner:

Q. The record does not show whom you called.

A. I called my wife. Later on during the spring of 1959 Mrs. Higgins would continue to stay out later and later. She would in most cases call me and tell me that she was staying out after 11 o'clock.

The Commissioner: Mr. Campbell, is this witness only testifying as to facts that he knows of his own Comm. Hrg. knowledge? The commissioner does not know page 21 } whether at this last moment he was speaking about whether he was present in Norfolk with his wife, wherever she was living, or whether he was down in Georgia and his wife was somewhere else and he got this information otherwise. It might be hearsay. Even though there is no objection I want to know.

A. In the latter instance that I was speaking of I was in Norfolk.

By Mr. Campbell:

Q. You said something about your wife would call you. What did she tell you?

A. She would tell me that it was necessary that she be out, and would explain why it was necessary to be out, after 11 o'clock. I accepted it at first, and then became more suspicious as these happenings continued.

Q. What was the reason that she gave you for being out late?

A. Real estate business.

Q. All right. At what time would she come home?

A. Well, the lateness after 11 o'clock at night increased until in the month of July 1959 in preparation Comm. Hrg. for a trip to her parents' cabin Mrs. Higgins page 22 } came in a half hour after I had set the alarm for 2:30 to get up and get an early start on this trip to Wisconsin.

By the Commissioner:

Q. Were you living in Norfolk at that time?

A. We were living in Norfolk at that time, sir. When the

*Roy Taylor Higgins.*

alarm went off, Your Honor, I noticed that Mrs. Higgins wasn't at home. I waited until she came home. She came home drunk and fell down on the bed. I found out later—

Q. You can't tell what you found out. I do not want to continue to interrupt you, because the attorney should control this.

The Commissioner: Don't let him testify, Mr. Campbell, as to what he found out, but let him testify as to what he knows of his own personal knowledge, please.

A. Yes, sir.

By Mr. Campbell:

Q. She was drunk when she came home. When did you get started for Wisconsin?

A. I got the girls up and finished packing. My older daughter and myself spent considerable time—I would estimate a half hour—trying to get Mrs. Higgins up to Comm. Hrg. get in the car. My older daughter and myself page 23 } practically carried Mrs. Higgins in an unconscious state to the car, a station wagon, and put her in the station wagon which had a bed in the back for the children to rest on, and I started driving to Wisconsin.

We went north to the Pennsylvania Turnpike, and about 11:30 that morning Mrs. Higgins came to, which was the first indication that she was conscious. She acted as if nothing had happened. I was disturbed and I ignored Mrs. Higgins.

Q. Did anything happen in Wisconsin along the same line of conduct?

A. Not to my knowledge at that time, no, sir.

The Commissioner: What was this—'59?

Mr. Campbell: July 1959.

A. I would like also to add that prior to this trip that we made my parents made a visit to Norfolk to visit my home, or our home. They arrived a day early. I was the acting chief staff officer and, in fact, the operational officer, of an amphibious squadron that was deploying to the Mediterranean for a period of six months. I had the duty the night my parents arrived. Mrs. Higgins called me up and told me—I was abroad ship—that my parents were coming early, and that she had an appointment, and she had to meet the appoint-

*Roy Taylor Higgins.*

ment. I told her that I would try to get off, get Comm. Hrg. somebody to take my duty, and go home and page 24 } be with my parents.

I was unable to obtain a relief. This was about 5:30 in the evening when I received this information. Most of the people had secured. Half of the people were on leave prior to going on the deployment. I did not get home that night. I found out later that Mrs. Higgins did not return—

The Commissioner: No.

By Mr. Campbell:

Q. From whom did you find out that?

The Commissioner: If the attorney does not stop the witness, I will have to do it.

By Mr. Campbell:

Q. From whom did you find this out? Did you have any conversation with Mrs. Higgins about that night?

A. Nothing except she had an appointment, and had to meet this appointment, and she would get home as soon as she could.

Q. The next day at what time did you first see her?

A. It was in the afternoon after I got off from work, I imagine about 5:30.

Q. Did you have any conversation with her Comm. Hrg. as to where she had been and how long? page 25 }

A. No, I did not.

Q. What happened after you came back from Wisconsin?

A. In this connection, with the arrival of my parents—a visit of my parents—I found out from my older daughter—

Q. You can't testify as to what she said.

A. All right.

Q. Tell us about her pattern of conduct after you came back from Wisconsin.

A. After we came back from Wisconsin we deployed to the Mediterranean. Our relations were strained. I had bid her a fond farewell and sailed for the Mediterranean.

Q. When was that?

A. In July.

Q. 1959?

A. '59.

*Roy Taylor Higgins.*

Q. When did you next see Mrs. Higgins?

A. I saw Mrs. Higgins in Goteborg, Sweden, on the 11th of December, 1959.

Q. How long was she in Europe?

A. Until the last week of December. I believe the date was the 31st.

Comm. Hrg. Q. Were you with her during that time?  
page 26 } A. I was.

Q. What was her conduct during that time?

A. Until the time we arrived in Genoa, Italy, which was the liberty port for the Christmas holidays for the flagship that I was on, her conduct was above reproach. However, on one occasion some of the staff officers and ship officers were at a night club, and I considered my wife as being overly friendly—

By the Commissioner:

Q. Were you there?

A. Yes, sir. I saw my wife being overly friendly with my chief of staff officer, and I got her and left.

By Mr. Campbell:

Q. What happened in Genoa, Italy?

A. We had a party on New Year's Eve. Mrs. Higgins and I attended. Mrs. Higgins early in the evening before midnight became quite drunk. I became more sober. I never got drunk because of being disgusted with her conduct: broken glass on the floor and conducting herself other than as a lady should.

Early in the morning about 3:30 or 4 o'clock I finally got a good friend of mine, a major in the Marine Corps, to take Mrs. Higgins home, and I went on home to the Comm. Hrg. hotel which is about two blocks away. I went  
page 27 } to bed.

Mrs. Higgins came in. I was awake when she came in. I went to sleep before she went to bed. I woke up the next morning about 10:30. I got up. Mrs. Higgins was not in the hotel room. This was on January 1, 1960. Mrs. Higgins was not in the room. I got the girls up, and we got dressed and we went across the street and had breakfast.

About noon I became concerned about Mrs. Higgins' absence or whereabouts. I went over to the hotel and checked to see if she had returned. She had not returned. I checked the exits, and there was no other exit in the hotel except the fire escape and the back servants' entrance.

*Roy Taylor Higgins.*

Q. Were the children with you during this time?

A. The children were with me during the entire time. We sat in this little restaurant across from the hotel until approximately 3 o'clock, at which time we returned to the hotel room. I was going to leave the girls in the hotel room and go to the ship and start making inquiries as to Mrs. Higgins' whereabouts.

A short time later—within a half hour, about 3:30 in the afternoon, Mrs. Higgins returned or came back  
Comm. Hrg. to the room. I asked her where she had been.  
page 28 } I did not act disturbed with her. She said that she just found herself; that she just came to across the hall in a bathroom; that she had apparently fallen in there when going to the bathroom. However, we had a bathroom in the room, or adjacent to the room that we were sleeping in.

Mrs. Higgins had on a shirt, a blouse and a sweater and saddle shoes or moccasins, which she did not have on when she returned from the party the previous night.

By the Commissioner:

Q. Don't try to argue the case. Let your lawyers do that.

By Mr. Campbell:

Q. What was the next incident, Commander? How long did she stay in Europe?

A. It was actually I believe the 2nd of January instead of December 31st that I took Mrs. Higgins and the children to the airport and they departed by air for the United States.

Q. When did you next see your wife?

A. I believe it was the 8th of February, 1960, in Norfolk.

Q. How did things go after that between you  
Comm. Hrg. and Mrs. Higgins?

page 29 } A. The situation was not ideal. Mrs. Higgins was having some trouble with her business when she returned.

Q. What business was she in in February when you got back?

A. She had been in business with J. O. Keene, as a partner in the real estate business.

Q. When you came back what business was she in, and with whom?

A. I understood that she was out of business, in that the partnership had been dissolved by Mr. Keene.

Q. Did she later go back in the real estate business?

*Roy Taylor Higgins.*

A. She later went back into business and—correction. She went back into business in the home. She set up an office—

Q. In your home?

A. In our home at 5801 Lathan Road in Norfolk.

Q. What hours did she keep in this business?

A. She was out late at night on occasions. I would say the occasion was not the exception. She went and came as she pleased, and about this time made no explanation to me.

Q. What was her condition as to drinking  
Comm. Hrg. during that time?

page 30 } A. Mrs. Higgins would almost invariably  
come into the house and go to the kitchen cabinet and take out a bottle of liquor and mix herself a drink, and have one or two or more relatively stiff drinks prior to and during the evening meal.

Q. What was the next conduct of hers that you did not approve of?

A. (No answer.)

Q. Let me ask you this: Who were the men that she was associated with during that time in 1960?

Mr. Nicholson: If Your Honor please, I object to all of this testimony: Who were the men she was associated with?

The Commissioner: Make your objection as the testimony comes in. I do not want a blanket objection. I sustain the objection.

By Mr. Campbell:

Q. Go ahead with her conduct during 1960.

A. Mrs. Higgins went and came as she pleased, without any explanation to me as to where she was. I did not accept this situation. I was disturbed about it because—

By the Commissioner:

Comm. Hrg. Q. Your attorney asked you about her con-  
page 31 } duct. He did not ask you about your reaction  
to her conduct.

By Mr. Campbell:

Q. State what you saw and what she said and what she did.

A. She stayed out late at night, supposedly on appointments—real estate appointments. I did not know where she was.

Q. How late would she stay out?



*Roy Taylor Higgins.*

A. Sometimes all night. On any number of occasions I have gotten up in the morning to go to work and would go and feel the hood of the car, and the hood of the car was still warm, during the winter months. That was in 1960.

Q. How long did she stay in business in the home?

A. Until May of 1961.

Q. Then where did she go into business?

A. She opened a real estate office on Military Highway in Norfolk, Virginia.

Q. Does she still have that business?

A. She does.

Q. What is the name of it?

A. Higgins Realty.

Q. Let's go to 1961. What was her conduct Comm. Hrg. then?  
page 32 }

A. In 1961, starting in the spring, Mrs. Higgins continued to stay out late at night until such time as in the month of June I had a talk with Mrs. Higgins and told her that I had decided she must give up the real estate business and come back into the home and be a mother and a wife, or I was going to take further action. I did not tell her what I was going to do, except that I told her that I was going to take the two girls and go to visit both grandparents that summer. Mrs. Higgins told me that she had the answer for me then, and that she was not giving up the real estate business, and that I could go ahead and do what I wanted to do.

The girl and I went on this trip of about 10 days, and returned the latter part of August. At that time Mrs. Higgins' answer was still the same: she would not give up the business. She gave me until the end of September to inform her as to what I was going to do.

In June, prior to talking to Mrs. Higgins, I went to see Mr. Cloud and I told him of my problem.

Q. Don't tell what he advised you, but what did you do thereafter?

A. I engaged the services of Mr. Cloud as my attorney in this matter.

Q. Whom was Mrs. Higgins associated with Comm. Hrg. during that time?  
page 33 }

A. John Beattie.

The Commissioner: When you say, "associated with" are you talking about in the real estate business?

*Roy Taylor Higgins.*

Mr. Campbell: I am talking about men, in the real estate business and otherwise.

By Mr. Campbell:

Q. What business is John Beattie in?

A. He is an attorney in Urbanna, Virginia.

Mr. Nicholson: If Your Honor please, I am going to object to this.

The Court: I sustain the objection unless the witness can testify in answer to that somewhat vague question as to whether he is cognizant of what business relations, and so forth, the parties had together, unless it was something Mrs. Higgins told him.

By Mr. Campbell:

Q. Did you have occasion to see John Beattie this morning?

A. I did.

Q. Where and at what time?

A. Approximately 12:30 this morning in the Virginia Reel Motel?

Q. How was Mr. Beattie dressed when you got there?

Comm. Hrg. The Commissioner: Do I understand that page 34 } this is on the question of custody only?

Mr. Campbell: Yes, sir, and to show the pattern of conduct since 1961.

By Mr. Campbell:

Q. How was Mr. Beattie dressed when you got there?

A. He was in shorts; the bottoms only.

Q. Is that underwear shorts?

A. Yes.

Q. Did you see your wife there?

A. Yes.

Q. Where?

A. She was slumped on the floor in the bathroom.

Q. How was she dressed?

A. She appeared to have a pantie girdle on. She was slumped over. I could not tell whether she had anything on above the waist or not. It appeared that she did not. She had no shoes on or stockings on.

Q. Did you see the bed?

*Roy Taylor Higgins.*

A. I saw the bed, yes, I did.

Q. What was its condition?

A. It had been used. It had been turned back  
Comm. Hrg. and was in a rumpled state. I did not speci-  
page 35 } fically note the condition of the pillows.

The Commissioner: Where was this?

By Mr. Campbell:

Q. Where was it?

A. The Virginia Reel Motel on Highway 13, approximately  
5 to 10 miles outside of Norfolk, Virginia.

Q. Have you seen your wife in the company of other men  
in the last year and a half?

Mr. Nicholson: I object, If Your Honor please.

The Commissioner: First let me know as to what time.

Mr. Campbell: If he answers this question then I will  
establish the time and place.

The Commissioner: You tell me what time you are speak-  
ing of.

Mr. Campbell: During the year 1961.

The Commissioner: Now the objection is made on what  
ground?

Mr. Nicholson: Your Honor, he asked concerning the com-  
pany of other men. Your Honor knows how vague that is. He  
has testified that Mrs. Higgins is in the real estate business;  
that she is active in the business. What pro-  
Comm. Hrg. bative value would that have? I object to it, if  
page 36 } Your Honor please.

The Commissioner: I think the question is  
very simple as it stands and perfectly harmless as it stands.  
What the purpose of it is I do not know. I overrule your ob-  
jection and note your exception, Mr. Nicholson. Let's pro-  
ceed.

By Mr. Campbell:

Q. What men have you seen in her company, and under  
what circumstances, when and where?

The Commissioner: That question would be objectionable  
Mr. Campbell. I think you would be limited to any incidents  
which might reflect on her conduct in such a way that they  
would be taken into consideration by the court from the stand-  
point of custody. Certainly I am sure you do not intend

*Roy Taylor Higgins.*

to bring out all of the various business relations concerning the various people that she has met.

Mr. Campbell: No, sir. My client understands.

The Commissioner: He may understand, but the record does not show it. Reframe your question.

By Mr. Campbell:

Comm. Hrg. Q. Commander, have you seen your wife in page 37 { the company of other men other than as to a business relationship between the two?

A. I have.

Q. When and where and who was it?

A. After Mrs. Higgins had left in September and moved with the girls to Admiralty Acres—

By the Commissioner:

Q. What year?

A. 1961. I on one occasion at 2:30 in the morning, in the middle of the month of November, saw Mrs. Higgins come home with Mrs. English and Mr. Bundy and another gentleman. I was parked at the end of the street watching the situation, and had been for several nights, and had on several occasions given up at a late hour—1:30 or 2 o'clock or 3 o'clock in the morning—and gone home.

On this one specific night I happened to look in the bedroom window. The venetian blinds were not all the way down. I saw a man standing in her bedroom. The overhead light was on. He was talking to somebody. I saw Mrs. Higgins sit up. I saw this man sit down on the bed. I saw Mrs. Higgins and this man kissing, and I saw their heads disappear for a number of minutes; I would estimate 3 to 4 minutes at the longest, and on several occasions as much as a

Comm. Hrg. minute. I could not see them when their heads page 38 { disappeared below the window sill. The window sill from the outside was about four and a half feet high. It was a ranch-style construction house, and the floor on the inside was about the same level.

Q. Did you see how Mrs. Higgins was dressed?

A. Later I did.

Q. How was she dressed?

A. I could only see Mrs. Higgins from the waist up, and she had a slip on. I could not tell whether she had a brassiere on or not.

Q. Did she have on any clothing over the slip?

A. None. I saw Mrs. Higgins stand and kiss this man several times. I saw this man leave and go out and get in the

*Roy Taylor Higgins.*

car of his friend who was waiting outside, who had previously left the house apparently to take Mrs. English home and had come back to the house, parked out front and waited 15 or 20 minutes, honked his horn, and approximately 10 minutes after the horn was honked the gentleman inside left.

Q. Where were the children during this kissing?

A. The children were in the house in their bedrooms.

Q. Did you have occasion to go out to the Comm. Hrg. Higgins Realty Company at any time during page 39 } that time on the Military Highway?

A. I did.

Q. When was that?

A. I was watching the Higgins Realty business establishment from the A & P store across Military Highway on a number of occasions—

By the Commissioner:

Q. Mr. Campbell asked you when.

A. This was in 1961.

By Mr. Campbell:

Q. The month?

A. I am not sure of the month. I have the date written down.

By the Commissioner:

Q. You will have to talk louder.

A. I have the date written down. I am not sure of the month or the day.

By Mr. Campbell:

Q. What part of the year ?

A. The early winter of 1961.

Q. At what time were you out there?

A. I was specifically there at 2:30 in the morning when Mrs. English, Mr. Bundy and Mr. Sasser were Comm. Hrg. in the backroom of Mrs. Higgins' business es-  
page 40 } tablishment. There is a window in that back  
room that has an air conditioner in it. I heard voices inside the room. I stuck my ear to the air conditioner and I heard Mrs. English, Mr. Sasser and Mrs. Higgins—Mrs. Higgins specifically—trying to get Mr. Bundy up. He apparently had been asleep in there. They were trying to get him dressed to go some place. I could not tell whether it was to go out and get something to eat or what.

*Roy Taylor Higgins.*

Q. Was the air conditioner on or off?

A. The air conditioner was off. It was not running.

Q. What else did you hear?

A. I heard quite a bit of general conversation. I heard Mrs. English tell an off-colored joke. I cannot remember the joke at this time. I heard Mrs. Higgins trying to get Mr. Bundy's pants on, and she repeated a phrase which she has used in my presence: "What do you have in your pocket, Coogie" On occasions in the past she has had occasion to reach in my pocket for money and would in an affectionate manner go a little bit further and finger my privates. I definitely heard this phrase used.

All of this time Mr. Bundy was trying to get all of the parties to leave and to leave him alone. Even-  
Comm. Hrg. tually Mrs. English and Mr. Sasser left. Mrs.  
page 41 } Higgins and Mr. Bundy apparently were on a  
couch. Mrs. Higgins and Mr. Bundy were still  
in the same room that the air conditioner was attached to.  
Thought I could not hear the details I could tell that they were  
in the process of making love. I can testify to this due to past  
years of experience in making love to Mrs. Higgins.

During this time I noticed at flashlight beam adjacent to the building, about 5 feet from where I was standing. I thought I was going to be apprehended so I stepped forward and encountered a Princess Anne County police officer. I stepped out, held up my hands and identified myself, and told him—

Q. We won't go into that any further. There is one other question I did not ask you. Are you and your wife, Mrs. Higgins, both of the white race?

A. We are.

Q. When Mrs. Higgins left did she take the children with her?

The Commissioner: What date are you speaking about?

By Mr. Campbell:

Q. When you all separated on September 13th?

A. Yes, sir.

Q. Did the children later return to you; if  
Comm. Hrg. so, when?

page 42 } A. Both children returned to me in October.  
The date was October 24th or 25th.

Q. Was that involuntarily or voluntarily on their part?

*Roy Taylor Higgins.*

A. Voluntarily on their part. I made no attempt to even ask either one of them to come back and live with me.

Mr. Campbell: Your witness.

By the Commissioner:

Q. How old are you?

A. I am 39 years old.

Q. How old is your wife?

A. She is 38 years old.

Q. Where were you born?

A. Junction City, Kansas.

Q. Where was your wife born?

A. Either Ames, Iowa, or in Nevada.

Q. What occupation does your wife have, if any, at the present time?

A. She is a real estate broker.

The Commissioner: Gentlemen, before you go into the cross examination of this witness I note that the hour is 12 o'clock. For purposes of discussing the question of lunch I would like to go off the record.

Comm. Hrg.

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(Thereupon, an off-the-record discussion was held, after which an adjournment was taken for lunch.)

**AFTERNOON SESSION.**

Met pursuant to the morning session, with the same appearances as heretofore noted.

**CROSS EXAMINATION.**

By Mr. Nicholson:

Q. Mr. Higgins, this affair in Italy that took place concerning your wife's misconduct, you claim that she was drunk and so forth. Where was that in Italy?

A. Genoa, Italy.

Q. That night you went to a night club, did you?

A. Yes.

Q. What was the occasion for it?

*Roy Taylor Higgins.*

A. On the second instance it was New Year's  
Comm. Hrg. Eve.  
page 44 }

Q. Was that the occasion which you spoke of  
when this officer took your wife to the hotel?

A. I did not say that.

Q. I misunderstood you. What did you say happened?

A. I said that I took Mrs. Higgins from a party several  
days before Christmas, I believe it was, because she was  
overly friendly with the chief of staff officer.

Q. Overly friend to what extent?

A. She was dancing very close to him and also fingering  
with her hand the back of his hair.

Q. Who was this commanding officer?

A. Commander Valellro.

Q. She was dancing close to him and was fingering his  
hair?

A. Yes.

Q. That would be overly friendly with him? What hap-  
pened after that? Were you at the party?

A. I was at the party, yes.

Q. Was everybody drinking?

A. I believe so.

Q. Did you drink?

A. I did.

Q. What state did you get in? Did you get  
Comm. Hrg. intoxicated?

page 45 }

A. No, sir.

Q. Did anybody else get intoxicated?

A. I did not observe anybody else intoxicated.

Q. That was the misconduct as far as your wife was con-  
cerned on that occasion. Is that right?

A. I did not call it "misconduct."

Q. What was it?

A. I was not satisfied with her conduct.

Q. The reason I said, "misconduct" was, Commander,  
that you are offering that in evidence here to show that she  
is not a fit mother to have the custody of her child. Isn't  
that right?

A. Yes, sir.

Q. What was the other occasion? What happened on New  
Year's Eve in general? You went to a night club?

A. We did.

Q. Did you get intoxicated?



*Roy Taylor Higgins.*

A. I did not.

Q. Did you drink?

A. I did.

Q. Did anybody else get intoxicated?

A. Several people, not to the degree—yes, several people.

Q. It was New Year's spirit, New Year's Eve?

A. That is true; with the exception of Mrs.

Comm. Hrg. Higgins.

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Q. What was the extent of her intoxication?

A. She was falling down drunk.

Q. As a matter of fact, didn't she walk home?

A. She was helped home by this friend of mine. She was in no condition to navigate, so to speak, by herself.

Q. What was her conduct on that occasion to show that she is not a fit and proper person to have custody of her child? What happened there?

A. This was a mixed party in that the staff and certain ship's enlisted personnel were at this party, and the staff and ship's officers were at this party. As my wife, I considered that she got too drunk and made a spectacle of herself at the party.

Q. And because of that you consider in your opinion that she is not a fit mother to have the custody of the child?

A. Yes; that contributes.

Q. That occasion that you speak of down at the real estate office when you said you put your head up to the air conditioner, that has been since you and she separated. Isn't that right?

A. That is correct.

Comm. Hrg.

page 47 }

Q. What?

A. Yes, sir.

Q. What you are telling the commissioner is not what you saw, but what you heard?

A. What I heard, yes, sir.

Q. You saw nothing?

A. I saw nothing. I heard names mentioned. I recognized the voices.

Q. On the occasion that you said you peeped in the window and saw her kiss this man, and she had a negligee on, or nightgown—

A. No, I did not.

Q. What did you say she had on?

A. She was in a slip.

Q. Did you see her?

A. I did.

*Roy Taylor Higgins.*

Q. Did you recognize her?

A. I recognized her.

Q. And that occasion has been since you were separated?

A. That is true.

Q. Did you take any action as to that? Did you swear out a warrant and have these people arrested?

A. I was not prepared at that time to do that act.

Q. You were not?

Comm. Hrg. A. No. I was considering the wishes of the page 48 { older daughter.

Q. You were considering what?

A. The wishes of the older daughter in not having her mother arrested.

Q. But you would have had her arrested normally; is that right?

A. Yes.

Q. Where was the older daughter at that time? Was she with you?

A. She was in the house with her mother, to the best of my knowledge.

Q. The older daughter was in the house? Did you discuss it with your older daughter?

A. No, I did not.

Q. How were you considering the wishes of your older daughter? How does that fit in?

A. She did not want to have her mother arrested.

Q. How did you know?

A. I mentioned the fact to her one time and she told me that it would kill her.

Q. You had her mother arrested last night.

Comm. Hrg. What about that? Did you consider the wishes page 49 { of your older daughter then?

A. I did.

Q. She wanted her mother arrested?

A. She did.

Q. She wanted her mother arrested?

A. Absolutely.

Q. Mr. Higgins, since Mrs. Higgins is in the real estate business her circle of associates and friends are entirely different from your circle. Isn't that true?

A. That is true.

Q. She on numerous occasions would go to these real estate meetings. Isn't that true?

A. Supposedly.

*Roy Taylor Higgins.*

Q. Supposedly? You would never accompany her, would you?

A. I do not recollect any time that I accompanied her.

Q. Did she ever ask you to accompany her?

A. She has.

Q. And you refused to go?

A. I refused to go except on one occasion. Then she would not accept my presence.

Q. To put it bluntly, Mr. Higgins, you are a very jealous person, aren't you?

Comm. Hrg. Mr. Cloud: I object, Your Honor. Jealousy page 50 } has nothing to do with custody. It is completely irrelevant as to the custody of the child.

The Commissioner: You can establish it by factual information.

By Mr. Nicholson:

Q. You testified that you got up in the morning and went down and put your hand on the hood of the automobile. Is that right?

A. That is correct.

Q. What did you do that for?

A. I did not know what time my wife came in. I had gone to sleep either on the divan or in the bed. I tried to stay awake to see what time she did come in. I was at the same time trying to work at my job.

Q. How could you tell by putting your hand on the hood of the car what time she came in?

A. In the wintertime at 7 o'clock or 7:30 in the morning with the hood of the car or the radiator still warm, I feel it is reasonable to assume that the car had not been sitting there for more than a couple of hours.

Q. You objected to her being in the real estate business?

A. Yes and no.

Comm. Hrg. Q. What do you mean by "Yes and no"? Explain that. I don't believe I understand. page 51 }

A. Mrs. Higgins is a very intelligent woman, Your Honor. She has to have an outside challenge. The challenge of the home is not sufficient. I realized this. I have gone along with her working both prior and after our coming to Norfolk because of this apparent inner need for something more challenging than just the household responsibilities. As a matter of fact, she maintained all the responsibilities of the

*Roy Taylor Higgins.*

finances. To a great extent I was at sea. It was fortunate at the time I thought to have somebody who could take over who had a better business head, so to speak, than I do. I was appreciative of it. I had expressed that appreciation to her previously. But, at this time I wish I had not been so trusting.

Q. Is that your answer? What is your answer now?

A. I became dissatisfied with her being in the real estate business when I became aware of the involvements—the first affair that I am aware of with Mr. Lille.

Q. With whom?

A. Mr. Lille.

Comm. Hrg. Q. When was that? Was that in 1958?  
page 52 }

A. To my knowledge it was in 1958 for almost a year.

Q. Since that time you have participated in signing notes and joined in deeds of trust in the real estate business, have you not?

A. In Mrs. Higgins' interest, yes. I tried to help her.

Q. You say that you tried to help her. Hasn't she contributed towards the home out of her own expense, out of her business?

A. Yes, sir, but only to a minor degree. This was not a joint family affair, in that I have evidence to show that things were going on that I had no knowledge of. I felt, and feel now, that I have been played a complete fool financially.

Q. As a matter of fact, as to this trip when she met you in Sweden and took the children, it was her money that she spent to go there, wasn't it?

A. I will explain that.

Q. I asked you—

A. Yes, it was. May I amplify, sir?

By Mr. Cloud:

Q. Just answer his questions.

By Mr. Nicholson:

Comm. Hrg. Q. The automobile that you are driving now  
page 53 } was bought by her, wasn't it?

A. No, sir.

Q. Wasn't it her funds that paid for it?

A. No, sir.

Q. Not even partly?

*Roy Taylor Higgins.*

A. Maybe in part. It is impossible to tell. I sold a car. I saved money. I sent her home and I stayed aboard the ship and did not go on liberty. I saved every penny I could while I was on this cruise and sent it back home.

Q. Did one of your daughters go away to school somewhere?

A. The older daughter, yes.

Q. Who paid for that?

A. I would be at a loss to say where the money came from exactly, because there is no definite accounting, nor can Mrs. Higgins definitely account for it.

Q. You know that you did not pay for it, though?

A. No, sir, I did not.

Q. I mean directly. You did not directly pay with your check for it?

A. It came out of our joint checking account. Mrs. Higgins also supposedly took some money from a cashed-in insurance policy and used it for this.

Comm. Hrg. Q. Now, Mr. Higgins, you are an intelligent  
page 54 } person. I know that you know you are under  
oath. I am going to ask you this question: You testified that you have made no attempt to influence these children insofar as custody is concerned?

Mr. Cloud: I object, Your Honor. That is not what he testified to—

Mr. Nicholson: Don't you testify for him.

The Commissioner: One minute. Let him finish the question.

By the Commissioner:

Q. Don't answer the question.

By Mr. Nicholson:

Q. You testified that you have done nothing to try to influence these children as far as custody is concerned?

The Commissioner: Is that the question?

Mr. Nicholson: Yes.

The Commissioner: I do not recall, Mr. Nicholson, that it was in that language. There was in substance something along that line. I will sustain the objection.

Mr. Nicholson: I will ask the court reporter to read that back.

*Roy Taylor Higgins.*

The Commissioner: It would probably take  
Comm. Hrg. the court reporter a couple of hours to find it.  
page 55 }

Mr. Nicholson: That is my recollection of it.

If I am wrong I stand corrected.

Mr. Cloud: I might say that my recollection was that up  
to the point the children voluntarily returned he did not.

The Commissioner: Gentlemen, you can argue all after-  
noon. If you go back to the record it is going to take a long  
time to find it. You may inquire again from him as to what  
he did say.

By Mr. Nicholson:

Q. Have you or have you not attempted to influence the  
children insofar as custody is concerned?

A. That is not the question I was asked.

Q. I ask you that now.

By the Commissioner:

Q. He is asking you that now. You do not have to look  
to your counsel. You can look over here if you want to. I pass  
on the propriety of each question.

By Mr. Nicholson:

Q. I ask you that now.

A. Your Honor, I made every attempt not to influence these  
children. It is impossible, naturally, not to have some in-  
fluence. I did not spell out the conduct of their

Comm. Hrg. mother to either one of them. I never did any-  
page 56 }

thing without first checking with my lawyer,  
Mr. Cloud, first; and subsequent to engaging

Mr. Cloud I contacted Mr. Campbell.

Q. Is that your answer to the question?

A. I did not willfully attempt to influence these children  
in regard to custody.

Q. You used the word "willfully." Haven't you told your  
children about the alleged escapades of their mother?

A. Would you like a "Yes" or "No" answer?

By the Commissioner:

Q. I should think that question could be answered "Yes"  
or "No."

A. Yes.

Q. Any question that can be answered "Yes" or "No"  
he has a right to have that answered, and then you can give  
your explanation.

*Roy Taylor Higgins.*

By Mr. Nicholson:

Q. You answered that "Yes"?

A. Yes.

Q. Then you did attempt to influence these children in regard to custody?

A. Yes; only in their interest.

Comm. Hrg. Lille, you said that you did not want him to pay page 57 } it back. Didn't you say that?

A. Words to that effect. I did not want her to collect it.

Q. Why?

A. I did not want to have anything more to do with the Lille affair.

Q. What did you have to do with it for her to collect it back from him?

A. I felt that the money was tainted.

Q. The money that he owed her would be tainted?

A. Yes, sir.

Q. Didn't you know, as a matter of fact, that she sued him and got judgment for the money?

A. No, I did not.

Q. You say you don't know that?

A. I did not know that. I do not know that.

Q. That judgment was obtained by Mrs. Higgins?

A. I am not aware of that.

Q. Against Mr. Lille?

A. I am not aware of that. I am not now aware of it.

Q. How was your wife's conduct towards her children in the household?

Mr. Campbell: Your Honor I object unless he specifies when.

Comm. Hrg.

page 58 } By Mr. Nicholson:

Q. Did she neglect the children in the home?

Mr. Cloud: I will ask that counsel be more specific.

The Commissioner: What is your objection?

Mr. Cloud: That the question is not specific; it is too general.

The Commissioner: I rule that it is sufficiently specific. If there is any neglect he ought to be able to say, "Yes" and

*Roy Taylor Higgins.*

under what circumstances. The question is: Did the wife neglect the children?

Mr. Nicholson: In the home.

A. Yes.

By Mr. Nicholson:

Q. What did she do in the way of neglecting the children in the home?

A. She did not show the average amount of motherly love toward the children or concern for them at all times. There were specific cases where extreme concern was expressed. She would leave them in my presence. With this present job, shore duty, I have been in effect a baby sitter. I have in effect cooked the children's meals in the absence of the maid. She did not spend as much time in recreation with the children as I think a proper mother should. She was more interested in her own business than she was the household, her husband and children. That came first.

Q. Her business came before her children?

A. That is correct.

Q. And she did not show the proper affection towards the children?

A. That is true.

Q. Her daughter was with you last night when her mother was arrested, wasn't she?

A. That is true.

Q. Who brought her down there?

A. I did.

Q. Why did you do that?

A. She insisted upon coming.

Q. Her own daughter insisted upon coming?

A. That is correct. I specifically asked her if she was sure she wanted to come?

Q. How did she know about it?

A. She was up when I received the telephone call from the investigator that I hired.

Q. At what time was it—1 o'clock in the morning?

A. No. This was before midnight.

Comm. Hrg. Q. You told her what the call was?

page 60 } A. I told her that I was having to leave, that they had gotten the goods, or words to that effect.



*Lee Higgins.*

Q. On her mother?

A. Yes.

Q. How was she dressed when she went with you?

A. She was in pajamas—shortie pajamas—and a full robe buttoned down the front with complete closure—5 or 6 buttons.

Q. Did you wake her up and tell her about it?

A. She was up.

Q. I asked you did you wake her up?

A. I did not.

Q. Was she sitting up waiting with you for a telephone call?

A. No, sir.

Q. What?

A. No, sir. I did not think anything would happen the night before this hearing.

Mr. Nicholson: I think that is all.

Mr. Campbell: That is all.

Comm. Hrg.

page 61 }

LEE HIGGINS,

called as a witness on behalf of Roy Taylor Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Q. What is your name, please?

A. Lee Higgins.

Q. Lee, when were you born?

A. October 23, 1944.

Q. And where?

A. Ames, Iowa.

Q. Is Mrs. Higgins your natural mother?

A. Yes.

Q. Commander Higgins adopted you; is that correct?

A. Yes, sir.

Q. After he and Mrs. Higgins were married?

A. Yes, sir.

Q. Where have you been living since you all came to Virginia?

A. In Norfolk.

Q. When was that?

A. Approximately 9 years ago.

*Lee Higgins.*

Q. Of course you understand what this pro-  
Comm. Hrg. ceeding is about?  
page 62 }

A. Yes, sir.

Q. I want you to tell the commissioner when  
the conduct of your mother first came to your attention as  
not being what it should be.

A. About 5 years ago.

Q. What was that conduct?

A. When she came home in the afternoon drinking, and  
when she went into the real estate business or started work-  
ing, associating with men after what I would call business  
hours.

Q. Did she work then for a real estate company in 1956?

A. Yes, sir.

Q. What company was that?

A. It was Mrs. L. N. Raitt.

Q. What men or man specifically are you referring to?

A. Mr. Frank Klimia.

Q. What was their relationship?

A. He was over at the house very frequently. They would  
go out together and drink.

Q. Was there any drinking in the house?

A. Yes, sir.

Q. Moderate or otherwise?

A. I don't know exactly. It wasn't moderate.  
Comm. Hrg. I mean, they would sit there and drink.  
page 63 }

Q. Where was your father, Commander Hig-  
gins, while this was going on?

A. I believe he was in the Mediterranean.

Q. How long did that relationship continue with Mr.  
Klimia?

A. I don't know exactly.

Q. Was he married or not?

A. Yes, he was.

Q. While he was associated with Mr. Higgins did he get a  
divorce?

A. Shortly thereafter, yes, sir.

Q. For whom did your mother work next?

A. Mr. J. O. Keene.

Q. Was that in the real estate business, too?

A. Yes, sir.

Q. With whom was she associated?

A. Mr. Baker and Mr. Brenner.

*Lee Higgins.*

Q. Did you see them frequently or not?

A. Yes. They were over at the house frequently. Mr. Brenner was in the company of Mrs. Osgood.

Q. Was there any drinking involved?

A. Yes, sir.

Q. How long did this go on?

A. About six months.

Comm. Hrg. Q. Did she ever work for Goodman-Segar-  
page 64 } Hogan?

A. No, sir, she did not.

Q. Did you know any of the people that did work there?

A. Yes, sir. There was a Mr. Lille. He was at the house frequently during one summer. He would go to the beach with us many times, and while my little sister and I were in the water they would sit up on the beach and talk and drink beer. He was over at the house very frequently. They would go out together in the evenings.

Q. When they would go out together where were you and Barbara?

A. We were there in the house.

Q. Was anyone with you?

A. On several occasions there wasn't. We had a maid.

Q. On these occasions when the two of you were alone at what time would your mother come in?

A. I don't know. It was quite late.

Q. At what time would you go to bed?

A. I would say around 10:30.

Q. Did your mother have any parties there at the house?

A. Yes. She had a real estate party once  
Comm. Hrg. specifically that I can remember while she was  
page 65 } working at the Rait Realty.

Q. What kind of party was it?

A. All the employees of Rait Realty were there. It was just a party. They sat around and talked and drank. I remember specifically Mr. Klimia drank so much that he was sick.

Q. Where were you and Barbara?

A. At the beginning of the party before it got too late I was out in the living room with the party, and then when it got later we went to bed.

Q. Where was Commander Higgins?

A. If I remember specifically at this party he was there.

Q. At the party?

A. Yes, sir, I believe so.

*Lee Higgins.*

Q. In the summer of 1959 did you all make plans to go to Wisconsin?

A. Yes, sir.

Q. Had your grandparents been to see you before that?

A. I don't remember.

Q. What happened when you started for Wisconsin?

A. The night before Mother was out quite Comm. Hrg. late. I don't remember specifically who she was page 66 } with. But, we got up around 3 and Daddy tried to get her up, but she was just, to use the expression, out cold. You could smell liquor on her breath. We tried and tried to get her up. Finally we got her dressed and out to the car. She came to about 11 o'clock the next morning.

Q. In Wisconsin did she have any sort of relationship with her cousin?

A. Yes.

Mr. Nicholson: If Your Honor please, that is a leading question: Did she have any sort of relationship with her cousin?

The Commissioner: It is leading.

By Mr. Campbell:

Q. Would you tell us of any specifics incident in Wisconsin that was brought to your attention?

A. Yes. Her cousin was there and his children. It was not a reunion, but there were several families there. The children slept out on a screened patio. Barbara and I were out there and two of the little cousins. Mother had been drinking quite a lot. As I remember, they went down to the lake and went swimming. There was a lot of loud talking, and they dropped a glass and broke it. Then Mother and Uncle Dale, Jr. came up to the car and they Comm. Hrg. were whispering and talking. I muttered a page 67 } name under my breath. She was drunk. I knew by her answer. She said, "What did you say?" I just did not say anything and acted like I was asleep. They were laughing and giggling.

There is a parking lot up the hill where most of the cars are kept, and they ran off up to the parking lot and they did not come back. I feel asleep about 30 minutes later and they had not come back.

Q. Besides whispering and giggling in the car did they do anything else?

*Lee Higgins.*

A. It was dark. I could not see.

Q. What time was this?

A. This was about 10:30 or 11:00.

Q. Do you know what time you fell asleep?

A. I would say around 11:30.

Q. Were you in school the fall of '59?

A. Yes. I was in Saint Catherine's in Richmond.

Q. For how long were you up there?

A. Two and a half years.

Q. When did you and your family go to Europe?

A. In December of 1959.

Q. What was your mother's conduct on the ship going over?

A. Well, we met—I don't remember exactly Comm. Hrg. how, specifically—but we met these two ques-  
page 68 } tionable characters. There was a man named Tick and another named Mike. They were thuggy looking. Several nights she would take us down to the cabin and put us to bed and then she would go back up, telling us that she was going into the lounge with these men.

Q. While you were in Europe did you have occasion to go to Genoa, Italy?

A. Yes, sir. Daddy's ship was stationed there. We were there for about two weeks.

Q. Did anything specific happen as far as her conduct there is concerned?

A. Yes. Mother and Daddy went to a party. Barbara and I stayed in the hotel. The next morning Daddy was there but Mother wasn't. We went across the street to a little cafe and sat over there to watch to see if she came back. It got on to about, I would say, 2 in the afternoon and she had not come back. We knew what she had on at the party. This dress was in the hotel room. She apparently had changed clothes. So, we gave up this vigilance at the cafe and came back over to the hotel room.

Shortly thereafter she came in dressed in street clothes with a coat on and told us a story that she had gone across the hall to the water closet, to the bathroom, Comm. Hrg. and had fallen down, or something, and she had  
page 69 } woken up and she did not know what happened or how she got there. We had a lavatory in the hotel room.

Q. Did Commander Higgins' parents visit you all in Norfolk?

A. Yes.

*Lee Higgins.*

Q. Was your mother home?

A. She wasn't home when they arrived. She did not return home until 4 o'clock the next afternoon. Daddy had the duty so he was not able to be there.

Q. Did she call or were you in contact with her?

A. I don't remember.

Q. Did she give any explanation as to where she was?

A. Not to me, no.

Q. Do you know whether or not she knew Lieutenant Commander Jones?

A. Yes. He was an officer on Daddy's ship.

Q. Did she know him before or after you came back from Europe?

A. I think it was before, but I am not sure.

Q. What was her relationship with him?

A. She was supposed to be selling him a piece of property, some real estate.

Comm. Hrg. Q. Did he ever visit your home?

page 70 } A. Yes. I remember one night specifically that I woke up early in the morning and I heard Daddy and Mother talking. From what I could gather from the conversation Mother and Mr. Jones had been out the previous evening, and Mr. Jones was asleep in the den.

Q. Did your mother go into business in her house?

A. Yes, she did.

Q. Do you recall when that was?

A. I could not say specifically.

Q. Where were you when this came about?

A. I think it was in the spring and I was home from school.

Q. Do you know whether or not your mother knew a man named Tommy Jordan?

A. Yes, sir.

Q. Did you ever see anything regarding that relationship?

A. Yes, I did.

Q. Go ahead.

A. Mr. Jordan had been over to the house several times. One night I had gone to bed I guess it was about 10 o'clock. I got up to shut the door. Mother and Mr. Jordan were in the living room. I got up to shut the door.

Comm. Hrg. There was a hall mirror so that I could see from page 71 } see from my door to the couch. She and Mr. Jordan were sitting on the couch kissing.

Q. What did you do?

A. I just got back in bed and went to sleep.

*Lee Higgins.*

Q. Do you know whether or not she knew a man named Lloyd Harcum?

A. Yes.

Q. Who was he?

A. He was a business associate.

Q. What was her relationship with him?

A. He was quite well off and he had a yacht. During that summer she was frequently out on his yacht at late hours.

Q. How many times did you see him?

A. I saw him only once.

Q. Did you ever receive any gifts from him?

A. Yes. I received a birthday present from him.

Q. What did your mother say about that?

A. She said it was because he was so terribly fond of me. I could not understand, because I had only met the man one time.

Q. Did she know Mrs. English?

A. Yes. When she opened the business in Comm. Hrg. the home Mrs. English came in as a partner.  
page 72 } She had known Mrs. English previously for a long time.

Q. What was her association with Mrs. English?

A. Do you mean before—

Q. Were they together often after they were in business together?

A. Oh, yes. They were together quite a lot.

Q. How about at nighttime?

A. Yes. They frequently went to Virginia Beach at night together.

Q. Did you ever go with them?

A. No, sir.

Q. Did they ever offer to take you?

A. No, sir.

Q. Where were you and Barbara when they would be off at night?

A. We were at home.

Q. Was anyone with you?

A. Yes. There was a maid there.

Q. On one occasion were you supposed to go swimming with them?

A. Yes, we were. Then suddenly a business appointment came up and they could not take us. When they came back we noticed—well, the English children were there with Bar-

*Lee Higgins.*

Comm. Hrg. bara and me—we noticed their bathing suits  
page 73 } were in the car and they were wet. We did not  
see them until the next morning.

Q. Was there anything else in the car?

A. There was a bottle of liquor.

Q. Full or not?

A. I don't remember.

Q. What did they say about the wet bathing suits?

A. She said it had rained.

Q. Had it?

A. No. We had been out in the yard the night before and there wasn't a cloud in the sky.

Q. How frequently were these night appointments that your mother had?

A. Quite frequently. She would call us and tell us that she had a business appointment and she just could not possibly get home, and for us to fix some dinner, that she would be home later.

Q. Did your father know about any of this?

A. I felt it was better just to keep what I had observed to myself, because I did not know whether he knew about the way she was conducting herself and I did not want to start anything.

Q. When did you first make him aware of the fact that you knew these things?

Comm. Hrg. A. It was obvious that he knew.

page 74 } Q. Do you know when that was?

A. No.

Q. Do you recall when she set up her own business, Higgins Realty Company?

A. It was last year at the beginning of the summer.

Q. Do you know whether or not she knew a man named John Beattie?

A. Yes, sir.

Q. Did you know him?

A. Yes, sir.

Q. In what way?

A. He was an attorney and a friend and a business associate. He was at the house quite frequently.

Q. What would they do at the house?

A. They would have drinks and discuss business.

Q. Do you know where Mr. Beattie live?

A. Yes. He lives in Urbanna.



*Lee Higgins.*

Q. Do you know how long she has known John Beattie?

A. I would say approximately a year and a half.

Q. When did you first become aware that your mother and father were going to separate?

A. I think it was at the beginning of last Comm. Hrg. summer. I don't recall where we were, but we page 75 } were sitting out in the car after we had come back from going some place. Mother told me that she had done all she possibly could to keep the family together, but a separation was just inevitable, that they could not get along, and she was sorry for Barbara and me, but she just could not do anything about it.

Q. Had she done all she could to keep the marriage together?

A. I don't feel that she had.

Q. Did you make a trip to Missouri last August?

A. Yes, we did.

Q. Who went?

A. Barbara and Daddy and myself.

Q. Your mother did not go?

A. No, she didn't.

Q. What was her condition when you all left?

A. We left at about 2 o'clock in the morning. She had been drinking.

Q. Did she and your father have any conversation about the marriage?

A. I beg your pardon?

Q. Did Mrs. Higgins and your father have any conversation about the marriage before you left?

Comm. Hrg. A. Yes. Daddy had asked her to give up the page 76 } real estate business and come home and be a wife and a mother. He told her that he would let her think it over while we were gone on this vacation. She said no, that she did not care to think it over, that she would give him her answer right then; that no, she would not give up the real estate business and come home.

Q. On or about September 13th of last year did your mother leave?

A. Yes. About a week before this she took Barbara and I out in the car and she said that the only way she could get a divorce from Daddy was to leave; that she could not file for divorce if she was living under the same roof with him. She told us that she just would not feel right leaving without us; that she would feel as if she was abandoning us.

*Lee Higgins.*

Q. Did she leave?

A. Yes, she did.

Q. When?

A. On September 14th.

Q. Did you and Barbara go with her?

A. Yes, we did.

Q. Why did you do that?

A. I went partly because I felt that maybe I could do something, help Mother; that just maybe we could  
Comm. Hrg. put this thing back together; and because she  
page 77 } said that she felt as if she would be abandon-  
ing us.

Q. You went with her. How long did you stay with her?

A. Approximately a month.

Q. What was her conduct during that month?

A. Well, first of all she told us that we would have to be careful of everything we did, like my having friends over after school when she wasn't there, and things like that, because everything we did would reflect on her. She would frequently call us in the afternoon and say, "I am sorry but I have an appointment. I just can't possibly get off. Put something in the oven and I will see you later." During that time I had approximately five dates, and she was not there when my date came to pick me up or when I came home, which was around 12:30 or 1 o'clock. She was not there any of these times except one afternoon. I had a date on a Sunday afternoon and she was there.

Q. Where would she say she was when she would have these appointments?

A. Just that she had a business appointment.

Q. Do you know at what time she did come in?

A. I remember specifically one night, the night before we came back to live with Daddy. Daddy called  
Comm. Hrg. me at 6 o'clock in the morning. Mother was not  
page 78 } there. The bed had not been slept in. She had  
called the previous evening and said that she was sorry but that she had an unavoidable appointment and she could not get home. At 6 o'clock in the morning she was not there. I went back to bed and stayed awake to see when she came in. She came in at 6:30. She stood in the doorway. I acted as if I were asleep. She got undressed and went to bed.

Q. Did you and Barbara have anyone staying with you?

A. No, we didn't.

*Lee Higgins.*

Q. Who cooked the meals if she wasn't there?

A. When she wasn't home I did.

Q. What was her relationship with Mrs. English during this time?

A. She and Mrs. English were still close friends and were going around together. They were in business together.

Q. How about John Beattie?

A. They were still friends and went around frequently together.

Q. Did he visit her at the house?

A. Oh, yes. Mr. Beattie was there frequently.

Q. What was her drinking situation during Comm. Hrg. that time?

page 79 } A. It was still the same.

Q. What do you mean by "the same"?

A. It just seemed to be routine. Every afternoon she would come home and the first thing she did when she came into the house was to open the cabinet and take out a bottle and fix herself a drink.

Q. While you were living in Admiralty Acres did you know Mr. Lille?

A. No. This was before when she was working at Rait Realty.

Q. This was in 1958?

A. Yes.

Q. What was her relationship with him? Do you know?

A. Yes. I have already told you this. He was at the house quite frequently. We went to the beach with him several times. As I said, they would lie on the beach and talk and drink beer while Barbara and I were playing in the water. She referred to him as "Son" and he to her as "Mom."

Q. Did you leave your mother?

A. Yes. I called Daddy on a Sunday afternoon and told him that I felt that every minute I stayed there I was just condoning her conduct, and that I would like to come home.

Comm. Hrg. By the Commissioner:

page 80 } Q. When was this?

A. It was on the 24th of October.

Q. What year?

A. 1961—1962; excuse me.

Q. How about Barbara, did she stay with her mother?

A. No, she didn't.

*Lee Higgins.*

By Mr. Campbell:

Q. This is 1962.

A. 1961, excuse me.

Q. Did you and Barbara return to your father?

A. Yes.

Q. Why did Barbara go? Do you know?

A. She had always said from the very beginning that she would do the same as I did, and it was up to me to make the decision. When I made the decision I told her about it and she came along.

Q. Did your mother's activities have any effect on Barbara, to your knowledge?

A. She knew what was going on as far as Mother staying out late and drinking. I think she preferred to ignore it.

Q. When you decided to leave where was Comm. Hrg. your mother?

page 81 }

A. She was out with clients.

Q. Did you talk to her on the phone at any time?

A. Yes. I believe she was in Urbanna. I called her once and talked to her. Then I called Daddy back and he said that he would come over and get me. She still wasn't home. We had taken our clothes back over to the house, and we came back to pick up the dog and she drove up. I left her a note saying that we had left.

Q. Was she alone?

A. No. There was a man in the car.

Q. You say that you talked to her in Urbanna. Where does John Beattie live?

A. In Urbanna. I believe this was the night before. I called her about the heater.

Q. When she drove up in the car as you all were leaving did you have any conversation?

A. Yes. She said words to this effect: It certainly was—excuse the expression—a dirty trick.

Q. What had she said to you when you voluntarily went with her in the beginning after the separation, about going back?

A. She had told us that at any time we wanted to go back we were free to do so.

Comm. Hrg. Q. You say that was on October 24th?

page 82 }

A. Yes. It was October 24th when we left.

Q. The rest of October and November did your mother get in touch with you any?

*Lee Higgins.*

A. No, not at all.

Q. Did she ever call you?

A. No.

Q. How about December?

A. Yes. She started calling Barbara in December and asking her to go places and do things with her.

Q. In October and November there was no contact?

A. No.

Q. After you all left did she continue to live in Admiralty Acres?

A. No. She was managing this house, selling it for Mr. Parsons, and we were living in it during this month. She moved over with Mrs. English.

Q. Where did Mrs. English live?

A. At 604 Ballylynn Court in Princess Anne County.

Q. Was Mrs. English married?

A. Yes.

Q. Was she divorced then?

Comm. Hrg. A. I believe there were proceedings for the  
page 83 } separation.

Q. Did that come about before or after Mrs. English and Mrs. Higgins got together in the real estate business?

A. This was after.

Q. After she moved from Mrs. English's where did she live?

A. She moved down to an apartment on Bute Street.

Q. Whose apartment was that?

A. Mr. Beattie's.

Q. Before you left and as you were packing did you have occasion to look around the bathroom?

A. Yes. I went into the bathroom. I believe I was looking for a slip. There is a cabinet that opens this way in the bathroom. I opened it and I found a pair of man's blue cord pants in there.

Q. Were any men living in that house?

A. Mr. Parsons had lived in the house before we moved there, but I had been in the cabinet before and the pants were not in there then.

Q. Lee, was there any change in Barbara during the time before or while she was living with Mrs. Higgins and after she left her?

Comm. Hrg. A. While—

page 84 } Q. Was there any change in her behavior or attitude, say, over the period of time when she

*Lee Higgins.*

went back to live with Commander Higgins without any contact from Mrs. Higgins and the time she started talking to her again?

A. No.

Q. In December after Mrs. Higgins started contacting Barbara was there any change?

A. Yes. Barbara and Daddy had always been very, very close. They were very much alike. The three of us always did things together, like ice skating and going to the movie. Barbara and Daddy had been exceptionally close. After this Barbara just did not seem to want to be with Daddy, to do things with Daddy like she used to do.

Q. This was after what?

A. This was after she started seeing Mother. I could tell when she came back she would act just cranky and she would not have much to say and would just sort of ignore us.

Q. Where did Mrs. Higgins spend Christmas?

A. In Urbanna with the Beatties.

Q. Did you see her on Christmas Day? Do you recall December 25th?

Comm. Hrg. A. I am trying to think whether it was the page 85 } 25th or the 26th.

Q. Anyway, did you see her around that time?

A. Yes. She was over to see Barbara. I believe it was Christmas Day night. We had planned to go out to dinner.

Q. Who is that?

A. Barbara, Daddy and I. Mother said she wanted to see Barbara for an hour. She was late getting there. She had made an appointment to see Barbara with Daddy, and she was late getting there.

When she came she said that she and Barbara had some calls to make and they would be back. Daddy asked her not to leave; that if she wanted to see Barbara they could stay in the house. Mother insisted that they leave. She stood there at the door and Daddy said words to this effect: "Do you promise to bring her back?" Mother said, "I promise you that I will not interfere with any of your plans." She said this two or three times. The following day we had planned for over a year to go on a skiing trip to Hot Springs, and Mother knew this. She stood there at the door and kept saying, "I promise I will not interfere with any of your plans."

Q. What did she do?

*Lee Higgins.*

A. She called around 9 o'clock and said that Comm. Hrg. Barbara was not coming back; that they were  
page 86 } down in the apartment and Barbara did not  
want to come back, that she was going to stay  
with her.

Q. Did she let you talk to Barbara?

A. I did not talk at all. The conversation was between Daddy and Mother.

Q. Did you go skiing?

A. Yes. That night we went down to her apartment and knocked on the door. The lights were turned out. The car was in front of the apartment. The lights were turned out. We knocked on the door. They made no movement inside, as if to lead us into thinking they were not there. We stayed and knocked on the door for, I would say, a good 45 minutes. During this time Daddy called Mr. Cloud and asked him what he thought he should do.

Q. Don't tell us what Mr. Cloud said. What did you do?

A. So we went back and we knocked on the door, and we kept knocking. Finally Mother came to the door and she asked us to leave. Daddy said that all he wanted to do was talk with Barbara, and asked her to find out from her what she really wanted to do. I heard Barbara crying. She was quite upset. Mother would not open the door. She would not let us in. We stayed there for quite awhile.  
Comm. Hrg. Finally Mother called the police, and the police  
page 87 } came and they went in and talked to Mother  
and they talked to Barabara. Then we left  
after that.

Q. Did you take Barbara with you?

A. No. Barbara stayed there.

Q. Did you later get Barbara?

A. Yes. We came back the following morning. Daddy was determined that Barbara should not be there, that she should be with us. He broke the door down. Mother called the police again and they came. Barbara came with us.

Q. Did you all go skiing at Hot Springs?

A. Yes. We left that afternoon.

Q. When did you get back from Hot Springs?

A. We came back the Friday before New Year's, I believe.

Q. Had you planned anything for New Year's?

A. Yes. I had planned a party. I was going to have 15 or 20 people in.

Q. Did your mother know this?

A. Yes, she did.

*Lee Higgins.*

Q. Where were you going to have the party?

A. At the house.

Q. When you got back what did you find?

A. The house had been stripped of furniture. She left a note. There was some furniture there: the refrigerator and most of the living room furniture. The den furniture was missing, and the china and most of the glasses. She left a note to Daddy and I, and she said words to the effect: "I hope this does not interfere with your party plans."

Q. Did she ever tell your father why she had stayed with him so long?

A. One night she came over to the house. She had had Barbara for the week end. She came back to tell Daddy that Barbara was going to stay with her and did not want to come back. They got into a heated discussion. She stood in the living room in front of Barbara and myself and told him that she had stayed with him for the past few years until she could get on her feet financially, and that he had only been a meal ticket.

Q. What time did she spend with you and Barbara in relation to the time she spent with the business acquaintances and with the business?

A. Do you mean at this time or previously?

Q. In 1961.

A. I don't really understand the question. Is this before—

Q. All of 1961.

A. I would say that she spent a greater part of her time in the business. She was gone most of the day and many times late into the evening. We had a maid there to keep the house and fix the meals.

Q. With whom do you want to stay?

A. My father.

Q. Why don't you want to stay with your mother?

Mr. Nicholson: We object to that, if Your Honor please. We have not asked for the custody of this young lady. That is sort of a loaded question.

The Commissioner: I think she has answered the question when she made the statement that she wants to stay with her father. I don't think anything else is material, Mr. Campbell.

Mr. Nicholson: In view of the fact that we are not asking for her custody.



*Lee Higgins.*

The Commissioner: I do not think she is called upon to express an opinion as to how she arrived at that opinion. She expressed her desire.

By Mr. Campbell:

Q. Lee, how do you and Barbara get along?

A. Lately she has just changed completely. She has never been an overly affectionate child—at least, towards me. Six years makes a lot of difference. We are six Comm. Hrg. years apart. But, I would not say that we page 90 } fought continuously all the time. We were amicable.

Q. Do you want Barbara to be with you?

A. Yes.

Q. Is there any reason why Commander Higgins is not a fit father?

A. No.

Q. Has he ever conducted himself in any way that you would not approve of?

A. No.

Q. When he is on shore duty what does he do with his free time?

A. He comes home and he spends his time with us.

Q. He does what?

A. He comes home at 5 or 5:30 every afternoon and spends his time working around the house, working on the car, and taking us places. We go to the movies, we go swimming and horseback riding, things like that. He spends his time at home.

Q. Does Commander Higgins drink now?

A. No. He drinks very seldom.

Q. How about your mother's drinking?

Mr. Nicholson: Your Honor, we have been all over that. That is certainly repetitious.

Comm. Hrg. Mr. Campbell: I am just trying to draw a page 91 } comparison, Your Honor.

Mr. Nicholson: I withdraw the objection. Go ahead. She may answer it.

The Commissioner: I will rule on it if you want me to.

Mr. Nicholson: No, sir.

A. Will you repeat the question?

*Lee Higgins.*

By Mr. Campbell:

Q. What about your mother's drinking?

A. I will say that she drinks excessively.

Q. Is she an alcoholic?

The Commissioner: That calls for an opinion.

Mr. Nicholson: I am not going to object to it, Your Honor.

The Commissioner: I am. I am objecting to any 18 year old child or 1 year old child giving an opinion as to who is or who is not an alcoholic. I address my remarks to Mr. Campbell particularly, because he in his capacity of Commonwealth's Attorney understands exactly what I am talking about.

Mr. Campbell: Yes, sir. I think they are all the questions I have.

Comm. Hrg.

page 92 }

CROSS EXAMINATION.

By Mr. Nicholson:

Q. You said that your mother drinks excessively. Have you ever known her to spend any time away from her business because of her drinking?

A. No.

Q. She went to work every day, didn't she?

A. Yes, as far as I know.

Q. Did your father ever serve you any drinks of any kind? Has he ever served you a highball or any drink?

A. Yes.

Q. He has?

A. Yes.

Q. You have recounted these various escapades and all. How old are you now?

A. 17.

Q. You go back to 1955; is that right?

A. I said about five years.

Q. You would have been 12 going on 13; is that right?

A. Yes.

Comm. Hrg. Q. You remember all of these occasions vividly as to what happened?  
page 93 }

A. Not vividly. I don't remember things down pat as they happened from day to day, but specific occasions I do.

*Lee Higgins.*

Q. How do you remember these various dates that you called out here? How do you remember those dates?

A. In association with where she was at this time, the business, how many years ago it was, and the various people that she was associated with.

Q. I mean the time like October 24th or November 10th.

A. Because that was recently.

Mr. Cloud: May it please the court, I object to that. As I recall her testimony she hardly remembers any dates. I would like to ask him to specify what dates he is referring to.

The Commissioner: I think you are right. I don't recall that she specified any specific dates.

Mr. Nicholson: I think she did.

The Commissioner: You have a notation of them. Ask her and I will check them when I get the transcript.

By Mr. Nicholson:

Comm. Hrg. Q. As to all of these experiences that you page 94 { have talked about as to your mother's actions, did you make notes of these things?

A. No, I didn't.

Q. Did you ever talk to your mother about them?

A. No, I didn't.

Q. Did you ever talk to your father about them?

A. No, not until it was made plain to me that he knew what was going on.

Q. When was that?

A. I would say approximately a year ago.

Q. Approximately? I don't mean the exact time.

A. Approximately a year ago.

By the Commissioner:

Q. Approximately when?

A. A year ago.

By Mr. Nicholson:

Q. After the suit was filed, after the separation or before?

The Commissioner: Which one are you talking about: the separation or the divorce suit?

Mr. Nicholson: Either one.

The Commissioner: Which one, Mr. Nicholson?

*Lee Higgins.*

By Mr. Nicholson:

Q. Did you discuss it with him before the Comm. Hrg. separation or after the separation?

page 95 }

A. Before.

Q. And after?

A. Yes.

Q. How many times have you talked to your father about these events, these affairs?

A. I could not say; I just could not say. I don't know.

Q. Did you relate to him one time all of these things or at various times?

A. At various times.

Q. When was the last time you discussed it with him and related some incidents to him?

A. Something that happened recently or in the past?

Q. In the past.

A. Yesterday.

Q. Yesterday?

A. I say, "Yesterday."

Q. How long a session would you have with him when you would talk to him about these affairs?

A. They were not really sessions. He would say something and it would cause me to think of a certain incident. I would just tell him about it.

Q. Did he refresh your memory about certain Com. Hrg. incidents?

page 96 }

A. No.

Q. You voluntarily told him or he asked you about them?

A. Sometimes I voluntarily told him and a couple of times he has asked.

Q. You realized that your mother's conduct from your testimony was tending to disrupt and break up the home, did you not?

A. Yes.

Q. How old are you—17 now?

A. Yes.

Q. You will be 18 when?

A. In October.

Q. Did you ever talk to your mother and tell her that she ought to change, that it was breaking up the home?

A. No. I was afraid to say anything. I guess I took the coward's way out. I was just afraid to say anything. Many times I wanted to, like the night we were sitting out in the

*Lee Higgins.*

car and she told me that she had done everything within her power possible to keep the home together. I just wanted so badly to tell her that I did not think she had, and to tell her that I knew exactly what was going on, but I didn't.

Q. You did not think it was worthwhile, or Comm. Hrg. what?  
page 97 }

A. I just did not think it was my place to tell her how to behave.

Q. I don't mean how to behave, but I mean to keep the home together. You were a girl 17 years old. You were not a child.

A. I just did not think it was my place to say anything about her conduct.

Q. As to your sister Barbara, you say that a change has come over her?

A. Yes.

Q. With whom is she now living?

A. She is living with Mother during the week and she is with us on the week end.

Q. That is by order of court, is it not?

A. Yes.

Q. Did she say who she wants to live with?

Mr. Cloud: I object, Your Honor, to my hearsay.

The Commissioner: The witness said that she was with her mother during the week and with—

A. —Daddy and I on the week end.

The Commissioner: That was what I wanted to get straight. What was the next question?

Comm. Hrg. Mr. Nicholson: She has recounted or she  
page 98 } has testified that a change has come over Barbara.

By Mr. Nicholson:

Q. Has she said with whom she wants to live?

Mr. Cloud: My objection is that it is hearsay unless it can be shown it was said in the presence of the parties.

The Commissioner: I think your objection is sound.

By the Commissioner:

Q. Is she 13?

A. She is 11.

*Lee Higgins.*

By Mr. Nicholson:

Q. Have you ever heard her express herself in the presence of Mr. Higgins by saying that she would rather live with her mother?

A. Yes.

Q. What did she say?

A. That she did not want to come with Daddy, that she would rather stay with Mother.

Q. Wasn't your mother a good mother to you? She treated you nicely, didn't she?

Mr. Cloud: Objection, Your Honor. That calls for a conclusion.

(The last question was read by the reporter.)

Comm. Hrg. Mr. Nicholson: Your Honor, I think that page 99 } goes to the question of custody.

The Commissioner: Which part do you want—the first part?

By Mr. Nicholson:

Q. Did your mother treat you nicely?

The Commissioner: Do you object to that?

Mr. Cloud: No, not to that.

By the Commissioner:

Q. Go ahead and answer it.

A. May I ask the question: Do you mean by "nicely" did she let me do what I wanted to do? I don't understand what you mean by that. Did she beat me or anything like that? She always treated me nicely.

By Mr. Nicholson:

Q. She treated you nicely?

A. Yes.

Q. Did she take care of your needs as much as she could, your wants and desires?

A. No, I would not say she did. She was gone too much.

Q. You say that she was gone too much?

A. The business kept her away from home so much.

Q. Now as to this man you speak of, Mr. Klimia, weren't

*Lee Higgins.*

Mr. and Mrs. Klimia friends of the family—  
Comm. Hrg. not of Mr. Higgins but of Mrs. Higgins?  
page 100 }

A. Yes. The Klimias had been over together two or three times.

Q. You say that you went away to school?

A. Yes.

Q. How long did you go there?

A. Two and a half years.

Q. Did you finish there?

A. No, I didn't.

Q. Why didn't you finish?

Mr. Cloud: I object, Your Honor. I think it is irrelevant.

The Commissioner: I don't know what the purpose of it is. She said that she went to Saint Catherine's two and a half years. What is the purpose of it?

Mr. Nicholson: I withdraw the question.

By Mr. Nicholson:

Q. On some occasions when your mother would call up wouldn't you refuse to talk to her on the phone?

A. No, sir. I don't remember that.

Q. What?

A. You mean—

Q. Since your mother and father have been separated, when she would call you and want to speak to you

Comm. Hrg. wouldn't you refuse to talk to her?

page 101 } A. Yes, I have.

Q. What?

A. Yes, I have.

Q. Why?

A. I just would rather not be with her.

Q. You would rather not be with her?

A. Yes. When she called it was usually to ask me to do something with her—well, not all the time, but most of the time. I feel this was only because over in the court there was something about the custody, and the judge told her that she had been seeing Barbara and to start calling me.

Q. You say that you have on occasions refused to talk to her?

A. Yes.

Mr. Nicholson: That is all.

*Lee Higgins.*

REDIRECT EXAMINATION.

By Mr. Campbell:

Q. You testified that you had heard Barbara say that she wanted to be with her mother. Was that before Comm. Hrg. or after this month and a half when she did not page 102 } get in contact with you?

A. That was after. Mother had started coming to see her and calling her sometimes two or three times a day and taking her out.

The Commissioner: Mr. Campbell, what weight would you put on any statement that the 11 year old child made sometime ago?

Mr. Campbell: Hardly any at all, Your Honor, but I wanted to clarify it since Mr. Nicholson brought it out that it was only after this long absence when the mother started making a concerted effort to get the attention of the child.

The Commissioner: Isn't the only question: What is for the best interest of this child as of the present time?

Mr. Campbell: Yes, sir. The only reason I asked it was because he brought it out and I did not know what weight would be put on the answer that Mr. Nicholson brought out.

The Commissioner: I imagine in due time that child will be available for questioning by the commissioner.

Mr. Campbell: Yes, sir.

Comm. Hrg. The Commissioner: If the commissioner has page 103 } to make a report to the court as to what is for the best interest of the child, or whether any pressure has been brought to bear on the child, or any one of many other items. But what you had in mind there I do not think has any bearing on it.

Mr. Campbell: That is all.

\* \* \* \* \*

Comm. Hrg.  
page 108 }

\* \* \* \* \*



E. L. LILLIE,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Q. What is your name, please?

A. E. L. Lillie.

Comm. Hrg. Q. Where do you live, Mr. Lille?

page 109 } A. 1628 Columbia Avenue.

Q. Are you married?

A. Yes.

Q. Do you know Mrs. Maryann Higgins?

A. Yes.

Q. When did you first know her?

A. Approximately four and a half years ago, I would say.

Q. In what capacity did you first know her?

A. I first met her in a business capacity. We were both  
selling real estate.

Q. Did your relationship with her at any time become intimate?

A. Yes.

Q. Over what period of time?

A. About six months I would say, approximately.

Q. Did you have sexual relations with her?

A. Yes.

Q. Once or more than once?

A. More than once.

Q. Numerous times?

A. Yes, I would say so.

Q. Were those relations ever had in her house where her  
children were?

Comm. Hrg. A. In her house, yes, with one child in another  
page 110 } room asleep.

Q. Was that the smaller child or the older  
child?

A. The smaller child.

Q. What year was this?

A. That would be three and a half years ago.

Q. Where was her husband at the time?

A. Mostly at sea, from what I understand.

Q. Were you married at the time?

A. Yes.

Q. Was there any drinking involved?

*E. L. Lillie.*

A. Quite a bit, yes. I was drinking very heavily myself.

Q. How about Mrs. Higgins?

A. She was drinking to some extent. I don't know to what extent it would be.

Q. Are you still married?

A. Yes. My wife and I separated, but we have since gone back together.

Q. Is she aware of this situation?

A. Yes, she is.

Mr. Campbell: Your witness.

Comm. Hrg.

page 111 }

CROSS EXAMINATION.

By Mr. Nicholson:

Q. Mr. Lille, you borrowed a thousand dollars from her, didn't you?

A. Yes, sir.

Mr. Cloud: Your Honor, I object. I think that is outside the scope of direct examination, unless he is going to call him as his own witness.

The Commissioner: He may or not be making him his own witness. I can't tell at this stage.

Mr. Nicholson: Your Honor, I want to show that he is a hostile witness.

The Commissioner: I overrule the objection and note your exception.

By Mr. Nicholson:

Q. She sued you, didn't she?

A. She threatened to sue me. I believe she did sue; I believe you are right.

Q. She got a judgment against you, didn't she?

A. No, sir.

Q. You affected a settlement?

Comm. Hrg. A. We effected a settlement through her  
page 112 } attorney.

Mr. Nicholson: That is all.

JOHNNY ENGLISH ,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

The Commissioner: For the record I want to ask this  
young man how old he is.

A. 13.

By the Commissioner:

Q. 13?

A. Yes, sir.

Q. What relation are you, if any, to either of these parties  
sitting here in the room?

A. None.

Q. None?

A. That is right.

The Commissioner: Gentlemen, do you wish this witness  
examined from the standpoint of competency?

Mr. Nicholson: I don't.

Comm. Hrg.

page 113 } By the Commissioner:

Q. What grade are you in in school?

A. Seventh.

Q. What?

A. Seventh.

Q. The seventh grade?

A. Yes, sir.

Q. You took an oath. Do you know what an oath is?

A. Yes, sir.

Q. What is it?

A. A pledge not to lie; a pledge to tell the truth.

Q. That is a very good answer. Answer Mr. Cloud.

Examined by Mr. Cloud:

Q. Johnny, I want you to speak out loudly so that everyone  
can hear you. O.K.?

A. Yes, sir.

Q. Tell the commissioner your full name.

A. John Carl English.

Q. John, do you know either or both Mr. and Mrs. Higgins?

*Johnny English.*

Comm. Hrg. page 114 } A. Yes, sir, I know both of them.  
Q. When did you first become acquainted with them, approximately?

A. I have known them ever since I can remember.

Q. Do your mother and father presently live together?

A. No, sir, they don't.

The Commissioner: Are you talking about his mother and father or Mr. and Mrs. Higgins?

Mr. Cloud: I said, "Do your mother and father presently live together?"

By the Commissioner:

Q. Go ahead.

A. No, sir, they don't.

By Mr. Cloud:

Q. With whom do you stay?

A. My father.

Q. Have you ever had occasion to be in the company of Mrs. Higgins?

A. Yes, sir.

Q. Have you ever observed her in the company of other men?

A. Yes, sir.

Q. Other than Mr. Higgins?

A. Yes, sir.

Comm. Hrg. page 115 } Q. Do you recall any specific instances and, if so, speak up loudly and tell the commissioner what you saw?

A. Yes, sir. At 604 Ballylynn Court where I used to live, Mr. John Bundy, I have seen her with him.

Q. Can you tell the commissioner whether or not they were at the time drinking anything?

A. Yes, sir, they were drinking something.

Q. What, if anything, did you observe about their conduct at that time?

A. They were sitting together, laughing and joking and drinking.

*Johnny English.*

Q. Did you have occasion to stay with the Higgins children while your mother and Mrs. Higgins were out?

A. Yes, sir.

Q. Can you tell us whether or not on these occasions they always returned early?

A. No, sir, they did not return early.

The Commissioner: Who? Do you mean did the children return early?

Mr. Cloud: Mr. and Mrs. English—Mrs. English and Mrs. Higgins.

By Mr. Cloud:

Q. On those occasions did you expect them early?

Mr. Nicholson: If Your Honor please, that Comm. Hrg. is a leading question.  
page 116 }

The Commissioner: I sustain the objection.

By Mr. Cloud:

Q. Do you recall any occasion as to the time they did return?

A. Yes, sir.

Q. When was that?

A. Many times over at the Higgins house at 5801 Lathan Road we were told they would return maybe at 9 or 10 o'clock at night, and we would never see them until the next morning.

Q. Have you ever observed Mrs. Higgins with Mr. English, your father?

A. Yes, sir.

Q. Do you recall any specific instances?

A. Yes, sir.

Q. Tell the commissioner what, if anything, you recall?

A. Where I used to live, 604 Ballylynn Court, one night I believe that Mr. Jordan, Mrs. Higgins, my mother and father were there and all of them were drinking. Mrs. Higgins was laying and sitting all over my father, and she poured two drinks on him and one on the floor.

By the Commissioner:

Comm. Hrg. Q. When was this supposed to be?  
page 117 }

A. I don't know the date.

*Joe Perkins.*

By Mr. Cloud:

Q. Do you remember how long ago it was?

By the Commissioner:

Q. How old were you at the time?

A. I was 12. It was before January.

By Mr. Cloud:

Q. How old are you now?

A. 13.

Q. Answer Mr. Nicholson's questions.

CROSS EXAMINATION.

By Mr. Nicholson:

Q. When you said that they came in late you were sleeping then, weren't you?

A. Well, we stayed up to maybe 10 or 11 o'clock and would go to bed.

Q. And then you would go to bed?

A. We stayed up rather late when I stayed with Lee and Barbara.

Comm. Hrg. Q. Until what time?

page 118 } A. Maybe we would go to bed around 11 or 12, or maybe later some nights.

Q. This drinking that you are talking about, that was just a drinking party of all of those grown folks. Is that right?

A. Yes, sir. All of the grown folks had drinks.

Q. They were drinking and having a big time; is that right?

A. It looked like a big time from what I saw.

Mr. Nicholson: That is all.

\* \* \* \* \*

JOE PERKINS,

called as a witness on behalf of Roy Taylor Higgin, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Comm. Hrg. Q. What is your name, please?

page 119 } A. Joe Perkins.

Q. What is your occupation?

*Joe Perkins.*

A. Investigator for Schafer's Detective Agency.

Q. What is that located?

A. It is located in South Norfolk on Poindexter Avenue.

Q. Has your agency been employed by Commander Higgins recently?

A. Yes, sir.

Q. Pursuant to that employment last night were you working?

A. Yes, sir.

Q. Did you see Mrs. Higgins last night?

A. Yes, sir, I did.

Q. When did you first see her?

A. I first saw Mrs. Higgins when we went into the motel room, Room 30.

Q. Room 30 at what motel?

A. That was the Virginia Reel Motel on Route 13.

Q. How long had you been observing the motel before you went in?

A. Approximately one hour; approximately from 11:15

P. M. to 12:15 A. M.

Comm. Hrg. Q. During that time was the room occupied?  
page 120 }

A. Yes, sir, it was.

Q. Were the lights on or off?

A. The lights were off.

Q. At what time did you go into the room?

A. Approximately 12:20 A. M.

Q. Who was with you?

A. Mr. Schafer and two South Norfolk policemen.

Q. Tell us what happened.

A. (Referring to notes) Approximately at 12:20 Mr. Schafer with Mr. Higgins and two South Norfolk policemen proceeded to the motel, Room 30. The police served warrants. They found Mrs. Higgins and a man in state of disrobement, Mr. Beattie.

Q. How was he dressed when you went in?

A. He was dressed in jockey shorts.

Q. Where was Mrs. Higgins when you went in?

A. Mrs. Higgins at the time was in the bathroom.

Q. How was she dressed?

A. Mrs. Higgins was in the bathroom. She was dressed in her undergarments and was trying to put on her bra. She was in her panties.

Q. What was the condition of the bed?

*Joe Perkins.*

A. Inside Room 30 the bed was messed up.  
Comm. Hrg. The covers were down. Two pillows were on the  
page 121 } bed. The sheets were messed up.

Mr. Campbell: Your witness.

CROSS EXAMINATION.

By Mr. Nicholson:

Q. What did you charge them with?

A. Mr. Schafer got the warrants out.

Q. Do you know what the warrants charged?

A. No. Mr. Schafer and Mr. Higgins got them out.

Q. Who is Mr. Schafer?

A. Mr. Schafer is my employer.

Q. At what time did you say you observed this place?

A. I observed the place from 11:15 P. M. until 12:15 A. M.

Q. 12:15?

A. A. M.

Q. Until when?

A. I got there at 11:15 P. M. and I observed it from 11:15  
until 12:15 A. M.

page 122 } (Missing.)

Comm. Hrg. Q. What did you see 11:15? What did you  
page 123 } observe at 11:15 when you got there?

A. I observed at approximately 11:15 on May  
30, 1962, a 1962 Plymouth Fury, Virginia license plates 758-  
660, parked in front of the motel, Room 30, at the Virginia  
Reel Motel on Route 13, South Norfolk. The vehicle was be-  
ing watched by another investigator who reported seeing  
Mrs. Higgins and Mr. Beattie going into the Virginia Reel  
Motel.

Q. Did you see them go in there?

A. I did not see them go inside the room.

Q. You did not see them go in?

A. No, sir.

Q. Who knocked on the door?

A. The police sergeant knocked on the door.

Q. Were you present?

A. I was present.

Q. The door was opened immediately, wasn't it?



*Joe Perkins.*

A. No, sir. It was approximately 3 minutes before the door was opened.

Q. 3 minutes?

A. Yes, sir.

Q. When he knocked on the door did anyone ask who it was?

A. There was no answer, whatsoever, sir.

Comm. Hrg. Q. No one asked who was knocking?  
page 124 } A. No one did.

Q. Then the door was opened?

A. In approximately 3 minutes.

Q. And the man who opened the door walked out in jockey shorts?

A. Yes.

Q. After 3 minutes?

A. Yes, sir.

Mr. Nicholson: That is all.

By the Commissioner:

Q. Did the police officer or anyone there announce that they were police officers?

A. Yes, sir; the police sergeant of South Norfolk did.

Q. When did he do that?

A. After knocking the second time.

By Mr. Nicholson:

Q. After knocking the second time and announcing that they were police officers, about 3 minutes elapsed?

A. Yes.

Q. And the man walked out in jockey shorts?

A. He cracked the door. The night chain was latched on the inside.

Mr. Nicholson: That is all.

Comm. Hrg.

page 125 } RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Could you tell whether or not Mrs. Higgins had been drinking?

A. Mrs. Higgins had been drinking. I smelled it on her breath when they brought her down to the police station.

*Elma Simmons.*

Mr. Campbell: They are all the questions I have.

Mr. Nicholson: That is all.

\* \* \* \* \*

Comm. Hrg.  
page 131 }

\* \* \* \* \*

ELMA SIMMONS,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. Tell the commissioner your full name.

A. Elma Simmons.

Q. Tell him your full name again.

A. Elma Simmons.

Comm. Hrg. Q. Elma, how old are you?  
page 132 } A. 42.

Q. Where do you live?

A. 428 Fenchurch Street.

Q. Is that here in the City of Norfolk?

A. Yes, it is.

Q. Approximately how long have you lived in the City  
of Norfolk?

A. All of my life.

Q. Do you know the parties to this suit, Roy Taylor Hig-  
gins and Maryann Merrick Higgins?

A. Yes, I do.

Q. Approximately how long have you known them?

A. It has been a little over a year, I think.

Q. Have you ever had occasion to be in their home on  
Lathan Road?

A. Yes, I have.

Q. Can you tell the commissioner approximately when was  
the last time you were in their home?

A. I don't know the exact date, but it was sometime in  
March, I believe, if I am not mistaken.

Q. Of this year?

A. Of this year.

Q. At any time that you would be in the home what would  
be the reason for your being there?

*Elma Simmons.*

Comm. Hrg. A. Well, I was there to take care of the kids.  
page 133 } Q. Did you ever work there at any time while  
Mr. and Mrs. Higgins lived there?

A. Yes, I have.

Q. Did you know anything about any separation which took place?

A. No, I did not.

Q. Did you have occasion to come to the home later when Mrs. Higgins was not living there?

A. Yes, I was there.

Q. Why did you come to the home at that time? What was your purpose?

A. I came there to take care of Barbara and the house, too.

Q. At that time did you in fact take care of Barbara?

A. Yes, I did.

Q. As I understood, you had also taken care of Barbara at the home while the parties were living together.

A. That is true.

Q. Did you have occasion to observe Mr. Higgins in his role as father to the child?

A. Well, he was very much of a father.

Q. I see. Was he home most every day?

A. Well, he was there when I left sometimes.

Comm. Hrg. Q. For how long a period of time did you  
page 134 } spend there as a sitter?

A. The last time you mean?

Q. Yes, the approximate period of time.

A. It was from December until March.

Q. I see. During the early part of this period did you have occasion to observe Barbara in her actions towards her father and, if so, tell the commissioner what you saw.

A. I was there on Friday. I did not work Saturday. When I came back that Monday she acted kind of peculiar. She acted like she was sick or something. I asked her what was wrong with her—

Mr. Nicholson: If Your Honor please, I am going to object to that.

The Commissioner: Sustained.

By Mr. Cloud:

Q. You listen closely to my question. I asked you if at any time in the beginning did you observe Barbara and her

*Elma Simmons.*

father together? Not what you heard at the time, but what you saw, if anything. Did you ever see them together?

A. Yes.

Q. Tell the commissioner if you can how Comm. Hrg. Barbara acted at that time.

page 135 } A. Well, she acted like she wanted to be with him. She acted like she loved to be with her father.

Q. From your observations at the time could you tell the commissioner whether or not Commander Higgins was a fit and proper person to take care of Barbara and to have her?

A. Yes, indeed, very much. He is a good father.

The Commissioner: Which one is Barbara?

Mr. Cloud: She is the 11 year old.

Mr. Nicholson: Off the record.

(Thereupon, an off-the-record discussion was held, after which the following occurred:)

By Mr. Cloud:

Q. At the time you have testified about her relationship with her father did you notice any change and, if so, tell the commissioner approximately at what time you noticed the change.

Mr. Nicholson: If Your Honor please, I am going to object to that. I don't know what he is talking about.

The Commissioner: I don't, either. You will have to rephrase your question. You say, "change"?

Mr. Cloud: Any change in her attitude.

Comm. Hrg. The Commissioner: Whose attitude?

page 136 } Mr. Cloud: Barbara's.

Mr. Nicholson: If Your Honor please, I object to that. Attitude toward whom?

The Commissioner: I am trying to get the question rephrased.

By Mr. Cloud:

Q. The first question was: You talked about her attitude in relationship with her father, and my second question was: After that did you notice any change in the attitude of Barbara regarding the relationship of Barbara and her father that you have just testified to, and if so tell the commissioner.

*Elma Simmons.*

A. Well, Monday evening when she came from school she acted like she was sick. I thought maybe she was sick, because she had been real friendly with me and played with me. So the first time I noticed this I did not say anything to her. The next week she acted the same way and I asked her what was wrong and she said—

Q. Don't tell what she said. Just tell what you saw, and not what you talked to her about.

A. I asked her, "Barbara, are you sick?" She said, "No."

Q. Elma, don't say what she said. You understand that you cannot tell what she said. You page 137 } can only tell what you saw as far as how she acted.

A. Well, she acted like she was in a deep study. When I asked her to go out and play she was still in a deep study. I would come back and do my work, and she was sitting on the couch and she acted like her mind was far away, that she was thinking about something.

Q. On that week end of your own knowledge was she with her mother?

A. I imagine so.

Q. You were not there?

A. I was not there.

Q. During the time that you were there did Barbara go to school?

A. Yes, she did, every day.

Q. She went to school every day? Were there any children in the neighborhood for her to play with when she came home?

A. Yes, there were.

Q. Did she play with the children?

A. No, she didn't.

Q. When you first came did she play with the children at that time?

A. Yes, she did.

Q. During the end of the time that you were Comm. Hrg. there can you tell us whether or not Barbara page 138 } continued to speak affectionately towards her father?

A. No, she did not.

Q. Answer Mr. Nicholson.

*Elma Simmons.*

CROSS EXAMINATION.

By Mr. Nicholson:

Q. You are just a parttime worker, aren't you, there at Mr. Higgins'?

A. Yes, I was at that time.

Q. You are not working there now?

A. No, I am not.

Q. Of what did your parttime work consist? How many days a week did you work?

A. I worked five days, but I did not work as many hours as I had.

Q. When would you come in and when you would leave?

A. I was there at 8:30 and I left around 4:30, because I had to catch the bus at 20 minutes of 5.

Q. Your testimony about Barbara's attitude was concerning the Monday when she came back after visiting her mother on the week end?  
page 139 }

A. That is right.

Q. She seemed to be dissatisfied to come home, didn't she?

A. I did not say she was dissatisfied. It looked like she was upset. She just did not seem to think right.

Q. That was after she had come back?

A. That Monday afternoon. I did not see her Monday morning.

Q. That was every week, wasn't it?

A. That is right.

Q. Every week?

A. That is right.

Q. She seemed to be disturbed when she came back?

A. That is right.

Mr. Nicholson: That is all.

RE-DIRECT EXAMINATION.

By Mr. Cloud:

Q. Of course, as your testimony indicated, in Comm. Hrg. the beginning when you first worked there she  
page 140 } was completely happy to be there all the time.  
Is that correct?

A. That is true.

*John M. Schafer.*

Mr. Nicholson: If Your Honor please,—

The Commissioner: That is leading. Objection sustained.

By Mr. Cloud:

Q. Tell the commissioner whether or not her attitude of upset covered the whole period you were there or just at the end.

A. Just at the end. When I first started working for them Barbara was real happy.

Mr. Cloud: That is all.

JOHN M. SCHAFER,

called as a witness on behalf of Roy Taylor Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Q. What is your name, please?

A. John M. Schafer.

Q. And your occupation?

Comm. Hrg.      A. Operator of Schafer's Detective Agency.  
page 141 }      Q. Where is your business located?

A. 1212 Poindexter Street, South Norfolk.

Q. Where do you live, Mr. Schafer?

A. 6614 Nashua Road.

Q. On May 30th of this year did you have occasion to go to the Virginia Reel Motel?

A. I did.

Q. At what time did you first get there?

A. Approximately 11:15.

Q. How long did you stay there?

A. I did not stay there, myself. I was looking for a motor vehicle, Virginia license 58-660, which was registered to Mr. Beattie.

Q. Did you see that automobile there?

A. I observed that vehicle parked in front of Room No. 30.

Q. What was the condition of the room at the time as to whether or not it had lights on?

A. It was in darkness.

Q. That was at 11 what?

A. 11:15.

Q. From the time you got there at 11:15 how long did you stay?

*John M. Schafer.*

A. I did not stay. I put one of my operators out to keep the room under surveillance.

Comm. Hrg. Q. At what time did you get back?  
page 142 } A. I contacted my client—

By the Commissioner:

Q. The question was: At what time did you get back?

A. Approximately 12:20.

By Mr. Campbell:

Q. Tell the commissioner what you saw at that time.

A. The room was still in darkness.

Q. What did you do?

By the Commissioner:

Q. You say, "still." You mean that when you returned there were no lights?

A. It was still in the same condition.

Q. You don't know what the condition was in the meantime?

A. No, sir.

Q. You used the word "still."

A. That is right. It was still the way I observed it the first time.

By Mr. Campbell:

Q. What did you do?

A. When we arrived back we had the police Comm. Hrg. officers with us. Commander Higgins was with  
page 143 } us and his daughter was with us. She remained  
in the car. I told her to stay in the car. The  
police officers had the warrants that Commander Higgins had  
secured against Mr. Beattie and Mrs. Higgins.

The police officers knocked on the door. I was standing to the left of the door which would be by the bathroom. The light went on in the bathroom, and then approximately in three minutes Mr. Beattie opened the door. He had the night chain on. The police officers told him who they were when they knocked the second time. Mr. Beattie unlatched the door and let us into the room. The police officers went on it, and we went in with the police officers.

Q. What did you see when you went in?

A. The room was in darkness. I went over to the night table and turned a light on in the room.



*John M. Schafer.*

By the Commissioner:

Q. Which room are you talking about?

A. Sir?

Q. Which room are you talking about?

A. A room at the Virginia Reel Motel.

By Mr. Campbell:

Q. Was there just one room?

A. Just one room, that is all; one room and  
Comm. Hrg. a bath.  
page 144 }

Q. Were there any lights on in the bathroom?

A. Yes, sir, when we went in there was.

Q. Go ahead. What did you see?

A. I turned the night light on. Mr. Beattie was standing there in his undershorts. I observed a woman's purse on the dresser. I did not see anyone else in that room.

Q. Did you see anyone in the bathroom?

A. No, sir. I did not look in the bathroom.

Q. How long did you stay there?

A. About 5 minutes I remained in the room.

Q. What did you do then—leave?

A. I started to call Commander Higgins. Commander Higgins came in and looked around the room, and looked in the bathroom, and he turned around and stated—

Q. Don't tell us what he stated. What did you see then, if anything?

A. That was all. We left.

Q. What was the condition of the bed?

A. The bed—

The Commissioner: I don't understand that question, Mr. Campbell.

By Mr. Campbell:

Q. Would you describe the bed as you saw it?

A. The bed had been messed up.

Comm. Hrg.  
page 145 }

The Commissioner: What is the purpose of that question, Mr. Campbell?

Mr. Campbell: To show whether or not it had been used.

The Commissioner: By whom?

Mr. Campbell: By anyone in that room.

The Commissioner: You are not attempting to show whether it was used by one person or two people or more?

*John M. Schafer.*

Mr. Campbell: That will have to come from his description.

The Commissioner: I don't know that it can. I often have trouble on that question. That is the reason I am asking you. What do you mean by "the condition of the bed"? It has not been objected to. I don't know whether this gentleman is an expert or not on that.

By Mr. Campbell:

Q. Would you describe the condition of the pillows?

A. I did not at that time take a close look at the pillows. All I know is that the bed had been occupied. That is all.

Q. How do you know that? Describe the bed  
Comm. Hrg. and the bed covers.

page 146 } A. The covers were pushed back on the bed  
and the bed was rumped.

Mr. Campbell: Your witness.

#### CROSS EXAMINATION.

By Mr. Nicholson:

Q. You say that when you and Commander Higgins came up there his daughter was with him?

A. She was in my car. He brought her because he did not want to leave her at home. I told the girl to stay in the car. I parked the car around the corner from the motel. I told the girl to stay in the car.

Q. How old a girl is she?

A. She is approximately 14 or 15. I don't know how old she is. I don't know the girl's age.

Q. You say that you knocked on the door, and knocked the second time, and they asked who it was and you said, "Police officers"?

A. I did not say that I said that.

Q. Someone said that.

A. I said that the police officers knocked on  
Comm. Hrg. the door.

page 147 } Q. And he wanted to know who it was?

A. That is correct.

Q. And they said, "Police officers"?

A. Yes, sir.

Q. You heard that?

A. Yes, sir.

*Jesse Snow.*

Q. Then you testified that three minutes after that the door was opened?

A. Approximately.

Q. Three minutes?

A. I did not time it, sir.

Q. I know, but you have testified to that.

A. That is right.

Q. I am merely questioning you as to what you said. I wasn't there. The door was opened and Mr. Beattie was standing there in his shorts?

A. His underpants. When he first opened the door, sir, he had the night latch on—the chain. Then when the police officers told him that they had a warrant for him he pushed the door closed and then unlatched the latch.

Q. That was approximately three minutes after they told him they had a warrant for him. Is that right?

A. That is right.

Comm. Hrg. Q. He had ample time to put clothes on if he  
page 148 } wanted to, didn't he?

A. That is right.

Mr. Nicholson: That is all.

JESSE SNOW,

called as a witness on behalf of Roy Taylor Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:

Q. What is your name, please?

A. Jesse Snow.

Q. Where do you live, Mr. Snow?

A. 1373 Alsace Avenue.

Q. Where are you employed?

A. Schafer's Detective Agency.

Q. Were you employed there on May 25th of this year?

A. Yes, sir, I was.

Q. On May 25th in the evening did you have occasion to follow Mrs. Higgins?

A. Yes, sir.

Comm. Hrg.

page 149 } By the Commissioner:

Q. Can you raise your voice?

A. Yes, sir.

Q. Please do.

*Jesse Snow.*

By Mr. Campbell:

Q. I ask you whether or not you had occasion to be on Indian River Road near Sparrow Road that evening?

A. Yes, sir.

Q. What time was that, approximately?

A. (Referring to notes) Approximately 8:30 P. M.

Q. Did you have occasion to see Mrs. Higgins?

A. Yes, sir, I did.

Q. Did you have occasion to see Mr. John Beattie?

A. Yes, sir, I did.

Q. Where did you first see Mr. Beattie?

A. I first saw Mr. Beattie early that morning somewhere between 9:30 and 10 A. M.

Q. Let's go back to around 8 o'clock that evening on Indian River Road. Did you see him?

A. Yes, sir.

Q. Tell the commissioner what you saw.

A. After Mrs. Higgins was coming back from Comm. Hrg. taking the colored girl home Mr. Beattie pulled page 150 { up behind me and blew his horn for me to pull over so that he could pass, and he passed. I was behind Mrs. Higgins. Then he blew his horn for her, and then passed her and pulled into a shopping center on Indian River Road, and they both went down Sparrow Road and turned left on Fontana Avenue where the both stopped. I was off on the side there and I could hear a conversation going on.

Q. What were they talking about? Could you tell?

A. I could hear them talking, but I don't know exactly what they said.

Q. What did they do then?

A. They were there for about 10 minutes and then each got in their own car and proceeded to this, I believe it was, a Gulf station on Indian River Road.

Q. What happened then?

A. Where Mrs. Higgins left her car and she got into Mr. Beattie's car, and they proceeded down Military Highway, turned off towards Deep Creek, and then about a mile or so down that road they turned off to the right on a dead-end street. At that point I lost them.

Q. When did you next have occasion to go to that filling station where her car was parked?

A. That was the last I worked on it.

*Jesse Snow.*

Q. Did you ever go back there again that  
Comm. Hrg. week end?  
page 151 }

A. I went down there when one of the other  
investigators went.

Q. When was that?

A. That was the 26th around 9, I think.

Q. 9 in the morning or 9 at night?

A. 9 P. M.

Q. 9 P. M.? Was the car there or not?

A. It was still there.

Q. Did you have occasion to go back there any later than  
that?

A. No, I didn't.

Q. Who went back there?

A. Investigator Compton. It might have been earlier than  
9 o'clock. I don't really remember because I wasn't working  
that case. But, I do know it was Saturday.

Q. You say that the car was still there?

A. Yes, sir.

Q. When did you next see the car again, or did you?

A. I did not.

Mr. Campbell: Your witness.

Comm. Hrg.  
page 152 }

CROSS EXAMINATION.

By Mr. Nicholson:

Q. Mr. Snow, did you testify in this case in the South Nor-  
folk Court?

A. I never testified previously in the case.

Q. You never did?

A. No, sir.

Q. You say that the car was parked at the gas station, and  
she got out of her car and got into Mr. Beattie's car?

A. Yes, sir.

Q. How long did the car stay there that you checked?

A. His car?

Q. Her car. Whose car did she get into?

A. She got into Mr. Beattie's car at the service station.  
She left hers there with an attendant.

Q. Where did they go?

*Jesse Snow.*

A. They proceeded on Indian River Road and then turned right on Military Highway.

Comm. Hrg. Q. Where did they go then?

page 153 } A. And then they proceeded on to where Route 13 intersects 17, or *vice versa*, and headed towards Deep Creek, and then turned off on a dead-end street. I was unable to turn around in time to follow them and avoid suspicion, so I lost them.

Q. In your opinion they knew—

Mr. Cloud: I object, Your Honor, to his opinion.

The Commissioner: What?

Mr. Cloud: The question was: In your opinion.

Mr. Nicholson: I will change that.

By Mr. Nicholson:

Q. Did they know that they were being followed by you?

Mr. Campbell: That would be a conclusion.

Mr. Nicholson: It is cross examination.

The Commissioner: Ask him whether there was any indication.

Mr. Cloud: That is what I object to. He can testify as to what facts he saw.

The Commissioner: That is all I am suggesting, that he testify as to facts.

Mr. Cloud: Ask him as to facts.

Comm. Hrg. Mr. Nicholson: Does Your Honor sustain  
page 154 } the objection?

The Commissioner: Rephrase your question. Find out if there were any facts that indicated that one party saw the other party.

By Mr. Nicholson:

Q. Did anything in their actions indicate to you that they knew they were being followed by you?

A. No, I did not think they knew they were being followed; otherwise I would have dropped them if I thought they knew I was following them.

Mr. Nicholson: That is all.

## KATHERINE LILLE,

called as a witness on behalf of Roy Taylor Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. Mrs. Lille, tell the commissioner your full name, please.

A. Katherine Anne Lille.

Q. Where do you live, Mrs. Lille?

Comm. Hrg. A. 1628 Columbia Avenue.

page 155 } Q. You are married, are you not?

A. Yes.

Q. Your husband's name is Mr. E. L. Lille?

A. That is right.

Q. You live together at this time; is that correct?

A. Yes.

Q. What is your occupation now?

A. I work as a medical secretary in Dr. King's office.

Q. Have you ever had occasion to work in the real estate business?

A. No.

Q. Has your husband ever worked in the real estate business?

A. Yes.

Q. Do you know Maryann Merrick Higgins? That is, have you met her?

A. Yes.

Q. I ask you whether or not you have ever had occasion to talk with Mrs. Higgins concerning your husband?

A. Yes.

Q. Do you recall approximately when that was?

A. September of '58.

Comm. Hrg. Q. At that time or any time current there-  
page 156 } with did you have occasion to talk to Mrs. Hig-  
gins concerning Mr. Higgins?

A. No. That was the first time I talked to her about Mr. Higgins.

Q. What, if anything, did she tell you concerning Mr. Higgins?

A. Well, I told her what my husband had told me, about him being sick and going back and forth to an institution for mental care.

Q. When you say, "he" to whom are you referring?

A. My husband—Mr. Higgins; I am sorry.

Q. You were talking to Mrs. Higgins about that?

A. Yes.

Q. Go ahead now.

A. She just verified the fact that he was sick.

*Katherine Lillie.*

Q. Tell the commissioner what in effect she said was wrong, if anything, with him.

A. That he was going back and forth to Richmond to McGuire's Hospital for care.

Q. Did you ask her whether or not she had been with your husband?

A. Yes.

Q. What, if anything, did she tell you?

Comm. Hrg. A. She told me that she had.

page 157 } Q. Did you ask her whether or not she had had intercourse with your husband?

A. Yes.

Q. What, if anything, did she tell you?

A. She said she had.

Q. Then at this conversation did Mrs. Higgins request you not to tell this to Mr. Higgins?

A. Yes.

Q. What, if any, reason did she give?

A. The one that I just said: that he was sick.

By the Commissioner:

Q. I can't hear you.

A. The one that I just stated: that he was sick.

By Mr. Cloud:

Q. Sick physically?

A. Mentally.

Q. Answer Mr. Nicholson.

CROSS EXAMINATION.

By Mr. Nicholson:

Comm. Hrg. Q. Mrs. Lille, you testify under oath that  
page 158 } Mrs. Higgins, who was a stranger to you—is  
that right?

A. She was not a stranger to me. I had talked to her a few times before.

Q. You had talked to her a few times before?

A. Yes.

Q. And she frankly admitted to you on the telephone that she had had intercourse with your husband?

A. No, not on the telephone, but in my apartment in the living room. We were sitting together.

Q. I understood you to say that you talked to her on the telephone.



*Katherine Lillie.*

A. I had quite a few times. She called the house to talk to my husband, and I had been to her house one time. This time after I found out what was going on I called her and asked her to come to my house, which she did.

Q. She told you that she had had intercourse with your husband?

A. Yes.

Q. And she told you further that she did not want you to tell her husband, Mr. Higgins, because he was sick?

A. Yes.

Q. Sick how?

Comm. Hrg. A. Mentally.

page 159 } Q. Mentally sick?

A. Yes.

Q. Did you know Mr. Higgins?

A. I had met him one time for about 15 minutes the night that I went to their house. That was the only time I had ever talked to him.

Q. You never did tell him?

A. No.

Q. Because she asked you not to tell him?

A. That is right; and my husband asked me not to tell him.

Q. Mrs. Lille, isn't it a fact that you have accused a number of women of having relations with your husband?

A. I know one other woman; I know her name.

Q. And that you have called up a number of different women on the telephone and threatened them?

A. Never.

Q. You never have?

A. I never have. I worked with one woman and I never said one word to her.

Q. Mrs. Lille, didn't Mrs. Higgins sue your husband? Didn't she turn over to an attorney for collection a note for \$1,000?

Comm. Hrg. Mr. Cloud: Is that question: Didn't she sue, page 160 } or didn't she turn over for collection?

Mr. Nicholson: I want to show—

The Commissioner: One minute. Go ahead, Mr. Cloud.

Mr. Cloud: I object to the form of the question. First of all, it has come up previously in the testimony that there was never a judgment or a suit instituted. Here this is in the alternative: Didn't she sue or turn it over to an attorney for collection? I think the question is ambiguous.

Mr. Nicholson: I will rephrase it.

*Katherine Lillie.*

By Mr. Nicholson:

Q. Mrs. Lille, didn't you threaten Mrs. Higgins and tell her that because of this matter she had with your husband on the collection of this note that you were going to get even with her?

A. I talked to Mrs. Higgins on the phone about that, and she said that her husband was insisting on payment. I told her that I did not know how we were going to pay it at that time. When she kept talking about her husband wanting payment I asked her when her husband was going to be in, because I wanted to talk to him about it. That was when she started screaming that I was going to blackmail

Comm. Hrg. her.

page 161 } Q. She did use that word, didn't she?

A. Yes, she did.

Q. Did she pursue the collection of the note?

A. I believe she did. I did not have anything to do with it after that.

Q. She turned it over to an attorney, didn't she?

A. Yes. I did not go with him. I don't know what happened down there or anything.

Mr. Cloud: I would object to her conclusion, Your Honor. Apparently this is hearsay, something that her husband told her. So, therefore, I would like for the record to make a motion to strike what she said as to her conclusion that it had been turned over to an attorney.

The Commissioner: Overruled.

By Mr. Nicholson:

Q. Didn't you call Mrs. Higgins several times after this note had been turned over for collection and threaten her on the telephone, telling her that if she pursued this you would get even with her?

A. I most certainly did not. I never called Mrs. Higgins from the night she called at the house until the night she called for me to come over and get my husband

Comm. Hrg. out of the driveway, that he was drunk.

page 162 } Q. Didn't you just testify that you called her and talked to her about the note, and that she told you her husband insisted that it be paid?

A. She called the house and talked to my husband, and I asked him to let me talk to her, which I did. He talked to her first and then I talked to her.

*Katherine Lillie.*

Q. Wasn't that after it was turned over to an attorney for collection?

A. No, it was not.

Q. It was not?

A. No, sir.

Mr. Nicholson: That is all.

REDIRECT EXAMINATION.

By Mr. Cloud:

Q. As far as collecting this money, did she ever make any statement to you as to what it was for?

A. Yes. She told me that she had paid my hospital bills and my children's doctor bills with the money. That was why she gave it to my husband.

Q. Had she?

Comm. Hrg. A. No, she did not. I have my cancelled  
page 163 } checks. I paid it myself out of the money that  
my father left me when he died.

The Commissioner: Is there anything further?

By Mr. Cloud:

Q. You were subpoenaed in this matter, were you not? You received a subpoena for this?

A. Yes.

Mr. Cloud: That is all.

By the Commissioner:

Q. Mrs. Lille, when was this admission that you testified to by Mrs. Higgins?

A. In September of '58. I had talked to her not about this matter, but just a general conversation.

Q. September of '58?

A. Yes, sir.

Q. Did the admission indicate when the alleged act of intercourse had occurred?

A. I am not too sure. I don't remember just when it started, but I do know that it went on the whole time I was expecting my last baby.

Q. When was that?

*Maryann Merrick Higgins.*

A. Let me see. From about November on to the following September.

Comm. Hrg. Q. What year?  
page 164 } A. November of '57.  
Q. '57?

A. Yes, sir.

The Commissioner: Are there any further questions by the attorneys?

(Answered in the negative.)

\* \* \* \* \*

MARYANN MERRICK HIGGINS,  
called as an adverse witness, having been first duly sworn,  
testified as follows:

Examined by Mr. Campbell:

Q. Please state your name.

A. Maryann Merrick Higgins.

Q. You were the original complainant in this action; is that correct?

A. Yes.

Comm. Hrg. Q. Mrs. Higgins, on May 25th of this year  
page 165 } in the evening around 8 o'clock did you have  
occasion to see Mr. John Beattie?

A. Yes, sir.

Q. Where?

A. I met him somewhere along Indian River Road after I had taken my maid home. I had arranged to meet him. We had business to discuss. We left my car for servicing at the service station. It needed some work done on it. We left it there. I got into his car and we rode down through Deep Creek, around in that section.

Q. How long did your car stay at that garage?

A. The car stayed there until 7:30 Sunday night. On Saturday I went to Urbanna with Mr. Beattie to visit in his home and spend the week end there.

Q. Was Mrs. Beattie home?

A. Yes.

Q. Is she here?

A. No.

*Maryann Merrick Higgins.*

Q. Then you were with Mr. Beattie all week end; is that correct?

A. He took me home Friday evening. I did not feel well. I did not go to my office on Saturday morning. He picked me up again sometime the middle of Saturday Comm. Hrg. afternoon. I did some shopping for him, help-  
page 166 } ing him to select some things for his son for camp, and we left for Urbanna.

Q. Did you stay in bed all day Saturday?

A. I stayed in bed Saturday morning, yes. I kept in touch with my office ~~office~~ my phone, as I can verify.

Q. Are they here to verify it?

A. No. They can be available.

Q. On May 29th when did you first see Mr. Beattie?

A. I don't know that I saw Mr. Beattie on May 29th. On May 30th he arrived late in the afternoon. He came to the house and had dinner with us.

Q. At what time?

A. I think he got there around 5:30. He was to have arrived earlier. We were to have seen some people on business, but he was late getting there. He was held up in Urbanna.

Q. Who is "us" that he had dinner with?

A. The maid and daughter—our household.

Q. Anyone else?

A. No.

Q. How long did he stay there?

A. I think we left the house about 9:15.

Q. That evening?

Comm. Hrg. A. That is right.

page 167 } Q. Where did you go?

A. We were going to Virginia Beach. He had some instruments for execution for an ex-business associate of mine, Mary English.

Q. What were those instruments?

A. They were deeds of trust.

Q. Go on.

A. Mr. Beattie had complained when he came in that he was extremely tired. We left the house. As we got near Military Highway on Indian River Road he suggested that since it was late it might be better to go down and make his reservation at the motel and get his room squared away so that he would be sure of having a place, which he did.

Then we came back up Military Highway on the way to the beach. By then it must have been 9:30 or so. We both de-

*Maryann Merrick Higgins.*

cided that it was awfully late to drive to the beach. I knew that Mrs. English was tired and had a lot to do the next day, so I suggested that he call her and tell her that we would not come down. We had some things that we wanted to go over.

Q. How did you know that Mrs. English was tired?

A. She had been in training for a new job  
Comm. Hrg. which was very strenuous for her.  
page 168 }

Q. How did you know that she was tired at that particular time?

A. I had seen her that afternoon.

Q. What?

A. With books spread all over the table.

Q. At what time?

A. I had met her about 2:00 or 2:30.

Q. Where?

A. In her home at Virginia Beach. I had taken Barbara down and we had gone swimming and been on the beach.

Q. Where did you and Mr. Beattie go then?

A. We went back to his motel room. There were some things we wanted to go over. I had been told that my house was wired, and so forth, so I did not care to discuss anything in the house.

By the Commissioner:

Q. Let me suggest to the witness in order to expedite this thing—you have very intelligent counsel in this case. If you will just make your answers responsive to the questions, and if counsel desires any other information I am sure they will ask you, we will get along faster.

By Mr. Campbell:

Comm. Hrg. Q. First, you took Barbara to the beach. At  
page 169 } what time did you get home?

A. I would say between 3:00 and 3:30.

Q. You arrived home at 1:50? You left Virginia Beach at 1:25?

A. I did not say that.

Q. I am asking you.

A. I don't know exactly time it was. It was some time probably between 2:00 and 2:30. We came home and mowed the lawn.

Q. You could have been home about 2:00, though, could you not?

A. Yes.

*Maryann Merrick Higgins.*

The Commissioner: Are you talking about A. M. or P. M.?

Mr. Campbell: P. M.

By Mr. Campbell:

Q. Later that evening you were with Mr. Beattie?

A. That is right.

Q. You were heading for Virginia Beach, but decided not to go because all of a sudden you felt that Mrs. English was tired? Hadn't you thought about that before?

The Commissioner: Wait a minute, Mr. Comm. Hrg. Campbell. You have asked four questions there. page 170 } For my sake now, so that I can understand the record and know which answer is to which question—

Mr. Campbell: I was repeating her answer.

The Commissioner: I know, but that is not the proper way to examine. Let's get them one at a time. If you are asking a question I want her answer. If you are making a statement I will pass on that.

Mr. Campbell: All right, sir.

The Commissioner: Let' get one at a time.

By Mr. Campbell:

Q. At what time did you decide not to go to Virginia Beach?

A. Around 9:30—yes, I would say around 9:30; between 9:30 and 10:00.

Q. On the night of May 30th?

A. Yes.

Q. Where were you when you made that decision?

A. On the way to the beach, driving up Military Highway towards Virginia Beach.

Q. Whereabouts on Military Highway?

A. I don't know exactly where it was. I could not say.

Comm. Hrg. estate office? page 171 }

A. South of the real estate office, I would say. I am not certain.

Q. What did you do then?

A. Mr. Beattie stopped and made a phone call to Mrs. English. He told her that he would see her the next day and take care of the papers for her, that he was terribly tired and we would not be down.

Q. What did you do then?

*Maryann Merrick Higgins.*

A. We went back to Mr. Beattie's motel room to go over some business that we had.

Q. What business?

A. As a matter of fact, to go over the list of witnesses that Mr. Higgins had subpoenaed for the hearing the next morning.

Q. Did you?

A. Yes.

Q. For how long a period of time?

A. I would say until about 3 minutes before the police knocked on the door. The lights were never off in the bathroom, as they testified.

Q. How about in the other room?

A. Just before they came Mr. Beattie had gone to bed, there again pleading being fatigued. I think he Comm. Hrg. had turned the light off in the room. I was in page 172 } the bathroom. I don't know.

Q. Were the lights off at 11:15?

A. No, they were not.

Q. You went over this list of witnesses until 3 minutes before the police arrived? Is that correct?

A. Until shortly before they arrived.

Q. And then right before they arrived what did you do?

A. I was in the bathroom. I was preparing to wash my hair.

Q. Were you going over witnesses or were you in the bathroom?

A. We had completed that. Mr. Beattie said that he was tired.

Q. What happened?

A. I was in the bathroom?

Q. And he was in bed?

A. Yes. I presume he went to bed. He said that he was going to bed.

Q. Why did you take your clothes off?

A. I had taken my top off. I had never taken my shorts off. It has been testified that it was a pantie girdle, but it was not. I had taken my blouse off because the Comm. Hrg. neck was high. I had taken it off and put on an page 173 } undershirt of Mr. Beattie so as not to get my shirt wet.

Q. What did you do then?

A. I was just prepared to put my head under the faucet when the knock on the door came.

Q. This was around what time in the morning?



*Maryann Merrick Higgins.*

A. I don't know what time it was.

Q. You were washing your hair?

A. I was preparing to wash my hair, yes.

Q. How far were you from your home?

A. The water is very bad at home. I prefer to use good water.

Q. Was there any difference between the water there and at the motel?

A. Yes.

Q. What difference?

A. I am not an analyst. But, the water in my home is very hard. It is full of sediment and is very bad.

Q. Had you washed your hair at the motel before?

A. No, sir.

Q. How did you know that?

A. I could recognize that the water was soft. It wasn't discolored.

Comm. Hrg. Q. Did you go there for the purpose of wash-  
page 174 } ing your hair?

A. No, sir.

Q. You did not know at the time you left that you were going to wash your hair?

A. I was thinking that I would have an opportunity to wash it at Mrs. English's.

Q. And you had shampoo with you?

A. Yes.

Q. Do you always carry shampoo?

A. When I plan to wash my hair.

Q. Do you have shampoo today?

A. No.

Q. What did you do after the police arrived?

A. We were taken by the police to the South Norfolk Police Station.

Q. Did you go back home?

A. No. We tried to locate a civilian doctor to submit to an examination, and then went to the Naval Hospital. I did not arrive home until sometime between 5:00 and 5:30.

Q. Between 5:00 and 5:30?

A. That is right.

Q. Didn't you testify in Princess Anne County last week—

Comm. Hrg.

page 175 }

The Commissioner: I can't hear you, Mr. Campbell.

*Maryann Merrick Higgins.*

By Mr. Campbell:

Q. Didn't you testify in Princess Anne County last week that you got home about 3:30?

A. No, I did not.

Q. You are sure that it was after 5 o'clock?

A. I was in a high state of shock. I was concerned about not having an opportunity to sleep. I tried to locate the Princess Anne police because Commander Higgins had taken Barbara against the court order.

Mr. Cloud: I object. There has been no evidence of anything against the court order. I object to the conclusion of the witness.

(The answer was read by the reporter at the request of the commissioner.)

The Commissioner: What is your objection?

Mr. Cloud: I object, because it was not against the court order. In fact, the court told him in the presence of counsel that it was proper to do it.

The Commissioner: Mr. Cloud can put on other testimony if he so desires. The objection is apparently founded on the statement that he does not believe the witness' Comm. Hrg. statement is correct.

page 176 } Mr. Cloud: I object because I think it is a conclusion, that she would say all of a sudden, unresponsive to the question, that he did something against the court order.

The Commissioner: I overrule your objection and note your exception.

Mr. Cloud: I note an exception.

By Mr. Campbell:

Q. What court order, Mrs. Higgins?

A. I understand there is a court order by Judge Page that Barbara is to visit me from Sunday evening until Friday afternoon.

Q. To visit you?

A. That is right.

Q. How could she visit you if you were out with Mr. Beattie in a motel?

A. I don't keep the child under my wing every minute. She was with completely competent help. I have a servant in my home who is completely capable.

*Maryann Merrick Higgins.*

Q. When you take these long trips with Mr. Beattie where is she then?

A. She is with her father on the week end. I have been welcomed in the Beattie home many week ends when Barbara is not at home.

Comm. Hrg. Q. As to when you got home, can you pinpoint page 177 } it a little better than 5:00 or 5:30?

A. I would have to say it was still sometime between 5:00 and 5:30.

Q. Going back to the week end of May 25th, how was it that if you planned to go to Urbanna with Mr. Beattie he should catch up with you on Indian River Road and stop your car?

A. He had known that I was taking the maid home, and I had said that I would either meet him at the house or the office. He just happened to be coming along Indian River Road as I came by.

Q. Was that when you made your plans to go to Urbanna?

A. No, sir. In fact, I did not feel well and I did not want to go to Urbanna. He asked that I come up there.

Q. Why?

A. Because I could be helpful in getting the little boy ready for camp.

Q. Is there anything wrong with Mrs. Beattie that she is not here?

A. She is extremely busy with her law practice.

Q. She is aware that this suit is taking place?

A. Fully aware.

Q. Is she aware of the charges that were  
Comm. Hrg. brought against Mr. Beattie in South Norfolk?  
page 178 } Norfolk?

A. Yes, she is.

Q. She did not appear there, either, did she?

A. No.

Q. How much had you had to drink on the night of May 30th?

A. Mr. Higgins testified that I was drunk.

Q. I did not ask you what Mr. Higgins testified to.

A. Excuse me. I had had two drinks before dinner and I had had one drink at the motel.

Q. Isn't it true that a drink for you is about a half glass of whiskey?

A. No, sir.

Q. You deny ever drinking a half glass of whiskey at one drink?

*Maryann Merrick Higgins.*

A. Yes. That is greatly exaggerated.

Q. How often do you drink?

A. How often? Not habitually is all I can say.

Q. What?

A. I say, not habitually.

Q. What do you mean by that?

A. I would say perhaps one or two days a  
Comm. Hrg. week I will have two or three drinks.  
page 179 }

Q. Do you ever get drunk?

A. No, sir.

Q. Never?

A. No, sir.

Q. On the night of May 30th didn't you have a drink in the  
car, too?

A. No, not to my recollection.

Q. How many drinks did Mr. Beattie have?

A. He had two drinks at the house. He testified in South  
Norfolk—

Q. I did not ask you that, Mrs. Higgins.

Mr. Nicholson: Just a minute. Your Honor, he has asked  
her—

Mr. Campbell: She can't testify—

The Commissioner: One minute, Gentlemen. Address  
your remarks to the commissioner. Let me hear from you.

Mr. Nicholson: Your Honor, he has asked her how many  
drinks Mr. Beattie had, and she is attempting to tell him  
what drinks he had.

The Commissioner: She was asked a question, and she an-  
swered the question, and then she added other things. If it  
is material for it to be brought out, I am sure you will bring  
it out.

Comm. Hrg.

page 180 } By the Commissioner:

Q. Just like I said before, make your answers  
responsive.

By Mr. Campbell:

Q. Do you ever drink in the car with Mr. Beattie?

A. No. I believe in going up at Christmas time to Mr. and  
Mrs. Beattie's I had a can of beer.

Q. How many times have you stayed in a motel room with  
Mr. Beattie overnight?

*Maryann Merrick Higgins.*

A. I have not stayed in a motel room with Mr. Beattie overnight.

Q. Have Mr. and Mrs. English ever brought you clothing to a motel room early in the morning when you had been there all night with Mr. Beattie?

A. Yes, sir.

Q. When was that?

A. That was in January of 1961.

Q. You had been there with him all night?

A. Yes. I cried on his shoulder.

Q. Until 7:30 in the morning?

A. Yes, sir.

Q. Did you all sleep together?

A. No.

Comm. Hrg. Q. What was your purpose in staying with  
page 181 } him then?

A. He was lending a sympathetic ear to my business and marital problems.

Q. What has been your relationship with Mr. English?

A. There was a friendship, a business relationship. The business relationship was severed because of my displeasure in the way he was doing his job. The friendship seemed to cease with that.

Q. Were you all right intimate at times?

A. No, sir.

Q. In the spring of '61 did you kiss him?

A. Not to my recollection.

Q. Would you remember that if you had?

A. I think I would.

Q. In front of your home on Lathan Road?

A. No.

Q. Have you ever kissed him?

A. As two couples together we have spent many New Year's Eves together. I imagine I have, yes.

Q. Other than when you all were all together have you?

A. No.

Q. When did your friendship with Mr. English cease?

A. In the summer of '61.

Comm. Hrg. Q. You say that the reason was because of  
page 182 } your displeasure with him?

A. Yes.

Q. Wasn't the actual reason that his wife got caught in adultery with Dr. Angelico?

*Joe S. English.*

The Commissioner: I did not understand your question, Mr. Campbell.

By Mr. Campbell:

Q. Wasn't the real reason the fact that his wife got caught in adultery with Dr. Angelico and you were involved?

A. I was not involved. I don't know what that has to do with it. No, that was no reason for the termination of the friendship or the business relations. He was building a home for me. I was very displeased with the costs and the progress of the construction.

Q. When the Englishes separated about that time you and Mrs. English have been very close ever since. Isn't that right?

A. Mrs. English and I had been close previous to that, and since, yes. We were in business together.

Q. Business associates?

A. That is right.

Q. Your sole reason for existence is business; Comm. Hrg. is that correct?

page 183 } A. No, sir.

Q. You spend more than 12 hours a day on an average in business?

A. If business necessitates long hours I am not reluctant to work. I find it necessary to make a living.

Mr. Campbell: That is all.

Mr. Nicholson: If Your Honor please, I will withdraw her and will put her on in rebuttal.

JOE S. ENGLISH,

called as a witness on behalf of Roy Taylor Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. Tell the commissioner your full name, Mr. English.

A. Joe S. English.

Q. Where do you live?

A. 5764 Hargrove Street.

Q. Do you know the parties to this suit, Comm. Hrg. Maryann Higgins and Roy Taylor Higgins?

page 184 } A. Yes, I do.

Q. How long have you known them, approximately?

A. I have known Mr. Higgins 15 years and Mrs. Higgins probably 10 or 12 years.

*Joe S. English.*

Q. Mary English, what relationship if any is she to you?

A. She is my wife.

Q. Has the marriage relationship been severed?

A. I filed for divorce.

Q. Has a final divorce been granted?

A. No, it hasn't.

Q. It has not? Have you ever had occasion to have any business dealings with Mrs. Higgins?

A. Yes, I have.

Q. Did you know her back in the spring of 1961—that is, in your business dealing?

A. Yes.

Q. Did you have occasion to be with Mrs. Higgins in front of her home at 5801 Lathan Road?

A. Yes.

Q. Tell the Commissioner what, if anything, took place at that time?

A. You are going to have to ask me a little more direct question.

Comm. Hrg. Q. Did you have occasion to be in a car out-  
page 185 } side the home?

A. Yes, I did.

Q. Did anything take place in that car—that is, between you and Mrs. Higgins?

A. Yes.

Q. Tell the commissioner what, if anything, transpired at that time.

A. Mrs. Higgins and I nearly became involved in sexual relations.

Q. Did you have occasion to kiss her or anything?

A. Yes, I did.

Q. Had either or both of you been drinking any alcoholic beverages?

A. Yes.

Q. Did you have occasion to drink any alcoholic beverages while you were in the car?

A. No.

Q. Approximately how long before you were there in the car was it that you had had any intoxicating beverages?

A. I would say an hour or two hours.

Comm. Hrg. Q. Had you both been together drinking at  
page 186 }

A. Yes.

Q. Where were you at that time when you were drinking?

*Joe S. English.*

A. At Mrs. Higgins' home.

Q. Can you tell the commissioner approximately how much both of you had?

A. Probably nearly a fifth.

Q. Approximately how long did you stay in the car outside?

A. 45 minutes maybe.

Q. Approximately at what time of the day or night was that?

A. This was probably 11 o'clock or 12 o'clock.

Q. Day or night?

A. Night.

Q. During that forty-five minute period was the whole time spent in kissing and talking?

A. Probably. It is a little difficult to say exactly what transpired.

Q. I believe you first told us that this did not consummate in any act of intercourse?

A. That is correct.

Q. Can you tell the commissioner what, if anything, stopped you?

A. Conscience.

Comm. Hrg. Q. What, if anything, did Mrs. Higgins say to page 187 } you at that time?

A. Are you looking for a direct quotation?

Q. Can you tell us what, if anything, you discussed while you were out there? Were you discussing business or what?

A. Discussing primarily my own troubles—marital troubles.

Q. Mrs. Higgins and your wife, had they been close friends?

A. Yes, they had. They were in business together.

Q. Do you know John Beattie?

A. Yes, I do.

Q. Can you tell the commissioner whether or not Mr. Beattie has been in the company of you and Mrs. English and Mrs. Higgins?

A. Yes, he has.

Q. Can you tell the commissioner whether it was on frequent or infrequent occasions?

A. Frequent occasions.

Q. Can you tell the commissioner what would be the purpose of these meetings when they were had?

The Commissioner: Was he there?



*Joe S. English.*

Mr. Cloud: He said he was.  
Comm. Hrg. The Commissioner: I understood him to say  
page 188 } that he knew him. I did not understand him  
to say that he knew he was there. Let's find  
out.

By Mr. Cloud:

Q. Did you ever have occasion to be with your wife and Mrs. Higgins and Mr. Beattie?

A. Yes, I did.

Q. At these meetings what would be the purpose of those?

A. Dinner and a few drinks; primarily social.

Q. Did you ever have occasion to take Mrs. Higgins to a motel where Mr. Beattie was staying and to take any clothes?

A. Yes, I did.

Q. Do you remember the approximate time of that?

A. You are looking for the month?

Q. Just approximately. If you can give me that, all right.

A. March or April of '61.

Q. Did you have occasion to come back later?

A. Yes, I did.

Q. When was that?

A. The following morning.

Q. On that evening before you took Mrs. Higgins can you tell us whether or not she had  
Comm. Hrg. page 189 } been drinking?

A. Yes.

Q. Do you have any idea as to how much she had been drinking?

A. That I could not say.

Q. Have you had occasion during the time you have known her to observe her drinking habits?

A. Yes, I have.

Q. Are you able to tell the commissioner of your own personal knowledge, as to what you have seen, approximately how many times a week she would have alcoholic beverages?

A. That is difficult to say. I would say frequently. That is the best that I can answer that.

Q. Would you say more or less than two drinks out of a week?

A. Yes, more.

Q. When you went to the motel did you go into the motel room?

A. Yes.

Q. Who was there?

*Joe S. English.*

A. Mrs. Higgins and Mr. Beattie.

Q. Do you recall their state of dress at that time?

A. No, I don't. I would say—

Comm. Hrg. Q. If you don't remember, don't try to an-  
page 190 } swer that. Have you had occasion to observe  
the parental relationship between Commander  
Higgins and his children?

A. Yes, I have.

Q. Tell the commissioner what you have observed in the years that you have known the family.

A. Since I have known the family I would say there has been a very close relationship between Mr. Higgins and particularly his younger daughter.

Q. Can you tell the court whether or not he has been a fit and proper person both physically and morally?

A. Yes, I would say without any reproach.

Q. Since the separation have you been able to observe Barbara in the home with her father?

A. Yes, I have.

Q. Were you aware as to whether or not the children left with Mrs. Higgins when the separation first occurred?

A. I was aware of that, yes.

Q. Of your own knowledge do you know approximately when the children returned?

A. I would say within probably a thirty-day period.

Q. After they returned to their father did  
Comm. Hrg. you have occasion to observe them in the home  
page 191 } during that period?

A. Yes, I did.

Q. Were you able to tell how Barbara, the younger child felt at that time? That is, what was her outward appearance so far as being contented?

A. I would say during this period was about the time I noticed a change in Barbara. I thought probably—

Q. Not what you thought.

A. All right.

Q. What change was there?

A. Well, my observation of Barbara has always been that she has been very devoted to her father. They have done a lot of things together. He was continually taking the children to various programs and that type of thing, even to the point that my wife pointed out my shortcomings in that respect.

Q. Can you tell the commissioner whether or not these observations you made were after the separation or before?

*Joe S. English.*

A. They were primarily afterwards. Of course I had occasion to observe this before.

Q. Was there any difference between the way the commander acted afterwards as opposed to before as a father to the children?

Comm. Hrg. A. No.

page 192 } Q. Of your own knowledge before the separation do you know whether or not Mrs. Higgins was actively engaged in business?

A. Before the separation?

Q. Yes.

A. Yes, she was.

Q. Can you tell us whether or not that necessitated her keeping late hours?

A. Well, having gone through the same situation myself, I am going to be forced to say that I doubt very seriously that much real estate business is transacted after 9 o'clock at night.

Q. Of your own knowledge do you know whether or not Mrs. Higgins was away from the home frequently during that period?

A. Yes, she was.

Q. Do you know who kept the children at that time?

A. More often than less the older daughter did.

Q. Do you know whether or not Commander Higgins was away at sea at any of these times?

A. Yes, he was.

Q. When he was home can you tell the commissioner whether or not he kept the children  
Comm. Hrg. page 193 } very much?

A. Yes, he did.

Q. Did he make most of these business excursions with Mrs. Higgins?

A. None of them.

Q. What is your son's name?

A. My oldest son is John.

Q. In whose custody is John?

A. I have his custody.

Q. He is the child who testified previously in this matter. Is that correct?

A. That is correct.

Q. Back to when you were in the car in the spring of '61—do you recall of when I am speaking?

A. Yes.

Q. Can you state whether or not Mrs. Higgins made any

*Joe S. English.*

proposal to you? If so, tell the Commissioner what it might have been.

A. "Your bed or mine."

Mr. Cloud: That is all.

### CROSS EXAMINATION.

By Mr. Nicholson:

Comm. Hrg. Q. Mr. English, when did you first make page 194 } known the fact that Mrs. Higgins tried to seduce you? When did you first make that known?

A. To who?

Q. To Mr. Higgins.

A. Shortly after the separation.

Q. You made it known to him?

A. Yes.

Q. What was the purpose of your telling him that?

A. Well, basically I am going to raise one point, when you use this word "seduce"—

By the Commissioner:

Q. That was the question that was asked you, and your answer was supposed to have been responsive to that question. If you want to correct your answer, go ahead.

Mr. Cloud: We will stipulate that she seduced him.

The Commissioner: Let's go ahead. I do not want the witness to argue with the attorney.

By Mr. Nicholson:

Q. What was the purpose of your telling him that after the separation?

A. Before the separation I did not realize Comm. Hrg. that Mr. Higgins had a situation which was page 195 } similar to my own. Mr. Higgins was best man at my wedding 15 years ago. We have had friendship which has extended over about a fifteen-year period. Before the separation I knew that he has having a little trouble with Mrs. Higgins. They were not essentially one hundred per cent happy, I would say, but I did not know the reason for this. I did not know it until after the separation. Mr. Higgins was then in the same boat that I was in. I felt

*Joe S. English.*

as far as he was concerned that he was entitled to know the particulars.

Q. And that was why you told him?

A. That is correct.

Q. You and Mr. Higgins are pretty close, aren't you?

A. Yes, sir.

Q. You visit each other and stay at each other's place? You have stayed at his place a number of times, haven't you, since the separation?

A. I will say I have occasionally remained there, seldom.

Q. How much drinking do you do, Mr. English?

A. Very little.

Q. Very little?

A. Very little.

Comm. Hrg. Q. Without knocking yourself out, how did page 196 } you and Mrs. Higgins manage to consume nearly a fifth of whiskey together?

A. Mrs. Higgins was consoling me as to my own marital problems. I was in pretty low cotton.

Q. And she was at the same time trying to seduce you; is that right?

A. Yes.

Q. You seem to be good on dates, good on times when things happened. You testified how wonderful a person Mr. Higgins is. Let me ask you if you remember this occasion, the statement that you made. Do you remember New Year's of 1961 when you were in the company of Mrs. English and Mr. Beattie, and you were in the kitchen of your home and your wife was there, and you made this statement—I am attributing this to you. You are under oath.

By Mr. Cloud:

Q. You wait before you say anything.

By Mr. Nicholson:

Q. You said, talking about Mr. Higgins, that "He is a miserable son of a bitch, and I don't blame you for not wanting to go home with him."

The Commissioner: Mr. Nicholson, you are asking the witness if somebody said—

Comm. Hrg. Mr. Nicholson: He said it about Mr. Higgins. page 198 } The Commissioner: He said this about Mr. Higgins?

*Joe S. English.*

Mr. Nicholson: Mr. Higgins. He has testified that Mr. Higgins was a fit and proper person.

The Commissioner: The question is whether he did or did not say that?

Mr. Nicholson: Yes, sir.

The Commissioner: What is your objection?

Mr. Cloud: I withdraw my objection.

A. I would have to deny that.

By Mr. Nicholson:

Q. You don't remember saying it?

A. I do not remember saying that.

Q. But you don't deny that you said it?

A. I would be forced to deny it if I did not remember saying it, wouldn't I?

By the Commissioner:

Q. Again you are trying to argue with the lawyer.

A. I am not a lawyer. I am here under oath to tell you the circumstances.

Q. The question is: Did you say it or not?

A. To my knowledge I did not say it. That is the best answer I can give you.

By Mr. Nicholson:

Comm. Hrg. Q. Didn't you on another occasion, speaking page 199 } of Mr. Higgins, say that he was a louse?

A. I cannot admit that, either.

Q. I am not asking you to admit it. I am asking you to say "Yes" or "No."

A. I would say no.

Q. You would say no?

A. I would say no, that is correct.

Q. You and Mrs. Higgins are not on speaking terms now, are you?

A. I have not had any occasion to speak with Mrs. Higgins.

Q. I say, are you on friendly terms?

A. We are not on friendly terms, no.

Q. Why?

A. Because you might be able to understand that Mrs. Higgins was involved in the same thing that my wife was involved in, and everytime Mr. Higgins overturned a stone he found my wife underneath there with her. This does not really add up to a real amicable relationship.

*George H. Gray.*

Q. So each one of you is crying on the other's shoulder?

A. I would not say that we are crying on each other's shoulder. We happen to be in the same boat, just as our wives happen to be in the same boat.

Q. That is all, Mr. English.

Comm. Hrg.  
page 200 }

\* \* \* \* \*

GEORGE H. GRAY,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. For the record tell the commissioner your full name.

A. George H. Gray.

Q. Where do you live, Mr. Gray?

A. 5800 Lathan Road, Norfolk 2, Virginia.

Q. You are an attorney at law, are you not?

A. Yes, sir.

Q. Do you know the parties to this suit?

A. Yes, sir.

Q. Do you know their children?

A. Yes, sir.

Q. Have you had occasion to observe the relationship of  
the parents with the children?

A. Somewhat, yes, sir.

Q. Do you have any children of your own?

A. Yes, sir. I have three.

Comm. Hrg. Q. Can you tell us whether or not you have  
page 201 } observed the attitude of the younger child Bar-  
bara as to staying over on Lathan Road?

A. I have seen Barbara. I remember when Mr. and Mrs. Higgins and their two children first moved there. She is a pleasant, happy little child. My three children are much younger than Barbara. The oldest of my children is 7. Barbara is just as nice and sweet to those three children as she can be. They have played in my yard and also my children have gone over to Mr. and Mrs. Higgins' house and have played there with Barbara. Also the older child is very familiar with my children.

Q. Since the separation of Mr. and Mrs. Higgins do you

*George H. Gray.*

know whether or not Barbara has continued to come over on Lathan Road?

A. She has been there on occasion. I have seen her there. It seems to me that it has been mostly on Saturdays and Sundays. My children again have played with her when she was there.

Q. Are you able to tell the commissioner as close to the present as we can get what her present attitude has been?

The Commissioner: Let's get that question clear, Mr. Cloud. Do you mean to ask the witness what Comm. Hrg. has he observed which in turn might indicate page 202 } so and so, so and so?

Mr. Cloud: Yes, sir.

The Commissioner: Let's phrase your question that way. We are not seeking opinions; we are seeking facts.

By Mr. Cloud:

Q. As close to the present as we can get, have you observed any circumstances or facts which would indicate her present attitude as to staying over on Lathan Road?

A. Well, I have observed her as a normal, happy child playing in her yard and in the neighbors' yards with other children. There are several other children in that vicinity. I have seen her play with them and also with my own children. I observed nothing unusual about her attitude. She wasn't despondent or unhappy. She appeared to be a normal child of that age.

Q. Can you state whether or not Commander Higgins is a fit and proper person, both physically and morally, to have the custody of this child?

A. In my opinion, yes, sir.

Q. What is that?

A. My opinion is that he is a proper person.

Q. Answer Mr. Nicholson.

Mr. Nicholson: I have no questions.

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Comm. Hrg.  
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JOHN B. SASSER,  
called as a witness on behalf of Maryann Merrick Higgins,  
having been first duly sworn, testified as follows:

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Comm. Hrg.  
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\* \* \* \* \*

### CROSS EXAMINATION.

By Mr. Campbell:

\* \* \* \* \*

Comm. Hrg.  
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Q. Have you talked to Mrs. Higgins about what you were going to testify to here today?

A. I talked to her, but I did not tell her what  
Comm. Hrg I was going to testify to.

page 220 } Q. Did she ask you questions about it?

A. She asked me if I remembered that night.

Q. Did you talk to Mr. John Beattie about it, too?

A. We have talked about it, yes. But, as far as any advice,  
no.

Q. Did you have any trouble in getting John Bundy's pants on that night when you went out there?

A. I don't believe Mr. Bundy had his pants off. I don't think so, no, sir.

Q. He was drunk, wasn't he?

A. Yes, he was drunk.

Q. Mrs. Higgins was drunk, too?

A. No, Mrs. Higgins wasn't drunk that I remember. That is the truth.

Q. Was she drinking?

A. She could have had something to drink before, which I would not have known it if she had. I don't know.

Q. Mrs. Higgins does quite a bit of drinking, doesn't she?

A. I can't swear to that, because I don't know her that well and I am not around her that much.

*Robert W. Bedingfield.*

- Comm. Hrg.      Q. Where was this convention?  
page 221 }      A. In Roanoke.  
                 Q. Mrs. Higgins was there?  
                 A. Yes, sir.  
Q. Mrs. English was there?  
A. Yes.  
Q. Commander Higgins was not there, nor Mr. English?  
A. No, sir.  
Q. How long did this convention last?  
A. It was three days.  
Q. Was John Beattie there?  
A. No, sir.  
Q. With whom was she at that time?  
A. Mary English.  
Q. Did you all have a lot of parties?  
A. Well, we had a lot of meetings. I drank a lot. I don't  
know about the rest of them. I went to enjoy myself.  
Q. That was the purpose of it, wasn't it?  
A. Yes, sir.  
Q. Did Mrs. Higgins enjoy herself?  
A. I imagine she did.

Mr. Campbell: That is all.

\* \* \* \* \*

Comm. Hrg.  
page 232 }

\* \* \* \* \*

ROBERT W. BEDINGFIELD,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

Examined by Mr. Cloud:

- Comm. Hrg.      Q. You are Robert W. Bedingfield?  
page 233 }      A. I am.  
                 Q. You are in the United States Navy, are  
                 you not?  
A. Yes, sir.  
Q. You are a chaplain in the United States Navy?  
A. Yes, sir.  
Q. Do you know the parties to this matter?

*Robert W. Bedingfield.*

A. I know both parties. I know Commander Higgins much better than Mrs. Higgins.

Q. For how long have you known Commander Higgins, approximately?

A. I first met him about the 1st of May, 1960, and sailed with him until about the 1st of October, 1960. I knew Commander Higgins about six months.

Q. Approximately how long ago was that?

A. In 1960 when I sailed with him.

Q. During that time did you have occasion to come in contact with him daily?

A. He was, as the Navy would say, my boss. I worked directly under him.

Q. In that connection would you have an opportunity to observe his personal habits, the type of person he was?

A. Very definitely, since I was also his pastor Comm. Hrg. as well as a person who worked for him.

page 234 } Q. Can you tell us whether or not he attended service regularly?

A. He did.

Q. Did you also have occasion to know him after you got back to Norfolk off the ship, so to speak?

A. Not really, no. There was very little social contact in this instance.

Q. Have you ever had occasion to call or be at his home?

A. Just once. I was received by Commander and Mrs. Higgins.

Q. Were the children there at that time?

A. One child was there. That was the first and only occasion when I met Mrs. Higgins.

Q. Are you able to tell us whether or not both physically and morally Commander Higgins is a fit and proper person to have the custody of his children?

A. On the basis of my observation over a period of six months I would say yes, very definitely.

Q. Answer Mr. Nicholson.

Comm. Hrg.  
page 235 }

CROSS EXAMINATION.

By Mr. Nicholson:

Q. Do you know Mrs. Higgins except on this one occasion that you met her?

A. No, sir, I do not.

*Roy Taylor Higgins.*

Q. You are not qualified to say whether she is a fit or unfit person?

A. That was not the question, was it?

By the Commissioner:

Q. That is the question now.

A. No, sir.

By Mr. Nicholson:

Q. Did anything unusual happen on the occasion that you visited at their home?

A. No, sir.

Mr. Nicholson: That is all.

Comm. Hrg.

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ROY TAYLOR HIGGINS,

called as an adverse witness, having been first duly sworn, testified as follows:

Examined by Mr. Nicholson:

Q. Mr. Higgins, for the record I would like to know what your salary is.

A. Around \$800.00 a year—\$800.00 a month.

By the Commissioner:

Q. What?

A. \$800.00 a month.

By Mr. Nicholson:

Q. Does that include all of your benefits, housing and everything?

A. No, it doesn't.

Q. How much is it altogether?

A. Very close to a thousand dollars?

Q. A thousand dollars? Are you in line for an increase in your pay soon?

A. I will be shortly.

Q. When will that happen?

A. I believe in June of this year.

Q. How much will that be then?

A. Approximately five per cent of my base pay.

*Roy Taylor Higgins.*

By the Commissioner:

Comm. Hrg. Q. What is your base pay?  
 page 237 } A. Each payday I draw \$394.00.  
 Q. That was not my question.

The Commissioner: I want to interrupt you, Mr. Nicholson, long enough to get this clear in the record for myself.

By the Commissioner:

Q. What is your base pay per month?

A. I don't know exactly what my deductions are for Social Security.

Q. We are not counting your deductions. What is your base pay?

A. I don't know exactly, frankly.

Q. What is your rank?

A. I am a commander.

Q. What is your length of service?

A. Twenty years.

Q. Is that what your base pay is computed on?

A. On my rank, yes, sir.

Q. Your rank?

A. Plus my longevity.

Q. You draw longevity in addition to your base pay?

A. That is correct.

Q. How much longevity do you have?

Comm. Hrg. A. I don't know how many, what we call  
 page 238 } fogeys I have.

Q. Twice a month you get paid how much?

A. \$394.00.

The Commissioner: Carry on, Mr. Nicholson.

By Mr. Nicholson:

Q. Mr. Higgins, you are asking the court to grant you custody of the daughter Barbara. Is that right?

A. That is correct.

Q. By the same token you are alleging that Mrs. Higgins is not a fit person to have the custody of the child. Is that right?

A. Yes, sir.

Q. You have certain standards that you go by, that you arrive at, in which you say she is not a fit person?

A. That is correct.

Q. Let me ask you this question, Mr. Higgins. Of course I don't have to tell you that you are under oath—

*Roy Taylor Higgins.*

The Commissioner: It is unnecessary to remind people that they are under oath. They were sworn. I do not think it is proper. Just go ahead and ask him the question.

By Mr. Nicholson:

Comm. Hrg. Q. Do you ever serve mixed drinks of whiskey  
page 239 } in your home to your daughter Lee and other  
high school children?

A. I have served drinks to Lee, yes.

Q. What kinds of drinks?

A. Mixed drinks.

Q. What do you mean by 'mixed drinks'?

A. Highball, bourdon and coke.

Q. How about other children, high school friends?

A. No.

Q. You never have?

A. That is correct.

Q. Have you ever served them beer?

A. On occasion.

Q. High school children?

A. Yes, one rare occasion.

Q. One rare occasion?

A. Yes.

Q. In your opinion do you think that is proper?

Mr. Cloud: I object to his opinion as to whether it is proper or not.

Mr. Nicholson: Your Honor, he is an adverse witness.

The Commissioner: We don't want his opinion unless it is an expert question of some kind.

Comm. Hrg.

page 240 } A. I might add that these drinks were served  
in front of Mrs. Higgins, with her approval, before the separation.

By Mr. Nicholson:

Q. Whose approval?

A. Mrs. Higgins'.

Q. What do you mean by her approval, Mr. Higgins?

A. No objection. Also the grandparent, Mrs. Higgins' mother.

Q. Did you ask her approval?

A. Yes, I did. I said, "Is it all right, Honey?" "Yes."

Q. On how many occasions have you served your daughter mixed drinks with bourbon.

*Roy Taylor Higgins.*

A. It would be hard to say; not more than ten.

Q. Since the separation and she has been living with you, how many times have you served her mixed drinks?

A. I can't say definitely. Less than ten times—five times.

Q. How many times have you told your daughter Lee off-colored stories?

A. On one occasion in front of Mrs. Hig-  
Comm. Hrg. gins.  
page 241 }

Q. On no other occasions?

A. That is correct.

Q. How about pornographic literature, have you ever shown that to your daughter?

Mr. Cloud: I object. I ask that the question be more specific.

The Commissioner: The witness is intelligent. He understands what that means, Mr. Cloud. The witness can answer it "Yes" or "No."

Mr. Cloud: I think it is an unfair question. It calls for an opinion as to what is pornographic and what is not.

The Commissioner: Let the witness tell.

Mr. Nicholson: I will be more specific.

By Mr. Nicholson:

Q. Have you ever displayed to your daughter Lee pornographic cartoons?

A. No, I have not.

Q. Have you ever told your daughter Barbara to leave the room, that you wanted to tell—you did not use the word "off-colored"—but a story to your daughter Lee?

A. No.

Q. You never did that?

Comm. Hrg. A. May I clarify this cartoon thing?

page 242 } Q. It is all right with me.

Mr. Cloud: I want you to get through with your questions.

The Commissioner: Just make your objection to the commissioner and I will pass on it.

By Mr. Nicholson:

Q. Mr. Higgins, is it true that your daughter Barbara desires to remain with her mother?

A. They are her feelings now, yes.

*Roy Taylor Higgins.*

By the Commissioner:

Q. Talk this way, please.

A. I feel that they are Barbara's feelings now, yes, but they were not her feelings prior to December of this past year.

By Mr. Nicholson:

Q. Have you tried to influence her within the last two or three weeks against her mother?

A. I have not. I only asked her what she wanted to do.

Q. Haven't you told her that her mother was not a proper person to have her custody?

A. Not in those words, no.

Q. But you told her that her mother drank excessively?

A. Barbara knows that.

Comm. Hrg. Q. I say, did you tell her that?

page 243 } A. No.

Q. Did you tell her that her mother ran around with men?

A. Not in those words, no.

Q. What did you tell her?

A. I told her that the reason I was doing what I was doing here is purely in her interest; that I thought, as I told Mrs. Higgins, that she was not a proper mother; that she did not choose to come back into the home and be a mother and a wife. She wanted to stay in the real estate business. I said I did not like what went on in the real estate business. and I thought for her own good and future well-being that she would be better off with me.

I also told her that I thought she ought to consider the fact that if she stayed with her mother there was a possibility that she would have another father, and she knows the type of men that Mrs. Higgins was running around with.

The Commissioner: Some counsel ascertain from the witness when these conversations took place, whether they were before or after the institution of this suit, and before or after the last hearing.

Comm. Hrg.

page 244 } By Mr. Nicholson:

Q. When was that, Mr. Higgins?

A. That has been within the last two weeks on advice of counsel.

Q. On advice of counsel?



*Roy Taylor Higgins.*

A. That is correct; to get a feeling as to what Barbara's feelings are now.

Q. Was it on the advice of counsel for you to tell your daughter that her mother ran around with men?

A. Not in those words, no.

The Commissioner: One minute, Mr. Nicholson. I want to understand exactly what the witness means.

By the Commissioner:

Q. You say that you talked to your daughter on advice of counsel?

A. I inquired of Mr. Cloud, I believe, and possibly Mr. Campbell, if I should talk to Barbara and say anything to her in relation to what the problem was, because I had been very careful up to this point not to cast any reflection upon Mrs. Higgins.

On one other occasion, at the time the original bill for divorce was received by me, I contacted my lawyers and asked them what I should do about this, and Mr. Comm. Hrg. Cloud advised me that it would be all right to page 245 } tell the girls what the situation was, and to ask them if they felt what Mrs. Higgins alleged as far as the mental cruelty that was alleged in the original bill—

Q. There is only one question that I want to know. Was or was not that with a view of influencing the child's decision?

A. No, sir.

The Commissioner: Carry on.

By Mr. Nicholson:

Q. Now, Mr. Higgins, you testified on direct that you did not know that Mr. Lille had made arrangements to pay off that note until we brought it out here. Is that right?

A. I did not know that that debt was to be paid off until I confronted Mrs. Higgins with anonymous phone calls that I had been receiving in the year 1960. She advised me that contrary to my wishes on the original reconciliation had collected the indebtedness owed by Mr. Lille. Specifically what brought this to a point was that I had received three phone calls from men asking, "Who is fucking your wife now?" I confronted Mrs. Higgins with this this past June. When I tried to sit down and talk to her about our marital problems she said

*Roy Taylor Higgins.*

that she felt Mr. Lille was the one that was making these phone calls, because she had gone against my wishes and collected this indebtedness. That was the first time I was aware that this indebtedness had been collected.

Q. I probably misunderstood you. I thought you testified here before—I might be wrong—on your direct that you did not know that Mr. Lille had paid this debt or made arrangements to pay it until I developed it at that hearing.

A. No, sir. I had until my brief case disappeared from the home the note signed over by Mr. Lille to Mrs. Higgins paying this off, something like \$17.00 a month.

Incidentally, I have a letter in my brief case now that came in the mail from this gentleman who is paying this money.

Q. But you did get these nasty and filthy phone calls from some man from time to time?

A. Yes, on three occasions.

Q. She told you that she thought it was Mr. Lille?

A. Yes. That was the first time I knew that the debt was being collected, against my wishes.

Mr. Nicholson: I think that is all.

By Mr. Campbell:

Q. Commander, you wanted to explain the cartoon question.

Comm. Hrg. A. Yes, sir. Your Honor, I had received a cartoon that was floating around our headquarters that showed a big St. Bernard. It was a cartoon about this size (indicating). He was on top of a Volkswagen and a man was in the Volkswagen—

The Commissioner: Is there any connection between this and the parties to this suit?

Mr. Campbell: This is in relation to that question that Mr. Nicholson asked: Whether or not he had shown any pornographic pictures to Lee.

A. This big St. Bernard was on top of this Volkswagen, doing an act as all dogs do, and this man in the car said, "Get away, you big S.O.B.," and it was in quotes that way.

I showed this to Mrs. Higgins. It was twisted but it was funny. She laughed at it. I believe the children were outside

*Roy Taylor Higgins.*

washing the car. Lee wanted to see what it was. At that time she was almost 17 years old. She insisted upon wanting to see it and I said, "Let her see it." Lee looked at the cartoon and sort of blushed. Mrs. Higgins said, "No, don't" but did not seriously object. Barbara wanted to see it. Both of us did not let Barbara see the cartoon.

Q. What kind of car do you have?

A. I have a small car similar to a Volkswagen, and am subject to many jokes as all small car owners are.

Comm. Hrg.

page 248 } By Mr. Nicholson:

Q. As a matter of fact, didn't Mrs. Higgins protest your showing it to Lee?

A. Not seriously, no.

Q. Not seriously?

A. Yes.

By the Commissioner:

Q. Mr. Higgins, I want to get this money situation straight for the record. You say that you do not know what your base pay is?

A. I don't remember. Mrs. Higgins has been taking care of the bills. I know what I make each month.

Q. Who files your income tax?

A. I prepared my last income tax statement.

Q. It may be necessary to get that in order to get this information.

A. I have that in my brief case now.

Q. You do?

A. I believe it is out there.

Q. I would like to see it.

A. I believe the taxable comes to around eight thousand and some dollars.

Mr. Campbell: He has it right outside.

The Commissioner: Does counsel have any objection?

Comm. Hrg. (There was no objection by counsel, and the page 249 } witness left the room and returned.)

By the Commissioner:

Q. Show it first to your counsel, please.

A. This brief case disappeared several weeks ago and some

*Roy Taylor Higgins.*

papers are missing. Whether my tax papers are still here, I don't know. I have not had occasion to look at them.

By Mr. Campbell:

Q. Who returned it to you?

A. Mrs. Higgins. It was taken from my home. Sir, my taxable income before deductions I believe was \$8,200.00. I don't have the statement. It is not here.

By the Commissioner:

Q. I thought you said it was there.

A. Sir, it was before my brief case disappeared. I don't know what happened to it.

Q. Let's find out about that. When did the brief case reappear?

A. Two days after it disappeared.

Q. When was that?

A. It was about the 1st or 2nd day of June of this year.

Q. Your offer to produce this income tax Comm. Hrg. statement has made this inquiry necessary now. page 250 }

A. Yes, sir.

Q. Where was your brief case when it disappeared?

A. It was in my home where I am presently living, 5801 Lathan Road.

Q. Did it get up and walk away, or did somebody take it, or what?

A. Apparently Mrs. Higgins came into the house and took it.

Q. You don't know?

A. She returned the brief case, sir.

Q. When you got the brief case back did you check it to find out whether anything had been taken out?

A. Yes, I did.

Q. You did?

A. Yes, sir.

Q. Did you at that time miss your income tax statement?

A. No. I missed some other papers that are considerably more important.

Q. Did you check to see if your income tax statement was in there?

A. Not specifically.

*Roy Taylor Higgins.*

Q. You don't recall when was the last time Comm. Hrg. saw your income tax statement?

page 251 } A. Not since around April; the middle of April before it was due.

Q. You volunteered the information that the income tax statement was in the outer office in the brief case.

A. Sir, I have been carrying all of my personal papers, checks and bank statements and all, in my brief case with me everywhere that I go.

Q. Mr. Higgins, you made a positive statement that that income tax statement was in that brief case. I am trying to find out why you made it.

A. I thought it was here, sir. My brief case disappeared. I can't say for sure what all the papers were that I had in it.

By Mr. Campbell:

Q. Did you report it to the police?

A. Yes, sir.

Q. Did the police investigate this?

A. I called my lawyer up—yes, they did.

Q. It was how many days after your home was broken into until Mrs. Higgins brought that brief case back?

A. About two days.

Q. Was that after this last hearing?

Comm. Hrg. A. Yes, it was. Also Mrs. Higgins called me  
page 252 } the night that the police investigated and told  
me that she would appreciate it if I would not  
be bothering her with these crazy ideas of mine. She denied  
having the brief case.

The Commissioner: Are you gentlemen through now?

Mr. Campbell: Yes.

By the Commissioner:

Q. Where do you keep your file of income tax paper for previous years?

A. Mrs. Higgins has those. They used to be kept in the home because Mrs. Higgins took care of all the financial matters of the home.

Q. Let's get back to your pay. You make every two weeks \$394.00?

A. Yes, sir.

Q. What is your tax deduction on your pay?

A. There is no tax deduction on the pay from the Navy.

*Roy Taylor Higgins.*

It is a standard deduction, sir. I would have to look at my papers.

Q. You don't know what it is? Is it 18 per cent or 20 per cent?

A. 20 per cent. I filed the long form this time.

Q. What deduction is made for bonds, it any?  
Comm. Hrg. How many bonds per month do you get?  
page 253 }

A. I don't take any bonds out.

Q. Is there a deduction or is there not a deduction? Is there or is there not a deduction per month against your pay for the purchase of Liberty Bonds?

A. No, sir, there are no deductions of any sort against my pay at this time, except the Social Security and the normal tax deductions.

Q. Do you know what the Social Security deduction is?

A. I believe that is close to 3 per cent now. There was a slight increase recently.

Q. Do you have any insurance deductions?

A. No, sir. I had an investment policy which I stopped that was being deducted each month—\$30.40. I stopped that because—

Q. I did not ask you why you stopped it. If you want to tell me it is all right.

A. It was a joint ownership. I figured there wasn't any sense in putting money in it that was going to be split up in the property settlement.

Q. The check that you receive from the Government is \$394.00 every two weeks?

A. Yes, sir.

Comm. Hrg. Q. That comes from which disbursing officer  
page 254 } —at the Base or where?

A. It comes from CINCLANT Fleet Disbursing Officer.

Q. In Norfolk?

A. Yes.

Q. What is his name? Do you know?

A. No, sir.

Q. But he is at CINCLANT?

A. CINCLANT Fleet.

The Commissioner: That is all I want.

By Mr. Nicholson:

Q. Your base pay is \$720.00 a month; is that right?

*Barbara Higgins.*

The Commissioner: Let me interrupt you. The witness has given to you the statement based on two weeks. Twice two weeks is not a month, because a month is four and a third weeks. Go ahead.

Mr. Nicholson: That is all.

\* \* \* \* \*

Comm. Hrg.  
page 257 }

\* \* \* \* \*

BARBARA HIGGINS,  
called as a witness, having been first duly sworn, testified as follows:

Examined by the Commissioner:

Q. How old are you?

A. 11.

Q. Who is your mama?

A. Mrs. Higgins.

Q. Who is your papa?

A. Mr. Higgins—Commander Higgins.

Q. How long have you been living with them?

A. All of my life.

Q. All of your life?

A. Yes.

Q. Where were you born, Barbara?

A. Guantanamo Bay, Cuba.

Q. Your father was in the Navy at that time?

A. Yes, sir.

Comm. Hrg. Q. You grew up with your half sister, didn't  
page 258 } you?

A. Yes, sir.

Q. What school do you go to?

A. Easton Elementary.

Q. What grade are you in?

A. Sixth.

Q. What church do you go to?

A. St. Peter's Episcopal Church. Sometimes we go to another church.

Q. I can't hear you.

A. Sometimes we don't go there but we go to another church. Most of the time we go there.

*Barbara Higgins.*

Q. Are you a member of any church?

A. No, sir.

Q. You never have joined a church?

A. No, sir.

Q. Are both of your parents of the same denomination or faith?

A. I don't think so.

Q. What is your mother's denomination?

A. I am not sure.

Q. I can't hear you.

A. I am not sure.

Comm. Hrg. Q. What about your father?

page 259 } A. I don't know that.

Q. Have you moved around the country with your mother and father because he was in the Navy?

A. Yes, sir.

Q. With whom are you living now?

A. My mother?

Q. How long have you been living with her?

A. About four months.

Q. With whom were you living before the four months?

A. My father.

Q. How long were you living with him?

A. I am not sure; about two months or so.

Q. How long have they been separated? Do you know that?

A. Since September I think.

Q. What?

A. Since September I think. I am not sure.

Q. September of what year?

A. '61.

Q. When they first separated which one did you either go to live with or stay with?

A. I went to live with my mother.

Q. Your mother?

Comm. Hrg. A. Yes.

page 260 } Q. And then how long did you live with her before you went to live with your father, approximately?

A. Maybe about a month and a half or two months. I am not sure.

Q. How did you happen to go to live with your father?

A. Well, my sister Lee decided that she was going, so I just went along with her.

Q. Where is your sister living now—your half sister?



*Barbara Higgins.*

A. With my father.

Q. With your father?

A. Yes, sir.

Q. Then did you come back to live with your mother again after that?

A. Yes, sir.

Q. How did you happen to do that? What made you do that?

A. I got uncomfortable. He was hard to live with, so I just decided to come back and live with my mother.

Q. Who was hard to live with?

A. My father.

Q. In what way?

Comm. Hrg. A. He would get grouchy.

page 261 } Q. What?

A. He would get grouchy. He would be mad most of the time. I guess that is about it.

Q. You came back to live with your mother?

A. Yes, sir.

Q. Then you lived with your mother for how long?

A. Four months I guess.

Q. Then did you go back to live with your father again?

A. No, sir.

Q. You still live with your mother now?

A. Yes, sir.

Q. Tell me this: Did your father restrict your liberty in such a way as to make you feel that you had more liberty or freedom of action by living with your mother? Do you know what I mean?

A. Could you say it again, please?

Q. Yes. I will approach it this way: How did your father treat you when you were living over there?

A. Pretty well, I guess. He got kind of mad and wouldn't speak. Then after awhile he was all right.

Q. How does your mother treat you?

A. Fine. She is happy.

Comm. Hrg. Q. Do you have an easier time living with  
page 262 } your mother or with your father?

A. With my mother.

Q. Do you have less discipline—do you know what “discipline” is?

A. Yes.

Q. —in living with your mother or with your father?

A. It is about the same, I guess. I guess it is a little bit less than when I was at my father's house.

*Barbara Higgins.*

Q. What did your father discipline you for?

A. Well, he just makes sure that I do everything right, and my mother does, too. Both are about the same.

Q. If you had a choice right now, if the big court over here would give you a choice as to which one you wanted to live with for an X number of years—you are 11 years old now—which would you select?

A. My mother.

Q. Why do you say that?

A. I love my father, but I think I love my mother more. I enjoy living with my mother more. It is easier.

Q. Suppose your half sister is still living  
Comm. Hrg. with your father, that means that you two would  
page 263 } be separated, wouldn't it?

A. Yes, sir.

Q. Would that influence you at all?

A. I don't think so.

Q. Tell me, did your father talk to you or did your mother talk to you, either one, in the last two or three weeks about where you ought to live in the future? Did anybody discuss this with you in the last two or three weeks?

A. My father did.

Q. Your father did?

A. Yes, sir.

Q. Did you bring up the subject or did he bring it up?

A. He brought it up.

Q. Apparently from what you say today he did not convince you. Is that right?

A. That is right.

Q. Where did he think you ought to live?

A. With him.

Q. But as of today you don't agree with him?

A. No, sir.

Q. What?

A. No, sir.

Comm. Hrg. Q. What is your answer to that?

page 264 } A. He has not convinced me or changed my  
mind.

Q. Did he convince you when he talked to you?

A. No, sir.

Q. Where does your mother live at the present time?

A. The name of the street?

Q. Yes.

A. She lives at 201 Byrn Brae Drive.

Q. Where does your father live at the present time?

*Barbara Higgins.*

A. 5801 Lathan Road.

Q. Where is your school?

A. It is near where my father lives.

Q. It is near your father's place?

A. Yes, sir.

Q. How are you going to get back and forth to school when you live with your mother?

A. She took me and would pick me up every time.

Q. What about the children of your approximate age in the neighborhood?

A. Well—

Q. Are your friends and acquaintances in the neighborhood where your father lives or in the neighborhood where your mother lives?

Comm. Hrg. page 265 } A. I have friends both places.

Q. Both places?

A. Yes, sir.

Q. Do you have any choice as to which place you would rather live?

A. Which section?

Q. Yes, which section.

A. No, sir.

Q. I want you to think real seriously about this, Barbara, because the court might be influenced by what you say. I am going to ask you once more for the record here: If the choice were left to you, with which of your parents would you prefer to live?

A. With my mother.

Q. Is there anything else that you want to tell me?

A. I don't know of anything.

Q. All right.

The Commissioner: That is all.

\* \* \* \* \*

Comm. Hrg.  
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\* \* \* \* \*

MARYANN MERRICK HIGGINS,  
being recalled in her own behalf, further testified as follows:

Examined by Mr. Nicholson:

Q. State your name.

A. Maryann Merrick Higgins.

Q. Where do you live, Mrs. Higgins?

A. I am presently living at 201 Byrn Brae Drive.

Q. Is that a residence or an apartment?

A. A residence.

Q. Describe the home there briefly as to how many rooms.

A. It is a seven-room house, fairly new. It was completed last fall.

Q. What business are you in, Mrs. Higgins?

A. Real estate and land development.

Q. How long have you been in that business?

A. Five years—over five years.

Q. Mrs. Higgins, there has been some testimony here that your husband opposed your being in that type of business because it took up so much of your time away from home, and your tendency was to neglect your children. State what your position is on that.

A. My children have never been neglected. I have had occasion to be away from home on business. After living with him, when I knew the children were cared for, I preferred to be away as much as possible from him.

Q. Mrs. Higgins, I warn you, please do not get emotional. Just try to calm yourself and testify the best you can. You are not contesting this divorce on the ground of desertion, are you?

A. No, sir.

Q. You are asking for the custody of your child Barbara?

A. Yes, sir.

Q. What is the status of Barbara? With whom is she living now?

A. She is with me from Sunday evening through Friday afternoon.

Q. Is that by consent or by order of court?

A. That is by order of court.

Q. It is a temporary order, is it not?

A. Yes, sir.

Comm. Hrg. Q. When did you and Mr. Higgins separate?  
page 268 } A. September of 1961.

Q. Did you leave the home?

*Maryann Merrick Higgins.*

A. Yes, sir.

Q. Did you take the children with you?

A. Yes.

Q. To where did you move?

A. I moved to a furnished residence in Admiralty Acres.

Q. How long did you stay there?

A. Until after the children went back with him, approximately six weeks.

Q. Just tell the commissioner briefly what the occasion was for your having Barbara back with you.

A. Barbara told me in December—

Mr. Cloud: I object, Your Honor, as to what Barbara told her.

By Mr. Nicholson:

Q. You can't testify, Mrs. Higgins, as to what she told you. Was there a motion made to the court to have her back with you?

A. Yes.

Q. I was your counsel then, was I not?

A. Yes.

Q. But I was not present then?

Comm. Hrg.

A. Yes.

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Q. An order was entered by Judge Page?

A. Yes.

Q. Mrs. Higgins, you are not asking for the custody of your daughter Lee who is how old?

A. Lee is 17 and a half.

Q. And she is your daughter by a former marriage?

A. Yes.

Q. And adopted by Mr. Higgins?

A. Yes.

Q. Why aren't you asking for her custody?

Mr. Cloud: May it please the court, for the record I object to the question. I think it is irrelevant. If she is not asking for her custody I see no bearing that it has on the present case.

The Commissioner: We have already been over that. It is in the record a half a dozen places.

Mr. Nicholson: What is in the record?

The Commissioner: The fact that you are not seeking the

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custody of the eighteen-year old.

Comm. Hrg. Mr. Nicholson: If Your Honor please, I  
page 270 } think it is very pertinent to show the reason  
why Mrs. Higgins is not asking for the custody  
of her daughter Lee. We contend that her father, Mr. Hig-  
gins, has poisoned this child's mind against the mother, tell-  
ing this child all sorts of stories about her mother, and has  
influenced her to the point where Mrs. Higgins, being realistic  
about it, feels that the child would not be happy with her  
because of these charges and these statements that Mr. Hig-  
gins has made.

The Commissioner: What is the purpose of that line of  
testimony insofar as the younger child is concerned?

Mr. Nicholson: The purpose is to show Mr. Higgins'  
trend of mind; that he is not a proper person to have the cus-  
tody of Lee as well as this other child.

The Commissioner: I get your point. Let me hear from  
the other side.

Mr. Cloud: Our only objection is that we feel it is ir-  
relevant. I don't strongly push it. If he feels as if he wants  
it in the record, then I assume he would put it in anyway  
with his exception.

The Commissioner: It might be illuminat-  
Comm. Hrg. ing to the court. Let's proceed.  
page 271 }

A. Well, Lee and I had always been very  
close. She had never been close to her adopted father. When  
I was ready to leave I took the children out of the house the  
evening before I was going to leave the house and told them  
what I found I had to do and asked them if they wanted to  
go with me. They did. Lee became very upset. Commander  
Higgins would call and would come over there several times  
a day. He would come to the house. I noticed a great deal  
of pressure, and even to some extent bribery being applied on  
the child. She became highly nervous, highly upset. Brain-  
washing is the only word I know for it.

On the other hand the child has indicated that she wants  
to live with him. A child that old, I would not want to force  
her to live with me against her wishes. I don't believe she  
would be happy. On the other hand, the child is very dis-  
turbed and very unhappy now. I don't think she should be  
with her father, either. It is a very unnatural situation, par-  
ticularly in view of the fact that he has always been—I would

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not say cruel to her, but he has never been kind to the child. As a matter of fact, I had to send her away to school for two and a half years, which we could not afford, because of his treatment of her. I feel that it was directly related to his treatment of her. The child could never do anything right. He was unkind to her, until suddenly after we had left he realized that because of our closeness the one way he could get his revenge against me was to pressure Lee into turning against me. I would not want to force her to live with me if she does not want to.

By Mr. Nicholson:

Q. Would you try to influence your daughter Barbara to live with you if she did not want to live with you?

A. I don't believe any child should be made to live with someone if they don't want to, if they are not happy with them.

Q. What sort of home did you maintain, Mrs. Higgins, when you and Commander Higgins lived together with the children?

A. I feel that I have always been a very good mother. I have been extremely interested in their education. I have always spent time to see to it that their education was furthered to their best advantage. I have always sewn for the children. I have tried my best to train them to grow up to be homemakers, themselves, in cooking and house-keeping. The older little girl is very competent in housekeeping, because I think it is quite a part of any young girl's training to know how to do things. I have done my tour at room-mothering and hauling Girl Scouts, and that sort of thing. In my work I am striving very hard to make a living so that their standard would not be lowered by their being separated from Commander Higgins.

Q. Does the child go to school regularly?

A. Yes.

Q. Who takes her to school?

A. I have been taking her since she has been living with me.

Q. Who picks her up in the afternoon?

A. I pick her up every afternoon. If for any reason I am detained I make arrangements to have her picked up, but that is very rare.

Q. Does she seem to be happy with you?

*Maryann Merrick Higgins.*

A. Yes, sir. She has indicated to me that she is, and that she does not want to move back with her father.

Q. Mrs. Higgins, there was a man here by the name of Lille who testified unblushingly that he had had sexual relations with you. Has he ever had sexual relations with you?

A. No, sir. Mr. Lille has vowed that he Comm. Hrg. would get vengeance from my having collected a page 274 } debt from him, as has Mrs. Lille. They vowed that they would get even with me.

Q. What debt was that?

A. Some money that I loaned Mr. Lille. He was seriously in debt about the time he came to work for me. I loaned him the money to pay his debts because he was troubled about it, with the idea that he was to repay it when he was successful in marketing a home that they owned. The home was marketed. I very foolishly did not have a deed of trust against it. The home was marketed and the money was spent otherwise. I collected it through an attorney. As I say, he vowed vengeance, and so did she.

Q. You have heard Mr. English testify here about the fact that you tried to take advantage of him in an automobile; that you got him drunk and tried to seduce him. Tell what happened on that occasion, Mrs. Higgins.

A. Mr. English knew that Commander Higgins had the duty one evening. Mrs. English and I were associated in land development and also in the real estate business. They had had some domestic troubles.

Mr. English called me and asked me if he could come over so that he could talk about his troubles. At that Comm. Hrg. time Mr. and Mrs. English and I were friendly. page 275 } Commander Higgins was not being friendly to anyone at that time.

Mr. English came over, brought a bottle of liquor and proceeded to consume a great deal of it. At one point—it may have been while sitting in his car—he made what I would call a pass at me and he was rebuffed.

Mr. English since was building a home for me, and he was dismissed from that job, and his association with Mr. Higgins renewed itself. As Mr. English said, they are in the same boat.

Q. Are you on friendly terms with him?

A. No, sir. I don't feel friendly at all.

Q. Are you on talking terms with him?

A. I tried to talk to Mr. English about some difficulty or fault that appeared in the construction of my house. He



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refused to talk to me about it. He refused a registered letter that I sent to him as notice to have the construction fault remedied.

Q. Mr. Higgins testified about a man named Bundy that was in your office. He, Mr. Higgins, said that by putting his ear up against an air conditioning unit on the outside he could hear, so he thought, things going on in there that were in relation to a sexual or romantic situation. Were

Comm. Hrg. you in the office with Mr. Bundy?

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A. Yes, and Mrs. English.

Q. Explain to the commissioner what that was.

A. Mr. Bundy is an intelligent real estate agent. He was employed by Mr. Sasser. Mrs. English and I had just established a new office in June of that year. There had been some discussion of Mr. Bundy coming to us on a loan basis, to work for us, more or less to spark plug our organization and show us how to do it so that we could get going.

I learned that Mr. Bundy had had a head injury during World War II and that he was supposed to check into the Veterans Hospital every six months for some type of treatment. Apparently it was very painful, and he had been putting it off. Mr. Sasser and his other colleagues had been urging him to go into the hospital and get it done.

On this one particular occasion he came over and was very despondent. He went to the office. I was at Mrs. English's home at the time. It was after the girls had gone back with their father and I was temporarily staying with her. I could not afford to maintain the furnished house that I had been renting.

He called from the office. He made a long-distance phone call to some Veterans Hospital that had his record. Comm. Hrg. ord. He made a call to the Kecoughtan Hospital, and they told him that he could not be admitted until the following morning. He called Mrs. English's residence. I don't recall whether I answered the phone or Mrs. English did, but he threatened suicide. We did not feel that we cared for that type of publicity, much less our concern for the man. So, Mrs. English called Mr. Wyatt who was a fellow agent of his in Portsmouth and asked him to call Mr. Sasser and to please come and get him.

We went to the office to ascertain whether the gentleman was all right, and also to try to have them take him to the hospital and turn him in. He argued that they would not admit him until 8 the next morning. At that time he had some

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of his medication with him. I don't know what it was. But at that time we got him to take it. He had been drinking and he was rather irrational. He had been lying on the couch in a back room or our office. I tried to get his shoes on at the time. I thought we could get him up and get him to the hospital. That must have been what the commander heard through the air conditioner. But, the man was not undressed.

Q. Did you finally get him up and get him to the hospital?

A. Yes. We took him to the hospital; admitted him to Kecoughtan.  
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Q. The next morning?

A. That is right.

Q. That is your explanation of that incident?

A. Yes.

Q. Mrs. Higgins, there has been some testimony here that you drank to excess, that you got drunk. What are your drinking habits and how much drinking do you do?

A. I would say very little. I enjoy occasionally having a drink socially with people. If I have had a particularly hard day I enjoy having a drink and relaxing before I have my dinner. The rest of it is certainly over-exaggerated.

Q. Did you entertain people in your home at parties when you and Mr. Higgins were living together?

A. Yes. His being in the Navy, we did quite a lot of entertaining. On one occasion it was testified about I had what they call in the Navy an "All Hands Party"—all office employees and their spouses. Commander Higgins was not at home, and that was very deliberate. Commander Higgins had been extremely rude to my friends and business associates to the point that it made them uncomfortable being around him. I would entertain real estate people when he was not at home out of deference to their comfort and my own, because he created great embarrassment for them.  
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Q. Did you attend conventions and meetings?

A. Yes, sir. Repeatedly during the early time of being in business I asked him to go with me. On two occasions he said that he would go, and I made reservations for him, and at the last minute he said he did not want to be Mrs. Higgins' husband, that he would not go.

Q. Mrs. Higgins, without asking you a lot of questions, tell the commissioner concerning the incident as to you and Mr. Beattie on the 30th of May, the day before the first hearing here.

*Maryann Merrick Higgins.*

A. That is a most preposterous thing. It was very obviously trumped up. The judge in South Norfolk—

Mr. Campbell: I object to that, Your Honor.

The Commissioner: I sustain your objection. I caution the witness that in replying to the questions of counsel merely state facts and do not draw conclusions or state opinions. That is not what Mr. Nicholson wants, I am sure.

A. As a fact the charge was dismissed in South Norfolk court.

The Commissioner: That was not the question, as I recall it.

Comm. Hrg.

page 280 } By Mr. Nicholson:

Q. You are here, Mrs. Higgins, now defending this charge. Regardless of what transpired in South Norfolk I want you to tell the commissioner just what transpired on this occasion. You are charged with adultery in the supplemental bill. Don't go into what happened in court in South Norfolk. Tell of your occasion in meeting Mr. Beattie and what happened.

A. As I testified this morning, Mr. Beattie came to our home. I asked that he come down and go over the list of witnesses that Commander Higgins had subpoenaed for the hearing the next day. Mr. Beattie has represented me in business matters. As a matter of fact, I am associated in business with him. He and his wife have represented Mr. Higgins and myself in some land acquisitions.

By the Commissioner:

Q. That was not the question asked you. I don't want to interrupt you, but I do want to get to the point.

A. I invited Mr. Beattie—

Mr. Nicholson: If Your Honor please, I want to make this statement. I think it is important for Mrs. Higgins to tell of her relationship with Mr. and Mrs. Beattie, because of the social contact and because of the conduct of

Comm. Hrg. Mrs. Higgins later.

page 281 } The Commissioner: You can put in that testimony if you want to, Mr. Nicholson, but I think you can do so by asking direct questions rather than

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letting her tell her story in her own way. She is not a lawyer and she does not know what is admissible and what is not. You do.

By Mr. Nicholson:

Q. Tell what happened on this occasion.

A. We were going to Virginia Beach for him to deliver some instruments to Mrs. English on a land matter. Our dinner was delayed. He was late in arriving as a matter of fact. It was between 9:00 and 9:15 I imagine when we were ready to leave the house. He decided that since it was late and he did not have a reservation at a motel he would go down and make a reservation, which he did.

He pulled up in front of the motel office. I was sitting in the front seat of the car. The light was on. There was certainly no one trying to do any sneaking around. He went in and got his room and visited with the manager for awhile. I remember that to my annoyance, because I was anxious to get to Virginia Beach and get back and get some sleep. He

went back to his car to take a suit out of the Comm. Hrg. car and put it in the room. Again I did not get  
page 282 } out of the car. His windshield was fogged up. There had been a mist or something.

So he stopped again directly in front of the office and went in to ask for a paper towel to wipe the windshield. The manager sent a colored boy out. He stood in there and visited with the manager, and then he came out. In the meantime a lot of time had been killed. As we headed for Virginia Beach we decided that it was very late. I knew Mrs. English was tired. I was very tired. Mr. Beattie had complained several times that he was exhausted. We decided not to drive to Virginia Beach because of the late hour. We were reluctant to discuss this whole fiasco in the home with Barbara there. I did not feel that it was any place to go over it and disturb her about it.

Q. You are speaking about "fiasco." You mean the hearing that was coming up?

A. The way this divorce has been handled.

Q. About coming up the next morning?

A. Yes. I did not want to alarm the child. Mr. Higgins had told me that he had my phones tapped and my office wired, and so forth. We did not care to discuss any business in the office. We went to Mr. Beattie's room to discuss it, and did that.

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Q. Just at that point let me interrupt you. Comm. Hrg. How were you dressed when you went into that page 283 } room?

A. I had on cream-colored shorts and a cream-colored shirt. It was a jersey.

Q. What sorts of shoes did you have on?

A. I had slides—house-slipper type.

Q. Go on.

A. In spite of their testimony, we sat with the light on and went over the list of witnesses.

The Commissioner: Mr. Nicholson, I think you should advise your client not to try to argue her own case. It adds that much more to the expense of the record.

By Mr. Nicholson:

Q. Mrs. Higgins, let me tell you at this point, do not comment on the testimony or argue the testimony of any other witness who has testified. Just tell what actually transpired on that occasion.

The Commissioner: If not, it will be necessary for you to examine her question by question.

Mr. Nicholson: I thought, Your Honor, that by her relating it, it would be quicker.

The Commissioner: If she can testify that way and leave out the argument and conclusions and opinions.

Comm. Hrg.

page 284 } By Mr. Nicholson:

Q. Just go on, Mrs. Higgins. At this time I think you last said that the lights were on.

A. Yes.

Q. Go on from there.

A. We went over the list of witnesses. Mr. Beattie also went over the instruments that he had brought down for Mrs. English so that I could assist her with them if he did not have the opportunity to. We discussed the laundromat business.

He complained again of being exhausted, and asked me to take his car and go on home and pick him up in the morning. He had been subpoenaed to come down here.

I wanted to wash my hair. I had planned to do it at Mrs. English's. The water at my house is not good. I wanted to wash my hair. I asked him if I could. He stated, as a mat-

*Maryann Merrick Higgins.*

ter of fact, that he did not give a damn what I did, but he wanted to go to bed. I went into the bathroom and was just about to wash my hair when the knock came on the door and the troopers descended.

Q. You were arrested then?

A. Yes, sir.

Q. You and Mr. Beattie?

Comm. Hrg. A. Yes, sir.

page 285 } Q. And charged with adultery and lewd co-habitation?

A. Yes, sir.

Q. You were bailed out, were you not?

A. Yes, sir.

Q. What did you do after you were bailed out?

A. I tried to find a civilian doctor who would give me a pelvic examination to prove that the whole thing was absolutely ridiculous. Not being able to get one I went over to the Naval Hospital for me to submit to an examination.

Q. At what time did you get there?

A. We got there sometime around 3:30.

Q. How long did you stay there?

A. Until 25 minutes of 5.

Q. Why was it necessary for you to stay there that long?

A. This man that we found out later was an intern who was on duty refused to examine me. He said he did not like to get involved in that sort of thing, and kept stalling and delaying. He finally said that he would call for another duty doctor. But, we waited and waited.

I was exhausted. Knowing that we were  
Comm. Hrg. coming up here the next morning I wanted to  
page 286 } get some sleep. Mr. Beattie was tired. Mr. and

Mrs. Lloyd, friends of Mr. and Mrs. Beattie  
from Portsmouth—

The Commissioner: Is all of this necessary, Mr. Nicholson?

Mr. Nicholson: If Your Honor please, this is a serious charge here. This woman is charged with adultery.

The Commissioner: I realize that. What I meant was, what was done afterwards.

Mr. Nicholson: We are trying, and we hope, to impress the commissioner with the fact that what she did afterwards would negative the idea that she might have had some relations with this man.

*Maryann Merrick Higgins.*

Mr. Cloud: For the record we say that it is self-serving.  
The Commissioner: I think it is repetitious, too.

Mr. Nicholson: I certainly do not want to irritate the commissioner.

The Commissioner: You go right ahead. You are not irritating the commissioner. He is not going to get irritated.

You go right ahead. I will have to pass on the Comm. Hrg. question of the cost of the record later on, be-  
page 287 } cause some of it is repetitious.

By Mr. Nicholson:

Q. Then you went home?

A. Yes.

Q. Did you have any illicit relations with Mr. Beattie that night?

A. No, sir.

Q. Or at any other time?

A. No. That is ridiculous.

Q. Your husband has charged you with having relations with him and with other men, hasn't he?

A. My husband has thought that anybody I ever associated with—

Mr. Cloud: Your Honor, I ask that she please be responsive.

The Commissioner: Mr. Nicholson is trying, Mr. Cloud, I am sure.

Mr. Nicholson: Your Honor, she is entitled to explain to the court the temperament and disposition of her husband.

The Commissioner: You are absolutely right. The only objection that was made, Mr. Nicholson, was that when you asked her one question she did not make her answer responsive.

Comm. Hrg.

page 288 } By Mr. Nicholson:

Q. Why did your husband charge you with these things if they are not true?

A. I think now his aim is to take the children away from me, to hurt me. He has sworn that he would get his revenge and that he would ruin me, and he knows that the most he could do to hurt me would be to deprive me of my children.

Q. Is your husband of a jealous disposition?

A. Insanely jealous. He always has been.

*Maryann Merrick Higgins.*

Q. There was some testimony here about your conduct in Genoa, Italy.

A. Yes.

Q. What happened there?

A. He testified that I stayed out all night, which is not true. When I awakened on the morning that they were speaking about, he and the girls had gone, I don't know where. I did go out of the hotel. But, I had been in the hotel. I had been in our room. I had been asleep. We had come back from a New Year's party. It was in the wee, small hours of the morning.

Q. Mrs. Higgins, during the time that you and Commander Higgins have been separated you have not received any support from him, have you?

Comm. Hrg. A. No, sir.

page 289 } Q. You have not asked for any, have you?

A. No, sir.

Q. You are not asking for any now, are you?

A. No.

The Commissioner: Are you speaking of alimony or support?

Mr. Nicholson: Support for the child.

The Commissioner: There is no order as to the support of the child?

Mr. Nicholson: No, sir.

By Mr. Nicholson:

Q. You have not asked for that, have you?

A. No.

Q. But you are asking for it in this proceeding, though?

A. Yes.

Q. If the court sees fit to grant you the custody of Barbara?

A. Yes.

Mr. Nicholson: I think that is all.

The Commissioner: For the benefit of all counsel the commissioner would like to know or have some testimony as to what amount of support the wife is seeking in  
Comm. Hrg. the event that the custody of the eleven-year old  
page 290 } child should be awarded to her by the court. I  
think that should be in the record.

Mr. Nicholson: Could we go on with the testimony and then I will discuss it with her?



*Maryann Merrick Higgins.*

The Commissioner: Yes, but it should be in the record.

Mr. Nicholson: We will put it in the record.

Mr. Cloud: I understand she is not prepared now to state how much?

Mr. Nicholson: Not at this minute, but I will put her back on.

The Commissioner: Gentlemen, before we get started on this, is there any considered opinion by counsel here that this hearing should stop today by 4 o'clock.

Mr. Nicholson: I think, if Your Honor please, that I have one more witness. I believe we can conclude it today unless they have some rebuttal that they want to bring her back. As far as I am concerned, I believe we can conclude it.

(Thereupon, a short recess was taken, after which the following occurred:)

By Mr. Nicholson:

Q. Mrs. Higgins, in the event the court sees Comm. Hrg. fit to grant you custody of the child Barbara page 291 } what amount do you feel would be a reasonable amount weekly for her support and maintenance?

A. I would say 75.00 a week.

Q. I will ask you this question: Outside of your business relationship with the Beatties, tell what your social relationship is with them.

A. They have been extremely kind and hospitable. At the time my daughter was invited to dance at St. Christopher's we were snowbound and the dance was called off—

Q. Don't go into detail.

A. I spent many week ends with them, particularly holidays, since Commander Higgins and I have been separated, and the girls have been with him on those holidays.

Q. Where do they live?

A. In Urbanna, Virginia.

Q. And they both practice law there?

A. Yes.

Q. Over the last year how many week ends would you say you have spent there, approximately?

A. Oh, I would say 15 probably; at least 15. I spent this past week end there.

*Maryann Merrick Higgins.*

Comm. Hrg.           Q. You do shopping for Mrs. Beattie?  
page 292 }       A. Yes.  
              Q. Where did you spend the last week end?  
              A. At the Beatties', sewing name tags on  
their son's camp clothes.

Mr. Nicholson: I am through.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Did you ask Mrs. Beattie to come down here to this hearing?

A. Mrs. Beattie is extremely busy.

Q. My question was—

A. No, I did not ask her to come down.

Q. You testified in the beginning that you do not believe any child should be forced to live with anyone if she does not want to. Isn't that correct? Wasn't that what you said?

A. I think the happiness of a child is paramount to be considered as long as it is compatible with her welfare.

Q. Do you mean that if the child wanted to stay with Commander Higgins that that would be perfectly all  
Comm. Hrg. right with you?

page 293 }       A. If I felt that she would really be happy  
              and that was what she wanted to do, but of  
course it would break my heart.

Q. It did not break your heart last year when you did not have her, did it?

A. It certainly did.

Q. You did not call the child once during about a month and a half?

A. That is not true. I did not call her for a period of, I would say, five or six days only. The children had been pressured and harassed by Commander Higgins. They were both disturbed. I felt that they should be allowed a little rest. Of course I was terribly disturbed when they were taken from my home without my knowledge. There has been the repeated statement that I did not contact them for a month or six weeks. That is not true.

Q. Barbara chose to go back with him, too?

*Maryann Merrick Higgins.*

A. Barbara went along with Lee.

Q. You consented to his having custody?

A. No, I did not consent.

Q. There was a consent order, wasn't there?

A. I don't know the legal aspects of it. But, at that time the children indicated that they wanted to be  
Comm. Hrg. with their father. I had no idea that this would  
page 294 } drag on this long. Their schools were there. I  
felt that if they wanted to be in their own neighborhood, in their own surroundings until this thing was wound up, terminated, if that was their desire that that was what it should be.

Q. But then your thoughts changed on that, didn't they?

A. My thoughts did not change. In December Barbara told me she could not stand it over there any longer, that she wanted to move back with me.

Q. In December?

A. In December.

Q. You are the one who reared Lee; isn't that correct?

A. That is right.

Q. How long have you and Commander Higgins been married?

A. 14 years.

Q. So you have been charged with her bringing-up?

A. That is right. The commander was at sea a great deal of the time in the last two years.

Q. Has he ever mistreated Lee?

A. I would say that he was never kind to Lee.  
Comm. Hrg. Q. What do you mean by that? He was strict  
page 295 } with her whereas you were not; isn't that correct?

A. That is not true. I am semi-strict with both of the children as far as insisting on good behavior, and so forth. He was I would say extremely unreasonable with Lee. The child could do nothing right in his sight.

Q. How about Barbara, has he been unkind to her?

A. No. He has always been extremely kind to Barbara, to the point that he made Lee very uncomfortable in that she would come to me in tears. that "Barbara can't do anything wrong and I can't do anything right." She was made to feel that she was unwanted by him, unliked by him.

Q. You heard Lee testify about your going to Virginia Beach with Mrs. English, with wet bathing suits, after you told them that you would take them to the beach and didn't,

*Maryann Merrick Higgins.*

and came home with a whiskey bottle in the car. Do you recall that?

A. I have no recollection of that.

Q. Did you ever do that?

A. I have no recollection of it. I have always taken my children to the pool. I swim with them. I have always seen to it that they had entertainment and enjoyment.

Comm. Hrg. ment.

page 296 } Q. You also were with Tommy Jordan on the couch when he was, to use Lee's words, passed out when she was present and could see. Is that correct?

A. That I have absolutely no recollection of. There is some fantasy there that I don't understand.

Q. Could that be that you were so drunk that you don't remember?

A. No, sir.

Q. That has happened on occasions, hasn't it?

A. No, sir.

Q. You never had an affair with Tommy Jordan at all?

A. No.

Q. Or with any other man since you have been married?

A. No, sir. Commander Higgins has thought that I have had affairs with every man I have ever been associated with or ever met, but that is not true.

Q. Have you ever kissed or hugged Tommy Jordan?

A. Not to my knowledge, no.

Q. Why do you say, "Not to my knowledge"?

A. Tommy Jordan has been an extremely good friend and an associate in the real estate business. He Comm. Hrg. has been very helpful. He has been in the business longer than I have. When I came into the business very green he was helpful to me. I would consider him a very close friend.

Q. Does he have anything against you?

A. Not to my knowledge. I consider him a very good friend.

Q. You don't like Lee any more, do you?

A. That is not true. I love her very much, and I am deeply concerned about her welfare and her present attitude. I will state that I think the child is very disturbed, very upset.

Q. You have not disturbed her any?

A. I have tried not to pressure the child. I have asked her if she was happy where she was, and if that was what she

*Maryann Merrick Higgins.*

wanted to do, and she has said, "Yes," and with that I left it alone.

She got into some trouble recently and had to go to Juvenile Court. She needed a parent with her. She called me to go. I think this is news to her father. I asked her at that time why she did not ask her father to go with her, and she said because he would not understand and he would get mad like he does.

As a matter of fact, last Thursday night the child graduated from high school. When I saw her immediately Comm. Hrg. after commencement she was in tears because page 298 } he had thrown a scene and upset her terribly just before commencement.

Q. What was the trouble in Juvenile Court?

A. She had a traffic ticket.

Q. For speeding?

A. No.

Q. What was it?

A. A stop sign; a stop light.

Q. She did not care to disclose that to her father?

A. That is right. He had just given her an automobile, and she I think thought he might take it away from her if he knew about it. She said at the time that he never had been understanding, and she did not want to tell him about it because he would get terribly angry.

Q. After this hearing on the 30th didn't you go out in the hall and say to Lee, "I did not know I raised a stool pigeon?"

A. No, I did not.

Q. You deny that?

A. I did not say that.

Q. What did you say to her?

Mr. Nicholson: Now, Your Honor, he was talking about cluttering up the record.

Comm. Hrg. Mr. Campbell: We certainly—

page 299 } Mr. Nicholson: Let me object. I submit it is irrelevant as to what she said to Lee in the hall or what Lee said to her in the hall.

The Commissioner: Unless he lays a foundation that he is going to attempt to prove it.

Mr. Nicholson: Suppose she did say that she was a stool pigeon?

Mr. Campbell: This is as to her fitness as a mother.

The Commissioner: Go ahead.

*Maryann Merrick Higgins.*

By Mr. Campbell:

Q. You deny that you said that?

A. That is right.

Q. Or anything like that?

A. I did not say that.

Q. I intend to contradict you. Do you deny saying anything like that?

A. I did not call her a stool pigeon.

Q. What did you say to her?

A. As a matter of fact, I did not speak to Lee.

Q. Did you say it to someone else so that Lee could overhear it?

Comm. Hrg. Mr. Nicholson: If Your Honor please, I object to what she said to someone else. Suppose she did say it to someone else, what bearing does it have on this hearing?

The Commissioner: It has a bearing, Mr. Nicholson, if the purpose of the question is to lay a foundation for the purpose of contradiction. It has not been so stated, so I don't know.

Mr. Campbell: That is one of the purposes, but it is also to show whether or not she is a fit mother, her attitude towards her children.

The Commissioner: I am going to let you go ahead. I overrule your objection and note your exception.

By Mr. Campbell:

Q. Did you say that to anyone?

A. No, I did not say that to anyone.

Q. Did you say anything like that to anyone?

A. Like that?

Q. Mrs. Higgins, you are being technical with me. You know what you said when you went out into the hall. What did you say with reference to Lee?

A. I made a comment that I suppose I very definitely regret. I think—

By the Commissioner:

Comm. Hrg. Q. What?

page 301 } A. I made a comment to another party that was unforgiveable for me to have said.

By Mr. Campbell:

Q. What did you say?

A. I said, "It looks like I raised a canary," or something

*Maryann Merrick Higgins.*

to that effect. She sang like a canary. She was very well coached.

Q. When you all got ready to go out West were you so drunk that you could not get up to start the trip?

A. No.

Q. What was wrong with you?

A. Commander Higgins had gone to the ship to check out on leave. He was supposed to have checked out at midnight or 12:01. I waited and waited and waited and he did not come home. I called the ship one time to find out how long it would be. He did not know. I had done everything but pack the picnic hamper and the things that were to be done the last minute. Finally I gave up and went to bed because I did not know how long it would be before he came home.

Q. Then did you have trouble getting up in the morning and you did not finally arouse yourself until about 11 o'clock?

A. That is not true. If I go to sleep and Comm. Hrg. sleep soundly and someone awakens me an hour  
page 302 } or hour and a half later, if I am tired and have not had my sleep fulfilled I am very drowsy. But, I was not so drunk that I could not get up, and that I came to at 11 o'clock is not true. It is exaggerated as everything else is that the commander has said.

Q. Do you recall that the commander was not the one who testified to that, but it was Lee?

A. She has been well coached.

Q. By whom?

A. By the commander and his counsel, I presume.

Q. You are presuming a lot, aren't you, Mrs. Higgins?

A. (No answer.)

Q. Getting back to Mr. Beattie, how long have you been so closely associated with him?

A. Mr. and Mrs. Beattie—

Q. I asked you about Mr. Beattie.

A. I don't think there is any separation. Mr. Beattie has represented me since, I would say, the fall of '59. He has made several collections for me. I would say he has probably drawn up into the hundreds of deeds for us. He represents the office.

Q. He has slept with you how many times?

A. He has not slept with me.

Comm. Hrg. Mr. Nicholson: If Your Honor please, I ob-  
page 303 } ject to his making a remark like that: How many times he has slept with her?

*Maryann Merrick Higgins.*

The Commissioner: There is no foundation, whatever, for that.

Mr. Nicholson: We are not trying a criminal hearing before a jury.

The Commissioner: I sustain your objection. I do not think there was any foundation for that remark.

By Mr. Campbell:

Q. Has Mr. Beattie had an apartment here in Norfolk?

A. I rented an apartment for the Beatties. They were handling quite a few things here. I rented an apartment for them at their request.

Q. Mrs. Beattie was in the hospital from time to time when they were here?

A. Mrs. Beattie was in the hospital in January of '61. She broke her ankle.

Q. And Mr. Beattie stayed here in the apartment with you; is that correct?

A. No, that is not true. The apartment was not even rented at that time.

Q. How many times have you stayed at night Comm. Hrg. in a motel with him?

page 304 } A. The one night that Mr. and Mrs. English and Mr. Beattie and I had been to a real estate banquet for the installation of officers. At that time Commander Higgins and I were having a great deal of trouble, and I had asked him to leave repeatedly which he would not do. That whole holiday time had been an absolute nightmare. Being under the same roof with him was extremely distasteful.

We had gone to this banquet, dropped Mr. Beattie off at his motel, and Mr. English was in the process of taking me home and I spoke up about how much I dreaded even having to go near Commander Higgins, and at his suggestion I believe he took me back to the motel.

Mr. Beattie very kindly listened to me bemoaning my troubles, and so forth. Mr. and Mrs. English came back. I was in evening clothes. Mr. and Mrs. English came early in the morning. At that time Mr. Beattie was trying to help them with some of their domestic problems. They brought me some slacks and a sweater that was much more appropriate for an early morning breakfast than what I had *one*. I was dressed when they came back, as I had been all through the evening and night.

Q. But you did stay there all night?



*Maryann Merrick Higgins.*

Comm. Hrg.     A. I was in the room with him, yes.  
page 305 }     Q. Alone with Mr. Beattie?  
              A. Yes.

              Q. Now, as to the apartment you rented for the Beatties, why did you rent it in Commander Higgins' name?

              A. I did not rent it in Commander Higgins' name. The lease was in John Beattie's name.

              Q. Mrs. Higgins, think very carefully about that.

              A. The apartment was in Mr. Beattie's name. You can check that with Kutz and Fentress.

              Q. In whose name was the telephone?

              A. The telephone service and the electric service were in Commander Higgins' name.

              Q. Why?

              A. I have done that frequently. You avoid the situation of having to go down and make an additional deposit, and so forth.

              Q. Why did you put it in his name as a lieutenant when he was a commander?

              A. I did not put it in his name as a lieutenant. The Telephone Company had his record as a lieutenant from the time we came here. The phone was not in Commander Higgins' name. The billing, the credit reference, was in Commander Higgins' name.

              Q. He got the bills?

Comm. Hrg.     A. No, he did not get the bills. I believe they  
page 306 }     were sent to my office.

              Q. You did not tell him anything about it?

              A. No. I was not communicating much of anything with Commander Higgins at that time nor since.

              Q. Up until the time you started in the real estate business was the commander a good provider?

              A. A good provider?

              Q. Yes.

              A. Yes. We had a very comfortable home. Financially, yes; I would not say he was much of a father or husband. He informed us that the Navy came first, and if he had any time left over for us that was fine.

              Q. Mrs. Higgins, approximately two weeks ago on Sunday you had occasion to return his brief case to his home. Is that correct?

*Maryann Merrick Higgins.*

Mr. Nicholson: If Your Honor please, taking a brief case and returning it has nothing in the world to do with this hearing.

The Commissioner: I believe you have her at the present time on cross examination as a rebuttal witness, don't you?

Mr. Campbell: Yes, sir.

The Commissioner: If you go outside of the Comm. Hrg. testimony which has been brought out by her page 307 } counsel you are making her your own witness, aren't you?

Mr. Campbell: Yes, sir.

Mr. Cloud: Doesn't he make her an adverse witness?

Mr. Campbell: She was already called by me as an adverse witness.

The Commissioner: She was called before, and then after that released.

Mr. Cloud: Wouldn't the rules of evidence be that where you cross examine a party to the suit they never become your witness? That would be consistent with the rules of evidence where it is a party to the action.

The Commissioner: I will have to check the record. I don't see where it is material. I am trying to find out what the materiality is of the question.

Mr. Cloud: We intend to establish that.

The Commissioner: I do not want to cut you folks off at all, because I am always liberal to the people who are paying the bill. You represent the husband who is paying the bill for this record.

Mr. Campbell: Let me say this, Mr. Comm. Hrg. missioner: I do not know by what standards page 308 } the Commissioner will decide the question of custody of the child, but the unfitness of the mother is what I have in mind, and to show whether or not she steals, lies, drinks and commits adultery, I believe all of that goes to that question. That is what it is directed at and nothing further.

The Commissioner: That is why you are bringing it out?

Mr. Campbell: Yes, sir.

The Commissioner: I will let you go ahead.

Mr. Nicholson: If Your Honor please, is he bringing out the fact that she took a brief case belonging to Commander Higgins in order to show that she is a thief?

*Maryann Merrick Higgins.*

The Commissioner: Wait a minute, Mr. Nicholson. He is endeavoring to bring it out. She is the witness. I don't know what her answer will be.

Mr. Nicholson: If Your Honor please, I am going to object to the question.

The Commissioner: I am going to overrule your objection and will note your exception. I will be liberal with them because they are paying for the record.

Comm. Hrg.

page 309 } By Mr. Campbell:

Q. Mrs. Higgins, did you return his brief case to his home?

A. Yes, sir. He has not returned my files that he has taken.

Q. What was my question?

Mr. Nicholson: Your Honor, she has a right to explain it.

The Commissioner: Certainly she has a right to explain it. I could not even hear the answer.

By Mr. Campbell:

Q. Was the answer yes, sir, that you had it and returned it?

A. Yes.

Q. Where did you get it?

A. In our residence on Lathan Road.

Q. What do you mean by "our residence"? I thought you testified that you lived on Byrn Brae Drive, or something. Where is your residence?

A. I am currently residing on Byrn Brae Drive.

Q. Two weeks ago were you?

A. Yes.

Q. Have you constantly since this hearing  
Comm. Hrg. started?

page 310 } A. Yes.

Q. So you went to Commander Higgins' residence and got his brief case. Is that correct?

A. Does ownership constitute—

Q. Would you answer my question?

*Maryann Merrick Higgins.*

By the Commissioner:

Q. Just state facts.

A. Yes, I went to the place that Commander Higgins is living.

By Mr. Campbell:

Q. How did you get in?

A. Through the front door which was unlocked.

Q. You did not touch the screen window?

A. No.

Q. You took his brief case with his personal papers in it?

A. That is right.

Q. You also took his income tax return?

A. It was in the brief case, and it was in the brief case when his brief case was returned.

Q. When it was returned there was missing a little yellow notebook?

A. Yes.

Q. You have that?

A. Yes, I do.

Comm. Hrg. Q. And that is his; is that correct?

page 311 } A. Yes; just as the files he has are mine.

Q. Is this amusing to you, Mrs. Higgins?

A. No, sir.

Q. When the police questioned you isn't it true that you denied having that brief case?

A. I did not. I explained to the police that the man was still my husband and that the residence was still jointly owned by me, and that I did not break in there. They apologized profusely for having disturbed me.

Q. You deny having talked to Detective Sanders concerning the brief case?

A. He said that he had a call from Commander Higgins saying that his home had been broken into and his clothing, money and papers stolen. I don't know who the officer was. I explained to him that there were divorce proceedings going on and that no decree had been entered, and that the residence was still owned jointly by both of us, and that I had taken clothes over for my daughter who was spending the week end with me; that I had not stolen any clothes or money.

Q. Did you deny taking his brief case?

*Maryann Merrick Higgins.*

A. No, I didn't. I wasn't asked whether I had taken his brief case. I did not deny it. I at no time denied it.

Q. What other papers did you remove from his brief case and keep?

Comm. Hrg.

page 312 } Mr. Nicholson: I object to that, if Your Honor please.

The Commissioner: She has not testified that she removed any.

Mr. Campbell: Yes, sir. She said that she took a yellow book.

By the Commissioner:

Q. What papers then other than the yellow book?

The Commissioner: Is that your question?

Mr. Campbell: Yes, sir.

A. There were two small notebooks, with Commander Higgins' snooping record for the last year in it, and a deed of trust and some correspondence on a note. A copy of a letter addressed to Mr. and Mrs. Joe English from Kellam & Kellam regarding Ballylynn Shores, our land development, was in there. There were some more notes pertaining to when he bought a tape recorder, and different investigators that he had gotten prices from, and different nights that he sat at the end of the street. I don't recall any other papers being removed.

By Mr. Campbell:

Q. I intend to contradict you on the matter that you say did not deny taking his brief case to the police.

Comm. Hrg. A. I did not deny having it. I went to the  
page 313 } phone and called Commander Higgins and told  
him that I wished he would stop playing games,  
that I wanted to get some sleep. Nothing more was said.

Q. You asked him to stop playing games, and you were the one who took his brief case. Is that correct?

Mr. Nicholson: Your Honor—

The Commissioner: That is argument. I sustain the objection. I do not want counsel to argue with the witness. Is there anything further, Mr. Campbell?

Mr. Campbell: Yes, sir.

*Maryann Merrick Higgins.*

By Mr. Campbell:

Q. At the time you took this weren't you under an injunction order, which is in the record, not to remove any personal property from that residence on Lathan Road?

A. Yes, I imagine so.

Q. You imagine so? Weren't you in court when you were told that?

A. Yes. I did not think at the time. Just as Commander Higgins is under the same order, I understand—

Q. Don't tell me what you understand.

Mr. Nicholson: You let her answer.

The Commissioner: One minute, Gentle-Comm. Hrg. men. There is no occasion for you to raise page 314 } your voice. There is no reason for both lawyers to talk at the same time. Mr. Phlegar cannot take it. If you want to correct the other lawyer, the way to do it is to make your objection to the commissioner. Let's see if we can conduct this in an orderly fashion. Otherwise I will have to go formal. I don't want to do it. Let's proceed, Mr. Campbell.

By Mr. Campbell:

Q. I just have one more question. Is it true, Mrs. Higgins, that the fact you violated the order and knew it, the fact that you took his property, amusing to you?

A. It is not amusing. I was not thinking of the order at the time I removed the brief case. The brief case itself has been amusing to me. He has kept it in his possession night and day for month. I was curious to see what was so valuable.

Mr. Campbell: That is all.

The Commissioner: Is there anything further, Mr. Campbell?

Mr. Campbell: No, sir.

Mr. Nicholson: That is all.

The Commissioner: May I ask counsel how many more witnesses you have?

Comm. Hrg. Mr. Nicholson: I have one more. I don't page 315 } know about their rebuttal. I can conclude I think today.

The Commissioner: I would like to stop at 4 o'clock. Mr. Phlegar would, too.

Mr. Nicholson: I don't think I can get through with my witness by 4 o'clock.

The Commissioner: Shall we fix another date or do you want to run until 4 o'clock?

Mr. Cloud: We might as well fix it. We have two witnesses that we will want now. We were not going to call them if we were going to conclude it today. I can get Sergeant Sanders.

The Commissioner: You have not even called him yet?

Mr. Cloud: No. Mr. Commissioner, at the last hearing we discussed about the commander's duty status, as to how long he would be here. I have shown Mr. Nicholson this letter and he has said that he has no objection to my putting it in the record.

The Commissioner: Are you offering it as an exhibit?

Mr. Cloud: Yes, sir.

The Commissioner: On behalf of the husband? Comm. Hrg. band?

page 316 } Mr. Cloud: Yes, sir.

The Commissioner: Mr. Cloud has offered a letter from the Navy dated June 15, 1962. Of course it would not be admissible unless it is stipulated between counsel.

Mr. Nicholson: It is all right. Let it go in.

The Commissioner: You have no objection?

Mr. Nicholson: No. I do not want you to have to bring the man all the way over here.

The Commissioner: Let's get the record clear. Do you have any objection to the introduction of the letter, and to be marked as an exhibit?

Mr. Nicholson: No, sir.

The Commissioner: It will be marked 'Respondent's Exhibit No. 1.'

(Received and marked.)

\* \* \* \* \*

Comm. Hrg.  
page 317 }

\* \* \* \* \*

ROY TAYLOR HIGGINS,  
being recalled, further testified as follows:

Examined by Mr. Nicholson:

Q. Mr. Higgins, when you testified before in relation to your pay there was some confusion—

Mr. Campbell: Excuse me, Mr. Nicholson. Commander Higgins has prepared a breakdown of his pay.

(Papers were handed to the commissioner and to Mr. Nicholson by Mr. Campbell.)

The Commissioner: I don't understand the second item on here under the head of "Deductions." The title of the column is "Effective 20th of July, '62," over "20 years." Then you have "Income tax—\$932.00."

By the Commissioner:

Q. Is that on a yearly basis or what?

A. That is a mistake. The "20" should be over here.

Q. Let's correct on this and also his copy there.

Comm. Hrg.

page 318 } By Mr. Nicholson:

Q. That is \$93.20 a month, isn't it?

A. That is right.

The Commissioner: Are you offering this?

Mr. Nicholson: We will use it just for information.

Mr. Campbell: Our side will offer it to the commissioner.

The Commissioner: Do you want to examine him on it first?

Mr. Nicholson: I think that would be best.

By Mr. Nicholson:

Q. \$814.18 a month, that is your take-home pay?

A. That is what it will be for the next year.

Q. \$814.18?

A. Yes, sir. I would like to make a point here. This \$814.18 will be increased by \$22.50 for the remainder of the year.

Q. You say it will be increased?

A. That is correct; after July.



*Roy Taylor Higgins.*

Q. Twenty-two what?

A. \$22.50.

Comm. Hrg. Q. For all practical purposes it will be  
page 319 } \$836.68. Is that right?

A. On January 1st.

By the Commissioner:

Q. January 1st of what year?

A. Next year, 1963. On January 1, 1963, it will start.

The Commissioner: Mr. Nicholson, for the record now, as long as there is no dispute about this breakdown, suppose you put it in evidence or have Mr. Campbell put it in evidence so that I will have a copy of it.

Mr. Nicholson: Suppose you do that, Mr. Campbell.

Mr. Campbell: Do we have any exhibit marked yet?

The Commissioner: I don't have any notation of one.

Mr. Campbell: Suppose we call this "Exhibit A."

The Commissioner: It will be "D-1."

By Mr. Campbell:

Q. Commander Higgins, is this a correct break-down of your pay, marked "Exhibit D-1"?

A. It is.

Mr. Campbell: I offer it as an exhibit.

Comm. Hrg.

page 320 } By Mr. Nicholson:

Q. Isn't there going to be an increase in the housing allowance?

A. There will be one in January 1963.

Q. How much will that be?

A. I don't know exactly. It has not been approved.

Mr. Nicholson: Your Honor, I think you can make a little note of this, that there will be an increase in the housing allowance.

A. It is a possibility. It is not law.

Mr. Campbell: I object to even considering that, because as I understand Congress has not passed the law.

*John S. Beattie.*

By Mr. Nicholson:

Q. It has not?

A. No, sir.

Mr. Nicholson: We will let it stand as it is.

The Commissioner: Let's proceed.

Mr. Nicholson: That is all of Mr. Higgins.

Comm. Hrg.

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JOHN S. BEATTIE,

called as a witness on behalf of Maryann Merrick Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Nicholson:

Q. Mr. Beattie, what is your profession?

A. I am an attorney.

Q. Where do you practice?

A. Urbanna, Virginia.

Q. With whom do you practice?

A. My wife.

Q. What is the name of your firm?

A. Beattie & Beattie.

Q. How long have you been practicing?

A. 11 years.

Q. Mr. Beattie, how long have you known Mrs. Maryann Merrick Higgins, the complainant?

A. Two and a half years.

Q. Under what conditions? What has been your relationship with Mrs. Higgins as far as any business transactions?

A. Well, I met Mrs. Higgins through a real estate transaction. Since that time my firm has represented her in numerous matters.

Q. Would you or would you not term your Comm. Hrg. firm as general counsel for Mrs. Higgins?

page 322 }

A. Without question, yes, sir.

Q. What has been the social relationship between you and Mrs. Beattie and Mrs. Higgins?

A. Well, I have visited Mrs. Higgins in her home, as has my wife. Mrs. Higgins has visited in our home. She has spent week ends there on numerous occasions. As a matter of fact, my wife and I were guests of Mrs. Higgins just three nights ago, or two nights ago. Mrs. Higgins, her mother, her chil-

*John S. Beattie.*

dren, her husband and friends have all visited in my house.

Q. There has been a right close relationship between the two families?

A. Yes, sir.

Q. Mr. Beattie, in a supplemental bill that was filed in this divorce matter it is alleged that on or about the 31st of May—

The Commissioner: What year?

Mr. Nicholson: 1962.

By Mr. Nicholson:

Q. —that Mrs. Higgins committed adultery with you in South Norfolk. Will you tell the commissioner the whole circumstances surrounding this charge or allegation?

A. On this particular evening I came to Norfolk. I had some material for Mrs. Higgins. I also had Comm. Hrg. some documents that my office had prepared for page 323 } for a friend of hers who lived at Virginia Beach I arrived in Norfolk I believe about 7 o'clock.

Q. Let me interrupt you at that point. You were also going to be a witness at a hearing before Mr. Sands the next day, were you not?

A. That is true, yes, sir.

Q. Go on.

A. I had been subpoenaed.

Q. All right, sir.

A. I had a matter to attend to immediately. I did that, and called Mrs. Higgins. I went by her house and was asked by her to have dinner with them. I was tired. I recall this: on several occasions I suggested to Mrs. Higgins that we leave—that is, plan to go to the beach. It was my understanding at the time that there was something she wanted to discuss with this party at the beach. I had two instruments that my office had prepared for this party. I told Mrs. Higgins on several occasions that I was very tired and that we should leave as early as possible.

We left her house I believe in the neighborhood of 9 o'clock. When we reached Military Highway I said, "I have made no reservations. Possibly I should run down and do that first."

As another reason I had a suit that I had Comm. Hrg. crumpled in a bag and not packed too carefully page 324 } and I had planned to wear it the following morning and wanted to hang it up.

I went down to this motel—Mrs. Higgins was sitting in the

*John S. Beattie.*

car—I drove into the front of the motel, went in and made reservations.

Q. At this point, Mr. Beattie, under what name did you register?

A. "John S. Beattie."

Q. Did you put "and wife"?

A. No, sir.

Q. Just "John S. Beattie"?

A. "John S. Beattie."

Q. All right, sir.

A. A colored attendant opened the room. I was directed to the room, and drove around to the room, took my bag out, my suit out—Mrs. Higgins sat in the car—closed the door and started off for the beach.

It had been raining and my windshield beyond the area covered by the wipers was quite dirty. It was not raining hard enough to wipe it off. There was practically a coat of mud on it.

I returned to the front of the motel and asked if they had a paper towel or something that I might use to wipe my windshield. The manager directed a colored Comm. Hrg. attendant to go out and wipe the windshield page 325 } for me. I stood there at the desk and chatted with him for five minutes—I don't know; several minutes—while this was being accomplished.

I left. I got in the car and started for Virginia Beach. After having gone a few miles I turned to Mrs. Higgins—whether she said something to me or I said something to her, I do not recall—but the sum and substance of it was this: that she was laboring under the impression that I had to see this party that night, and I was laboring under the impression that the party wanted to see me, and further that Mrs. Higgins wished to see her. Mrs. Higgins had previously said there were several things she wanted to discuss with me.

At that point I said, "If you are going to see her in the morning I see no point in our driving down there tonight." She agreed with me.

I returned to the motel. I told Mrs. Higgins, "I will go back and go over whatever you want to go over with me and that will be it. You may take my car and go on home." I do not recall what I had done, I mean that week end, but I was exhausted.

I returned to the hotel—to the motel. Mrs. Higgins went in with me. We sat there I would say approximately 2 hours.

*John S. Beattie.*

There was a bed that ran perpendicular to the Comm. Hrg. wall as you enter the room. There was a chair  
page 326 } on the left of it, a table, and a light on that table. I had my papers with me. I sat in the chair. Mrs. Higgins sat on the bed. At one point she pulled the pillows off the bed and put them up behind her. I had a fraction of a bottle of gin. I believe while I was there I had two drinks during the entire evening. Finally, as I say, we accomplished—

Q. At this point what was the subject of discussion mainly for the time that you were in there and she wanted to talk to you?

A. There were several things, Mr. Nicholson, but what appeared to disturb Mrs. Higgins more than anything else was the fact that I believe 22 or 23 witnesses had been subpoenaed in this matter, and the majority of them, if not all of them, knew practically nothing about Mrs. Higgins. She was baffled as to why they would be subpoenaed; not only baffled but also disturbed about it. I believe in many instances the witnesses had in fact called her, though not subpoenaed by her or in her behalf. I would say that was the main thing. There were other matters.

Q. Continue.

A. I went over the list with Mrs. Higgins. She gave me the facts in each case. I tried to assure her,  
Comm. Hrg. telling her just to forget it. I also told her that  
page 327 } I was exhausted and that I had to go to bed. I actually turned the light off, and I think Mrs. Higgins went into the bathroom which was forward and to the right of the room. While she was in there, to the right of the bed was an alcove serving as a closet, and I stepped in there and took my clothes off and hung them up and got in bed.

Mr. Higgins came out of the bathroom and said something to me. I have forgotten just what it was. But, I do recall being irritated with her, solely because I was tired and wanted to go to bed. Whether she asked a question that I felt had been answered I cannot say.

She then said something about washing her hair. I told her, I believe I said, "I don't give a damn what you do, but just let me go to sleep."

That is about all I remember. There was a knock on the door. I dozed. Whether it was two minutes, five minutes or fifteen minutes, I cannot say. I do not recall looking at my watch more than once during the entire evening.

*John S. Beattie.*

There was a knock on the door. I answered the door. Before answering the door I asked who it was, I believe. I was told that it was the police. I asked if they Comm. Hrg. had a search warrant. They said, "No," but page 328 } they said, "We have a warrant for your arrest."

I opened the door. Mrs. Higgins was in the bathroom. These officers came in. As I recall I saw two officers and I believe three other persons. The two officers came in the room and a person that I have later identified as Mr. Schafer came into the room. Later I believe Commander Higgins came into the room. All of this happened within a matter of several minutes.

Mrs. Higgins, as I say, was in the bathroom. I turned to one of the officers—I believe it was a sergeant—and told him that if he would just give me a few seconds I would speak to her and direct her to accompany him. She was, without saying, infuriated. I did that, and within a matter of a few minutes we accompanied the officers to the South Norfolk Police Station.

Q. At this point, Mr. Beattie, when you came to the door how were you attired? What did you have on?

A. What did I have on?

Q. Yes.

A. I had on a pair of shorts.

Q. You were told that they were officers? They told you when they knocked that they were officers and you opened the door, didn't you?

Comm. Hrg. A. Yes.

page 329 } Q. You did not attempt to put your clothes on or anything?

A. No.

Q. Go on from there.

A. At the South Norfolk Police Station I called a friend of mine who lives in Portsmouth, believing that he lived near the police station or certainly in that area. I apologized for calling—this was at 1 o'clock, I assume—I apologized for calling him, and asked him if he would come down and help me.

Q. Who was that?

A. Edward Lloyd.

Q. What is his business?

A. He is an attorney. I went to school with him. That was where I met him.

*John S. Beattie.*

At the end of some time he and his wife appeared. It developed that neither one of them owned real property and consequently were unable to go our bonds. There was a professional bondsman sitting there, so rather than call anyone at that hour of the morning I turned to him and made arrangements for our bonds.

Mr. Cloud: May it please the court, I object at this point as being immaterial.

The Commissioner: The expense of the rec-Comm. Hrg. ord has to be considered. What occurred from page 330 } that point on I do not think is material.

Mr. Nicholson: Your Honor, I think it is material.

The Commissioner: Tell me why.

Mr. Nicholson: You mean about the bondsman?

The Commissioner: Tell me why it is material to the merits of this case.

Mr. Nicholson: Later?

The Commissioner: Yes.

Mr. Nicholson: There has been some testimony by Mrs. Higgins that after they were bailed she went to the Portsmouth Naval Hospital for an examination, as she wanted to have some evidence of the fact that she had not just recently had relations with Mr. Beattie.

The Commissioner: The objection was made with reference to the testimony concerning the bondsman.

Mr. Nicholson: I submit that probably is irrelevant.

Mr. Campbell: Your Honor, we object to the rest of what he just said as being irrelevant, too.

The Commissioner: We will have to wait until the questions are asked, and then make your objection in or-Comm. Hrg. der to keep the record clear. Go ahead.  
page 331 }

By Mr. Nicholson:

Q. Let's dispense with the details about the bondsman.

A. While waiting for Mr. Lloyd to come I approached, I assume, the desk sergeant and asked if there were a doctor available. I was told there was not.

Q. Why did you want a doctor?

A. Why?

Q. Yes.

A. Because both of us had been in the custody of the of-

*John S. Beattie.*

ficers from the moment they knocked on the door. I knew that if I could obtain medical evidence it would disprove any charge made against either one of us.

Q. So far as adultery is concerned?

A. So I was told by the desk sergeant that there was not. When the Lloyds arrived, Mr. Lloyd with his wife, I asked them if they would be kind enough to stay with us until we could reach a doctor.

We drove from there to a point on the Military Highway—

Mr. Campbell: I object to this line, Your Honor. In the first place, Mrs. Higgins testified that she did not get examined by a doctor; and, in the second place, Comm. Hrg. it is self-serving.

page 332 } The Commissioner: Mr. Campbell, I am at a loss to remember the testimony which was taken in May and the early part or the middle of June. We do not have the transcript here. I will note your objection and consider it when I get the transcript. Go ahead.

A. I attempted to reach a doctor from a telephone booth, to no avail. It was then suggested by Mr. Lloyd that we go to the Naval Hospital in Portsmouth. We did that. We stayed there I would say for an hour or more. Mrs. Lloyd first accompanied Mrs. Higgins into the hospital and later Mr. Lloyd joined them. I remained in the car. I was not present during the entire time those mentioned were in the hospital, but I can say that at the end of an hour and a half, or whatever it was, we appeared to be no nearer a medical examination, that I wished and had consulted Mrs. Higgins about, than we had earlier. All of us at that point were exhausted. I finally turned to them and suggested that we just forget it.

By Mr. Nicholson:

Q. And you left the hospital?

A. Yes, we left the Naval Hospital with the Lloyds.

Q. For the record, Mr. Beattie, did you and Comm. Hrg. Mrs. Higgins on that occasion have sexual relations? page 333 }

A. As I stated before, and I state again, there was none—and if an examination had been made it would have proven negative.

Mr. Nicholson: That is all.



*John S. Beattie.*

# CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Beattie, maybe you know, but what is this examination that would have proven you had or had not had sexual relations?

A. What is it? It is my understanding—I have been told by doctors and in fact used it—it is my understanding that in all instances a doctor can determine from an examination whether or not sexual intercourse has occurred.

Q. You have never heard any such testimony in court, have you?

A. I beg your pardon, I have, yes, sir.

Q. When?

A. When?

Comm. Hrg. Q. My question was clear.  
page 334 }

A. Where have I heard it?

Q. Yes.

A. I have seen it on several reports from Dr. Mann's—even after death—from Dr. Mann's office, who is the Chief Medical Examiner, in cases even after death.

Q. Aren't those tests for the purpose of determining if there was an ejaculation, but not the reason for it?

A. I am not a doctor.

Q. The fact is you did not have a test made?

A. I testified that we did not; that is right.

Q. And Mrs. Higgins did not have a test made?

A. No.

Q. This was your idea originally?

A. That is correct; I suggested it.

Q. You say that you arrived at her house at 7 P. M.?

A. I meant to say about 7 P. M. It could have been 7:30. I don't recall.

Q. At what time did you get to Norfolk?

A. At what time did I get to Norfolk? I would say thirty or forty minutes ahead of that time, whatever

Comm. Hrg. time I arrived there.

page 335 } Q. Did you call her?

A. I testified that I called her, yes.

Q. Did you testify before that you called in the neighborhood of 5:15?

A. I don't recall; no, I don't recall.

Q. Did you testify in South Norfolk, "I called Mrs. Higgins I would say in the neighborhood of 5:15. I don't find fault with the time."

*John S. Beattie.*

A. If I said 5:15, I don't recall.

Q. Is your memory just as good on these facts that you have testified to?

A. I would assume it is a little better. I don't keep a log of my actions.

Q. Is your wife here today?

A. No, she is not.

Q. She has not been here at any of these hearings; is that right?

A. No.

Q. Are Mr. and Mrs. Lloyd here?

A. I have not seen them, no. Mrs. Lloyd testified in South Norfolk.

Q. She is not here?

A. No. I say, she was present then.

Q. On May 25th did you see Mrs. Higgins?

Comm. Hrg.

page 336 } By Mr. Nicholson:

Q. Don't answer that.

Mr. Nicholson: I object to that, as to whether he saw her on May 25th.

Mr. Campbell: She was examined on this point, Your Honor: the fact that on May 25th her car was left at a filling station over the week end and she went off with Mr. Beattie. This goes towards the custody.

The Commissioner: What connection does that have?

Mr. Campbell: The fact that she took off with Mr. Beattie for a week end, even while this hearing was in progress. This is solely towards the custody issue.

The Commissioner: Are you using him as an adverse witness now?

Mr. Campbell: Yes, sir.

The Commissioner: You can put him on the stand as your own witness. You are probably making him your own witness anyway.

By Mr. Campbell:

Q. You did see her on May 25th?

A. I do not recall.

Comm. Hrg. Q. Did you happen to be going up Indian  
page 337 } River Road and come upon her car going in  
the same direction and stop her?

*John S. Beattie.*

The Commissioner: You are still talking about '62?

Mr. Campbell: Yes, sir.

A. May I ask this: Was that on the week end of the 25th?

By Mr. Campbell:

Q. Yes, sir. Did you pull up behind her car and blow your horn, and she stopped and you all had some conversation?

A. I do not believe that was on the 25th, though. If I could see a calendar. (Handed to the witness by Mr. Campbell.) The week end I would say would be the 26th. I saw Mrs. Higgins on Friday, and on Saturday late in the afternoon in the neighborhood of 2 or 3 o'clock possibly I called Mrs. Higgins. She accompanied me to two stores. She then drove with me to Urbanna, at my home in Urbanna, and spent the week end with my wife, my child and me.

On Sunday evening in the neighborhood of 7 o'clock, or thereabouts, I brought Mrs. Higgins back to Norfolk. I sat there at the house with her, I don't know, an Comm. Hrg. hour and a half. I would say no more than two page 338 } hours at the outside. There were several other persons there in and out during the evening. Mrs. Higgins then drove me to my car. As we drove in we picked up her car at a Shell station.

Q. Let's stop right there. Go back to Friday night. That was where she left her car, at the Shell station, wasn't it?

A. (No answer.)

Q. On Friday night somewhere right after 9 o'clock you stopped her on Indian River Road, you all talked and left her car at the Shell station and you all left?

A. On the 25th?

Q. Right.

A. No.

Q. Friday night?

A. I do not know where Mrs. Higgins was Friday night, nor do I know where she was until 2 or 3 o'clock Saturday.

Q. You deny then that you got with her on Friday night?

A. I do not deny that. I told you that if it is the week end you are referring to, I saw her Friday evening.

Q. Where did you see her?

Comm. Hrg. A. On Indian River Road is where I first saw page 339 } her.

Q. How did you happen to see her? Did you meet her by chance?

*John S. Beattie.*

A. As a matter of fact I was looking for her. I had been to Berkley—

Q. Just answer my question. Did you meet her by chance?

A. I would say I met her by chance, yes.

Q. Did she park her car and you all left in your car?

A. Friday evening she parked her car at the Shell station, that is true, yes.

Q. And you all left in your car?

A. I picked her up, that is true.

Q. And her car was still parked there Monday morning?

A. I cannot answer that. I know this: that when I came back from Urbanna in the neighborhood of 7:00 or 7:30 Sunday evening Mrs. Higgins' car was at the Shell station. Mrs. Higgins had not felt well—did not feel well. I was told by someone in her office that, as a matter of fact, she had been sick all Saturday. It was nerves more than anything else.

When I returned Sunday her car was there. I left mine and drove her home, or drove with her home.  
Comm. Hrg. When I left an hour or hour and a half later  
page 340 } she took me to the Shell station and I got in my car.

Q. Had you ever spent a night before May 31st of this year in a motel room with Mrs. Higgins?

A. I have been in motel rooms with Mrs. Higgins on many occasions.

Q. All night?

A. No, not all night. On one occasion—

Mr. Nicholson: If Your Honor please, talking about the record here, I object to going into any details except what Mr. Campbell is referring to on this particular occasion.

A. I am aware of it.

The Commissioner: I will note your objection and overrule it. Mr. Campbell represents the husband who is paying for the transcript. I do not think it will do any harm. Go ahead.

By Mr. Campbell:

Q. You were aware of it, you say?

A. I believe so, yes, sir. I do not know how to pinpoint it as to time, but on one occasion I was with Mr. and Mrs. English—

*John S. Beattie.*

By the Commissioner:

Q. What year are we talking about?

A. Mr. Commissioner, I would say it was a Comm. Hrg. year or year and a half ago; a year and a half page 341 } ago probably. I was in Norfolk and I called Mrs. Higgins. She had tickets to an annual realty board party—

By Mr. Campbell:

Q. Mr. Beattie, can you answer my question "Yes" or "No"?

A. I am answering your question.

Q. The answer is yes, you have spent the night with her in a motel?

The Commissioner: He is not compelled to answer it "Yes" or "No," Mr. Campbell.

Mr. Campbell: Your Honor, I think it would be proper for him to explain it afterwards.

The Commissioner: It entirely depends on the circumstances. It might be that that type of question cannot be answered "Yes" or "No." I don't think you can give that injunction to the witness.

By Mr. Campbell:

Q. Have you stayed all night with her at a motel?

A. I answered "Yes." If you will bear with me for a moment—

Q. You have not answered the question.

Mr. Campbell: Your Honor, I don't see why Comm. Hrg. he can't answer that question "Yes" or "No" page 342 } and then explain it.

The Commissioner: I am not going to require him to answer it "Yes" or "No." I am going to let him go ahead and tell what happened.

By Mr. Campbell:

Q. Mr. Beattie—

A. May I finish?

Q. Did you have occasion to go to a motel or hotel with Mr. and Mrs. English and Mrs. Higgins, and the Englishes left and you spent the night there—stayed that night in the motel room with Mrs. Higgins?

*John S. Beattie.*

A. I have been trying for 10 minutes to answer that question.

By the Commissioner:

Q. You can answer that. That is a very clear question.

A. On this occasion I did. The circumstances however were these: When I reached Norfolk I called Mrs. Higgins and she told me that she had tickets to what I believe was an annual realty affair to be held at the Norfolk Country Club; that she, her associate Mrs. English, and Mrs. English's husband, and my understanding was that her husband had planned to go, but that Commander Higgins declined and Mrs. Higgins asked me if I would like to go. I accompanied them to this function.

When we returned—I was staying at the Country Club Motel—when we returned to my room the four of us went into my room to have a nightcap. Mrs. Higgins became beside herself. She was crying one moment and irascible the next. On more than one occasion I walked outside and consulted Mr. English. I actually wanted them to take her home. His final comment to me was, "If she can get it off her shoulder let her do it. Listen to her."

As I stated earlier, I have represented Mrs. Higgins for two and a half years. I have represented her mother and I have represented her sister-in-law, and I feel that I have represented her husband. I have represented corporations that she is interested in.

Mr. Campbell: Your Honor, I think the explanation is going into a little argument.

The Commissioner: I think so, too.

By the Commissioner:

Q. Just stick to the facts. Make your answers responsive to the questions. You know all of this as an attorney.

By Mr. Campbell:

Comm. Hrg. Q. Does Mrs. Higgins drink alcoholic beverage?  
page 344 } ages?

A. Yes.

Q. Often?

A. I don't know how often. I am in no position to say.

Q. Do you drink often?

*John S. Beattie.*

A. Very often, yes. As a rule I have two or three drinks every night of my life.

Q. How often does she have these crying spells that you referred to two or three times.

A. The last one that I recall occurred at my house on the week end of the 25th that you referred to. She and my wife were closeted for several hours. My wife was trying to console her. How often I don't know. I have seen it on more than one occasion.

Q. Have you gone over all of this testimony with Mrs. Higgins recently?

A. Have I gone over it with her?

Q. As to what your testimony was going to be?

A. The last time I discussed it specifically with her was on the night of the motel incident. That was not as to my testimony. That was as to others.

Q. Have you discussed other people's testimony since then with her?

Mr. Nicholson: If Your Honor please, I object to that. He is her counsel.  
page 345 }

Mr. Campbell: He is not here as her counsel.

Mr. Nicholson: He is her counsel. Whether he has discussed this matter with her or has not discussed it, I don't see where it is relevant.

The Commissioner: It is a stock question, Mr. Nicholson. It is for the purpose I imagine of attempting to discredit the testimony that he is offering here today. If Mr. Campbell thinks it is important I am going to let him put it in.

Mr. Nicholson: If Your Honor please, we note an exception.

The Commissioner: I note your exception.

A. I would say a year and a half or two years ago—

By Mr. Campbell:

Q. I am asking you since this trial started have you discussed her testimony.

A. Have I discussed—

Q. —her testimony.

A. I don't recall discussing her testimony, no.

Q. Has she discussed what other people testified to here?

*John S. Beattie.*

A. She has made comments in my presence  
Comm. Hrg. and in the presence of others on what was said.  
page 346 } only when she felt that the truth was not being  
told, I believe.

Q. Did she tell you anything that she testified to?

Mr. Nicholson: If Your Honor please, I certainly object.  
He is talking about cluttering up the record.

Mr. Cloud: Mr. Commissioner, of course the witnesses  
were excluded. This witness has testified that she has dis-  
cussed and commented on the testimony of others that have  
been in here. I think it is highly pertinent as to whether  
or not she has discussed with this witness what she has testi-  
fied to.

The Commissioner: What point are you making, Mr. Cloud?

Mr. Cloud: First of all, it would show bias. Also I think  
it would certainly breach an attorney's duties—an attorney  
who well realizes that when witnesses are separated they are  
not to discuss any testimony that goes on in the hearing room.

The Commissioner: I do not go along with you on that, Mr.  
Cloud. He is not an attorney of record in this case. He is  
an attorney who has represented the lady. It  
Comm. Hrg. is a witness talking to another witness rather  
page 347 } than an attorney talking to a witness. He can  
answer the question "Yes" or "No": Has he  
discussed the matter pertaining to this case with Mrs. Hig-  
gins since the other hearing, or even previous to the other  
hearing?

Mr. Cloud: I think the last question was: Has he dis-  
cussed her testimony, the testimony she gave in here?

The Commissioner: Let's proceed.

A. I do not recall ever discussing Mrs. Higgins' testimony.

By Mr. Campbell:

Q. You don't recall it, but it could have been done. Is  
that your answer?

A. She might very well have made some comments. I  
don't know.

Mr. Campbell: That is all.

Mr. Nicholson: That is all.

The Commissioner: Who is your next witness?

Mr. Nicholson: We rest, if Your Honor please.



*Phyllis E. Gray.*

The Commissioner: Can this witness be ex-  
Comm. Hrg. cused?

page 348 } Mr. Nicholson: Yes, sir.

The Commissioner: Who is your next wit-  
ness, Mr. Campbell, on rebuttal?

Mr. Nicholson: Call Mr. Beattie back. I want to ask him  
one question.

By Mr. Nicholson:

Q. Mr. Beattie, on this occasion that you said you and  
Mrs. Higgins spent quite some time at your room, and you  
said that she was hysterical and carrying on, did you have  
any illicit relationship with her?

A. No, sir.

The Commissioner: Which time, for the record, are you  
speaking about?

By Mr. Nicholson:

Q. On this occasion that you said there was a real estate  
party and you came back with Mr. and Mrs. English.

A. Real estate or something associated with it.

Q. What was the nature of her hysteria? What was it  
all about, just generally now?

A. Trouble.

Q. Trouble with whom?

A. Business, domestic matters, and everything.

Mr. Nicholson: That is all.

Comm. Hrg.

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PHYLLIS E. GRAY,

called as a witness on behalf of Roy Taylor  
Higgins, having been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. Please state your name.

A. Mrs. Phyllis E. Gray.

Q. Will you tell us please where you live?

A. I live next door to the Higgins family.

Q. To whom are you married?

A. To George Gray.

Q. How long have you been living next door to the Higgins  
family?

A. Five and a half years now.

*Phyllis E. Gray.*

Q. Do you have any children of your own?

A. I have three.

Q. Do you work or do you stay at home?

A. I stay at home.

Mr. *Nicolson*: I am going to interrupt. If Your Honor please, I understand this is a rebuttal witness.

The Commissioner: This is rebuttal testimony.

Mr. Cloud: I think it is rebuttal.

Mr. Nicholson: All right, sir.

By Mr. Cloud:

Comm. Hrg. Q. At the home have you had occasion to ob-  
page 350 } serve Commander Higgins as well as the chil-  
dren there?

Mr. Nicholson: I am going to object to that.

By Mr. Nicholson:

Q. Don't answer that, Mrs. Gray, until the court passes on it.

The Commissioner: On what ground, Mr. Nicholson?

Mr. Nicholson: She is strictly on rebuttal.

The Commissioner: I can't tell at this stage. The question is: Has she had occasion to observe? She may or may not have. You are probably objecting to the next question.

By the Commissioner:

Q. Go ahead.

A. Not to a great extent.

By Mr. Cloud:

Q. Can you tell us whether or not your children have played with either or both of the Higgins children?

Mr. Nicholson: I am going to object to that, if Your Honor please.

The Commissioner: What is the point of it?

Mr. Cloud: The point of it is that the testi-  
Comm. Hrg. mony on direct was to the effect that Command-  
page 351 } er Higgins was not a fit person to have the cus-  
tody of this child. This is in rebuttal to that.

The Commissioner: In connection with the possible custody of the child by Mr. Higgins?

*Tommy F. Jordan, Jr.*

Mr. Cloud: Yes, sir.

The Commissioner: I overrule your objection, Mr. Nicholson. Go ahead.

By Mr. Cloud:

Q. Your answer to that question is what?

A. Oh, yes, they play together very much.

Q. Would you describe the neighborhood, particularly the street that you live on? Is it a through street?

A. No. It is a dead-end. There is a circle, a turning.

Q. Are there any children other than your children and the Higgins children in that area?

A. There is are five others.

Q. Can you tell us whether or not Barbara Higgins plays with any of these children when she is there?

A. As far as I know she plays with all of them when she is there.

Comm. Hrg. Q. Are you able to tell the commissioner  
page 352 } whether or not Commander Higgins is a fit and  
proper person both morally and physically to  
have custody of Barbara?

A. Of course that is an opinion, but I should think he would be.

Q. You know of nothing to the contrary?

A. No.

Q. Answer Mr. Nicholson.

Mr. Nicholson: I have no questions.

\* \* \* \* \*

Comm. Hrg.

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TOMMY F. JORDAN, JR.,

called as a witness on behalf of Roy Taylor Higgin, having been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. Tell the commissioner your full name, please, and where you live.

A. Tommy Jordan, Jr. I live at 9655 Norfolk Avenue, Norfolk 3, Virginia.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. 16 years.

*Tommy F. Jordan, Jr.*

Q. Do you know Maryann Merrick Higgins?

A. Yes, I do.

Q. Will you tell the commissioner whether or not you have ever had occasion to hug and/or kiss Mrs. Higgins and, if so, state approximately when?

A. What I have known of Mrs. Higgins was strictly a business venture.

Q. Did you understand my question?

A. Yes, I did.

Q. Will you tell the commissioner whether or not you have ever had occasion to hug and/or kiss Mrs. Higgins and, if so, approximately when?

Comm. Hrg. A. On one occasion coming from the Norfolk page 354 } Yacht & Country Club to the Lafayette Yacht Club. We had been to a real estate party of some kind and we stopped over at the Yacht Club and had a few drinks over there. We sat in the car for about five minutes or so, I guess, and I did kiss her good night.

Q. And you were married at the time?

A. Yes.

Q. You say you had some drinks. What kinds of drinks were those?

A. Whiskey—mixed drinks.

Q. Did either of you give any indication of being under the influence at that time?

A. Both of us were feeling right good. As I say, we had been to the Norfolk Yacht & Country Club to a banquet over there, and then we came by the Lafayette Club.

Mr. Cloud: That is all.

#### CROSS EXAMINATION.

By Mr. Nicholson:

Q. She kissed you good night?

A. Yes.

Comm. Hrg.  
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Mr. Nicholson: That is all.

By the Commissioner:

Q. When was all of this?

A. I don't really know.

Q. How many years ago?

A. I would guess a year and a half or two years ago.

*Detective Mario Asaro.*

Q. What is your business?

A. It was real estate at that time.

By Mr. Cloud:

Q. Are you still in the real estate business?

A. I still have my license.

By Mr. Nicholson:

Q. You all had been to a convention and had some drinks?

A. Yes.

\* \* \* \* \*

Comm. Hrg.

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\* \* \* \* \*

DETECTIVE MARIO ASARO,  
called as a witness on behalf of Roy Taylor Higgins, having  
been first duly sworn, testified as follows:

Examined by Mr. Cloud:

Q. You are Detective Mario Asaro of the Norfolk City  
Police, are you not?

Comm. Hrg. A. I am.

page 360 } Q. Will you state to the commissioner  
whether or not in the early part of June of this  
year, 1962, you had occasion to investigate the alleged taking  
of some property from Commander Roy Higgins?

A. We investigated the alleged breaking into the home of  
Mr. Higgins.

Q. When you say, "We," to whom are you referring?

A. Sergeant Sanders and myself.

Q. Sergeant Sanders is unavailable today because of an  
automobile accident. Is that correct?

A. That is correct. He is in the hospital.

Q. In response to that investigation did you have occasion  
to ask Mrs. Higgins whether or not she had taken the com-  
mander's brief case?

A. We did.

Q. What, if anything, did she say in response to that?

*Detective Mario Asaro.*

A. She replied, she told Sergeant Sanders and myself that she did not know anything about a brief case.

Q. Answer Mr. Nicholson.

\* \* \* \* \*

Comm. Hrg.  
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\* \* \* \* \*

Virginia,  
City of Norfolk, to-wit:

I, William H. Sands, Commissioner in Chancery, certify that the foregoing testimony in Vol. I and Vol. II was duly taken and sworn to at the times and place in the caption mentioned.

Given under my hand this 2nd day of Nov., 1962.

WILLIAM H. SANDS  
Commissioner.

Phlegar & Phlegar \$373.00.

Comm. Hrg.  
page 373 } JUDGE'S CERTIFICATE.

I, Judge Walter A. Page, Judge of the Court of Law and Chancery of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings of the case of Maryann Merrick Higgins v. Roy Taylor Higgins, and includes all the testimony offered, the motions and objections of the parties, the rulings of the court, and the exceptions of the parties, and all other proceedings of said trial.

I further certify that the exhibits offered in evidence, as described by the foregoing record, and designated as Respondent's Exhibit No. 1 and Exhibit D-1 are all of the exhibits offered upon said trial, and the originals thereof have been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final order in said cause, and that the attorney for the complainant had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 8th day of March, 1963.

WALTER A. PAGE, Judge.

Comm. Hrg.  
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CLERK'S CERTIFICATE.

I, W. L. Prieur, Jr., Clerk of the Court of Law and Chancery of the City of Norfolk, Virginia, do hereby certify that the foregoing transcript of testimony and other proceedings of the trial of the case of Maryann Merrick Higgins v. Roy Taylor Higgins, duly certified by the Judge(s) of said court, together with the original exhibits introduced upon the trial of said case, identified by the initials of said Judge, were filed in my office on the 7th day of March, 1963.

W. L. PRIEUR, JR. Clerk.  
By L. M. CALVERT, D. C.

A Copy—Teste:

H. G. TURNER, Clerk.

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