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Record No. 5091

In the Supreme Court of Appeals of Virginia at Richmond

KATHERINE ANNE O'BRIEN SMITH

v.

HARRY LEE SMITH, JR.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel 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

Record No. 5091

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 9th day of October, 1959.

KATHERINE ANNE O'BRIEN SMITH, Appellant,

against

HARRY LEE SMITH, JR., Appellee.

From the Circuit Court of the City of Norfolk

Upon the petition of Katherine Anne O'Brien Smith an appeal is awarded her from a decree entered by the Circuit Court of the City of Norfolk on the 10th day of March, 1959, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Harry Lee Smith, Jr., was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 22 }

* * * * *

Filed 11-25-58.

HELEN M. ROMULUS. D. C.

REPORT OF DELAMATER DAVIS, COMMISSIONER IN CHANCERY.

To the Honorable Clyde H. Jacob, Judge of the Court aforesaid.

The undersigned, one of the Commissioners in Chancery of this Court, to whom the above entitled cause was referred by an order entered therein on April 9, 1957, to make the inquiries therein directed to be made and to report to the Court thereon, respectfully reports as follows:

I.

PLEADINGS.

The Bill of Complaint was filed January 3, 1957. The process was served on the Defendant on the 9th day of January, 1957 in Arlington County, Virginia.

The Complainant charged the Defendant with cruelty and desertion and abandonment. She averred the parties had been continuously separated since January 1, 1954. Complainant alleged the parties last cohabited in San Juan, Puerto Rico, and that the parties were residents of and domiciled in the State of Virginia for more than one year next preceding the commencement of the suit. The Complainant prayed for "a separation (not a divorce)."

The defendant answered and filed a Cross-bill.
page 23 } He averred the parties were residents of and domiciled in the State for more than one year next preceding the commencement of the suit. The Complainant was charged with desertion for more than one year prior to the institution of the suit, and the Defendant prayed for a divorce a *vinculo matrimonii.*

The Complainant filed an answer to the Cross-bill.

The Defendant filed a Supplemental Cross-bill on June 25, 1957, in which he averred that the parties last cohabited as man and wife in the City of Norfolk and that the Complainant deserted the Defendant on May 7, 1957. He prays for a divorce *a mensa et thoro.*

The Complainant filed an answer to the Supplemental Cross-bill.

On September 17, 1957 the Complainant filed a Supplemental Answer and Grounds of Defense to Supplemental Cross-bill. In this pleading the Complainant sets up, apparently as an Answer to the Defendant's Supplemental Cross-bill, a charge of adultery alleged to have been committed by the Defendant in the Monticello Hotel on May 6th, 1957, without any reference to any other person either directly or indirectly. No relief is asked.

This pleading is marked by the Commissioner on the Jacket No. 7—Counsel for the Defendant excepted to the Court's action in ordering the filing of the pleading. The order is No. 6 by the Commissioner.

II.

The Defendant's permanent address was 1321 Grey's Court Avenue, Richmond, Virginia—the residence of his parents.

The Commissioner interprets the Bill of Complaint as a divorce action and that the residence and domicile of the Defendant in Virginia has been proved.

The question of venue must now be determined. page 24 } Sec. 20-98 provides:

The suit, in either case, shall be brought in the county or corporation in which the parties last cohabited, or at the option of the plaintiff, in the county or corporation in which the defendant resides, if a resident of this State * * *

At R., p. 61, the Defendant said he was living at the Officers B. O. Q. Fort Myer, Virginia; that he last lived with his wife before going to Puerto Rico, at Fort Benning, Georgia, and that he had lived with his wife at no other place than at a military post. He was asked if he ever lived with her as man and wife at any other place than a military post. He said he had not except when on visits to Norfolk. Counsel for the Complainant evidently deemed such cohabitation in Norfolk sufficient to satisfy the requirements of Sec. 20-98. The attention of the Court is called to the annotation in the Code to this Section where it is said:

As the jurisdiction of divorce suits is a special statutory and limited one, it would seem that such jurisdiction must be exercised in conformity to the statute bestowing it. In such cases the question of venue becomes *jurisdictional* * * *

It follows that the objection *cannot be waived,* and the Court will *mero motu* dismiss the bill when defective in this respect. (Ca. ci) (Italics Supplied)

The Court's attention is called to the Defendant's testimony at R., p. 90 Vol. II in which he said:

"He was requesting the Court to grant him a divorce from his wife on the ground of desertion.

"Q. When was the last time she lived with you?

"A. The last time she lived with me was in Puerto Rico in 1953." Referring again to the annotation in the Code (*Supra*).

page 25 } "Cohabitation" has reference to a continuing condition. (Ca. ci.)

For the foregoing reasons the Commissioner is of the opinion that the Bill of Complaint as well as the subsequent pleadings should be dismissed.

Subject to the foregoing recommendation, the Commissioner will now complete his report.

III.

The parties are both Roman Catholics and were married by a priest of that faith in Norfolk on May 15, 1948. The Bill of Complaint is in error in stating 1949. A certified copy of the Marriage License is attached to the Bill of Complaint.

IV.

Both parties are of the white race. The Complainant was born in Norfolk, Virginia; is now 34 years of age and has no occupation. The Defendant was born in Richmond, Virginia; is now 35 years of age, and at the time of the first two hearings was a Captain in the United States Infantry. He joined the Army as a recruit in 1942 (R., p. 25—Vol. III); was a Staff Sergeant in 1948 (M. L.) and on November 30, 1957 he was relieved of active duty on account of an economy cut. Since the close of the hearings the Commissioner has received a communication from the Defendant indicating he is again a Sergeant First Class stationed in the Far East.

V.

Two children were born of the marriage: Brenda Anne Smith, born May 5, 1950, and Joseph Lee Smith, born August 10, 1953.

VI.

The Complainant is an epileptic. She joined
page 26 } the WAVES and was given a disability discharge.
She gets compensation from the United States Government of $102.00. (R., p. 59—Vol. I) At the hearing on May 7th, 1957 she said that she had an attack on the preceding Sunday—(May 5th). Before they were married she had an attack in Defendant's home; so that the Defendant was acquainted with the situation and accepted the fact of his wife's disability and tried to help her.

On the other hand, the evidence is quite clear that Mrs. Smith has not cooperated with her husband in his ambition to make the Army a career.

VII.

The issues made by the pleadings are:

(a) Was the Defendant husband guilty of such cruelty and desertion as warranted the wife to refuse to return to live with him in Puerto Rico?

(b) Was the Defendant husband guilty of commission of adultery with Mary Ann Vance in the Monticello Hotel on the night of May 6, 1957?

(c) Was the Complainant wife guilty of desertion by reason of her failure to return to live with her husband in Puerto Rico?

Mrs. Patrick J. O'Brien, mother of the wife, testified she was 52 years old and lived at 9416 Inlet Road, Norfolk, Virginia. Mrs. O'Brien testified that she did not see any physical cruelty, some mental cruelty. She only had the word of her daughter coming back from Puerto Rico. She said she did not know of any desertion by the husband, except that she did know he always had more interest in spending his service career overseas. He didn't want to stay in the States particularly. He applied for duty overseas.

The parties took their children and moved their household

goods to Puerto Rico where the husband was as-
page 27 } signed for duty in December 1953. Soon after
they got there Mrs. O'Brien said she received a call late at night from Captain Smith in which he said she was sick and had been in the hospital; she was going to leave the hospital and the Army doctors were going to put her in a straight jacket or send her out. Mrs. O'Brien told him she had better not linger there and that her daddy and herself (the mother) were flying down there and the Army had no right to put their hands on her daughter. (R., p. 5—Vol. I)

The wife was brought back to the States. Her parents practically had to carry her as she was in such bad physical condition. Her blood count was way down and she was under the care of doctors when she came back to Norfolk. The doctors were Dr. Grinnan and Dr. Spessard. She was in the hospital two weeks. She then came back home, but had to return to the hospital for another spell.

It was about this time that the husband sued his wife in the Territorial Court of Puerto Rico for a divorce on the ground of desertion. But he did not do this until after Mrs. O'Brien retained Mr. Fine to get support money.

Mrs. O'Brien testified (R., p. 9—Vol. I) that the last time the parties lived together was on January 1, 1954 when they flew down to Puerto Rico and brought the wife home. They have been continuously separated since that date.

Katherine Anne O'Brien Smith testified (R., p. 43 and following) that she went to Puerto Rico in December 1953, taking the children with her and accompanied by her husband. They made their home at Fort Brooke which was an Army Post, to which her husband was assigned. When she arrived she had an epileptic attack that made her unconscious, and
due to her bad condition she was taken to the Army
page 28 } hospital. She was treated there and sent home.
Her father and mother came to San Juan.

Mrs. Smith said she did not believe anything was said about her husband joining her in Norfolk. In answer to a question as to whether anything was said about her going back to San Juan, Puerto Rico, she answered (R., p. 44—Vol. I) *"No, sir, definitely not."* (Italics applied)

She arrived in Norfolk with her mother and father in January 1954. She said that she had need no longer for Dr. Grinnan's attention, but was still under Dr. Spessard's care.

At R., p. 53—Vol. I—Mrs. Smith testified that she didn't like Army life but had put up with it. She had been in the Service herself before and she knew what it was like. She said, "My children are Catholics and I would like to suggest

what places to bring them up in instead of like a lot of gypsies."

At R., p. 56—Vol. I—she stated that her husband instituted the divorce suit a year after she got back—in January 1955. The following questions and answers were then asked?

"Q. Will you live with him now?

"A. No, not with the cruelty and the lying I have to put up with, no, sirree.

"Q. You refuse to live with him now?

A. Not unless he changes completely. You couldn't expect a person to live with a cruel person that lies, could you, or stand for their children to live with them?

"Q. If he gets quarters where he is stationed will you go there and live with him?

"A. Not unless he changes his cruelty and lying. I couldn't expect my children to live with that."

(R., p. 57—Vol. I) Mrs. Smith said that she had suggested to her husband that he get out of the Army, come page 29 } to Norfolk and go in the bricklaying business with her brother. He refused it, however, and told her that he expected to stay in the Army and make a career. She said that he was a Sergeant when she married him and he was a Captain at the time of the hearing.

At the risk of repetition, attention is called to Mrs. Smith's testimony at R., p. 59—Vol. I—where she said that she had had an attack "Yesterday, Sunday" which was on May 5, 1957. In answer to a question as to whether there was any hope of whether she would outgrow her trouble she said, "Dr. Spessard and I are working on it."

At R., p. 60—Vol. I—the Commissioner told Mrs. Smith: "The question I have to answer and the Court has to be advised about is whether or not when you left Puerto Rico you intended to desert him. You say you left him and you are unwilling now to go back and live with him unless he changes considerably, and his conduct was such that you don't want to live with him?"

"A. Yes.

"Q. The question I have to answer is whether or not you deserted Captain Smith in Puerto Rico or whether or not he deserted you by not making a home for you.

"A. No. He called my family at home at three to five something in the morning to come and get me due to my condition of illness. How could I possibly desert him?"

Whether or not Mrs. Smith deserted her husband January 1, 1954 when she came back from Puerto Rico is an open question. The Commissioner was not at all satisfied after the hearing on May 7th that there was any proof of the desertion. He said: (R., pp. 84-85—Vol. I) "The way I see it at the moment, under the pleadings there is
page 30 } no proof of desertion by Mrs. Smith on December 30, 1953. The allegation is that she deserted him on that date. There is no proof to that effect.

"On the other hand, the charge in the bill of complaint is that Captain Smith was guilty of cruelty and failure to provide a home for her. I find no proof of that, so the parties are just where they were.

"Mrs. Smith has testified to the fact that she would not go back and live with him again, but I don't think she has established an act of desertion on his part, and it is not within the pleadings. There is nothing I can do about that.

"The way I see it, neither party is entitled to recover. Mr. Smith is under order of Court for the support of his wife and children, and the Court will have to pass on that finally after I file my report. I want you to give me Captain Smith's income and expenses."

While there is doubt as to whether or not an intent to desert on the part of Mrs. Smith January 1, 1954, it is perfectly clear from her declaration hereinabove set forth at R., p. 56 that as of May 7th there was no intention on her part to live with him again.

Again (R., p. 144—Vol. II) in answer to a question by her Counsel, Mrs. Smith said: "I don't care if he is in the Army, or what he is in, the lies he has told today and every day, I do not want to live with him because of his cruelty and lies. I don't want to put myself and the children in such a position. I have been made a fool to, and the lies he has told today—I don't want to live with him."

It has been pointed out that there was no proof of physical cruelty. Even Mrs. Smith's mother could not say there had been. We have only the statement of Mrs. Smith. (R., p. 142—Vol. II)—that she was in the hospital in Norfolk in January of 1954 from the beating he gave her in Puerto Rico.
She said: "He put his knee in my stomach, and
page 31 } threw my suitcase across the room, and beat me in the face, where I am missing a tooth. Dr. Mendelsohn can tell you about that. Also Dr. Spessard, the doctor at the hospital I was in, can, where he beat me in Puerto Rico."

that there is no proof that adultery was committed, and so reports.

The testimony of Mary Anne Vance was taken at a further hearing on December 20, 1957 and will be found in Vol. III on pages 2 through 16 inclusive.

The demeanor and appearance of the witness is an important factor in all these cases which cannot be communicated to the Court in any other way than by a statement from the Commissioner. The Commissioner feels that Miss Vance was telling the truth in all particulars in her testimony and conducted herself in a perfectly ladylike manner.

To sum up the case briefly, the Commissioner finds several facts proved:

(1) That there was a close relationship between the Complainant and her mother; and that for a period of
page 33 } about eight years the Complainant and her children when she had children, was living with her mother.

(2) Complainant disliked Army life and did little to help her husband in his ambition to make the Army a career.

(3) She had no real complaint about him, although she falsely testified that he assaulted her in Puerto Rico, when, as a matter of fact, her injuries were caused by a fall during an epileptic fit.

(4) The Defendant did nothing to cause the Complainant to leave him in Puerto Rico, and yet she retained an attorney in Norfolk to press for support. The largest part of the record is taken up with the battle between the parties on the question of support. It is quite evident that the Complainant cares nothing for her husband and she only wants what she can get out of him in the way of support.

(5) She has succeeded in ruining his career as an officer in the Army when he is unfitted to make a livelihood in civilian life.

(6) The charge of adultery against the Defendant and his witness, Miss Vance, while facilitated by reason of the stupid way in which the Defendant handled the registration, in no wise changes the situation that the Complainant had no case, unless she could fasten the charge of adultery on her husband.

For the foregoing reasons the Commissioner recommends that the Complainant's Bill for separate maintenance be dismissed, and that the Defendant be granted a divorce *A VINCULO MATRIMONII* from the Complainant.

If the Commissioner is sustained in his finding that Mrs. Smith was guilty of desertion, and not sustained in respect

VIII.

Having disposed of the issue made by the pleading on behalf of Mrs. Smith, it becomes necessary now to take up the issue made by the Answer filed by her on September 17, 1957. In that Answer she says that she has discovered that the said Harry Lee Smith, Jr. committed adultery on the 6th day of May, 1957 in the City of Norfolk, Virginia in the Monticello Hotel.

One of the Defendant's witnesses was Mary Ann Vance. At that time she was 32 years old. She lived at 38 Walnut Street, Natick, Massachusetts, and held a commission as Captain in the Army Medical Corps. (R., p. 72—Vol. I)

At that time she was on duty at Rodriguez Hospital in Fort Brooke, and first saw Mrs. Smith the day she arrived in December 1953. Miss Vance said that Mrs. Smith had had a fall and that she (the witness) went over to stay with the children while Captain Smith went to the hospital with his wife. Mrs. Smith complained about the Army and her quarters and everything else and said she wanted to get away from the Army and Puerto Rico. Miss Vance said that Mrs. Smith's feelings, the way she expressed them, was that she did not like the Army and didn't like anything about it and didn't want to have anything to do with it. She just wanted to get away from it completely.

At R., p. 76—Vol. I—Miss Vance said that Mrs. Smith didn't want anything to do with Army doctors. She wanted civilian doctors in Virginia; and Miss Vance
page 32 } understood that Mrs. Smith was coming back to Puerto Rico as soon as she felt all right.

Miss Vance left Puerto Rico on November 8, 1954, eleven months after Mrs. Smith left.

It will be noted that the Answer charging adultery goes no farther in asking for relief. In other words, Mrs. Smith's demand was still for separate maintenance. The Answer was filed on September 17, 1957 and on September 18, 1957 a further hearing was had.

At R., p. 106 Vol. II (and following): Counsel for Mrs. Smith showed that on May 6, 1957, the day before the first hearing, the Defendant registered at the Monticello Hotel with Mrs. Harry L. Smith. He was asked who the lady was that he registered as Mrs. Smith and his answer was Miss Vance, a witness he had to come down.

The testimony covering this question covers a number of pages beginning at R., p. 106 of Vol. II. The Commissioner's conclusion from a careful reading of the testimony is

The evidence fails to establish that Mrs. Smith deserted her husband by returning to Norfolk on New Year's day, 1954; it also fails to establish that Mr. Smith has ever been guilty of cruelty toward his wife which would amount to a constructive desertion on his part. I have concluded that Mr. Smith did not physically abuse his wife during the time the parties lived in Puerto Rico.

Mrs. Smith's failure and refusal to return to her husband upon sufficient recovery from her debility of January, 1954, constitutes desertion on her part. The exhibits comprising the correspondence between the parties during the months following January of 1954, as well as the depositions of the witnesses, convince me that Mrs. Smith has deserted her husband, and that such desertion culminated in her declaration of May 7th, 1957, that she would not return

page 39 } to her husband unless he changed completely (Vol. I, Depositions, p. 56).

After hearing the testimony of all of the witnesses in person, the Commissioner concluded that the evidence fails to establish an act of adultery against Mr. Smith. A careful review of the depositions shows that there is ample evidence to support this conclusion, and I am prepared to sustain Mr. Davis in this finding.

I am convinced from the record that the best interest of the infant children of the parties will be served by awarding their custody to Mrs. Smith.

From the evidence (Defendant's Exhibit #1, of February 3, 1959) it appears that Mr. Smith's service pay presently totals $396.90. After deducting tax withholdings and social security, his net earnings total $376.60. As I can see no valid reason for further delaying a decision on the amount to be allowed for the support of the two infant children of the parties, I am prepared to require Mr. Smith to pay the sum of $150.00 per month ($75.00 for each of the said children) to Mrs. Smith.

If you will prepare a decree setting forth the above, I will be glad to enter it.

Very truly yours,

THOMAS M. JOHNSTON, Judge.

TMJ:meg

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to the charge of adultery, the finding of the Court should be that neither party is entitled to relief.

page 34 } No recommendation can be made with respect to support of the children without further evidence as to the present ability of the Defendant to support them.

The Commissioner recommends the custody of the children be allowed to remain with their mother.

IX.

As required by Sec. 8-256 of the Code of 1950 notice has been given counsel of record that this report would be filed forthwith.

All of which is respectfully submitted.

DELAMATER DAVIS
Commissioner in Chancery.

• • • • •

page 38 } March 2, 1959.

Louis B. Fine, Esq.
Law Building
147 Granby Street
Norfolk 10, Virginia

C. Lydon Harrell, Jr., Esq.
Kresge Building
236 Granby Street
Norfolk 10, Virginia

Henry Bowden, Esq.
Kresge Building
236 Granby Street
Norfolk 10, Virginia

Re: Katherine Anne O'Brien Smith *v.* Harry Lee Smith, Jr., Chancery Docket No. 899-C.

Gentlemen:

After considering this file, I am satisfied that the required jurisdiction and venue have been established, and that the issues raised in the Bill of Complaint and all subsequent pleadings are properly before the court.

$500.00 as attorney's fees for services rendered the complainant, and also the court costs expended in her behalf in this suit, including the Commissioner's fee and Court Reporter's fee. To which action of the Court in failing to award the complainant separate maintenance as claimed in the original bill of complaint and in the subsequent supplemental bill of complaint and the refusal of the Court to hold that the defendant was guilty of adultery, the complainant by counsel duly excepted; and to which action of the court in awarding complainants counsel attorneys fee and costs, the defendant by counsel duly excepted. The complainant having signified her intention to apply to the Supreme Court of Appeals of Virginia for an appeal from this decree, it is ordered that the effect of said decree in so far as it grants Harry Lee Smith, Jr., a divorce *a vinculo matrimonii* be suspended for a peroid of 60 days.

And this cause is removed from the docket.

Enter March 10, 1959.

T. M. J.

page 42 }

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Filed 4-14-59.

VIRGINIA MANNING, D. C.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Now comes the complainant, Katherine Anne O'Brien Smith, pursuant to the provisions of Rule 5:1, Section 4 of Rules of Court, and states that she hereby notes an appeal from the final decree of the Circuit Court of the City of Norfolk, Virginia, rendered in the above styled cause in favor of the defendant against the complainant on the 10th day of March, 1959, and that the said complainant to that end, will prepare and present her petition for an appeal and the record in this cause to a Justice of the Supreme Court of Appeals of Virginia.

For her assignments of error, the said complainant says that the Trial Court erred as follows:

1. The Court erred in finding that the complainant deserted the defendant.

DECREE.

This cause came this day to be heard on the papers formerly read, the report of Delamater Davis, Commissioner in Chancery, the exceptions filed herein by both parties, and was argued by counsel; and,

It appearing to the Court that the parties hereto were lawfully married in Norfolk, Virginia, on May 15, 1948; that both parties are members of the white race; that two children have resulted from this marriage, Brenda Anne Smith, born May 15, 1949, and Joseph Lee Smith, born August 10, 1952; that both parties hereto were domiciled in and were actual *bona fide* residents of the State of Virginia at the time of the commencement of this suit, and had been so domiciled for more than one year next preceding the said time; that at the time of the commencement of this suit and at the times the defendant, Harry Lee Smith, Jr., filed his cross-bill and supplemental cross-bill herein, the complainant, Katherine Anne O'Brien Smith, was a resident of the City of Norfolk, Virginia; that the complainant, Katherine Anne O'Brien Smith, has deserted the defendant, Harry Lee Smith, Jr., and that said desertion has been continuous and uninterrupted for a period of more than one year; that the said Harry Lee Smith, Jr. was not guilty of cruelty to or desertion of his said wife, and was not guilty of any act of adultery; that this Court has full jurisdiction over this cause and the parties hereto and that the venue of this suit is correct;

Thereupon, the Court doth adjudge, order and decree that the said Harry Lee Smith, Jr., be, and he hereby is, granted a divorce *a vinculo matrimonii* from Katherine Anne O'Brien Smith on the ground of desertion on her part for a period of more than one year.

It is further ordered that the complainant's Bill of Complaint and Supplemental Bill of Complaint be, and the same hereby are, dismissed.

page 41 } It is further adjudged and ordered that custody of the said children be, and it hereby is, awarded to the said Katherine Anne O'Brien Smith, and she is hereby awarded the sum of $75.00 per month for the support of each child, a total of $150.00 per month for the two children; it is further ordered that said Harry Lee Smith, Jr., cause the said sums to be paid to Katherine Anne O'Brien Smith by an Army allotment check, or pay the same to her directly.

It is further adjudged, ordered and decreed that, subject to credit for any fees or costs heretofore paid, the defendant Harry Lee Smith, Jr., pay to Louis B. Fine the sum of

Mrs. Patrick J. O'Brien.

A. Mrs. Patrick J. O'Brien.
Q. Your age?
A. 52.
Q. Your residence?
A. 9416 Inlet Road.
Dep. I Q. Where is that located?
5/7/57 A. Norfolk, Virginia.
page 3 } Q. What is your occupation?
A. Housewife.
Q. Mrs. O'Brien, you are the mother of Katherine Anne O'Brien Smith?
A. Yes.
Q. The complainant in this case?
A. Yes.
Q. Your daughter has filed suit for separate maintenance in the Circuit Court of the City of Norfolk, not for a divorce?
A. Correct.
Q. Will you tell the Court when and where she was married?
A. You are speaking to me?
Q. Yes.
A. She was married at the Holy Trinity Catholic Church, Ocean View, Norfolk, Virginia.
Q. On what date?
A. 1948. Am I right?

The Complainant: Yes.
Mr. Fine: That bill of complaint alleges the 15th of May, 1949.
The Witness: 1948.

By Mr. Fine:
Q. Both parties are of the white race; is that
Dep. I correct?
5/7/57 A. Correct.
page 4 } Q. There are two children born of this marriage; is that correct?
A. Yes.
Q. Their names are Brenda Anne Smith, born on the 15th day of May, 1950, and Joseph Lee Smith, who was born on the 10th day of August, 1953?
A. 1952, that should have been.
Q. I am sorry. Your daughter has alleged that Mr. Smith has been guilty of cruelty. Do you know anything about that, of your own knowledge?

Mrs. Patrick J. O'Brien.

2. The Court erred in finding that the defendant was not guilty of cruelty.
3. The Court erred in finding that the defendant was not guilty of desertion.
4. The Court erred in finding that the defendant was not guilty of any act of adultery.
5. The Court erred in failing to award separate maintenance to complainant.
6. The Court erred in entering the final decree of March 10th, 1959.

page 43 }

KATHERINE ANNE O'BRIEN SMITH
By JEROLD G. WEINBERG
Of Counsel.

* * * * *

Depositions of witnesses taken before Delamater Davis, Esq., Commissioner in Chancery, pursuant to notice, at his office, Bank of Commerce Building, Norfolk, Virginia, May 7, 1957, to be read as evidence in the above entitled cause, pending in the Circuit Court of the City of Norfolk, Virginia.

Appearances: Mr. Louis B. Fine Attorney for the complainant.

Mr. C. Lydon Harrell, Jr. Attorney for the defendant.

* * * * *

Dep. I
5/7/57
page 2 }

* * * * *

MRS. PATRICK J. O'BRIEN,
called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. Mrs. O'Brien, would you state your full name please?

Mrs. Patrick J. O'Brien.

Q. When you went down to Puerto Rico were the children with your daughter?

A. Yes, they were in the house. She was flat on her back.

Q. Did he give you the clothes for the children?

A. Part of them.

Q. That was 1953?

A. Yes.

Q. Do you remember the month, approximately, or the season in 1953?

A. We arrived back here, I recall, New Year's Day.

Q. New Year's Day, 1954?

A. Yes. She was put in the hospital that morning. We got in at midnight and she went to the hospital at 7:00 o'clock.

Q. Since that time did he visit your daughter or do anything for her?

A. No, and he didn't write. It went on for several weeks and he didn't write and we heard nothing from him. Her daddy and I had to practically carry her.

Q. Did he ever call on her after that?

Dep. I A. No.

5/7/57 Q. You have in the bill of complaint she arrived page 7 } home on January 1, 1954?

A. Yes.

Q. Since the first day of January, 1954, has he ever lived with her or tried to do anything for her? Answer yes or no.

A. I would say no.

Q. With regard to support money what, if anything, did you have to do to get support for your daughter and her children?

A. At first it was trying by his superior officers in the Army.

Q. Did you get anything that way?

A. No, didn't get anything except praising him up, that he was a good officer.

Q. Did he, in fact, institute divorce proceedings at San Juan, Puerto Rico?

A. Yes.

Q. Was it necessary for you to get counsel down there to represent your daughter?

A. Yes.

Q. And after that the proceedings were dismissed?

A. Yes.

Q. How long was it before you got any support money

Mrs. Patrick J. O'Brien.

A. Some, yes, mental, but physical cruelty I didn't see it. I had the word of my daughter coming back from Puerto Rico.

The Commissioner: You can only testify of your own knowledge.

The Witness: I said mental, not physical.

By Mr. Fine:

Q. There is an allegation also in connection with desertion. Do you know about his deserting your daughter? Tell us what accurred.

A. I don't know of any desertion except I do know Mr. Smith always had more interest in spending his service career overseas. He didn't want to stay down in the States particularly. He applied for duty overseas.

Dep. I 5/7/57 page 5 } Q. Was he stationed at San Juan, Puerto Rico, in 1953?

A. Yes.

Q. Did you receive a call from there?

A. At 3:00 o'clock, that she had to leave there.

Q. Who did you get the call from?

A. Captain Smith.

Q. What did he say to you?

A. He said she was sick, that she had been in the hospital and she was going to leave and the Army was going to put her in a strait jacket or send her out. I told him she better not linger there, that her daddy and I were flying down and the Army had no right to put their hands on my daughter.

Q. Did you go?

A. We took a plane from the airport and changed at Washington, and from there to Florida—

Q. Don't go into that.

A. We did.

Q. Did he call you back?

A. Yes.

Q. Then when you went to San Juan did you take your daughter to Norfolk?

A. Yes. We practically had to carry her as she was in such bad physical condition. Her blood count was way down and she was under the care of doctors when she came back to Norfolk, Dr. Grinnan and Dr. Spessard, and she was in the hospital two weeks and back home and had to go back for another spell.

Dep. I 5/7/57 page 6 }

for your daughter and children, approximately?

Dep. I 5/7/57 page 8 } A. If I recall, it was after it was turned over to you.

Q. Before it was turned over to me did you enlist the aid of Senator Byrd and Mr. Hardy—

Mr. Harrell: I object to that.

The Commissioner: I don't think that ought to be a matter of record.

A. That was after Mr. Smith cut the allotment down from $200.00 to $100.00.

Mr. Harrell: Mr. Fine has been leading the witness.

The Commissioner: I should like to have the witness testify. He can testify better than the witness perhaps, but I had rather hear her story.

Mr. Fine: I will introduce the divorce proceedings, your Honor. They are a matter of record.

The Commissioner: I had rather hear their story, if you don't mind.

By Mr. Fine:

Q. With regard to support for your daughter and children, how long did it take before you got any support for her, approximately?

Dep. I 5/7/57 page 9 } A. I don't recall right off hand. My daughter can tell you about that better than I can. This thing has been such a rigmarole.

* * * * *

Q. When is the last time he lived with Mrs. Smith?

A. Up until the time we flew down to Puerto Rico and brought my daughter home.

Q. And you say that was January 1, 1954, as you testified?

A. Yes.

Q. They have been continuously separated without interruption since the first day of January, 1954; is that correct?

A. Yes.

Mrs. Patrick J. O'Brien.

Q. Your daughter—

Dep. I
5/7/57
page 10 } A. May I make an explanation of these things? Sometimes saying "yes" or "no" don't bring out the facts. Since my daughter started recovering her health and got a little stronger she has confided in me and then—

Mr. Harrell: I request that you tell her not to tell anything somebody else told her.

The Witness: It is my daughter which is involved here.

The Commissioner: Your daughter can tell us herself. If I let you go ahead on that she would in effect be testifying through you, but if there is anything she wants to say she may. Mr. Fine will develop the case for you.

By Mr. Fine:

Q. Mrs. O'Brien, after much correspondence with the War Department did you finally get support for your daughter?

Mr. Harrell: I object to that.

Mr. Fine: I want to show he intended to desert her.

Mr. Harrell: If you don't let me state my objections we will end up in a dog fight. If you read the question back you can see counsel is testifying for the witness, and I object to it.

The Commissioner: I will have to sustain the objection, Mr. Fine.

Dep. I
5/7/57
page 11 } By Mr. Fine:

Q. What, if anything, did you do with regard to support for your daughter?

A. Well, his superior officers were wrote to stating the facts of my daughter's physical condition and about support of my daughter and children.

Q. I hand you herewith a letter dated May 25, 1956, and ask you if this letter was not received with regard to support, from Lieutenant Colonel—

Mr. Harrell: Before ruling on this, if we are going to put in letters here and there, I will probably want to introduce some letters myself.

Mr. Fine: We will cross that bridge when we get to it.

Mr. Harrell: If one is allowed to put letters in we should let the others do the same thing.

The Commissioner: If I permit Mr. Fine to put letters

in, I will give you the same privilege. The Court is perfectly capable of sifting the wheat from the chaff.

The Witness: May I say this—

Mr. Fine: No. Wait until the Commissioner rules.

Dep. I
5/7/57
page 12 } The Witness: It is all new to me.
Mr. Fine: I would like to read this to you.
The Commissioner: Exhibit B.

(The letter was read as follows):

"HEADQUARTERS
ARMED FORCES SERVICE CENTER (7050)
ROOM 1B 862, THE PENTAGON
WASHINGTON 25,, D.C.

ANWHC-SC 201. Smith, Harry L., Jr., Captain

25 May 1956

Mr. Robert C. Stackhouse, Associate
Louise B. Fine
Attorney and Counsellor at Law
National Bank of Commerce Building
Norfolk, Virginia

Dear Mr. Stackhouse:

This is to acknowledge receipt of your letter of May 5, 1956 addressed to the Secretary of the Army concerning the allotment provided to your client, Mrs. Katherine Smith, by her husband, Captain Harry L. Smith, Jr.

Captain Smith is presently assigned to this unit; however, he is not due to report for duty until 11 June 1956. Upon his arrival, I shall personally discuss with Captain Smith the matter of his support of his wife and children and you will be advised of the action to be taken.

Yours very truly,

(S) Paul O. Hoffman
Lt. Colonel, TC
Commanding"

Dep. I
5/7/57
page 13 } The Commissioner: You are going to put in the marriage license?

Mr. Fine: Yes, sir.

The Commissioner: May I ask at this point was he ever under order of Court to furnish support?

Mr. Fine: Yes, sir. We finally got the War Department to say he was going to get kicked out if he—

Mr. Harrell: I object to that.

Mr. Fine: The War Department said they were going to kick him out and he came down here and asked us to agree to a figure and then tried to get out of it before the Court.

The Commissioner: I think you could develop it briefly by proving whether he supported her from January, 1954, to the present date.

If you go to the Court of Appeals on it you might want to have a different picture.

By Mr. Fine:

Q. I also hand you, Mrs. O'Brien, a letter from the War Department from a Major General of the U. S. Army in connection with support, and ask you if this memorandum was not received from the Army in connection with supporting the children, wife and two children, I should say?

Dep. I
5/7/57
page 14 } The Commissioner: What is the date of that?

Mr. Fine: May 10, 1956.

The Commissioner: Exhibit C.

By Mr. Fine:

Q. On April 12, 1956, was not this letter received from Harry Smith himself telling us that his wife could go to work?

A. Yes.

The Commissioner: Exhibit D.

Mr. Fine: I would like to read that to you sir.

12 April 1956

"Dear Mr. Stackhouse:

I received your letter dated 10 April 1956 today and before I can go into detail to reply, I would like to have a question answered. Since I have not heard from Katherine since 1953, or have any knowledge of the children's doings, I feel that it is only fair that this question be answered.

What is Katherine's present income?

Mrs. Patrick J. O'Brien.

I know she can work for she did before we married and she also served in the WAVES. Her sickness does not prevent her from working or any type of activity. She has had this sickness since she was a kid.

Dep. I
5/7/57
page 15

Your last paragraph in your letter causes me to ask the above question.

My address is as follows:

Capt. Harry L. Smith, Jr.
7553d AU Hq. & Hq. Det.
APO 851, New York, NY.

Truly yours,

(S) Harry L. Smith, Jr.
Capt. Infantry"

By Mr. Fine:

Q. Mrs. O'Brien, finally did he not then ask for an appointment—

Mr. Harrell: I object to the way it is expressed on the grounds it is a leading question.

By Mr. Fine:

Q. I hand you a letter from Mr. Smith and ask you if that is a letter that came in in October asking for an appointment with reference to support? Is that correct?

The Commissioner: Just identify it.

Mr. Fine: That is a letter of Harry L. Smith.

A. Yes.

The Commissioner: Exhibit E.

Dep. I
5/7/57
page 16

By Mr. Fine:

Q. After that conference were you present when he agreed to pay $282.00 a month?

Mr. Harrell: Mr. Fine is testifying for this lady again.

The Commissioner: It is shown that there was an agreement, and he is asking her if she was present when Captain

Smith agreed to pay a certain sum of money. She can answer yes or no.

A. Yes.

By Mr. Fine:
Q. I hand you herewith the memorandum in which he agrees to pay $282.00 pursuant to the agreement; correct?
A. Correct.
Q. Look at the signature.
A. That is his writing.

The Commissioner: Exhibit F.

By Mr. Fine:
Q. After we had reached that agreement of $282.00 did he want to go through with the agreement or did he then file a crossclaim for divorce?

Mr. Harrell: I object to that.
The Commissioner: Mr. Fine, please let Mrs. O'Brien do the testifying.

Dep. I
5/7/57 By the Commissioner:
page 17 } Q. After that agreement was entered into what did Captain Smith do, if anything?
A. The way I understand it he turned down—
Q. Are you testifying from your own knowledge? If you don't know of your own knowledge you can't testify to it.
A. He employed his attorney.
Q. You know nothing about it except what they may have told you?
A. That is my understanding.

By Mr. Fine:
Q. Was this letter written confirming the agreement of $282.00 by Captain Smith?

The Commissioner: Does it say anything about the letter?

A. They sent many letters, but I want to be sure of telling what I know. I know his signature.

Mrs. Patrick J. O'Brien.

The Commissioner: I don't suppose there is any question about that. Exhibit G.

Mr. Fine: I would like to read this to you ,sir.

The Commissioner: Unless there is something you want to develop, I will have it before me and can read it.

Dep. I (The letter was read as follows):
5/7/57
page 18 }

2 November 1956

"Mr. Louis B. Fine
Room 1103
National Bank of Commerce Building
813 Main Street
Norfolk, Va.

Dear Mr. Fine:

The opportunity extended me by the appointment at your office last Saturday, 27 October, 1956, to express my desires and to explain my financial status with you and my wife, Katherine A. Smith, is greatly appreciated.

The agreement which you presented for my acceptance shows your kind and fair judgment.

I have acknowledged my verbal agreement by authorizing two hundred and eighty-two ($282.00) dollars to be deducted from my monthly pay by allotment. A personal action form has been sent to you by the personnel officer.

The two hundred dollars ($200.00), which is due from back payments, will be made up as agreed. Inclosed is a money order in the amount of twenty-five dollars ($25.00) as a part payment, which leaves a balance of one hundred and seventy-five ($175.00). The money order is made out to my wife, and if it is an inconvenience to you to forward it to her, I can forward the next payment directly to her. Please let me know your desires.

I am cognizant of our verbal agreement of payments, visiting the children, payment of bills, and assurance that no correspondence will come through Army channels, but I would also, in all fairness, like to have this agreement in writing, signed by my wife, for my records to make sure I do not violate the agreement. Also I would have it in

Mrs. Patrick J. O'Brien.

Dep. I
5/7/57
page 19 }

my possession in the event that any questions may arise concerning my status by the Department of the Army, Adjutant General.

Thank you very much for your cooperation.

Sincerely yours,

(S) Harry L. Smith, Jr.
Captain, Infantry''

By Mr. Fine:

Q. Has your daughter been a faithful and dutiful wife, ever mindful of her marital duties?

A. To my knowledge, she has because the biggest part of her married life she has been residing with me, going on eight years, and they will be married nine years, and he spent 15 months shortly after they were married—

The Commissioner: She can't very well answer the question without giving some facts. They have not lived together since January 1, 1954.

* * * * *

Dep. I
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page 20 }

* * * * *

The Commissioner: She would not be able to observe the marital relations of her daughter towards her husband when he was somewhere else. You are asking a difficult question for anybody to answer.

You may ask her, during the time they lived together, whether she knows what the relations were between the parties.

Mr. Fine: Answer that.

A. No, I don't know. I was not around and I never lived with them. To me I could not myself talk to him. This was new, and I am not in the habit of cursing.

I spent a lot of time with my daughter in Fort Knox be-

fore her baby was born and I noticed his attitude because the child was born a daughter instead of a boy.

By Mr. Fine:
Q. Was your daughter a good wife?
A. I could swear for that if I never got out of this room.

Dep. I
5/7/57
page 21 } Mr. Harrell: There is no attack on this lady's character.

Mr. Fine: There is an attack on Mr. Smith's character for not supporting his wife and children.

The Commissioner: This is something she has to prove, that she has been a good wife, ever mindful of her marital duties. Mrs. O'Brien says that as far as she knows she was.

A. She was a very good wife and very settled.

By Mr. Fine:
Q. One other question. While Mr. and Mrs. Smith were living together did they have a joint building and loan account?
A. Yes, they did.
Q. Where was that account?
A. I believe the Mutual Federal at Boush and Bute Streets.
Q. It is the Mutual Federal?
A. I believe I have got the name right.
Q. What happened to that?
A. Mr. Smith, when my daughter—

Mr. Harrell: If she doesn't have personal knowledge of this I object to it.

Dep. I
5/7/57
page 22 } A. (Continuing) I took my daughter there to make a withdrawal to take care of the hospital bills and back expenses, and clothing for the children. We went there and come to find out Mr. Smith had drawn out all the money with the exception of three dollars.

By the Commissioner:
Q. It was in a joint account?
A. It was a and/or account, the same thing.

Mrs. Patrick J. O'Brien.

By Mr. Fine:

Q. It was a joint account with the right of either one to withdraw it?

A. He drew $800.00 while she was in the hospital shortly after she got back to Norfolk.

Mr. Fine: Answer Mr. Harrell.

CROSS EXAMINATION.

By Mr. Harrell:

Q. You made some statement about how much time he spent overseas and not with his wife. He was in the Army when she married him, was he not?

A. Yes.

Q. And part of the time after they were married—

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page 23

A. She lived with him on Army Posts.

Q. The last one she lived with him on for any length of time was at Fort Knox?

A. Yes.

Q. From there they went to Fort Benning, Georgia?

A. Yes.

Q. After they had been there approximately two or three months you and Mr. O'Brien visited them there and when you and Mr. O'Brien left she and the children left with you and came back to Norfolk, didn't she?

A. No, I visited them in Georgia. I was working for the Government and I got word from Mr. Smith the baby had been badly burned and I got excited. I want to explain how it was.

By the Commissioner:

Q. Take it a little easy. If you talk too fast we don't get it all.

A. Mr. Smith contacted us and said the baby had got burned en route from Fort Knox to Columbus, Georgia. I became very alarmed and we rushed down and we stayed a few days and returned back to Norfolk again.

His object for going to Georgia was to go to school and apply for overseas duty. He said he wanted to get up to a rank, and since he didn't have too much education that was the only way he could do it. My daughter went down there with him and —

Mrs. Patrick J. O'Brien.

• • • • •

Dep. I
5/7/57
page 24 }

• • • • •

By Mr. Harrell:

Q. Your daughter and two children left from Fort Benning and came back with yuo?

A. My husband and young son.

Q. What year was that?

A. I don't know.

Q. It was just before they went to Puerto Rico?

A. That was before Lieutenant Smith left for Puerto Rico?

A. Yes.

A. My daughter was with him. My daughter returned home with me.

Q. He went down to Puerto Rico and didn't have a house and later on he got housing and came back to Norfolk and got your daughter and children and took them down there?

A. After my daughter wrote him several times.

Q. He went down there alone because he didn't have housing and later on he got housing and came back to Norfolk and got your daughter and children and took them down there?

Dep. I
5/7/57
page 25 }

A. After my daughter wrote him several times.

Q. It was hard to get housing in Puerto Rico, but he actually came back here and got her and the children?

A. Yes.

Q. At first she was going to let him take the children and she was going to stay home, was she, and then she changed her mind and went with him?

A. There was some difference of opinion in the bedroom the morning they were going to leave, and Lieutenant Smith, he was with us approximately a week, I know a few days, more or less, before he left for Puerto Rico.

His attitude was friendly at first, but he would go off during the day and never said anything to anyone. He acted peculiar. I never questioned my daughter or said anything

Mrs. Patrick J. O'Brien.

to him. What the difference of opinion was I don't know. I was in the kitchen and they were in the bedroom.

She was hysterical and her stomach was upset and she was vomiting, nauseated, and crying, and I couldn't make out what it was all about. She didn't want to tell me. He came out and said my daughter was crazy, she wanted a divorce.

Q. And you didn't want all of this?

A. We didn't want all of this because—

Mr. Harrell: Just a minute. I asked her a simple question that she could answer yes or no.

Dep. I
5/7/57
page 26 }

* * * * *

Q. You say when he called you from Puerto Rico she was down there with him and he is the one you talked to?

A. When we went down and brought her back?

Q. Yes.

A. Mr. Smith called me twice on long distance and reversed the charges, and told me my daughter had to leave Puerto Rico, that she was in the hospital and was ill and they had done all they could for her. She refused to leave Puerto Rico. He said if she was not out by Wednesday the Army would put her in a strait jacket.

Dep. I
5/7/57
page 27 }

Q. He told you that she was mentally ill?

A. No, she is not mentally ill. That I can prove.

Q. I am speaking of the telephone conversation between you and him. She was mentally ill at that time?

A. No.

By the Commissioner:

Q. You referred to putting her in a strait jacket.

A. He said the Army would do it because they had done all they could for her. I said, "What is wrong"? He said, "I don't know." I said, "Let me talk to her." He said, "She can't. She is in bed." I told him not to try any Army strait jacket and also informed him not to put a hand on her.

Mrs. Patrick J. O'Brien.

Q. He offered to get emergency leave and take her back, didn't he, when you went down?

A. I have my doubts.

Q. He told you he would do that and you told him it was not necessary?

A. He told me a lot of things that could be divided into two.

By the Commissioner:

Q. I don't know what you mean by that.

A. I mean some you can believe and others you can't.

Dep. I 5/7/57 page 28 } By Mr. Harrell:

Q. He wanted to keep the children there so she could come back to Norfolk and get treatment and return?

A. No. Her clothes were already packed before we got there.

Q. Did he do that?

A. As God is my judge.

Q. You made a lot of statements about what you did to get support money. You were not satisfied with the amount of money he was giving her and tried to get more?

A. Are you talking to me?

Q. You are the one who is supposed to answer the question.

A. I speak for my daughter. She is in a nervous condition, but it is not a mental condition.

Q. I am not saying anything about that.

A. She is a meek girl and he took advantage of her.

Q. You don't have any use for this man, do you?

The Commissioner: Answer it yes or no.

A. At one time yes, and at the present time no.

By Mr. Harrell:

Q. You didn't like him, did you?

A. Not the way he treated my daughter.

Q. You wrote to his sister in which you said it was a sorry day for your daughter when she met Captain Smith?

A. That is correct.

* * * * *

Dep. I
5/7/57
page 30 }

PATRICK J. O'BRIEN,

called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. State your full name, please.

A. Patrick J. O'Brien.

Q. Your age?

A. 54.

Q. Your residence?

A. 9416 Inlet Road.

Q. Norfolk, Virginia?

A. Norfolk, Virginia.

Q. Mr. O'Brien, you are the father of Mrs. Smith; is that correct?

A. That is right.

Q. I am referring specifically to the time that Mr. and Mrs. Smith were living at San Juan, Puerto Rico.

A. Yes.

Q. Did you ever receive any communication from the defendant, Mr. Smith, about your daughter?

A. I didn't receive the information directly but I was in the room when it was called to my wife.

* * * * *

Dep. I
5/7/57
page 32 }

* * * * *

Q. After that call what did you do?

A. We proceeded to San Juan to bring our daughter back.

Q. Was she ill?

A. Yes, she seemed to be in great distress.

Q. Who arranged for transportation for your daughter back?

A. My best recollection is that we did. On second thought, I think Mr. Smith had purchased two airplane tickets for himself and wife that day. It has been quite awhile ago.

Patrick J. O'Brien.

Of course I would have to purchase tickets for myself and wife.

Q. How about the children, were they to come with you or remain with him?

A. The children were to go with us.

Q. Were their clothes packed, or not?

A. No, I don't believe they were. We had to pack them.

By the Commissioner:

Q. Who packed them?

A. We did.

Q. You did?

A. Yes.

Dep. I
5/7/57
page 33 } By Mr. Fine:

Q. You packed the clothes?

A. Yes. They may have been partially packed; part of them were packed. The children's clothes, I think we had to get some of them together.

Q. You, your wife, daughter and her children came to Norfolk?

A. Yes.

Q. What day was it you arrived in Norfolk, approximately, if you don't know exactly?

A. I think you place me in a position where I can't answer the question.

Q. Do you know what time of year it was, whether spring, summer or winter?

A. I think in the winter.

Q. From that date on did Mr. Smith ever come to see his wife and children?

A. No.

Q. How about support for the wife and children; what, if anything, was done about that?

A. In the beginning I don't believe there was any support for awhile and then it did start to come. The amount I don't know exactly because I didn't pay any attention to the details of that.

Dep. I
5/7/57
page 34 } All of this transpired within the last years and I can't remember all the details. That is all I remember about it.

Q. You don't remember how much he sent?

A. Well, it seems he sent a check for two-hundred and

some odd dollars and then reduced it. Now it is coming to me. It was $200.00 in the beginning and then, on the advice of his attorney—this is him, quoting this: His attorney advised him to send only $100.00 and then, of course, that was not agreeable to us and we took steps to increase the amount.

We had to go to a great expense to do it. My wife had to write to the War Department and the Government, the Army, to have him do what was right in regard to money matters.

What effect it had I don't know, except it may have been increased later on.

Q. Anyhow they have been continuously separated since she has been brought from San Juan?

A. Yes.

Q. Do you know what statement he made, if any, regarding joining her in Norfolk after you brought her back?

A. I can't remember what he told me when we left. I am trying to think of it. I don't believe it had anything to do with joining her.

Q. Was she supposed to go back to Puerto Rico or was he to join her here?

Dep. I 5/7/57 page 35 } A. I don't believe there was anything said in that regard that I know of. I think that if he was ever stationed here in the States again there would be a reconciliation and they would go back together again. That is what I thought was the effect of it by their statements.

Mr. Fine: All right, that is all.

CROSS EXAMINATION.

By Mr. Harrell:

Q. You stated he has not been to see the children or his wife since she came back here from Puerto Rico. He has been out there to see the children since then, hasn't he?

A. My recollection is the first time he saw them was right over here in Mr. Fine's office right recently. That is the only time I have seen him.

Q. He could have seen them at some other times without your having seen him?

A. A total of twice maybe just a week or ten days ago, or approximately a month ago.

Q. He and your wife don't get along very well, do they?

A. What is it?

Q. He and your wife don't get along very well, do they?

Patrick J. O'Brien.

A. Apparently they don't.

Dep. I 5/7/57 page 36 } Q. Now, when you and your wife were down there in Puerto Rico your daughter wanted to come back to Norfolk to see Norfolk doctors who were treating her; is that correct?

A. Yes.

Q. She didn't like the Army or the Army hospital or anything about it, did she?

A. That is right.

Q. She just don't like the Army at all or living in the Army?

A. That is right.

Mr. Harrell: That is all.

By the Commissioner:

Q. Mr. O'Brien, what is your occupation?

A. Carpenter.

Q. I understood from Mrs. O'Brien when she was testifying she had some connection with the Army. Was she an enlisted person?

A. My son is in the Marine Corps.

Mr. Fine: Mrs. Smith was a WAVE in the World War.

• • • • •

Dep. I 5/7/57 page 37 } By the Commissioner:

Q. Until January 1, 1954, they had been living together; that is, your daughter and her husband had been living together, at different Army Posts; is that correct?

A. Yes.

Q. Did they spend any time at your home?

A. Yes. As man and wife?

Q. The two of them?

A. Yes.

Q. Did they spend any time living with you?

A. Just a short time like a week or five days while they were waiting to go from one post to another.

Q. From January 1, 1954, who supported Mrs. Smith and the children? Did you provide for their support or Mrs. O'Brien?

A. You mean from—

Patrick J. O'Brien.

Q. From January 1, 1954, when you brought them back from Puerto Rico.
A. Yes, we did.
Q. Was she getting money from him?
A. Not in the first instance, but—
Q. When they first separated?
A. When they first separated it was $100.00—$200.00 and then it was reduced to $100.00.
Q. To $100.00?
Dep. I A. Yes.
5/7/57 Q. I have got to find out definitely how much
page 38 } Captain Smith contributed to her support from January 1, 1954. I have heard a lot of disconnected testimony.
A. I can't give you the dates.
Q. You didn't support them?
A. No, I don't say I did or didn't. If she was not getting money from him we would give her money. Do you call that supporting her?

By Mr. Fine:
Q. Just answer the question.
A. I was supporting her then.

By the Commissioner:
Q. Were you paying her doctors' bills?
A. No.

By Mr. Fine:
Q. Who paid her doctors' bills—

Mr. Harrell: I haven't finished cross examining yet.
Mr. Fine: I thought you said you had.
Mr. Harrell: Go ahead and finish.

By Mr. Fine:
Q. During that time she was living at your home?
A. Yes.

By the Commissioner:
Dep. I Q. Did she incur any doctors' bills when she
5/7/57 came back here in 1954?
page 39 } A. Yes, sir.
Q. Was she under the care of a physician?
A. Dr. Spessard.

Patrick J. O'Brien.

Q. You say she paid those bills?
A. Yes.
Q. She was getting some money from somewhere, was she?
A. Yes, sir.
Q. She didn't get it from Captain Smith?

The Complainant: No. I was paying it.

A. She had compensation of her own.

By Mr. Harrell:
Q. She could have gone to a Government hospital for treatment, couldn't she?
A. Would you want to go to a hospital you didn't like? She didn't like them.
Q. You said that when she left, you, your wife and the children and came back up here there was not anything definitely settled then as to whether he was coming to Virginia or she was going back down there. Actually he wanted her to come back? Didn't he want you to leave the children and let her come back and when she got well for her to come back with him?
A. It may have been suggested but it didn't work out for some reason. The conditions there were—
Q. You—

Mr. Fine: Let him finish.

Dep. I
5/7/57
page 40 } A. We determined that conditions there were not suitable to raise childen, especially with the mother of the child sick. Facilities were poor, and on most Army Posts they are insufficient.

By the Commissioner:
Q. What was the name of the Army Post?
A. Fort Brooke, I believe.
Q. They had family quarters in there?
A. Yes, but they were old residences of the community. They had spun floors and high ceilings, very long windows, and the facilities was unkempt and unclean. It was not a suitable place for living.

Katherine Anne O'Brien Smith.

The Commissioner: Call your next witness.
Mr. Harrell: I hadn't finished.

By Mr. Harrell:
Q. He wanted to keep the children there but you decided it would be better for them to come back and you brought them back?
A. Yes.
Q. He finally agreed to it because that is what she wanted?
A. Yes.

Dep. I 5/7/57 page 41 } Q. He actually wanted those children to stay and for her to come back, but there was nothing definite ever said as to when she would come back, was there?

A. I don't believe it was suggested, but it was suggested the Army Post didn't want her there presumably because they had no medical treatment for her in her state.
Q. She didn't like the Army or the Army hospital and didn't want to stay?
A. That is right.
Q. She came back here and in possibly a month, something like that, he started sending her money?
A. Approximately.
Q. Then he was sending her $200.00 a month?
A. Yes.
Q. Later on you said that on advice of the San Juan lawyer he cut the money down to $100.00 a month?
A. Yes.
Q. She got $100.00 a month checks only two times and then he increased the amount again, didn't he?
A. Yes, I believe so. Those details I don't know.
Q. She didn't get a check for about six weeks after she came back, and after that she got a check every month, didn't she, except two or three weeks?
A. That I don't know, about the details of it.

And further this deponent saith not.

Dep. I
5/7/57
page 42 } KATHERINE ANNE O'BRIEN SMITH,
the complainant, having been first duly sworn, was examined and testified as follows:

Katherine Anne O'Brien Smith.

DIRECT EXAMINATION.

By Mr. Fine:

Q. Tell the Commissioner, please, your full name.

A. Katherine Anne O'Brien Smith.

Q. You married your husband in Norfolk in 1948?

A. Yes.

Q. In Norfolk, Virginia?

A. Yes.

Q. May 15th?

A. Yes.

Q. You have two children?

A. Yes.

Q. And their ages?

A. Brenda will be eight on May 15th, and Joseph will be five on August 10th.

Q. You and your husband lived together at various Army Posts during your married life; is that right?

A. Yes, sir.

Dep. I 5/7/57 page 43

Q. Now, I refer you especially to the time that you went down to San Juan, Puerto Rico.

A. Yes, sir.

Q. Do you remember the date you went down there, what month and what year?

A. It was in 1953.

Q. What month?

A. December.

Q. You went down there in December?

A. That is right.

Q. Did you take your children there with you?

A. Yes, sir.

Q. You made your home down there on the Army Post; is that right?

A. Yes.

Q. What is the name of it, Fort Brooke?

A. Yes.

Q. After you were down there did you become ill?

A. Yes, sir.

Q. Please tell his Honor just what happened. You became ill, and what happened? The other part is not material.

A. While I was there, when I arrived I had an epileptic attack which made me unconscious and due to my bad condition I was taken to the Army hospital.

Katherine Anne O'Brien Smith.

Q. What happened?

Dep. I 5/7/57 page 44 } A. I was treated in there and sent home.

Q. State whether or not your husband called and told your mother about it, or not?

A. Yes.

Q. Did your mother and father come down to San Juan?

A. Yes, sir.

Q. Now, can you tell us what was said, if anything, about his joining you in Norfolk, Virginia?

A. I don't believe anything was said about that.

Q. You don't believe anything was said about that?

A. No, sir.

Q. Was anything said about your going back to San Juan, Puerto Rico?

A. No, sir, definitely not.

Q. Nothing said about that either?

A. No, sir.

Q. When did you arrive in Norfolk with your mother and father?

A. January, 1954.

Q. Since January, 1954, were you attended by medical physicians in this City?

A. Yes, Dr. Spessard and Dr. Grinnan.

Q. Have you recovered from your illness?

A. Yes. I no longer have—no longer need Dr. Grinnan's attention, but am still under Dr. Spessard's care.

Dep. I 5/7/57 page 45 } Q. During that time have you had your children with you constantly?

A. Yes, sir.

Q. Do you live with your mother and father?

A. Yes.

Q. And your two children are there?

A. Yes, sir.

• • • • •

Dep. I 5/7/57 page 46 } Q. You arrived, as I understand it, in the United States in January, 1954?

A. Yes.

Q. After you were down here in the United States did he file suit against you in the Court in Puerto Rico?

A. Yes. I was so shocked about this because it was for a divorce and we are both Catholics, and our religion does not permit it.

Katherine Anne O'Brien Smith.

Q. Did you desert him on the 30th of December, 1953?
A. No, sir.

Mr. Fine: I would like to file this complaint, introduce this complaint, that was filed in the Superior Court of Puerto Rico, San Juan section.
The Commissioner: Exhibit H.

By Mr. Fine:
Q. As I understand it, when you left on the 30th of December of 1953, you left to come back to the States to get medical treatment?
A. Yes.
Q. And he swore you had left and deserted him at that time?
A. Yes, sir.
Q. Did you retain counsel to contest this divorce case?
A. Yes, certainly.
Dep. I. Q. I believe Mr. Robert C. Stackhouse asso-
5/7/57 ciated a Puerto Rican counsel?
page 47 } A. Yes, sir.
Q. And it was dismissed?
A. Yes.
Q. On August 29, 1956; is that correct?
A. Yes, sir.

Mr. Fine: I introduce this, if your Honor please.
The Commissioner: Exhibit I.

By Mr. Fine:
Q. I believe that depositions were taken in this case before Mr. Knight on June 24, 1955, for which he made a charge of $15.00; is that correct?
A. Yes, sir.
Q. Which depositions are filed in that suit?
A. Yes.

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page 48 }

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Katherine Anne O'Brien Smith.

By Mr. Fine:

Q. Will you tell the Court, please, after you had come down here to Norfolk with your parents he gave you any support money?

A. No, not until a time.

Q. How many months, if any, did he fail to give you any support money?

A. I don't know exactly, Mr. Fine.

Q. Tell us the best you can, please.

A. I believe about six months.

Q. During that time what happened, and what effort did you make in connection with getting support?

A. Various letters were wrote to the War Department, and to his superior officers.

Q. How much was the allotment he gave you?

A. $200.00 a month.

Q. After he gave you $200.00 a month allotment, what happened to that allotment?

A. Well, after two months it was deducted to $100.00 a month.

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page 49

Q. Then what happened?

A. It was finally increased back to $200.00 a month.

Q. Then what happened; what amount did you finally get?

A. We finally got, he agreed on, $282.00, I paying the medical expenses.

Q. Have you and your husband lived together since you have been at your home in Norfolk?

A. No.

Q. Since January, 1954?

A. No.

Q. Has he ever asked you to come down to him?

A. Nowhere, no.

Q. Have you refused to be his wife?

A. I have not.

Q. Have you been a good and faithful wife, ever mindful of your marital duties?

A. Yes.

Q. Did you give him any reason or justification for not wanting to live with you since January 1, 1954?

A. No, sir.

Q. You have also alleged in the bill of complaint, in addition to desertion, that he was cruel to you. Was he cruel, or not?

Katherine Anne O'Brien Smith.

A. Yes, sir.

Q. State what he did.

Dep. I 5/7/57 page 50 } A. He put his foot in my stomach twice, and I have got a tooth missing in front.

Q. Where was that?

A. In Puerto Rico.

Q. That is what your mother was going to testify to?

A. Yes.

• • • • •

Dep. I 5/7/57 page 51 }

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Q. I believe you don't want a divorce on account of your religion; is that correct?

A. That is right. I have no reason for a divorce, but he is asking for one.

Mr. Fine: Answer this gentleman.

CROSS EXAMINATION.

By Mr. Harrell:

Q. Mrs. O'Brien, you married Mr. Smith back in 1948?

A. Mrs. Smith.

Q. I beg your pardon, Mrs. Smith. Did you?

A. Yes.

Q. He was in the Army at that time?

A. Yes.

Q. What was his rating at that time?

A. Sergeant.

Dep. I 5/7/57 page 52 } Q. Sergeant?

A. Yes.

Q. Where was he stationed?

A. Philadelphia.

Q. You lived with him at that time?

A. Yes.

Q. You lived with him at different Army Posts?

Mr. Fine: I am going to object to all of this, going back for years, unless it is material.

Katherine Anne O'Brien Smith.

The Commissioner: It is leading up to something I was going to ask about myself because I want to know about transportation.

(Off record discussion).

By Mr. Harrell:

Q. Mrs. O'Brien—Mrs. Smith, you and your husband lived together on several Army posts?

A. Yes.

Q. I think probably the first time you were separated by his service was when he went to Korea?

A. We were first separated when he went to Okinawa, and then he went to Korea.

Q. When he went to Korea how much money was he sending you?

A. I don't know now.

Dep. I 5/7/57 page 53

Q. Do you know where you lived—where he lived before he went in the Army?

A. Yes.

Q. Where?

A. Richmond.

Q. His parents live there?

A. Yes.

Q. That is his home?

A. Yes.

Q. Now, after you had been living together in this Army life you began to get dissatisfied with Army life, did you?

A. Well, I don't understand what you mean by "dissatisfied". I didn't like it, but I put up with it.

Q. You didn't like it?

A. I had been in the service before, and I knew what it was like.

Q. You didn't like military service?

A. My children are Catholics and I would like to suggest what places to bring them up in instead of like a lot of gypsies.

Q. Just before your husband went to Puerto Rico you went down to Georgia, did you?

A. Yes.

Q. After you had been living there two or three months you and the children left with your father and came back to Norfolk?

Dep. I 5/7/57 page 54

A. Yes.

Q. And he stayed down at Fort Benning?

A. Yes, because I came back with my father

because he had orders to go to Puerto Rico which he had put in for.

Q. It was decided, because he didn't know what living conditions would be, that he would go alone and when he got quarters you were to join him?

A. Yes.

Q. He came back up here and you went down with him?

A. Yes.

Q. And you stayed there approximately two weeks before you left and came back?

A. Three weeks.

Q. Before you left and came back?

A. I had to come back due to my illness. It was the Army's decision, and when I arrived there I had an attack and I had to come back here to get proper medical attention. I had to leave and come back here or be put in a strait jacket.

Q. Did the Army tell you that?

A. Yes.

Q. You have no use for the Army?

A. I have no objection to the Army.

The Commissioner: She doesn't care about the living conditions, she says.

Dep. I 5/7/57 page 55 } By Mr. Harrell:

Q. Just before you came back you and your husband discussed whether the children would stay there, did you?

A. I would not leave there without my children. They are mine.

Q. You didn't want the children to stay there, did you?

A. No. How would he take care of them?

Q. He had made arrangements to take care of the children, had he not?

A. (Pause).

Mr. Fine: Answer him.

By Mr. Harrell:

Q. He had made arrangements to take care of the children, had he not?

A. While he was working, arrangements to take care of the children?

Q. Yes.

A. While I was living with him?

Katherine Anne O'Brien Smith.

Q. No, if you had left the children there with him.

A. No. There was an agreement that I wouldn't leave there unless the children went with me.

Q. He wanted to keep the children, did he not, until you could come back?

A. No, sir.

Q. Did you want to come back?

Dep. I 5/7/57 page 56 } A. Yes, I wanted to come back where I could get civilian doctors.

Q. He wanted you to come back to Puerto Rico after the civilian doctors got you well?

A. No, sirree.

Q. Didn't he write and ask you to come back?

A. No.

Q. This divorce he started was started a year after you got back, was it?

A. Yes.

Q. January, 1955?

A. Yes.

Q. Will you live with him now?

A. No, not with the cruelty and the lying I have to put up with, no, sirree.

Q. You refuse to live with him now?

A. Not unless he changes completely. You couldn't expect a person to live with a cruel person that lies, could you, or stand for their children to live with them?

Q. If he get quarters where he is stationed will you go there and live with him?

A. Not unless he changes his cruelty and lying. I couldn't expect my children to live with that.

Mr. Fine: I don't think that is pertinent.

Dep. I 5/7/57 page 57 } The Commissioner: I think it is.

Mr. Fine: It is purely from the standpoint of trying to influence your Honor against this lady. He has never asked her to come back and he is trying to color this case and prejudice her. I venture to say that if you can show anything in writing where he has asked her to come back it would have been in bad faith.

Mr. Harrell: He will testify and will show you that your argument is groundless.

By Mr. Harrell:

Q. Mrs. Smith, once you tried to get him out of the Army

to come to Norfolk and go in the bricklaying business with your brother?

A. I suggested it, that is all.

Q. And he refused it?

A. It was just a suggestion.

Q. He told you he was going to stay in the Army, didn't he?

A. Yes.

Q. And was going to make a career?

A. Yes.

Q. He was a sergeant when you married him and he is a captain now, is he not?

A. Yes.

Dep. I 5/7/57 page 58 } Q. Mrs. Smith, just before you did leave to go to Puerto Rico, at one time or another you told your husband he could take the children and you were going to stay home, didn't you?

A. No.

Q. Then you changed your mind and went with him?

A. No, I would never leave these children to go.

Mr. Harrell: That is all I have, your Honor.

Mr. Fine: I want to call Mr. Smith as an adverse witness.

The Commissioner: We are not through with her.

By the Commissioner:

Q. I understand you have had epilepsy all of your life?

A. Not all of my life.

Q. It is congenital, is it?

A. When I joined the Waves—that is the reason I get compensation, a compensation check, because I was discharged, dishonorably discharged, on account of my illness.

Q. You didn't get a dishonorable discharge for that?

A. I mean disabling discharge.

Q. You get compensation from the Government on account of your condition?

A. Yes.

Dep. I 5/7/57 page 59 } Q. It is congenital, is it?

A. Sometimes you outgrow it.

Q. And sometimes you don't?

A. No.

Q. Have you had any attacks recently?

A. Yesterday, Sunday.

Q. This year?

Katherine Anne O'Brien Smith.

A. Yes.

Q. There is no hope that you will outgrow it?

A. Dr. Spessard and I are working on it.

Q. What is the compensation you get from the Government?

A. $102.00.

Q. You were getting that at the time of your marriage?

A. Yes.

Q. You were an epileptic before?

A. Before we were married I had one in his home.

Q. He was thoroughly familiar with your physical condition?

A. Yes.

Q. Did I understand you to say he was a native of Richmond?

A. Yes.

Q. Since you were married he has not established a home anywhere else?

Dep. I 5/7/57 page 60 }

A. No.

Q. He is still a resident of Virginia?

A. That is right.

Q. When you left Puerto Rico and came to Norfolk you left for the purpose of coming back for civilian medical care?

A. Yes. Dr. Spessard was my doctor previously, before I went to Puerto Rico, and attended me in the DePaul Hospital afterwards.

Q. I assume there is a charge of desertion on his part, that you deserted Captain Smith. The question I have to answer and the Court has to be advised about is whether or not when you left Puerto Rico you intended to desert him. You say you left him and you are unwilling now to go back and live with him unless he changes considerably, and his conduct was such that you don't want to live with him?

A. Yes.

Q. The question I have to answer is whether or not you deserted Captain Smith in Puerto Rico or whether or not he deserted you by not making a home for you.

A. No. He called my family at home at three to five something in the morning to come and get me due to my condition of illness. How could I possibly desert him?

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Dep. I
5/7/57
page 61 } HARRY LEE SMITH, JR.

the defendant, called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (adverse).

By Mr. Fine:

Q. State your name, please.

A. Harry Lee Smith, Jr.

Q. How old are you?

A. 34.

Q. Where do you live?

A. Officers BOQ, Fort Myers, Virginia.

Q. Where is your residence?

A. Permanent address is 1321 Grey's Court Avenue, Richmond, Virginia.

Q. Where did you last live with your wife before you went to Puerto Rico?

A. Before I went to Puerto Rico?

Q. Yes.

A. Fort Benning, Georgia.

Q. That was on a military post; is that correct?

A. Yes.

Dep. I
5/7/57
page 62 }

Q. You were on military orders at that time?

A. Yes.

Q. Have you lived with your wife as man and wife at any other place other than at a military post?

A. No.

Q. Have you ever lived with her in Norfolk, Virginia?

A. No.

Q. You never lived with her as man and wife in the City of Norfolk?

A. No. We were only here on visits.

Q. That is what I say. When you were here on visits did you live with her?

A. Yes.

Q. In the City of Norfolk?

A. Yes.

Q. As man and wife?

A. Yes.

Q. Captain, your wife did come to the United States from San Juan, Puerto Rico, and came to Norfolk, Virginia, on January 1, 1954; is that right?

Harry Lee Smith, Jr.

A. That is right.

Q. You haven't lived with her as man and wife since January 1, 1954?

A. No, sir.

Q. What?

Dep. I A. That is right.

5/7/57 Q. That is perfectly true then?

page 63 } A. Yes.

Q. When you were living with her at San Juan in December, 1953, did you make out an allotment to her then?

A. No. She was living with me.

Q. So there was no necessity for you to make an allotment in 1953 when you were living together?

A. No.

Q. After January 1, 1954, when she went to Norfolk to get treatment, you called her mother up for her to come down, did you not?

A. No, I didn't call her mother up to come down.

Q. Did you call her?

A. I called her, yes.

Q. What did you ask her to do?

A. I didn't ask her to do anything. Would you like to know what went on in the apartment between us and her daughter before we left Norfolk?

Q. You didn't call her and tell her your wife was seriously ill?

A. That was a part of the conversation.

Q. Did you not tell your mother, Mrs. O'Brien, that Mrs. Smith was seriously ill and the Army would put her in a strait jacket?

Dep. I A. No, I didn't tell her she was seriously ill.

5/7/57 Q. Did you tell her they would put her in a

page 64 } strait jacket?

A. No.

Q. You know she came here to Norfolk on January 1, 1954; you knew that, did you?

A. That my wife went to Norfolk?

Q. Yes.

A. Yes.

Q. And your two children went there?

A. Yes.

Q. Did you send her any money in the month of January, 1954?

Harry Lee Smith, Jr.

A. One day—
Q. Just answer the question.
A. I am not sure. May I check this? I sent her in January, 1954, money.
Q. What date?
A. The 28th of January.
Q. Have you got a cancelled check for it?
A. I have got the check stub here.
Q. Have you got the check for it?
A. No, not with me.
Q. How much was the so-called check?
A. $300.00.

Dep. I 5/7/57 page 65 }
Q. Did you send her a check in February, 1954?
A. Yes, on the 27th day of February.
Q. Have you got a cancelled check?
A. No. I have got this stub.

Q. Let me see the stub, please.

(A paper was handed to counsel).

By Mr. Harrell:
Q. Will you read the amount off?
A. $100.00.

By Mr. Fine:
Q. Have you got a bank statement?
A. No, not with me.
Q. You haven't got a bank statement. Are you sure you didn't write all of these at one time? They appear to be right freshly made out. When did you write them?
A. On the dates you see there.
Q. Do you have the bank statement and cancelled checks?
A. Not with me.
Q. Did you withdraw money from the building and loan you had in a joint account?
A. Yes.
Q. Why did you do that when your wife needed medical attention?
A. Because I received a letter from you ten days after she left me stating she wanted support.

Dep. I 5/7/57 page 66 }
Q. Did you ever reply to me when I wrote you a letter that you had sent your wife a check for $100.00?
A. What is that?

Harry Lee Smith, Jr.

Mr. Fine: Read the question to him.

(The question was read as follows):

"Did you ever reply to me when I wrote you a letter that you had sent your wife a check for $100.00?"

A. No, I can't remember. I don't know whether I replied to you or turned it over to the Judge Advocate.

By Mr. Fine:

Q. Do you remember writing me a letter? I ask you if I didn't write you this letter, and didn't you receive it (handing paper to witness)? Read it, please, sir.

A. Yes, I remember it.

Q. Did you ever reply to that letter?

A. I can't say yes or I can't say no. May I check?

Q. Sure you may. We will save some time.

A. (No response).

Mr. Fine: I would like to read this, January 23, 1954.

By Mr. Fine:

Q. You were told that you had withdrawn $800.00 from the joint account?

A. Yes.

Dep. I
5/7/57
page 67 } Mr. Fine: I would like to introduce that.
The Commissioner: Exhibit K. Do you want to put these check stubs in?

Mr. Fine: No, sir.

Mr. Harrell: I was going to introduce these, but some of these are not payable to his wife.

The Commissioner: They look like they are genuine.

By Mr. Fine:

Q. Is it true, or not, that you agreed to pay your wife $282.00 a month for support in October, 1956?

A. Yes.

Q. You also agreed to pay her $200.00 which was due from back payments?

A. Yes.

Q. Why did you change your mind? Has there been any decrease in your salary?

A. Because I was being pressured. I was under pressure from you.

Harry Lee Smith, Jr.

Q. What is your salary?
A. What my salary is?
Q. Don't you know what it is?
A. I guess you want the exact figure. It is approximately $600.00.
Dep. I 5/7/57 page 68
Q. Approximately $600.00 a month. What is your salary, sir?
A. $615.67.

By the Commissioner:
Q. That is gross?
A. Yes, sir.
By Mr. Fine:
Q. In addition to the $615.67 how much do you get as allowance for being a married man?
A. $102.60.
Q. How much do you get for having two children?

Mr. Harrell: A commissioned officer doesn't draw anything for having children.
Mr. Fine: Let him answer.
A. I don't draw anything for children.

By Mr. Fine:
Q. How much do you draw for quarters?
A. $102.60 for quarters and $47.88 for subsistence allowance. That is $150.48.
Q. Being a married man?
A. That is right.
Q. What is your gross?
A. $615.67.
Q. Deducting from that $150.48 leaves $465.19, doesn't it?
Dep. I 5/7/57 page 69
A. Yes.
The Commissioner: That is what he would get if he were not married.

By the Commissioner:
Q. Is that correct, Captain Smith?
A. When a man is—I am pretty sure if I didn't have any dependents I would draw $85.50 in addition to that.

By Mr. Fine:
Q. I am speaking of your being a married man and not about your children.

Harry Lee Smith, Jr.

A. Yes.
Q. You would get $465.19?
A. Right.

The Commissioner: He said he would get an additional $85.00.

By Mr. Fine:
Q. Do you get an allowance for having two children?
A. Yes.
Q. How much is that?
A. Married officers with dependents get $102.60.
Q. Does it make any difference if you have one or two children?
A. No.

Q. 102.60 and $47.88?
Dep. I A. Right.
5/7/57 Q. So from your $280.00 you agreed to give
page 70 } her you are contributing only $129.52?

Mr. Harrell: I object to that.
Mr. Fine: I am going to show that part of the money he pays them comes from the Government.
Mr. Harrell: The last question is misleading.
The Commissioner: How much is he contributing out of the $282.00 if his net pay is on a basis of four-hundred odd dollars?
Mr. Fine: It is $129.52.

By Mr. Fine:
Q. Isn't that correct?
A. Not necessarily. If I was not married and without dependents I would still draw $47.88 regardless. That is subsistence. By my being married with dependents they give me extra, $102.60.
Q. When were you made captain?
A. 4 of March, 1954.
Q. When are you eligible for major?
A. Any time after I have been five years a captain. It is basic.

By the Commissioner:
Q. You get certain fogeys for your time?
A. Yes.

Miss Mary Ann Vance.

Dep. I
5/7/57
page 71 } By Mr. Fine:

Q. That leaves you $333.67 to look after your needs and luxuries?

A. And to pay tax deductions, insurance and social security.

By the Commissioner:

Q. You are getting social security now, or under social security now, I believe?

A. That is right.

By Mr. Fine:

Q. How much is your net take home pay?

A. $213.00.

Q. And you are giving your wife $282.00; is that right?

A. That is right.

Q. Your wife has three to support with herself and you only have yourself. You tell that to the Judge today, that you get $213.00?

A. Yes.

Q. How do you expect three people to live on $282.00?

A. I don't know.

Q. The Judge didn't reduce it, did he?

A. No, he didn't reduce it.

Mr. Fine: That is all.

Dep. I And further this deponent saith not.
5/7/57
page 72 } MISS MARY ANN VANCE,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Harrell:

Q. State your full name.

A. Mary Ann Vance.

Q. Your age?

A. 32.

Q. Your present address?

A. 38 Walnut Street, Natick, Massachusetts.

Miss Mary Ann Vance.

Q. Do you hold a commission in the Army Reserves?
A. Yes, captain in the Army Medical Corps.
Q. Do you know Captain Harry Lee Smith and Mrs. Katherine Anne O'Brien Smith?
A. Yes.
Q. When and where did you first see Mrs. Smith?
A. In Puerto Rico in December, 1953, the day she arrived.
Q. Where you on duty there at that time?
A. Yes.

Dep. I
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page 73

Q. What was your rank at that time?
A. First lieutenant.
Q. Where were you stationed?
A. Rodriguez Hospital.
Q. Do you know anything about the quarters that Captain Smith had for Mrs. Smith when she arrived?
A. He had quarters in the San Cristobal officers' housing area, of which most of them were six room apartments.
Q. Was that within Fort Brooke?
A. Within a half mile of Fort Brooke.
Q. Was that regular Army housing furnished officers?
A. Yes.

Mr. Fine: We are interested in this particular apartment, not what most of them were, but what this one was.
The Witness: As I remember it, I think it was a six room apartment.

By Mr. Harrell:
Q. Were you in contact with Mrs. Smith while she was there?
A. I was, sir.
Q. In detail tell the Commissioner of your dealings with Mrs. Smith, etc., while she was in Puerto Rico.
A. I first met her the afternoon she arrived, and when she had a fall Captain Smith could not be reached for awhile and I went over to stay with the children while he went to the hospital with her.

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page 74

The day she was discharged from the hospital he was Adjutant for retreat parade and she was at the hospital for a certain time, and it was on my route home and I gave her a ride home. I stayed with her one weekend when he was Officer of the Day because he could not stay in the apartment with her during that time, and I took care of her two children.

Miss Mary Ann Vance.

Q. The reason he could not stay in the apartment was because he was Officer of the Day?

A. Yes.

Q. Where did he have to be?

A. He had to stay on the reservation, the base.

Q. Go on about that weekend.

A. She was complaining about the Army and her quarters and everything else, and she wanted to get away from the Army and Puerto Rico.

• • • • •

Dep. I
5/7/57
page 75 } Q. What did she say to you concerning her attitude about the Army?

A. She didn't like the Army quarters or the hospital, and until her household furnishings arrived—

Q. Could you tell whether or not she felt that way when she arrived?

Mr. Fine: I object to a conclusion.

By the Commissioner:

Q. Just tell us what she said.

A. Her feelings, the way she expressed them, was she didn't like the Army and didn't like anything about it and didn't want to have anything to do with it. She just wanted to get away from it completely.

By Mr. Harrell:

Q. Do you know whether or not Captain Smith had made any arrangements concerning taking care of the children if she should leave the children there when she came back to Norfolk?

A. I do know he said he was going to try.

Mr. Fine: I object to that.

The Commissioner: Unless he said it before Mrs. Smith.

A. (Continuing) I had agreed to help take care of the children when I was off duty if he could not have a maid there.

• • • • •

Miss Mary Ann Vance.

Dep. I
5/7/57
page 76 } Q. When Mrs. Smith left Puerto Rico to come back to Norfolk did she tell you she wanted to come back to Norfolk and that she was coming back to Puerto Rico?

A. She didn't want anything to do with Army doctors. She wanted civilian doctors here.

Q. Did she say anything about coming back to Puerto Rico?

Mr. Fine: I object to that as leading.

A. I understood she was coming back to Puerto Rico as soon as she felt all right.

Mr. Fine: I object to what she understood.

By Mr. Harrell:

Q. Did she ever come back?

A. Not while I was there. I left 8 November, 1954.

Q. About eleven months later?

A. Yes.

Mr. Harrell: Answer Mr. Fine's questions.

CROSS EXAMINATION.

Dep. I By Mr. Fine:
5/7/57 Q. How many times were you in the apartment
page 77 } of Mr. and Mrs. Smith?

A. About four times.

Q. And one of those times was when you were looking after the children while Mrs. Smith was in the hospital?

A. Yes.

Q. Did you see her then?

A. Yes, I did see her then.

Q. At the house or hospital?

A. At the house, before the ambulance arrived.

Q. Was she ill?

A. Yes.

Q. Very ill?

A. She was semi-conscious at the time.

Miss Mary Ann Vance.

Q. So that was the first time you saw her?
A. Yes.
Q. After that how long was she in the hospital?
A. I don't know just offhand how long she was in the hospital.
Q. Did you see her in the hospital?
A. I saw her once on the ward.
Q. Did you ever see her again?
A. Yes.
Q. When was the next time you saw her?
A. Captain Smith—one night Captain Smith was Officer

Dep. I of the Day and I stayed with her.
5/7/57
page 78 } Mr. Fine: Will you read the question to her?

(The question was read as follows):

"When was the next time you saw her?"

A. The next time was the night I stayed with her.

By Mr. Fine:
Q. Was she ill then?
A. She didn't get out of the bed to eat or take care of the children.
Q. I asked you was she ill?
A. As far as I could tell, no.
Q. That was a very short time?
A. Yes.
Q. How long were you over there looking after her children?
A. From Saturday noon until Sunday morning when Captain Smith arrived.
Q. She had not gotten out of bed from Saturday?
A. No, sir.
Q. Until Sunday morning?
A. Except to go to the bathroom.
Q. What were you doing, nursing?
A. No.
Dep. I Q. What were you doing?
5/7/57 A. I was physio-therapist in training there,
page 79 } and I was glad to help a fellow officer to have somebody to stay with the children.

Miss Mary Ann Vance.

Q. She didn't have a nurse, Mrs. Smith?
A. Not after she was discharged from the hospital.
Q. When were the four times you saw her?
A. I saw her when he was on duty, and when I picked up Brenda and took her out the day just before she left.
Q. Brenda is the oldest child?
A. Yes.
Q. Were you in her company very long?
A. No.
Q. You just took the child out. Where did you take her?
A. She went back with me to the nurses' quarters.
Q. Every time you saw her she was ill, was she?
A. No.
Q. When was the first time you saw her?
A. On the day she fell, the day she arrived.
Q. She was ill then?
A. Yes.
Q. And the second time was in the ward?
A. Yes.

Dep. I
5/7/57
page 80

Q. In the hospital?
A. Yes.
Q. And the third time was when she was in bed, and didn't get up except to go to the bathroom?
A. Yes.
Q. And the fourth time was the time when you took the child to the nurses' quarters?
A. Yes.
Q. That was the day before she left?
A. Yes.
Q. Her plans were to come up here to get civilian treatment?
A. I don't know what her plans were.
Q. You don't know much about their marital difficulties, do you?
A. I don't make it a practice of meddling in family affairs.
Q. I am not criticizing you.

The Commissioner: I think she has answered you.

By Mr. Fine:
Q. As far as you know, she did have epileptic seizures, didn't she?
A. Yes.
Q. Wasn't this a four room apartment?

A. No, sir.

Dep. I 5/7/57 page 81 } Q. Can you state on your oath this was a six room apartment and not a four room apartment, or are you just depending on your best recollection? My client advises me it was a four room apartment.

A. If the porch would be considered a room there were six rooms, counting the porch.

Q. You are willing to swear it was a six room apartment counting the porch?

A. Yes.

The Commissioner: It doesn't make too much difference, does it?

By Mr. Fine:

Q. You know nothing about whether Captain Smith saw her in Norfolk, Virginia, or not, do you, while she was away?

A. All I know is his duty assignment was there.

Q. Do you know anything about his seeing her in Norfolk?

A. I know when he came on leave because he came up on a military flight which I was on.

Q. Where?

A. To Norfolk.

Q. Were you visiting here?

A. No. I went to Boston.

Q. At the same time?

A. About the same time. Originally I had space on the plane and he didn't.

Q. Do you remember what month it was?

Dep. I 5/7/57 page 82 } A. In November, 1953. He came up after Mrs. Smith.

Q. She left Puerto Rico and came to Norfolk—

Mr. Harrell: I think you are confusing the witness. She said he came up here to get her before she went down there.

By Mr. Fine:

Q. I am speaking of after she left for Norfolk on January 1, 1954, or December 31, 1953. Do you know whether he came to Norfolk?

A. I don't know what he did after that. I was stationed at the hospital and he was at the post.

Q. You don't know what arrangements they had about coming to Norfolk?

Miss Mary Ann Vance.

A. I know he was hoping she would return as soon as possible.

Q. How do you know that?

A. Because he told me when he borrowed money to bring her back up here.

Q. Did he borrow the money from you?

A. No.

Q. You are a close friend of his?

A. No. I was a friend of male officers and their wives, and also friendly with Captain Smith.

Q. Did you come here by reason of a subpoena?

Dep. I A. No. I came on request of Mr. Harrell.

5/7/57 Q. You were friendly enough to come down here
page 83 } to testify?

A. Yes.

Q. Where are you stationed at the present time?

A. I am not employed. I have just been discharged from the Veterans' Hospital.

Q. Where were you before you came down here?

A. With my family in Natick, Massachusetts.

Q. Where was your last assignment?

A. Puerto Rico. I left in November, 1954.

Q. You came here out of personal friendship to Mr. Smith?

A. I came down as a friend.

Q. You came down here at your expense?

A. No.

Q. He paid for your transportation?

A. Yes.

Q. Where are you staying in the City?

A. Hotel.

Q. What hotel?

A. Monticello, is it?

Q. Where is Mr. Smith staying?

A. I understand he is staying there, too.

Q. Who is with Mr. Smith?

A. By himself.

Q. What is his room number?

Dep. I
5/7/57
page 84 } Mr. Harrell: I object to that. I don't think it has a thing to do with this case.

Mr. Fine: It is rather unusual, coming down from Massachusetts.

The Commissioner: I can understand it. I think I understand the inuendo, and I think it is rather bad taste.

Mr. Fine: That is all. I want the record to show I think, under the circumstances of this case, it is very unusual.

Mr. Harrell: That is all.

And further this desponent saith not.

The Commissioner: The way I see it at the moment, under the pleadings there is no proof of desertion by Mrs. Smith on December 30, 1953. The allegation is that she deserted him on that date. There is no proof to that effect.

Dep. I
5/7/57
page 85 } On the other hand, the charge in the bill of complaint is that Captain Smith was guilty of cruelty and failure to provide a home for her. I find no proof of that, so the parties are just where they were.

Mrs. Smith has testified to the fact that she would not go back and live with him again, but I don't think she has established an act of desertion on his part, and it is not within the pleadings. There is nothing I can do about that.

The way I see it, neither party is entitled to recover. Mr. Smith is under order of Court for the support of his wife and children, and the Court will have to pass on that finally after I file my report. I want you to give me Captain Smith's income and expenses.

Mr. Harrell: I ask for a continuance for another witness.

The Commissioner: Could they add anything to it?

Mr. Harrell: I think they might prove desertion.

* * * * *

Dep. II
9/18/57
page 90 } Office of the Commissioner, Bank of Commerce Building, Norfolk, Virginia, September 18, 1957, 10:00 o'clock A.M.

Met pursuant to the foregoing adjournment.

Appearances: Same counsel as heretofore noted.

HARRY LEE SMITH, JR.,

the defendant, having been previously sworn and examined, was recalled and testified in chief as follows:

Harry Lee Smith, Jr.

DIRECT EXAMINATION.

By Mr. Harrell:

Q. State your name, sir.

A. H. L. Smith, Jr., Harry Lee Smith.

Q. And you are the defendant in this suit, are you not?

A. Yes, I am.

Q. And you are requesting this Court to grant you a divorce from your wife on the grounds of desertion, are you not?

Dep. II 9/18/57 page 91 } A. Yes, sir.

Q. When was the last time she lived with you?

A. The last time she lived with me was in Puerto Rico in 1953.

Q. And that was the last part of December, 1953, or the first part of January 1954, that—

• • • • •

Q. Your wife has not lived with you since you testified, since the last hearing?

• • • • •

A. The last time I lived with my wife was in San Juan, Puerto Rico, December, 1953. She came from Norfolk to San Juan during the month of December, and she left there on or about January 1, 1954.

By Mr. Harrell:

Q. Where did your wife go when she left San Juan, Puerto Rico?

Dep. II 9/18/57 page 92 } A. When she left San Juan she went to Norfolk, Virginia.

Q. Whom did she live with here?

A. With her parents, Mr. and Mrs. O'Brien.

Q. After your wife left San Juan, did you write to her and request her to return to San Juan and live with you?

A. Yes, I did. I was under the impression that the reason for her leaving was to obtain medical care under her doctor, which she so desired, and that she was going to return once she was feeling better. If I had known she was not going to return I would have kept the children there.

Q. How many times did you write your wife requesting her to return?

Harry Lee Smith, Jr.

A. I wrote to her about three times.

Q. And what were the results?

A. I did not receive anything from her as to whether or not she would return to me. The whole issue was evaded in her letters.

Q. Have those letters been introduced in evidence?

A. Yes, they have.

Q. How long after your wife left San Juan was it you filed your divorce suit in San Juan?

A. Approximately a year after she had left.

Dep. II 9/18/57 page 93

Q. After filing this divorce suit did your wife ever return to you or indicate she would return to you or suggest she would?

A. None whatsoever, she never did.

Q. Did she make any offer to return?

A. No, sir, she did not.

Q. Did she ever give you any reason as to why she would not?

A. No. The only reason is that she does not—

Q. Did she ever express to you any reason why she would not return? That is what the question is.

A. No, sir.

Q. Why did you start this divorce suit in San Juan, Puerto Rico?

A. I started the suit in San Juan, Puerto Rico, because I thought she was going to put in for a divorce against me, and since she was not returning to me, I started the proceedings in the hopes that maybe, by doing so, she would write to me and want to come back to San Juan, Puerto Rico, and live with me.

Q. Was a divorce granted you there?

A. No. it was not.

Q. Why was it not?

A. The Court claimed lack of jurisdiction in the lower Court and referred it to a higher court and asked me to appeal, because there was some question about my residence there.

Dep. II 9/18/59 page 94

Q. Did you appeal the case?

A. No, I did not appeal the case due to the fact I was soon due to return to the United States, and by being back in the States, I thought maybe my wife would want to join me and live in the States, since I would not be in foreign country.

Q. When you and your wife were there at Fort Brooke, what sort of quarters were furnished you and by whom?

Harry Lee Smith, Jr.

A. By the Government, they were Government quarters on a very famous old Spanish port known as San Cristobal. They were very nice quarters and were occupied by officers. Officers and their families, those types. I had approximately six rooms and they were built of Spanish tile, and large rooms. They were furnished by the Government due to the fact our household goods had not arrived at that time.

Q. Describe this fort as to its beauty and living conditions.

A. Fort Brooke—

Q. San Cristobal and Fort Brooke, is that a part of Fort Brooke?

A. Yes, sir. It is an old tourist attraction and linked up with San Cristobal down there. There used to be a tunnel running between, connecting the two, but due to safety they closed the tunnel up, and it is all connected as a Spanish defense of the island. It is one of the main tourist attractions in San Juan. The quarters are up to Government standards and, if they were not, we would not be allowed to live in them.

Dep. II 9/18/57 page 95

Q. Now, how does this place compare with other places in the Army for tours of duty?

A. This is one of the choicest spots on the sound, the choicest assignment in the Army, and you are lucky to get it, and you very seldom get it a second time.

Q. Why is it your wife will not return and live with you?

A. For two reasons, one is that she has a great dislike for the Army, she does not like anything about Army life at all, life in the Army. She has refused many times to be taken care of by Army doctors which would have saved us a great expense.

Also, the only other reason is that if she is not closely tied to her mother—she does not care to be away from her mother any far distance, away from her.

Q. How does her mother feel towards you?

Mr. Fine: I object to that as immaterial and irrelevant.

The Commissioner: I don't think it is a proper question.

Mr. Harrell: The man has just testified that is one of the reasons.

Dep. II 9/18/57 page 96

The Commissioner: I will admit it if you insist, I will admit it for the record, but I don't think it is proper and that is my ruling.

Mr. Fine: If it goes in the record I wish to note my exception.

Harry Lee Smith, Jr.

By Mr. Harrell:

Q. How does her mother feel towards you?

A. Her mother dislikes me.

• • • • •

Dep. 9/18/57 page 97 } Q. How has she treated you when you visited the children?

A. Well, not too well. She likes to discuss matters that would lead into arguments, and I do not care to discuss any matters between me and my wife and children with her. I am married legally to my wife, and any matters that come up should be discussed between her and I, and I do not want her mother to add her opinion, because she likes to argue too much, and I have to take somebody with me to keep from having arguments whenever I visit my children. I took a stranger once before.

Q. Before your wife left you in the latter part of December, 1953, or the first of January, 1954, had she ever left you before?

A. Down at Fort Benning, Georgia, she left there while I was attending school, to come back to Norfolk to live. She did not want to stay there due to my long hours at school. I had a maid to help out with the children and I knew of no reason why she would want to leave. She could have stayed there up to the time I would leave and bring her back to Virginia prior to my shipment overseas. I did not want her to leave. I am an individual—I do not blame my wife too much, I feel sorry for her, and anything she wants to do. I usually go along to avoid an argument. I hate arguments, I dislike arguments.

Dep. II 9/18/57 page 98 } Q. When she left Fort Benning and came back to Norfolk who accompanied her on the trip up here?

A. It was her mother and father.

Q. Now, where did you and your wife last have marital relations?

A. It was in Norfolk, Virginia, in her mother's house, in Norfolk, Virginia, is really the last time, when I came to the States from Puerto Rico to pick her up and the children to take back to Puerto Rico.

Q. Why have you not had relations with her since then?

A. She just does not want to have any relations, she does not want to live with me.

Q. Now, when you came up from San Juan to get her and the children and take them back with you—

Harry Lee Smith, Jr.

Mr. Fine: I object to that. He said he wrote. You are leading him again.

Mr. Harrell: He testified he went down to San Juan, Puerto Rico, and got quarters and came back to get his wife and children and wanted them to go back with him.

Mr. Fine: I object to statement of counsel.

The Commissioner: You asked him when he came back from San Juan to Norfolk. Was that after Mrs. Smith had come to Norfolk and broken off?

Dep. II 9/18/57 page 99 } Mr. Harrell: I never had a chance to finish the question.

Mr. Fine: I object to your leading this witness.

The Commissioner: I want to get the time. Was it after the break-off that is alleged in the papers here?

Mr. Harrell: No, sir, the first time.

By Mr. Harrell:

Q. When you came back from San Juan to get your wife and take her down there did your wife want to go?

A. No, sir, she did not. She told me to take the children and go, that she did not care to go with me. I told her, "All right, in the morning I am going to go ahead and take off with the two children," and so she and her mother went into the room, the bedroom, and started talking. I could not hear, as they were behind a closed door, but, anyway, the next morning she said she was going along, and on that whole trip from Norfolk to Mobile, Alabama, which was to the overseas ship, bound by plan, she never said anything, no cooperation, to take care of the children. While in Brookley she did not take care of the children, and she refused to go through the processing, to take medical shots required before shipment overseas. I had a hard time taking care of two children, and I had also to go over to the club to get a bath, and tried to finish the processing we are required to do. The whole plane trip from Brookley to Puerto Rico she did not say anything. I kept asking her what was the matter, and I got no reply half the time. Sometimes I got the reply, "Nothing." I tried to carry on a conversation with her and the results were nothing.

Dep. II 9/18/57 page 100 }

When I arrived at Puerto Rico, the Army Air Force Base, the escort met us, and it was a two hours trip, and she was very discourteous towards him, she did not show any politeness at all, and the lack of cooperation all along was very bad on her part, and I disliked it, because it put me in a very embarrassing situation.

Harry Lee Smith, Jr.

Q. Has your wife ever talked to you about your leaving the Army?

A. Yes, many times. One time she wanted me to come down and work with her brother, to study laying bricks. I had indicated to her the army is my life and profession I have chosen, just like you join the law profession, and I was in sight of the goal I was working towards. I have worked my way up from a recruit to a Captain, and I did not do that by getting handouts.

Q. What, if anything, has she done to interfere with your Army routine?

A. At Fort Knox, Kentucky, she used to call my office at nine and tell me to come home and take care of the children.

Dep. II 9/18/57 page 101 } Due to my military duty, I could not possibly do that, although I did make excuses to. When I had guests to come to the house she would never present herself in a ladylike manner. The only time she would comb her hair and fix herself up, was when her folks were around, and I was too ashamed to bring guests to the house.

Q. Have you ever been cruel to her?

A. I have never been cruel to her, no. I have been decent and nice and kind, everything I could. I had a maid everywhere we went to do the work around the house.

Q. What kind of maids have you had?

A. Both colored and white, to do the ironing and housework and take care of the children.

Q. Where did you obtain these maids?

A. You get them through the domestic service on the post. The majority of posts throughout the United States have a domestic service.

Q. Has she ever indicated she would live with you since she left in January, 1954?

A. No, she has not.

Q. Do you still want her and the children to live with you?

A. Yes.

Q. Will you drop this suit if she and the children will return and live with you?

Dep. II 9/18/57 page 102 } A. Yes, sir. I have quarters I put in for at Fort Myer and wrote and told her, very nice quarters.

Q. Prior to the time this suit was filed, you made an agreement in Mr. Fine's office you would pay her and the children $282.00 a month for their support?

A. Yes, I did.

Q. Did you have legal counsel at that time?

Harry Lee Smith, Jr.

A. No, I did not. I came here—there was one letter when I arrived at my new assignment from overseas with my new Commanding Officers, and I was greatly embarrassed about it, that there should be a letter coming down through channels claiming non-support of my wife and I told him I had been under advice of lawyers as to what to do. I was paying to give us proper advice, and they told me to cut the payments down to $100.00. I told him that information; I did not want my Army career jeopardized for no reason, and he suggested I increase it back to the $200.00 and obtain legal counsel, and I said I would do that, which I did; with the fear of getting more letters, which I did. It was quite embarrassing for the Sheriff to come walking in my office and hand me a subpoena before those people.

I made arrangements to come down here and talk to Mr. Fine; if I could not afford a legal counsel, maybe something we could work out with an assurance there would be no more letters written through Army channels in any form pertaining to this affair between us, and, after a bit of deliberation, Mr. Fine came to the figure of $282.00—it was some odd cents and I rounded it off, because the Army does not go for odd figures. I told him I would agree, that I would have this amount of money sent to my wife by allotment, I would send request showing I had put in for that. I wanted the agreement in writing, so I could put it in my files, if the incident came up, to show the Commander I had made the agreement; in case letters came through I would have some explanation. It was strictly agreed between Mr. Fine before my wife. I am a worrying type individual, and I worried about my Army life. After all, it is my bread and butter, and my wife's and two children's.

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* * * * *

Q. Would you have signed that agreement had you not been under this pressure from Mr. Fine with the Army?

A. No.

* * * * *

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* * * * *

Harry Lee Smith, Jr.

By Mr. Harrell:

Q. Where is the household furniture that you all had now?

A. My wife has it.

Dep. II 9/18/57 page 105

Q. Was that furniture bought since you were married?

A. Yes, it was.

Q. Does she have it all?

A. She has all, to my knowledge, she has all of it. There was some sent to Puerto Rico, which was the baby carriage. We had two washing machines. One of them was a washing machine that was sent down there, and a television set.

• • • • •

CROSS EXAMINATION.

By Mr. Fine:

Q. Mr. Smith, you signed that hotel register (handing paper to witness)?

Mr. Harrell: I object to him answering that question. I have objected to the filing of the amended answer to the cross-bill, and this is the subject Mr. Fine is about to seek to put in evidence, to introduce, and I object to all testimony or evidence on that on the grounds I believe that the amended answer should not have been allowed to be filed, therefore, no evidence should be admitted on it. I would like it understood I object to all of this.

Dep. II 9/18/57 page 106

The Commissioner: You understand I am admitting it subject to argument later on subject to the admissibility of the paper, to save time.

Mr. Fine: My friend objected strenuously yesterday, and the Honorable Court, over his objection, permitted us to file this as a part of the answer in the case, held it was proper. So, in effect, my friend would have your Honor reverse the Court's ruling.

Mr. Harrell: I objected and excepted to the Court's ruling.

The Commissioner: You will have a chance to appeal. I am bound to let it in.

By Mr. Fine:

Q. Is that your signature (indicating on paper)?

A. Yes, that is my signature.

Q. And you registered with Mrs. Harry L. Smith on May 6th of this year at the Monticello Hotel?

Harry Lee Smith, Jr.

A. That is right.
Q. Who is the lady you registered as Mrs. Smith?
A. Miss Vance, a witness I had to come down.
Q. She slept in the same room with you?
A. No, sir. I did not sleep in the room with her. I would be a fool to do anything like that.

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page 107

Q. Where did you sleep?
A. In the back of the station wagon.
Q. You did not stay in the hotel with her?
A. No, sir, I did not stay there at all.
Q. Then, you deny staying in the hotel with her?
A. I certainly do. I went up to her room to go over the bills, because I had to pay for her trip down here and back. I had to make a long distance phone call to see if Captain and Mrs. McCord were coming up here for this hearing, and I could have registered in a hotel otherwise than with my wife—you notice that Mrs. is at the end of the name.

I was quite nervous walking into a hotel, because I am not in the habit of walking in a hotel with a woman, and there was a man standing there, and I have heard a great deal of registering and a detective following you around, and I have had enough embarrassment, and I did not want to get involved, I was scared, and I just added Mrs. on there so I could go up to her room and discuss the matter with her, see what she had in her bag, some papers, or what orders, and I pointed out the orders she needed. I was to pay her bill down, gas, etc., and I paid her for that and everything, I figured, so it would take care of her going back, figured it out.

There is nothing between that woman and me, and never has been, or any woman since I have been married to my wife. I am not a lady's man.

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Mr. Fine: I object to that as no responsive to my question.
Mr. Harrell: I submit you are accusing him of adultery.
Mr. Fine: He has committed adultery and we will prove it. I am answering you.

By Mr. Fine:
Q. Do you live in Vermont?
A. No.
Q. Why did you put that down there?
A. I was shook up when I was signing that thing, I did not want to put my right address.

Harry Lee Smith, Jr.

Q. That is your handwriting?
A. Yes, sir.
Q. "38 Walnut Street."?
A. Yes, sir.
Q. What city?
A. Barre City.
Q. So, you were not even from Vermont yourself, at all?
A. No. That is why I don't mind admitting that.
Q. Where did you sleep, in what hotel?
A. I did not sleep in any hotel.
Q. Where did you sleep?
A. In the back of the station wagon.
Dep. II Q. Where was the station wagon?
9/18/57 A. At the City Hall Garage.
page 109 } The station wagon was parked at the City Hall Garage?
A. Yes, sir.
Q. And you slept in the station wagon?
A. I slept in the back of the station wagon.
Q. What time of night did you come in there to sleep? You are on your oath, now.
A. I know that. I am not a clock-watcher. I don't know exactly what time it was.
Q. Did you have a mattress in the station wagon?
A. No, sir.
Q. Did you have a blanket?
A. I had a blanket.
Q. And did you tell the watchman you were going back there to sleep?
A. I did not say anything to him. I went back and got the duplicate set of keys, she gave them to me. I went back there and slept in the station wagon, and I got up the next morning and walked out.
Q. Did anybody see you come in there and go to sleep?
A. I don't know.
Q. Did anybody see you leave there?
A. I don't know.
Q. Where did you wash your face that morning?
Dep. II A. I went over and shaved, downstairs at the
9/18/57 YMCA.
page 110 } Q. Did you have your bag there or at your hotel?
A. Yes, I took them out with me.
Q. After you checked in there?
A. Right. I took the shaving articles out and took them with

me, and when she checked out of the hotel I told her where to meet me, in Mr. Harrell's office.

Q. Did you get a bellboy to take your bags back out?

A. I don't know. I was not there.

Q. When you took your shaving articles out?

A. No, I just took them out of the bag in the room.

By the Commissioner:

Q. In other words, you left the bag in the room and took the shaving articles?

A. That is right. I took the bags out of the station wagon and took them up there, to the room.

By Mr. Fine:

Q. Did anybody see you shave at the YMCA?

A. I don't know.

Q. What harm would it have been to have shaved in that room there?

A. I don't know. I would have had to furnish my shaving needs.

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Q. And you paid this bill, did you not?

A. No. I paid her to pay the bill. It was included in the money I gave her.

Q. How much?

A. A hundred and some dollars.

Q. How much did you give her?

A. To be exact, I believe it was $114.00.

Q. She came down without subpoena, did she not?

A. I believe—I am not sure. I am not sure whether one was mailed her, or not.

* * * * *

Q. Then you did not tell your lawyer to subpoena her?

A. No. I told him the people had knowledge of things in Puerto Rico, and he suggested I have them brought here, and Capt. and Mrs. McCord could not make it. He advised me whoever I brought here I would have to pay their expenses.

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Q. You heard her testify about her being at the Monticello Hotel, and you heard her say that you were staying there, too. I will read this question and answer: "Where is Mr. Smith staying? A. I understand he is staying there, too." Did you tell her you were staying at the Monticello?

Harry Lee Smith, Jr.

A. I told her I might, and I told her, I said, "Give me the duplicate set of keys to the car, I may sleep there. I don't have enough money."

Q. How old are you?

A. Thirty-five years old.

Q. And your registration on this (indicating paper), you just did that for convenience?

A. That is right.

Q. If you were out of funds, why did you not get a single rate room for her?

A. I am not used to registering in hotels.

Q. Have you not been traveling, all over the world? Do you expect the Court to believe that?

A. Yes, I do. When I travel around I stay on military bases. This time I am staying at the YMCA.

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* * * * *

Mr. Fine: I introduce these (producing papers).

Mr. Harrell: I object to the introduction of those on the grounds previously stated.

The Commissioner: They are marked as "Plaintiff's Exhibits N and O."

Mr. Fine: I would like to state for the record Exhibits N and O, offered September 18th, 1957, are pursuant to subpoena duces tecum issued by the Court on the Monticello Hotel.

By Mr. Fine:

Q. Mr. Smith, after your wife went home from San Juan did you go to see her?

A. No.

Q. And when she left San Juan was she in seriously bad health with epileptic seizures she had sustained?

A. Right.

Q. Why did you not go to see your wife after she left San Juan to Norfolk?

A. I had a position there in the Army and the Army does

Dep. II 9/18/57 page 114 } not let you run around. I did not want to burn up leave time. When she got better I could use it. I knew she was in good hands. Her mother has reiterated that to me. I wanted to save my leave time for when she felt better, and I could come and bring her back, rather than have her travel by herself and two children.

Q. When she left San Juan to come here she was seriously ill, was she?

A. She was ill. She had a cut across here (indicating). She had a fall when she had an attack, and I forget how many stitches were taken.

Q. You suggested she come home and get treatment?

A. She did.

Q. It was agreeable?

A. It was agreeable, because I have always agreed to anything she wanted.

Q. That answers my question. I want to ask you this: When was the next time you saw your wife and children? This happened in 1953?

A. That is right.

Q. When did you see your wife and children next?

A. Sometime in the fall; I think it was in November, 1956.

Q. And you tell the Court as a fact you would not go to see your wife from December, 1953, to November, 1956?

A. I was overseas at the time.

Dep. II 9/18/57 page 115 } Mr. Harrell: He has testified he was overseas and he could not.

Mr. Fine: The Court very well knows they have leave coming to them.

Mr. Harrell: He has explained that.

Mr. Fine: He can explain, but you cannot object just because you don't like his answer.

Mr. Harrell: I don't like the comments of counsel and object to them.

Mr. Fine: And I object to counsel interfering with my cross examination.

By Mr. Fine:

Q. When did you leave Puerto Rico?

A. I left Puerto Rico May 9th, 1956.

Q. Is there any reason why you could not have taken off

sometime from January, 1953, to May, 1956, why you could not have seen your wife and children?

Mr. Harrell: He has answered that.

The Commissioner: He is under cross examination, and I have to give Mr. Fine some leeway in his cross examination.

A. I was taken sick in Florida, and I was in the hospital, there at the Master Marine Air Base, in Apalachee, Florida. I was on leave and they suggested I report into—at my duty station which was Washington, D. C.

Dep. II
9/18/57
page 116 } By Mr. Fine:

Q. Did you go to Washington, D. C.?

A. Yes, sir.

Q. When did you go??

A. I reported in on the 31st of May.

Q. How long did you remain in Washington, D. C.?

A. Until the present time.

Q. Let's get this straightened out. You don't understand me. I asked you this simple question: How long had you been in Puerto Rico and you told me May, 1954; after that you left, and where—

A. 1956, that is when I received my PCS orders.

Q. In other words, you were in Puerto Rico from the 1st of January, 1954, through May, 1956?

A. To be—actually I was in Puerto Rico in September, 1953, when I arrived in Puerto Rico from foreign service duty. I departed from there on the 9th of May, 1956.

Q. Now, all during that time you saw fit not to see your wife and children?

A. She was here in the States. after leaving me in January, and, in good grace I was waiting for her to come back. I wrote letters asking when was she coming.

Q. You did not care to see your wife?

Dep. II
9/18/57
page 117 } A. I have, yes, always.

Why did you not?

A. When I go to that house I don't want an argument. I would like to take those two kids away from her.

Q. You said you wrote her a letter to come to San Juan?

A. That is right.

Q. Do you have a copy of it?

Harry Lee Smith, Jr.

Mr. Harrell: I think it is Exhibit L.

Mr. Fine: I would like to see it.

The Commissioner: Here are letters introduced in evidence (handing to counsel).

By Mr. Fine:

Q. I hand you those letters and ask you to point out any letter in there in which you asked her to come to San Juan, in any letter at any time. Point out any letter you wrote asking her to come to San Juan.

A. Right here (indicating).

Q. Read it, please.

A. "I do hope our children are well and in the best of health. I could come there and get them and bring them here and when you get well I could get you here also."

Q. That is dated January 14th, 1954. I would like for the reporter to copy the whole letter.

The Commissioner: All right, let her copy it.

Mr. Fine: Will the reporter please copy that letter in the record.

Dep. II
9/18/57
page 118 } "HEADQUARTERS, FORT BROOKE, P.R.
A.P.O. #851 c/o P.M. New York, N.Y.

14 January 1954

Dear Kit:

I am sending this letter to you through your doctor since your Mother has not informed me of your condition or what hospital you are in.

What is wrong I do not know, I am confused as to what your Mother is trying to do to our marriage.

I have received a letter dated 9 January 1954, thats ten (1o) days after your departure from here, from an attorney named "Louis B. Fine" stating that he represents you in connection with support for you and our children. This is not true for I have money order receipts showing the amount of money I paid you and when I was there I paid your doctor and gave your Mother some money for checks that she wrote and also gave you money. I can't remember any time we have missed paying our bills. No one has sent me any notices of none pay-

Harry Lee Smith, Jr.

ments. I put out a lot of money to travel from Norfolk to here with you and the kids. Then paid for you and the kids to go back and also paid for your father to go back. I paid to send his hat and razor back that he left here also. I put out money for the kids Christmas presents, tree, trimmings, your present and a present to Edith. I gave you that German clock for Christmas and you said you liked it and when Mrs. Rozak asked you what you got for Christmas you pointed to the clock. Brenda helped unwrapped the clock for you. I got Edith a clock almost like that one I gave you and sent it to her from us. I still have the clock here and I can send it to you.

For the month of November of 1953 I sent you a total of $400.00 and I did not have to send you any money in December for I was there with you. I drew my December pay on 22 December before Christmas so as to have a nice Christmas for you and the kids. My next pay I draw will be at the end of this month and as always I will send you some money.

Dep. II
9/18/57
page 119 } Receiving this letter from your attorney so soon after you left here was a surprise to me, just ten (10) days after you left. I can't believe this is your doings.

You have savings bonds that you took out of the desk drawer here and put into your baggage and before you left I open you bag at the airport and signed one so that you will be able to cash them. They are bonds that I bought for you and the kids so use them. They are as good as money. I told your father to use them and he saw me sign one.

You took my watch that you give me for a present and now your mother said you want the camera you gave me also. Are you planning on leaving me for good since you want everything back you gave me? I have a wedding band you gave me on 15 May 48 do you want that back? A person usually gives a present to someone because they want them to have it and keep as a remembrance of them.

I do hope our children are well and in the best of health. I could come there and get them and bring them here and when you get well I could get you here also. Your mother said the house was overcrowded so since the children are my responsibility I can take care of them here.

The kids have no winter clothes there for everything was put in the trunks and sent here. They arrived yesterday and I received a call that they will deliver them tomorrow afternoon. Just as soon as I can get them unpacked I will send the children clothes first.

Harry Lee Smith, Jr.

I think you should wait until you are well and strong before you start any legal actions. I believe that what you are trying to do from what your mother has written me and my sister. I would rather you wait until you are better. I would like to hear from you personally.

YOURS,
HARRY L. SMITH, JR.
1st Lt. INFANTRY."

Dep. II
9/18/57
page 120 } By Mr. Fine:

Q. Do you have any other letter where you asked her to come back, that you have a home there for her? Show me any such letter and we will put it in the record?

A. Right here, in this letter of 25th of February, 1954. "Now we had good quarters here and the household goods were on the way. So when you and the children come back here that means more of a longer wait for our household goods. When do you plan to bring the kids here? Quarters here are alright and the Army doctors here are very good as you have already experienced." I have indicated in letters I wanted her back.

Mr. Fine: Copy that letter of February 25th, 1954, in the record, please.

Note: The letter above referred to is in the letters and figures following: to-wit:

"25 February, 1954

Dear Kit:

I hope you and the children are alright for I have not heard from you for some time. I have received a cable from the transportation section at Fort Monroe, Va. concerning our household goods. They are holding them at the port and wanted to know about orders sending you to the states. Well of course there were no orders sending you back for you left here by commercial means.

Dep. II
9/18/57
page 121 } This means the household goods are tied up at the port and now it will take a longer period for them to get here. Now we had good quarters here and the household goods were on the way. So when you and the children come back here that means more of a longer wait for our household goods. When do you plan to bring the kids here? Quarters here are alright and the

Harry Lee Smith, Jr.

Army doctors here are very good as you have already experienced.

My duties now as club officer keeps me busy day and night. I have lots of work to get caught up on since this job is new to me.

I have a few things like the high chair, baby carriage, curtains, your sweater, washing machine and TV set here that I have in storage. I have been waiting for the other things for I have some of my clothes in them and some papers that I would like to have. Did you stop the shipment? If so why? As far as I am concerned you are on a visit there and no one can get the household goods for they are in my name and they will not move them unless they receive orders from me.

I sent Jack the check for the telephone bill for he did not send me a bill. I also paid your doctor bill.

I miss the kids and do hope they are alright. Please let me know how they are.

Always,
Harry."

By Mr. Fine:

Q.. Any other letter?

A. No, except this letter from her where she indicates she wants the household goods, indicating she did not want to come back.

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Q. Did you write her any other letter since January, 1954?

A. Here I have, indicating that, "Now I guess you can travel since you are strong."

Q. What date is that letter?

A. "I would like to know when you and the kids can come here. Like I said you are there on a visit and there were no orders sending you there for you left and turned down Army travel."

By the Commissioner:

Q. What is the date of that letter?

A. March 10th, 1954.

By Mr. Fine:

Q. Point out to the Commissioner where you ask her to come to San Juan.

A. "I would like to know when you and the kids can come here," by "*t*here" meaning San Juan.

Q. Read the next letter?

A. That is all.

Harry Lee Smith, Jr.

Q. Since March, 1954, have you asked her to come there, written any letter?

A. I don't believe I have, because the replies I got back from her, there was no indication she wanted to come back. She wanted the household goods and I took for granted she did not want to. I sent household goods to her instead.

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Q. Did you not write her a letter telling her, since this suit was instituted, had been instituted, and this was after you testified in this case, telling her—threatening her?

A. Talking about threats, get some of her letters.

Q. Is that your handwriting and addressed to your wife (handing paper to witness)?

A. Sure, that is one, that is one talking about Post quarters.

Q. That is written by you?

A. Yes.

Mr. Fine: I introduce that in evidence.

The Commissioner: It is marked as "Exhibit P."

Mr. Fine: I will read it. It is dated May 18th, 1957, and post marked on the envelope May 18th, 1957:

"Dear Kit:

The other day I submitted a request for Post Quarters here in the south area of Fort Myer for you, the children and myself. There is a waiting list and I will be notified whenever an apartment becomes vacant. The quarters are good, they were build during World War II. It is too expensive to live off the Post. These quarters are for enlisted men and officers up to the rank of Captain only. Since my working hours are long this will be close to my work.

The quarters are unfurnished but you have all the household goods there and it will not cost too much to move them here. I

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am in debt and it would be cheaper to live together than apart. Like an old saying, "If you cannot fight them, join them." You will join me here or I will get out of the service and leave you without income. I will let you know when quarters will be available so you can get ready to come.

Harry."

By Mr. Fine:

Q. You never had the quarters, you just made application?

Harry Lee Smith, Jr.

A. I just made application.

Q. Did you ever write and tell her you had quarters?

A. No.

Q. "You will join me here or I will get out of the Service and leave you without income." So that is the threat you made?

A. A threat?

Q. Have you ever told her you had quarters since May 18th, 1957?

A. I have not gotten them yet. It is a long waiting list. You can check it with those people up there in Antilles.

Q. When you were writing to your wife and asking her to come, you represent, did you write this letter to me in February, 1954, when we asked you for support for the children (handing paper to witness)?

A. Yes, sir.

Mr. Fine: I introduce that in evidence.

The Commissioner: It is marked as "Exhibit Q".

Dep. II
9/18/57
page 125 } By Mr. Fine:

Q. Then, on top of that we sent you a wire on March 2nd, and asked you if you had not received this, which this is a copy of, in 1954, when you are trying to say you asked your wife to come on home. Did you receive the original of that telegram?

A. Yes, I did.

Mr. Fine: I introduce that in evidence.

The Commissioner: It is marked as "Exhibit R."

By Mr. Fine:

Q. We notified you and you paid no attention to that telegram and we had to notify the Army—

Mr. Harrell: I object to that.

By Mr. Fine:

Q. Did you get notice from the War Department about your failure to support your wife and children while she was ill here?

Mr. Harrell: I object to that question. Mr. Fine is testifying when he says about failure. In other words, he is stating he refused to do so.

Harry Lee Smith, Jr.

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The Commission: Did not Capt. Smith testify, Mr. Fine had taken it up with the Army several times, and that in order to foreclose any further communication by Mr. Fine with the Army officials, he came down and made this agreement? I don't know the value of it, but it just simply confirms what Mr. Fine did. Capt. Smith said Mr. Fine had taken up with the Army people, his superior officers, about his failure to support his children, and in order to keep it out of the record, he came down and made this agreement.

Mr. Harrell: That was in 1954. Mr. Fine asked the question in such a way that, regardless of how he answers, yes or no—it is not a fair question.

Mr. Fine: We do represent to the Court this man failed to support his wife and children, while his wife was desperately ill, and we had to solicit the efforts of Mr. Byrd and much paper work to get this woman support.

Mr. Harrell: I object to Mr. Fine testifying. He could ask, did he receive this card, without going into the testimony he tries to get in *in* his questions.

By Mr. Fine:

Q. Answer the question, please.

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By the Commissioner:

Q. Did you receive that card or similar notice?

A. I received notice that came down through channels.

Mr. Fine: I introduce that in evidence.

The Commissioner: It is marked as "Exhibit S."

By Mr. Fine:

Q. As a matter of fact, you were interviewed by Lt. Col. Paul O. Hoffman who told you you had no right to reduce the allotment to your wife from $200.00 to $100.00 per month, in accordance with this letter.

Mr. Harrell: Read the question to him.

(The last question was thereupon read.)

Harry Lee Smith, Jr.

A. He did not say I had no right to reduce it—it says here, "Upon advice of his personal lawyer," and that is the reason I did it.

By Mr. Fine:

Q. Did he not tell you you could not do it unless there was decree of the Court?

A. That is right, "Until an edict is issued by the Court."

Q. How long were you paying her $100.00 a month?

A. I think about a couple of months.

Q. Don't you know it was for ten months?

Dep. II 9/18/57 page 128 } A. Ten months?

Q. Yes, and that is why we had to go further to get this thing—

Mr. Harrell: I object to Mr. Fine testifying.

By Mr. Fine:

Q. How many months?

A. I have the receipts here. One time I sent her $300.00.

Mr. Fine: I introduce this letter from Lt. Col. Paul O. Hoffman, dated June 11th, 1956.

The Commissioner: It is marked as "Exhibit T."

The Witness: Military people are paid once a month.

By Mr. Fine:

Q. Now, Mr. Smith you were transferred from Puerto Rico to Washington, D. C., South Area, Fort Myer, Arlington, Virginia?

A. That is right.

Q. You knew then you were in the jurisdiction of the Commonwealth of Virginia?

A. That is right.

Q. And you were told by your commanding officers to come down and straighten out the question of support for your wife and children, is that right?

Dep. II 9/18/57 page 129 } A. That is right.

Q. And you came on down?

A. That is right.

Q. And at the time that you came down to make a settlement, how much were you paying your wife then?

Harry Lee Smith, Jr.

A. $200.00 a month, and paying for all doctors' bills.

Q. All right. And then when you came down here, I think your wife wanted $300.00 a month?

A. She wanted $400.00.

Q. And after Mrs. Smith, and you, and I sat down and we hit on the $282.00 a month?

A. To be exact, it was $281.00 and some cents, and I told you they did not go in for odd cents on allotments.

Q. And the Government allows you, if you are a married man with two children, how much? I have it here. See if that is right.

A. For a Captain, it would depend on how many dependents. $102.60.

Q. How much for your quarters?

A. That is your quarters allowance. The other allowance is your subsistence.

Q. How much is that—your testimony heretofore given is correct?—$102.60 for quarters and $47.88 for subsistence, making a total of $150.00. So, in fact, you are only giving your wife an allowance of $130.00 and some cents?

Dep. II
9/18/57
page 130 } A. That is correct.

Q. The total amount you receive is $615.67.

A. Yes, sir. That includes the $47.88.

Q. So, that would leave you for yourself $213.00?

A. Yes. sir, after paying taxes, insurance, etc.. what I draw a month.

Q. To take care of registering at the hotel, etc., if you want to is that right?

A. (No response).

By the Commissioner:

Q. Now, if and when a divorce is granted here, the $102.00 is cut off, if you are a single man?

A. No, sir, as long as the Court says I have to support my wife and children, then I draw the dependency allowance. You see, that is the pay scale with the dependents and no dependents.

Q. Of course, during all this time you have claimed your wife and children as dependents in your income tax return?

A. Yes, sir. I have one handicap on that. A joint return is a little bit better than a single return, and I do not submit a joint return because I cannot get her signature.

Harry Lee Smith, Jr.

By Mr. Fine:

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Q. If you will get competent tax counsel you will find you can.

A. To put it right, I average about twenty some dollars more every year I have to pay the income tax people, because I keep copies.

By the Commissioner:

Q. How much?

A. $22.00 more or less.

By Mr. Harrell:

Q. A year or month?

A. When I file my income tax return.

By the Commissioner:

Q. They give you a W-2 form?

A. Yes, sir. I know they take the usual credits. The tax they take out a month is $44.60. I have Social Security $10.53, my insurance $17.90, and Class E allotment $50.00 a month. I think I explained that once before.

Q. What is Class E allotment?

A. Every since the day my wife started this I started running into debt, I went to the Army Emergency Relief and I borrowed money from them. I do not have to pay interest rate, it is just deducted from my pay $50.00. This last was $300.00, I got a loan. I don't have any bank account, and I don't have any money.

By Mr. Fine:

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Q. Have you finished?

A. Yes, sir.

Q. You have already made application to the Circuit Court of the City of Norfolk to reduce the $282.00 and you were denied that motion?

A. I don't know.

Mr. Harrell: I object to that.

Mr. Fine: That is a fact.

Mr. Harrell: It was denied temporarily until the case was heard.

By Mr. Fine:

Q. In addition to your agreeing to pay $282.00, you owed her some arrearage?

Harry Lee Smith, Jr.

A. That $200.00?
Q. Yes.
A. I have, and I am to send $25.00 a month to pay that back.
Q. You did not do it?
A. Not all, but about $175.00 or $150.00.
Q. You are behind on that, is that right?
A. I cannot remember the discussion we had on that.
Q. You can not remember?
A. Yes, sir, that was before I got a lawyer.
Q. I am speaking about that agreement in the matter, you said you would catch up the arrearage. You have not done that, have you?

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page 133 }

A.. Not to the full extent, because in the meantime I got my lawyer.
Q. And you refused to pay that legitimate debt, and have not since?

Mr. Harrell: I object to the question. Mr. Fine is testifying when he says legitimate debt of this type of debt. I don't think it is proper.

By Mr. Fine:
Q. Did you agree to pay your wife the arrearage?
A. Yes, sir, I did.
Q. Did you pay it?
A. Not all of it.
Q. You have not done that since you entered into the agreement in 1956?
A. No; I have not paid any?
Q. Up until the time you had counsel in this case you have not paid any of the arrearage?
A. I paid some.
Q. Up until the time you hired Mr. Harrell you have not paid any more?
A. No, I haven't.
Q. Why have you not done it? Anybody advise you not to pay?
A. I don't know; I believe I talked it over with you.

Dep. II
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page 134 }

Q. Answer, don't look at him. Did he advise you not to pay?
A. No. I pay all my debts.
Q. Like you do this one?
A. I beg your pardon. I paid all debts except this one.

Harry Lee Smith, Jr.

Q. Why did you cut your wife's support from $200.00 to $100.00, when having to pay doctors' bills?

A. I was paying everything, paying immediately.

Q. You did not pay everything until we got after you?

A. Whenever I received bills I paid them.

Q. These bills were incurred in the early part of 1954. When did you mail checks for them. Do you have any check?

A. Yes, sir.

Q. Do you have checks showing they were paid in 1954 as they matured?

A. Yes, sir, I had checks (handing to counsel).

Q. The first time you paid anything for her was May 26th, 1954, after we wrote the Government?

Mr. Harrell: I object to that. He is testifying, and that is absolutely improper.

A. The letters to me are irregular letters, did not put any pressure upon me to pay my wife's and children's doctors' bills.

By Mr. Fine:

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Q. The bill was incurred January 14th?

A. That is right.

Q. And you paid that May 26th, 1956, did you not, and after you knew we had written to the Government for you to take care of your wife?

A. No. I paid those bills as I received them, and when I got money enough.

Q. Paid June 3rd, 1954, for hospital bill which was incurred in January, after we wrote the Government?

Mr. Harrell: I wrote him.

A. Let's be a gentleman about it: I wanted to pay those letters, they did not put pressure on me.

By Mr. Fine:

Q. Why did you send your wife on February 27th, 1954, for the first time only $100.00?

A. I had given her $400.00 in November.

Q. November, December, January, February, that is four months.

A. No, sir. I was with her in December, during the month of December. Is there anything in the marriage that I have to

hand my wife so much money a month when I am living with her? During the month of December I gave her $400.00.

Mr. Fine: That is all.

RE-DIRECT EXAMINATION.

Dep. II 9/18/57 page 136 } By Mr. Harrell:

Q. Capt. Smith, a moment ago you testified there was money taken out of your pay every month to pay for insurance?

A. Yes, sir.

Q. Who is the beneficiary under that insurance policy?

A. My two children.

Q. What is the amount of that policy?

A. $10,000.00.

Q. A moment ago on cross examination Mr. Fine asked you if you were giving to your wife only $130.00 and some cents per month out of your pay. Now, did you include or consider the sum of $47.88 that you testified you drew for subsistence when you answered that question.

A. That does not include it, so added to the $102.00 something, that makes $149.00.

Q. To clear up that situation, what is the amount of money that you draw as a result of having dependents which you would not draw if you did not have dependents.

A. $102.60.

Q. And the $47.88 that you have testified to that you draw for subsistence, would you draw that whether you have dependents, or not?

A. Yes, sir, I would.

Mr. Harrell: That is all I have.

Dep. II 9/18/57 page 137 } And further this deponent saith not.

JAMES B. COATES,

called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. Will you please state your name?

James B. Coates.

A. James B. Coates.
Q. And your age, residence, and occupation.
A. I am fifty-three, 1019 Westover Avenue, Norfolk, Virginia, night assistant manager of the Monticello Hotel.
Q. I hand you herewith registration card and ask you if Harry L. Smith, Jr., and Mrs. Smith registered there at the hotel, and were you clerk at that time?
A. Yes, I was.

• • • • •

Dep. II
9/18/57 }
page 138 } Q. All right, continue.
A. That is my initial on the registry card. I was on duty at the time.
Q. Is that rate, $9.00, a single or double room?
A. Double.
Q. What is a single room?
A. $6.00.
Q. So, it would have been a saving of $3.00 to have gotten a single room?
A. Yes, sir.
Q. Now, Mr. Coates, who made a long distance call there at the time from this room?
A. I don't know.
Q. According to your records?

Mr. Harrell: The man has testified he doesn't know.

A. I don't know who made the call. It came from that room and I assume Mr. Smith. I have nothing to do with those records.

The Commissioner: He is not competent to testify to that.

By Mr. Fine:
Q. According to your records?

The Commissioner: He is not responsible as to that. He was the admission clerk.

Dep. II A. There is only one thing I can say.
9/18/57
page 139 } By Mr. Fine:
Q. What is that?

A. The record shows a long distance call.

Mr. Harrell: I object.

By Mr. Fine:
Q. According to the records who made the long distance call?
A. Mr. Smith.
Q. What time, what date?
A. The 6th of May.
Q. Where was the long distance call made, to whom, what city?
A. Columbus, Georgia.
Q. I also hand you herewith photostatic copy of bill of the Monticello Hotel. Is that a double rate, $9.00?
A. Yes, sir.
Q. And the long distance call is $1.76?
A. Yes.
Q. And that is, "Harry L. Smith and Mrs."
A. That is right.
Q. What address is on that paper?
A. 38 Walnut Street, Barre City, Vermont.

Mr. Fine: That is all.
Mr. Harrell: No questions.

Dep. II
9/18/57 And further this deponent saith not.
page 140 }

* * * * *

KATHERINE ANNE O'BRIEN SMITH,
the complainant, being recalled and testified in rebuttal as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. Mrs. Smith, you understand you are still under oath?
A. Yes, sir.
Q. Now, Mrs. Smith, I want to ask you a few questions which I have not asked you before.
A. Yes.

Katherine Anne O'Brien Smith.

Q. Now, concerning this adultery which was committed May 6th, 1956, at the Monticello Hotel—

Mr. Harrell: I object to Mr. Fine testifying.

The Commissioner: It is possible that is a conclusion adultery has been committed. We have the facts, the registration, but we have not proof. I would not put that in the record there.

Dep. II 9/18/57 page 141 } Mr. Fine: The authorities have indicated that a man and woman registering as Mr. and Mrs. when not married, that is sufficient proof of adultery.

Mr. Harrell: I object.

By Mr. Fine:

Q. (Continuing) At the Monticello Hotel with Miss Vance, who said he registered there with her; did you have anything to do with that?

A. No, sir.

Q. Was that adultery committed by your procurement—

Mr. Harrell: Objection.

The Commissioner: All right, let your objection go in for the record.

By Mr. Fine:

Q. (Continuing) Or connivance?

A. No, sir.

Q. And have you lived with Mr. Smith since the commission of said adultery?

A. No, sir.

Mr. Harrell: I object to the question as calling for a conclusion.

By Mr. Fine:

Dep. II 9/18/57 page 142 } Q. Now, I want you to state to the Court whether or not Mr. Smith, your husband, has at any time asked you by verbal word of mouth to live with him?

A. No, sir.

Q. I ask you if, in January, 1954, when you came from Puerto Rico to take treatment at the Norfolk hospital and from offices, were you, or not, in the hospital in January, 1954, when he asked you to come down to Puerto Rico?

Katherine Anne O'Brien Smith.

A. I was there from the beating that he gave me in Puerto Rico.

Q. He beat you?

A. Yes, sir.

Q. How?

A. He put his knee in my stomach, and threw my suitcase across the room, and beat me in the face, where I am missing a tooth. Dr. Mendelsohn can tell you about that. Also Dr. Spessard, the doctor at the hospital I was in, can, where he beat me in Puerto Rico.

Q. What statement did Mr. Smith make to you about wanting a divorce?

A. While I was in the hospital in Puerto Rico he wanted a divorce because the doctors told him anybody with epilepsy went crazy always, and he had advice he could get a divorce, which is not true. People do not go crazy.

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page 143

Q. Where were you then?

A. In the hospital.

Q. Where?

A. San Juan, Puerto Rico.

Q. And when you got down to Norfolk was it necessary for you to retain a lawyer to make your husband support you and the children?

A. Yes, sir.

Mr. Harrel: I object as leading.

Mr. Fine: Well, it is a fact.

By Mr. Fine:

Q. After your employment of counsel you did get support for yourself and the children?

A. Yes, sir.

Q. Referring to Plaintiff's Exhibit P, had you ever had a request from your husband at any time from 1954, to the 18th day of May, 1957, to move to any quarters?

A. No, sir.

Q. And this is a letter of May 18th, 1957 (indicating)

A. That is right.

Q. Have you ever received a letter since the 18th day of May, 1957, saying he has gotten quarters for you and he wants to live with you?

A. No, sir.

Q. Do you regard that as a bona fide offer at a reconciliation, that he is going to leave the Army if you don't

Katherine Anne O'Brien Smith.

do that? Do you think that is a *bona fide* offer?

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A. No, sir.

Q. Do you want to live with a man under those circumstances?

A. I don't care if he is in the Army, or what he is in, the lies he has told today and every day, I do not want to live with him because of his cruelty and lies. I don't want to put myself and the children in such a position. I have been made a fool to, and the lies he has told today—I don't want to live with him.

Mr. Fine: That is all.

CROSS EXAMINATION.

By Mr. Harrell:

Q. Mrs. Smith, while you were in San Juan, Puerto Rico, you had an epileptic seizure, did you not?

A. Yes, sir.

Q. How long had you been there when that occurred?

A. I was there about two hours when Mr. Smith found me in a pool of blood.

Q. From this epileptic seizure?

A. Yes, sir.

Q. And they took you to the hospital?

A. Yes.

Q. Was that the time when a tooth was knocked out, when you fell from the chair?

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page 145

A. No, it was not. The doctors at the Rodriguez Army Hospital can tell you my tooth was not knocked out then.

Q. You testified a moment ago that he put a knee in your stomach. As a matter of fact, he was trying to hold you in this fit or convulsion you were in, was he not?

A. My daughter five years old did not think so. She witnessed it, but I don't want my daughter to know anything about this. She could come down and testify about that, but I would rather lose this case than to bring her in and have her involved in this. I don't want her to know anything about it.

Q. He held you with his arms and not his knee?

A. He held me with his knee in my stomach and hit me in the face with his fist.

Q. A moment ago did you testify that while you were in the hospital in San Juan he told you he wanted a divorce?

Mary Ann Vance.

A. Yes.

Q. Why did you not testify to that in this case before?

A. Simply because I believed it was not necessary. All the other things I brought I felt were enough. There were so many things that were happening, have happened, Mr. Harrell.

Mr. Harrell: That is all.

By the Commissioner:

Dep. II 9/18/57 page 146 } Q. As I understood your testimony we took in May, when you left Puerto Rico, you left merely for a breathing spell, you did not tell him you were quitting?

A. No, sir. He called my mother at three o'clock in the morning that if I did not get out of San Juan the Army would put me in a strait-jacket and send me back. I told him that morning.

* * * * *

Dep. III 12/20/57 page 1 }

* * * * *

Depositions of witnesses taken before Mr. Delamater Davis Commissioner in Chancery, pursuant to notice hereto annexed, at the law offices of the Commissioner, National Bank of Commerce Building, Norfolk, Virginia, at 3:30 P.M., December 20, 1957, to be read in evidence in the above entitled cause, pending in the Circuit Court of the City of Norfolk, Virginia.

Appearances: Mr. Louis B. Fine, attorney for the complainant.

Mr. C. Lydon Harrell, Jr., attorney for the defendant.

Dep. III 12/20/57 page 2 }

MARY ANN VANCE,

called as a witness on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Mary Ann Vance.

DIRECT EXAMINATION.

By Mr. Harrell:
Q. State your full name.
A. Mary Ann Vance.

The Commissioner: You understand she testified once before.
Mr. Harrell: Yes, sir.

By Mr. Harrell:
Q. You have testified previously in this case, have you not?
A. Yes, sir.
Q. The complainant in this case through her counsel have accused Mr. Harry Smith, the defendant in this suit, of committing adultery with you on May the 6th, 1957, by spending that night in the Monticello Hotel with you. Did you sleep in the Monticello Hotel that night?
A. Yes.
Q. Did you sleep in the room in which you were registered?
Dep. III
12/20/57
page 3
A. Yes.
Q. Did Mr. Harry Smith spend the night in that room with you?
A. No, he did not.
Q. Have you ever had marital or sexual relations with Harry Smith at any time in your life?
A. No.
Q. Did you register yourself?
A. No.
Q. In the hotel?
A. No, I did not.
Q. Who registered in the hotel?
A. Mr. Smith registered for me.

Mr. Harrell: All right, answer Mr. Fine. One other question:

By Mr. Harrell:
Q. At the time he registered did you know how he made the registry?
A. I did not.

Mr. Harrell: All right, answer Mr. Fine.

Mary Ann Vance.

CROSS EXAMINATION.

Dep. III By Mr. Fine:
12/20/57 Q. You are Miss Vance, aren't you?
page 4 } A. Yes.
Q. Where you live?
A. Greenwich, Connecticut.
Q. And at that time when you formerly testified where did you live?
A. I lived temporarily with my family in Natick, Massachusetts.
Q. Have you ever had Mr. Smith register for you before?
A. No, sir.
Q. And did you register under your name as "Miss Vance?"
A. I did not register.
Q. Didn't register at all?
A. No.
Q. And will you tell us the circumstances of how you came into the hotel with Mr. Smith?
A. No.
Q. You won't tell me?
A. I walked right in. I understood he was registering for me.
Q. Where did you see Mr. Smith first?
A. I met him in Washington and came down from
Dep. III Washington.
12/20/57 Q. And when did you leave Washington?
page 5 } A. I left Washington that night after the hearing. I left him at Fort Myers and I drove on home.
Q. No, I am speaking of when you came to Norfolk. You said you left with Mr. Smith, is that correct?
A. Yes, sir.
Q. What time did you leave Washington?
A. About 11:30 that night.
Q. And you drove down here with him?
A. On the trip down I met him about 8:30 or 9:00 o'clock in the morning. We drove down on the trip back.
Q. Let's get it straight. I am talking about when—
A. I came down originally. I came down and met him in Washington around 8:30 or 9:00.
Q. Where did you meet him at?
A. At Fort Myers.
Q. And when did you arrive in Washington?
A. That morning.

Mary Ann Vance.

Q. What time?
A. About 8:30 or 9:00.
Q. And how did you come to Washington?
A. I drove to College Park, Maryland the night before.
Dep. III 12/20/57 page 6 } Q. And where did you stop?
A. At a motel.
Q. Name the motel, please?
A. I think it's the Hass Motel, never having been there before or since.
Q. And where is the motel located?
A. In College Park, Maryland.
Q. What did you do with your car?
A. My car was right there at the motel, and we drove down in my car.
Q. Let's get back to College Park, that night that you registered at Collage Park; and the name of the place was what?
A. I think it's the H-A-S-S or H-A-A-S, I'm not sure which.
Q. H-A-?"
A. It's either H-A-A-S or H-A-S-S, I'm not quite sure.
Q. And that is located in College Park?
A. College Park.
Q. And that would be May the 5th?
A. Yes.
Q. Or the 4th—or the 5th?
A. Wait a minute. What was the date of the first hearing?
Dep. III 12/20/57 page 7 } Q. The hearing that you testified in was May the 7th.
A. May the 7th. Then it was the night of the 5th.
Q. That's why I asked you whether it was the 5th. And how did you register there?
A. By my name: Mary Ann Vance.
Q. And you arrived at what time?
A. Somewhere after midnight.

The Commissioner: Arrived where?
The Witness: College Park.

By Mr. Fine:
Q. And after you arrived there at midnight did you make any calls?
A. I did not. Having driven nine hours straight, I wasn't about to do anything but get into bed.

Mary Ann Vance.

Q. All right. And how much did you pay for the room, do you remember?
A. I don't remember exactly.
Q. Do you have any memorandum of it?
A. (Witness shook head).
Q. Did you get the bill?
A. I did not get a bill. It was either five or six dollars, I think.
Q. Did you pay it by check or cash?
A. Cash.
Dep. III Q. Have you any corroborative evidence that you
12/20/57 were at College Park on May the 5th?
page 8 } A. The only thing would be the motel.
Q. And you hardly know the name of it?
A. It's either H-A-S-S, or H-A-A-S.

The Commissioner: Where is College Park?
The Witness: Just north of the District of Washington.
Mr. Harrell: It's at the University of Maryland. I know you have driven by there.
The Commissioner: It's 15 or 20 miles from Washington.

By Mr. Fine:
Q. And you were coming from which way?
A. I had made a mistake and gotten on the Baltimore through way and so had gotten into the outskirts of Washington and turned and headed back looking for a motel.
Q. Headed back from Washington looking for a motel towards Baltimore?
A. For a motel towards Baltimore.
Q. And what kind of car were you driving?
A. A Mercury station wagon.
Q. What model?
Dep. III A. 1956.
12/20/57 Q. And it is licensed in your name?
page 9 } A. It is licensed in my name.
Q. In what state?
A. Connecticut now. It was Massachusetts then.
Q. At that time it was Massachusetts?
A. Massachusetts.
Q. And the next morning you drove to Fort Myers?
A. Yes.
Q. And you picked him up?
A. Yes.
Q. At what time?

Mary Ann Vance.

A. Somewheres around 9:00 o'clock, I guess, 8:30 or 9:00.
Q. Are you sure he didn't meet you before 8:30?
A. He did not meet me because originally I did not think I could even be in Washington before 11:00 A.M.
Q. And he did not take leave the day before. Do you know whether he did or not?
A. (Witness shook head). I doubt if he would because it was a Sunday.
Q. You say it was a Sunday?
A. Yes.
Q. May the 5th?
A. Yes, it was.
Q. You said it wasn't necessary for him to take leave?

Dep. III
12/20/57
page 10 } Mr. Harrell: Mr. Commissioner, I object to that line of questioning. If she knows whether he took leave or not she can state so without arguing with her and asking her.
The Commissioner: She is on cross examination.
Mr. Harrell: But it is immaterial, your Honor. It has no relevancy to this.
Mr. Fine: I submit it is relevant to the case.
The Commissioner: To hook it up it would be necessary.

By Mr. Fine:
Q. Now, on May the 6th, 1957, he apparently spent the night at Fort Myers, is that right?
A. May the 5th, yes.
Q. The night of May the fifth.
A. Yes, sir, as far as I know.
Q. Well, do you know where he spent the night?
A. I am not in the habit of asking people—

The Commissioner: Well, it states in the bill for divorce he is stationed at Fort Belvoir, wasn't he, or where was he stationed at that time?
Dep. III
12/20/57
page 11 } Mr. Fine: Fort Myers.
The Commissioner: Fort Myers?
Mr. Fine: Yes, sir.

By Mr. Fine:
Q. And where did you pick him up at Fort Myers?
A. At the BOQ.

Mary Ann Vance.

Q. And you went to the BOQ?
A. Yes.
Q. Did you have a prearranged meeting?
A. It had been planned to meet.
Q. Where?
A. At the BOQ and leave from there.
Q. All right, then, you left about 8:30. What time did you arrive at Norfolk?
A. We went to Mr. Harrell's office when we first hit Norfolk; I am not sure what time that was.
Q. Can you give us an idea?
A. I think it was around 3:00 o'clock.
Q. What time did you register at the Monticello Hotel?
A. I did not register there.
Q. What time did Mr. and Mrs. Smith register?
A. I don't know what time.

Dep. III 12/20/57 page 12

Q. What time did you go to the clerk's desk with Mr. Smith?
A. I didn't.
Q. Didn't go there at all?
A. No.
Q. Did you sleep in the Monticello Hotel?
A. Yes, sir.
Q. And who turned the key over to you?
A. He gave me the key.
Q. What time did he give you the key?
A. As soon as I went up to the room.
Q. Well, I know, but what time did you all go to the room?
A. I think it was probably around 5:30 or 6:00.
Q. And did you both wash up?
A. No, I don't think we did. We went and ate and come back to get my papers straight as to what was needed for the hearing the next day and he—
Q. You mean to tell the Court that you and Mr. Smith did not wash up in your hotel room?
A. I don't remember whether we did or not. We mainly wanted to eat and get things straight because both of us were tired. I had driven all the day before and then riding down here the next day.
Q. Well, he was in your room, is that correct?

Dep. III 12/20/57 page 13

A. Yes, sir.
Q. What time did he go into your room with you?
A. When I checked in.
Q. That was between 5:30 and 6:00?

Mary Ann Vance.

A. And 6:00.
Q. Did you wash up?
A. I probably did. I usually do before I eat.
Q. Did he wash up?
A. I don't remember that he did.
Q. Didn't use the bathroom either to your knowledge?
A. He may have. I am not in the habit of watching whether somebody uses the bathroom or not.
Q. And after you all went in the room, how long were you in the room?
A. We were only in it a few minutes and went to supper.
Q. How long, half an hour, twenty minutes?
A. I think probably fifteen to twenty minutes at the most.
Q. And what did you do during the fifteen or twenty minutes?
A. I got my clothes and discussing the papers and such that would be needed the next day.

Dep. III 12/20/57 page 14

Q. Did you ascertain that the room was registered in your name?
A. I did not know that the room wasn't registered in my name until I checked out the next afternoon.
Q. Isn't it usual for the person who picks up the keys for the room register in their name?

Mr. Harrell: I object to that as argumentative.

By Mr. Fine:
Q. Has he registered before for you?
A. No, sir.
Q. Did you tell him to register for you?
A. I assumed that when he registered for me he registered in my name.
Q. Did you pay the bill?
A. Yes.
Q. Have you got the bill?
A. No, I don't have it.
Q. How much did you pay?
A. It was a little over $10.00.
Q. You don't remember the exact amount?
A. No, sir.
Q. And you paid it yourself?
A. Yes.

Mary Ann Vance.

Q. Did you make inquiries as to whether you paid for the single rate or double rate?

Dep. III 12/20/57 page 15 } A. I paid for it with money that Captain Smith had given me to pay for the hotel room.

Q. He gave you the money to pay it with?

A. Yes.

Q. Where did you all take dinner?

A. Right there at the hotel.

Q. And what time did you take dinner?

A. I don't know, sir.

Q. And after dinner, where did you and—

A. We went back up to call Captain McCord to see if he could come up for the hearing.

Q. He used the telephone?

A. Yes, sir.

Q. And this was after dinner?

A. Yes, sir.

Q. And how long was he in there making a call?

A. Not very long because we went—

Q. Did you get him?

A. It took a few minutes to get the call through.

Q. How long did it take you to get the call through?

A. I don't know.

Q. An hour?

A. No.

Dep. III 12/20/57 page 16 } Q. The telephone calls were charged to the room, weren't they?

A. Yes.

Q. And did he tell them his name on the telephone?

A. I was not listening that closely.

Q. How do you know he was trying to call Captain McCord, or didn't he tell them that that was Captain Smith calling Captain McCord?

A. I don't think he gave any name as to who was calling. I don't remember him give a name, but I happened to know Captain McCord myself, too.

Q. All right, but you certainly did not call him?

A. I did not know where he was stationed until then.

Q. And how long was it before you left your room the second time with Captain Smith?

A. I never left the room with him. He left shortly after he called, and I left the next day at noon time and met at Mr. Harrell's office.

Q. Did you ascertain where he was stopping?

Mary Ann Vance.

A. I did not know. He said he might be there in the hotel or he might stay in the car and took the car keys to the car with him.

Q. Did you make an appointment for him to reach you in the morning or where you could call him?

A. No, he said he would meet me at Mr. Harrell's office when he called.

Dep. III 12/20/57 page 17 }

Q. He wasn't coming by to meet you for breakfast?

A. No, sir.

Q. Did you meet for breakfast?

A. No.

Q. Where did you take your breakfast?

A. Right there in the hotel.

Q. Where did he take his breakfast?

A. I don't know, sir.

Q. Now, if you recollect, I asked where Captain Smith was stopping.

A. I thought he was planning to stay at the hotel.

Q. Well, didn't you say that he stopped at the hotel?

A. That was what I had originally understood he was going to do.

Q. Let me see if I can refresh your memory. On page 83 of the testimony you testified to this: "He paid for his transportation?" Answer: Yes. Question: Where are you staying in this city? Answer: Hotel. Question: What hotel? Answer: Monticello, is it? Question: Where is Mr. Smith staying? Answer: I understood he was staying there, too. Question: Who is with Mr. Smith? Answer: By himself. Question: What is his room number?" and you wouldn't answer that, would you?

A. I didn't know.

* * * * *

Dep. III 12/20/57 page 18 }

* * * * *

Q. Didn't he shave in your room?

A. No, sir.

Q. Are you sure of that?

A. As far as I know, he didn't.

Mary Ann Vance.

Q. If he said that he was in there shaving, then you would contradict him, or you just don't remember?

A. I don't remember that he shaved in there because he took his things with him.

The Commissioner: Off the record.

(An off-record discussion was had after which the following occurred):

Dep. III By Mr. Fine:
12/20/57 Q. Now, you don't know about the shaving?
page 19 A. No.

Q. All right, we will pass that by. Now, he left his bag in your room, didn't he?

A. He left a briefcase, yes.

Q. Well, now, let me ask you to refresh your memory. On page 110, the Commissioner himself inquired and asked whether this is a fact: "In other words," speaking to Mr. Smith, "you left the bag in the room to go shave? Answer: That is right, I took the bags and took them up to the room." Is that right?

A. Yes, sir.

Q. So, he did leave his bag in your room; any question about that?

A. I think it was a briefcase that was—

Q. It wasn't a bag. Well, didn't he have a bag for his clothes?

A. Not that I know of.

Q. Now, after you testified in this case before the Commissioner, what time did you leave?

A. We left Mr. Harrell's office.

Q. Do you remmber what time it was?

A. I think around 6:30 or 7:00.

Q. And where did you go that night?

Dep. III A. We took the ferry across and went straight
12/20/57 up to Washington.
page 20 Q. Where did you stay that night?

A. I didn't.

Q. Where did you go?

A. I drove straight on towards home.

Q. You drove all night?

A. Yes. If you can find a motel on the Bay Bridge road, let me know where.

Q. Well, you left Norfolk?

Mary Ann Vance.

A. I left.

Q. You left Norfolk at 6:30 which would put you under ordinary driving conditions, if you did not stop for dinner, about 12:00 or 1:00 o'clock in Washington, isn't that correct?

A. Yes.

Q. Did you stop for dinner on the way?

A. We didn't, no.

Q. Did not. Did you have any dinner that day?

A. I didn't.

Q. Didn't have dinner. Now, after you arrived in Washington, what time did you get there?

A. I think it was around 11:30 or 12:00, and I said I was going on to the other side of Washington to stay.

Q. And what time did you take Mr. Smith home?

Dep. III 12/20/57 page 21

A. I dropped him at the gate at Fort Myers.

Q. What time?

A. Somewhere around 11:30 to 12:00.

Q. At night?

A. Yes.

Q. And you continued on that night and drove all the way up to Massachusetts that night?

A. I drove to Wilmington, Delaware that night.

Q. And where did you stop that night?

A. In a parking lot of a diner at 4:00 in the morning.

Q. And slept in the car?

A. Yes.

Q. You did not stop anywhere that night?

A. No, sir.

Q. What time did you get up in the morning?

A. I was on the road again by 6:00.

Q. You can't show where you registered that night, can you?

A. I cannot because I slept in the car.

Q. I understand, but is there anybody that knows that you slept in this car at 4:00 o'clock in the morning alone?

A. I doubt it. I pulled into an all night diner and stopped.

Q. Do you remember where you took your breakfast?

Dep. III 12/20/57 page 22

A. On the New Jersey Turnpike.

Q. And you mean to tell us that after you stopped at this diner at 4:00 o'clock in the morning and got up at 6:00 you didn't get your breakfast at this diner, that you stayed up all night and then drove up all night to Massachusetts?

A. I wasn't hungry at that point.

Mary Ann Vance.

Q. But you said you hadn't had any dinner and didn't take anything to drink or to eat from the time you left Norfolk, is that correct?

A. No, we had a sandwich going across the ferry, but that was all, or something.

Q. Sandwich or something?

A. A sandwich and I think a coke or something of that sort.

Q. Is there any obligation of yours to assist Mr. Smith in this matter?

A. No, none whatsoever.

Q. This is all of your graciousness?

A. Yes, sir.

Q. And before this time of May the 7th, 1957, when you came to the hotel, when did you see Mr. Smith last?

A. Before I left Porto Rico.

Q. And how long ago was that?

Dep. III A. November of '54.

12/20/57 Q. And did you have some correspondence with
page 23 } him?

A. Very little.

Q. Have you got the letter from him to you asking you to appear here?

A. The first hearing I had a letter from Mr. Harrell to appear.

Q. Did you receive a letter from him to appear here?

A. No, sir.

Q. You just came pursuant to Mr. Harrell's letter?

A. Yes, sir.

Q. And he did not communicate with you at all but only got a letter from Mr. Harrell?

A. Yes. The only letter I had after that was saying for me and him to come on down together rather than two cars driving down.

Q. Have you got that letter?

A. I don't have it now, no.

Q. What did you do with it?

A. I don't usually keep correspondence after I answer them.

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12/20/57
page 24 }

* * * * *

HARRY LEE SMITH, JR.,

the defendant, recalled as a witness on his own behalf, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Harrell:

Q. You are Harry Lee Smith, the defendant in this suit, are you not?

A. Yes.

Q. Are you any longer in the United States Army?

A. No.

Q. When were you discharged from the army?

A. The 30th of November.

Q. Of this year?

A. Of this year, 1957.

Dep. III
12/20/57 By the Commissioner:
page 25 } Q. Were you discharged or separated?
A. I was relieved from active duty as an officer.

By Mr. Harrell:

Q. And—

Mr. Fine: Excuse me. I submit, Mr. Smith, you were asked by the Commissioner not whether you were relieved but whether you were separated or discharged.

Mr. Harrell: If the Commissioner is not satisfied with his answer, he can ask him again.

Mr. Fine: All right, I will ask him.

By Mr. Harrell:

Q. When did you join the army?

A. (Long pause) It was back in 1942.

Q. When did you become a commissioned officer in the army?

A. In 1948.

* * * * *

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12/20/57
page 26 }

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Harry Lee Smith, Jr.

Q. When you received your commission were you commissioned as a reserve officer in the United States Regular Army?

A. As a reserve officer.

Q. And when you were released from active duty on November 30th, 1957, why were you released?

A. Due to the economy cut.

Q. Was it done at your own request?

A. No, sir.

Q. Was it done against your wishes?

Dep. III A. Yes, sir.

12/20/57 Q. Are you employed at the present time?

page 27 } A. No, sir.

Q. Have you made application for employment?

A. Yes, sir.

Q. And what company have you applied to be employed by?

A. The Acacia Mutual Life Insurance Company, in Washington, D. C.

Q. Have you taken the examination required in order to sell life insurance?

A. Yes, I took it Wednesday.

Q. Wednesday of this week?

A. This week.

Q. And have you gotten an answer to it yet?

A. Not yet; not until sometime next week.

Q. And as of this date do you know whether or not you will be employed by the Acacia Life Insurance Company?

A. No, I do not.

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Dep. III
12/20/57
page 28 }

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Q. If you are employed by Acacia Mutual Life Insurance Company, do they plan to start you off on a drawing account?

Dep. III
12/20/57 A. Yes, they call it a financing plan; it is not a
page 29 } salary. They are financing me to sell insurance for them and they pay my expenses. I had to make out a budget account for them as to what it cost me to live.

Harry Lee Smith, Jr.

Q. Now, will you be required at any time to pay back to the company this money they advance you?

A. In the financing plan they have a system whereas the money is returned to the company by the commissions on the insurance I sell.

By the Commissioner:

Q. In other words they are paying you for teaching you how to sell life insurance?

A. Yes, sir, I am in a training program.

The Commissioner: I understand what the setup is.

Mr. Harrell: That's all.

CROSS EXAMINATION.

By Mr. Fine:

Q. And you are going to get how much a month for that?

A. They figure my plan where they will invest in me $500.00 a month.

Q. And your salary as a captain was how much?

A. Six hundred and—

Dep. III
12/20/57
page 30 } The Commissioner: Nearly $700.00, as I recall.

A. (Continuing)—something like that. I can't remember.

The Commissioner: With all of his allowances.

By Mr. Fine:

Q. And, Captain, you have taken this matter up and presented it to the Honorable Clyde H. Jacob, and the amount of support money and alimony was reduced from $280.00 to $200.00 a month on the basis of your income of $500.00 a month, is that correct?

A. I imagine that is what he based it on.

Q. Well, you were there, weren't you?

A. I was there but I didn't know what he based it on.

Q. Well, you submitted that figure, didn't you?

A. Yes, I submitted that figure.

Harry Lee Smith, Jr.

By the Commissioner:
Q. Well, are you being paid now?
A. No, sir.
Q. Where you receive anything in cash?
A. No, sir.
Dep. III Q. What are you living on now?
12/20/57 A. On the service pay that I got out of the
page 31 } service.
Q. How much was that?
A. They gave me $2,200.00.

By Mr. Fine:
Q. So that—

By the Commissioner:
Q. (Continuing) So that you don't actually have any income from which to pay alimony or support money for the child; is that correct?
A. That's right. The money—I took the money I got from the service pay and I owed $850.00 to the Army Emergency Relief. I had to pay that back out of that, and I owed the bank $2,000.00.
Q. You haven't got anything then. You are in debt still?
A. Yes, sir.
Q. If you paid $850.00 to the government and paid the bank $2,000.00.
A. Well, I have sold everything of value that I had that I possibly could.

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12/20/57
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By Mr. Fine:

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12/20/57
page 33 }

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Q. Now, in your statement to the Court before Judge Jacob which I want to get into the record, you have allowed

yourself from the $500.00 which the Acacia Insurance Company is going to let you have under the training program, how much a month for an apartment?

A. $85.00 a month.

Q. And how many rooms is that in the apartment?

A. That was an efficiency apartment with a living room and bedroom and a little kitchenette and a bath.

Q. And where is the apartment located?

A. Fully furnished. In Washington, D. C.

Q. State the address, please?

Mr. Fine: Let the record show the witness hesitated and looking at counsel.

The Commissioner: I don't think there is any reason why he shouldn't answer it. It is a perfectly plain question and something that counsel is entitled to know.

A. It's Apartment 212, 2901 Connecticut Avenue, Northwest.

By Mr. Fine:

Dep. III
12/20/57
page 34 }

Q. And in whose name is that apartment rented?

A. To my name.

Q. And anyone else living in that apartment with you?

A. No.

Q. Are you sure?

A. Positive.

Q. Do you have any guests there?

A. Once in a while.

Q. And Miss Vance has visited you there?

A. No.

Q. You state under oath that she hasn't visited you there?

A. I state under oath before a priest she hasn't visited there.

Q. And it has one bedroom?

A. Right.

Q. Why did you hesitate to give us the address?

A. I don't know. I understand that every one of these words are costing me money. I don't think any of this stuff is relevant.

Mr. Fine: That's all.

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12/20/57
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MRS. ANN KELLY,

called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. State your name, age, residence and occupation.

A. Mrs. Ann Kelly, 9416 Inlet Road.

Q. And your age, please?

A. 52.

Q. And your occupation?

A. I stay home. I don't work out; unemployed.

Q. And you are related to Mrs. Smith, are you not?

A. I am her aunt.

Q. And were you present or not when Mr. Smith returned from overseas duty in connection with his military duties prior to his going off with Mrs. Smith to Porto

Dep. III
12/20/57
page 36 }

Rico?

A. I was.

Q. Will you tell his Honor, please, ma'm, what was his attitude and conduct towards Mrs. Smith?

A. Now, you mean before he went to Porto Rico?

Q. That's right. Just don't go into a lengthy—

The Commissioner: I am going to object on the part of the Court.

What were her opportunities for observation of the relationship between the parties?

Mr. Fine: Very well, sir.

By Mr. Fine:

Q. Did you live near the home of Mrs. O'Brien?

A. I lived with Mrs. O'Brien.

Q. And when Mr. Smith had come back from overseas duty did he stop in Norfolk?

A. You mean from Korea?

Q. Yes.

A. I mean Okinawa; yes, he did.

Q. He did?

A. Yes, he did.

Q. How close—where was Mrs. Smith living then?

A. She was at her mother's home, the same address.

Ann Kelly.

Q. And you lived in the mother's home, too?
A. Yes, sir.
Q. In other words you lived in the same home
Dep. III that Mrs. Smith lived with her parent?
12/20/57 A. Yes, sir.
page 37 } Q. And how long have you lived in the home; that is what his Honor wants to know.
A. I have lived with Mrs. O'Brien since 1940. She come back to Norfolk.

* * * * *

Dep. III
12/20/57
page 38 } Q. And you have stayed on in the home since 1940?
A. Yes, sir, and we lived in that one home on Inlet Road since '44.
Q. All right. Now, prior to both Mr. and Mrs. Smith going to Porto Rico and particularly before Mr. Smith went to Porto Rico, will you tell his Honor what his attitude was towards her and what statements you heard him make to her.
A. Well, I heard him say not only at that time but on numerous times after they have had a little disagreement—to me it didn't amount to much—but I would hear him say: "What's the matter with you, do you want a divorce?" So, divorce has been in his mind more than just now.
Q. Now, let me ask you this: How many times, if you tell us, did you hear him talk about divorce prior to going to Porto Rico?
A. No, I can't accurately say.
Q. Give us your best judgment.
A. Because I don't want to lie—I'm not here to lie.
Q. I appreciate that.
A. Well, I will tell it—
Dep. III Q. Tell us how many times to the best of your
12/20/57 knowledge.
page 39 } A. At least three times.
Q. And what effect, if any—
A. Now—
Q. What effect, if any, did it have on Mrs. Smith?
A. Well, she said she would never give him a divorce because the church don't believe in it, They are both Catholics

and the Church doesn't believe in it; and she would stand up and raise her children like Catholics like she was raised.

* * * * *

Q. What effect did it have upon her nervous condition?
A. It was very bad on her nervous condition.
Q. How did she show it was nerves.
A. Because she would cry and get very worked up about it and things like that.

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12/20/57
page 40 }

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LOUISE PAGE DETTERMAN,
called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Dep. III
12/20/57
page 41 } By Mr. Fine:

Q. Mrs. Detterman, would you tell his Honor your full name, please, ma'm.?
A. Louise Page Detterman.
Q. And your age, please, ma'm?
A. 49.
Q. All right. Residence, please, ma'm?
A. 1973 Edgewood Avenue.
Q. And that is in the City of Norfolk?
A. Yes.
Q. And your occupation?
A. Housewife.
Q. And how long have you lived in the City of Norfolk?
A. Oh, for 43 years.
Q. All right. And do you know Mr. and Mrs. Smith, parties to this suit?
A. Yes, I do.

Louise Page Detterman.

Q. And now, Mrs. Detterman, have you been in their company several times or not?

A. Several times.

Q. And have you been in their company, and I want to direct your attention particularly prior to Mr. Smith going to Porto Rico and then prior to Mrs. Smith joining him in Porto Rico.

Dep. III 12/20/57 page 42 } A. Yes, I have been in their company.

Q. You have been in their company?

A. Yes.

Q. How soon before he left for Porto Rico would you say that you were in his company?

A. Oh, I would say within two days.

Q. Within two days?

A. Before they went to Porto Rico.

Q. All right, now, I want you to tell his Honor, please, what your observations were with regard his conduct and how he acted towards his wife.

A. At that time before they went to Porto Rico?

Q. Yes.

A. Well, there was just nothing said that day. I mean I went in the kitchen by the back and knew that they were leaving for Porto Rico and I had Christmas gifts for them, and, of course, they were in the other part of the home and Mrs. O'Brien said "Louise is here with your Christmas gifts."

Q. Well, now, excuse me—

A. (Continuing) There was just nothing said.

Q. —how did he act towards—I can't get you to tell what her mother said. That would be hearsay unless he was present.

Dep. III 12/20/57 page 43 } A. No, I said—

Q. How did he act; did he act affectionately or did he act frigid?

Mr. Harrell: I object to that, he is trying to lead the witness.

Mr. Fine: No, I mean "affectionately" wouldn't hurt you a bit.

The Commissioner: No, not a bit.

By Mr. Fine:

Q. Affectionately or frigid?

A. Well, I would say frigid.

Louise Page Detterman.

Q. Well, what made you come to that conclusion. Tell the Court.

A. Well, at one time before that, around '50, when she was in the hospital with pneumonia—

Q. Yes?

A. —I visited her one night over at the hospital and he was there, too, and he certainly was anything but sweet. I mean, to me it was ridicule.

Q. Well, now, how can you say it was ridicule, did he ridicule her?

A. Well, she was a very ill girl. He asked why was she ill, and I spoke up and said: "Well, naturally, she is worrying about you being in the war." And he said: "Why would she worry over me, because if I got it it would be $10,000.00 in her favor," and little things like that. It wasn't affectionate.

Dep. III 12/20/57 page 44

Q. What did he say, if anything, about her shape or form?

Mr. Harrell: I object. He is leading the witness. He is trying to get her to repeat the very words he uses.

By Mr. Fine:

Q. What did he say regarding her pulchritude, would he say she was beautiful?

A. It was anything but calling her beautiful. How thin she was and he liked woman with some "meat" on them and things like that.

By the Commissioner:

Q. You are asking me to believe now that sick woman he was talking to her in the hospital that way?

A. Yes, sir, yes, sir, she was in the hospital.

Q. And did he say that?

A. Yes, sir.

By Mr. Fine:

Q. And this was when she was in the hospital?

A. Yes, sir.

Q. And what was his occasion of being there at that time. How did he happen to come?

A. Well, he was home from Okinawa and found her in the hospital with pneumonia and very ill.

Dep. III
12/20/57
page 45 } Mr. Fine: All right, you may inquire.
Mr. Harrell: No questions.
Mr. Commissioner: Well, now, let me ask some questions.
Mr. Fine: Certainly.

By the Commissioner:

Q. I am a disinterested party, but I am just here trying to find out the truth. Isn't it a fact, Mrs. Detterman, from your observation of the family that Mrs. O'Brien and Mrs. Kelly and the other members of Mrs. Smith's family did not like Captain Smith? Didn't they show hostility toward him on nearly every occasion that you saw him?

A. Mr. Davis, I couldn't tell you. I wasn't in their company or around them enough to know. The night I was ever there in their company where he was present they were all sitting around very nice to him.

Q. They were all right?

A. Of course, that was when I was in there. That was when I was in their company.

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12/20/57
page 46 }

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N. B. ETHERIDGE,

called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Dep. III
12/20/57 By Mr. Fine:
page 47 } Q. You are Mr. N. B. Etheridge?
A. Yes.

Q. And Mr. Etheridge, would you state your age, residence and occupation, please, sir?

A. I am 57 years old, president and treasurer of the City Hall Garage, Incorporated, and I live at 135 Fayton Avenue.

N. B. Etheridge.

Q. And incidental to your occupation you are one of our city fathers, are you not, sir?
A. I am sorry; yes, sir.

The Commissioner: One of our grandfathers.

By Mr. Fine:
Q. In connection with the operation of the City Hall Garage Corporation, Mr. Etheridge, do you take an active daily part in that business?
A. Every day.
Q. And how long have you been in that business, sir?
A. My garage was organized and opened up in 1935. Before that for nine years I was manager of four different garages at one time.
Q. Now, Mr. Etheridge, I want to direct your attention, sir, specifically to May the 6th, 1957. Does your garage permit—

Dep. III
12/20/57 The Commissioner: Now, first, you've got to
page 48 } show the machine in his garage before that.
Mr. Fine: All right, sir, very well, sir.

By Mr. Fine:
Q. In connection with the automobile that subsequently went there in May—

Mr. Fine: What type of car was it, Mr. Smith?
Mr. Harrell: Now, just a minute. Let the witness describe the automobile.
The Commissioner: Yes, I think it is necessary for Mr. Etheridge to identify it. I don't know whether he knows Captain Smith or not.
Mr. Harrell: I don't know whether he does, either.
The Commissioner: But you must show that Captain Smith's car was in his garage before any further testimony along that line can be admissible.
The Witness: So far as I know it was not. The reason why I say so, there was a Mrs. O'Brien, I believe
Dep. III her name was, came to see me sometime in the
12/20/57 early summer; I think it was June, and inquired
page 49 } about the car. I searched all the records, and we did not have any record of it. It was a station

wagon, I forget whether it was Chrysler or what it was, but I had no record of it.

By Mr. Fine:

Q. I am referring, sir, to a Mercury Station Wagon, 1956.

A. I don't recall what the make of the car was now.

Q. And it had a Massachusetts license on it.

A. I looked at all the records. I couldn't find a record of it.

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Dep. III
12/20/57
page 50 }

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Q. What are your rules and regulations about anyone sleeping in the car in your garage?

Dep. III
12/20/57
page 51 }

A. Positively no one. We have a lot of trouble with that on account of the colored chauffeurs and the salesmen coming inside. They sleep in the car but we carry insurance on the capacity of the garage and it's dangerous in the first place.

Mr. Harrell: Your Honor, I object to it. He has answered the question and he is just piling the cost of the record up.

Mr. Fine: The Commissioner has—

Mr. Harrell: He has answered the question and now he is going into a lot of stuff that is immaterial.

The Witness: There are other policies as well as that.

The Commissioner: I think that is substantial.

By Mr. Fine:

Q. And the City ordinance does not permit that?

A. I don't know.

Q. You don't know about that?

A. I know my orders.

By the Commissioner:

Q. And that doesn't allow human habitation in the garage?

A. No loafing in the office or loafing in the building or anything in there after night.

Norman Ferrell Willey.

Dep. III
12/20/57
page 52 } The Commissioner: I think that will be sufficient.
Mr. Fine: All right, sir.
You may inquire.
Mr. Harrell: No questions.

And further this deponent saith not.

NORMAN FERRELL WILLEY,
called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. Would you tell the Commissioner, please, your full name, your age, residence and occupation?
Dep. III A. Norman Ferrell Willey, 664 Wiley Drive,
12/20/57 Norfolk.
page 53 } Q. And your occupation, sir?
A. Garage attendant, City Hall Garage.
Q. How long have you been attached to the City Hall Garage?
A. 12 years last month.
Q. And were you employed May 1957 there?
A. Yes.
Q. And were you employed in the day time or night?
A. Night.
Q. And were you employed on May the 6th, 1957?
A. Every night, yes.
Q. Every night. I want you to look at that gentleman there (indicating to Mr. Smith). Do you remember him sleeping in an automobile in your garage?
A. Nobody sleeps in an automobile at the garage.
Q. Do you remember a Mercury station wagon, 1956 station wagon being licensed in Massachusetts being in your garage?
A. No, sir, not any particular one, no, sir.
Q. Have you at any time had anyone sleep in your garage in May 1957?
A. No one in May or any other time.
Q. Or any other time?

A. No, sir.
Dep. III Q. Why do you say that?
12/20/57 A. Because Mr. Etheridge ordered it.
page 54 } Q. Well, now, I want you to take a look at that gentleman again. Do you remember seeing him?
A. Never.

Mr. Fine: All right, sir, answer this gentleman.

CROSS EXAMINATION.

By Mr. Harrell:
Q. Mr. Willey, you say that no one slept in the car in the garage during May of 1957 because Mr. Etheridge has rules against that?
A. Yes, sir.
Q. Have you ever seen me before?
A. No, sir.
Q. Could you testify that I have never been in your garage before?
A. Been in there?
Q. Yes.
A. No, sir.
Q. You couldn't say that I have not?
A. Haven't been in there?
Dep. III Q. Yes.
12/20/57 A. No, sir.
page 55 } Q. Well, you could not say that he has not been in there, could you?
A. He didn't ask me that. He asked me if he slept in there.
Q. Well, you could not say that he never slept in there at any time, could you?
A. Yes, sir.
Q. Do you go around and check the cars every night?
A. That I do, yes, sir.
Q. You do that to be sure that they don't sleep in there?
A. That and other reasons.
Q. And you do that at all hours of the night?
A. Yes, sir, all night long every night.
Q. Were you on duty the night of May 6th, 1957?
A. Every night, yes, sir.
Q. Every night you work there, seven nights a week?

Norman Ferrell Willey.

A. Yes, sir.
Q. And you never—

The Commissioner: That does not answer the question. I want to know whether he was on duty there on May the 7th. He didn't answer it. He said "every night" but—

The Witness: Yes, sir, I was there.
Dep. III Mr. Fine: May the 7th and May the 6th?
12/20/57 The Witness: Yes, sir.
page 56 } The Commissioner: You may interrogate.

By Mr. Harrell:
Q. You do not recollect him and you do not recognize me either, do you?
A. No, sir.
Q. It is very possible that either one of us could have been in there or both of us?
A. You mean came inside?
Q. Yes.
A. Yes, sir.
Q. And you don't remember every automobile that comes in there either, do you?
A. No, sir, it's impossible.
Q. And you can't say for sure whether this automobile was in there that night, can you?
A. No, sir.

Mr. Harrell: All right, thank you.

RE-DIRECT EXAMINATION.

By Mr. Fine:
Dep. III Q. But you say as far as you know that no one
12/20/57 slept in the station wagon on May the 6th?
page 57 } A. Or any other time.
Q. Let me ask you one other thing—go ahead, your Honor.

By the Commissioner:
Q. I just wanted to find out one thing that I have not heard it developed. Who parked the cars in there, do the customers *mark* their own or not?
A. No, sir.
Q. So that if anybody testified in this case that the car

was parked at the City Hall Garage and that Captain Smith went back to the room and got the duplicate keys and came back and opened it up and slept there, well, would he know where the car was after he brought it there, or does—is it usually brought there by one of the bell hops?

A. No, sir, we go to the hotel and get them.

Q. You go to the hotel. Well, he would not know where the car was in the garage, would he?

A. No, sir.

The Commissioner: All right.

By Mr. Fine:

Q. Now, let me ask you one more question: Have you ever seen me before today?

A. Not that I know of.

Dep. III
12/20/57
page 58

Q. Have I had any conversation with you?

A. No, sir.

Q. And have you any interest in this case?

A. Not a bit in the world.

Mr. Fine: That's all.

Q. I believe that you got here by reason of a call from the night watchman who notified you to come down here, and you haven't talked to Mrs. O'Brien or Mrs. Smith or anybody?

A. No, sir.

Q. You are just here to testify?

A. I only knew it 30 minutes from 3:00 o'clock until now, in other words.

The Commissioner: That's all right, thank you very much, Mr. Willey.

Mr. Harrell: Just a moment, Mr. Willey.

RE-CROSS EXAMINATION.

By Mr. Harrell:

Q. You wouldn't know if anybody went in and out of this garage on this particular night, would you?

A. No, sir.

And further this deponent saith not.

Dep. III
12/20/57
page 59 } HARRY LEE SMITH, JR.,
the defendant, recalled as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION. (Rec)

By Mr. Harrell:
Q. How did you know where the station wagon was this night that you stayed in the garage?

Mr. Fine: I object to that as leading.
The Commissioner: Well—
Mr. Harrell: How?
The Commissioner: I want to know, Mr. Fine. If Mr. Harrell didn't do it, I would want to have him explain his testimony on page 108 of the record here. Have you got it there? Because he has been put on the defensive. He is definitely on the defensive at this point.
Mr. Harrell: Well, let me finish this one.
The Commissioner: Go ahead.
Mr. Fine: Go ahead.

By Mr. Harrell:
Q. Answer the question.

Dep. III
12/20/57
page 60 The Commissioner: What was your question?
Mr. Harrell: I asked him how did he know where the automobile was in the garage where he stayed in there.

A. When I came out of the hotel, I asked the man at the entrance, I says: "Where do you park the cars for people staying in the hotel." He said the City Hall Garage. I asked him where it was.

Mr. Fine: I object to it but go ahead if your Honor is interested.

By Mr. Harrell:
Q. All right, go ahead. Did he tell you where the car was?

Harry Lee Smith, Jr.

A. He just told me the City Hall Garage.

Q. How did you find the car when you went there?

A. I walked in the door. There was a man sitting in the corner there, and I went right on in the door and I saw the car sitting on the far side and I just went over there and got in.

Q. Then describe what you saw as to the location of this place, where was the man sitting, and so forth.

A. There was a window there and he was sitting there in the corner. I don't know if this was the gentleman that was sitting there or not. I think he had his back to me.

Dep. III 12/20/57 page 61 } Q. Was it an office or what?

A. It was an office.

Mr. Fine: I object to that as leading, your Honor.

Mr. Harrell: I said, "or what." I am trying to find out.

Mr. Fine: Well, you asked what it was.

By Mr. Harrell:

Q. Not what, where was he sitting?

A. He was in a corner of an office, a little office.

Q. And how many people were there?

A. He was the only one I saw.

Q. And how was he dressed?

A. I don't know. He had a jacket on. I didn't really pay too much attention because I went right by the window there.

Q. What was he doing at the time you went by?

A. I don't—he was there at the desk doing something.

Q. Did he look at you as you went by?

A. No, he had his back to me.

Q. All right. What time of night was it that you went in there?

Dep. III 12/20/57 page 62 } A. I don't know. I don't think it was too late because there was still a lot of people on the street. I don't know exactly, I didn't look at my watch.

Q. What time of morning did you leave there?

A. Oh, I left, it was right early, because it was not too comfortable sleeping, but it was light. It was daylight.

Q. Was the same man on duty or was a different man on duty?

Harry Lee Smith, Jr.

A. I didn't see anybody.
Q. You didn't see anyone at all?
By the Commissioner:
Q. Well, you took the car with you when you left the City Hall Garage?
A. No, sir.
Q. What did you do when you left there?
A. I just got up and folded the blanket up and walked out and went down to the YMCA.
Q. The YMCA?
A. Yes.
Q. Where is the YMCA?
A. I don't know the street, but I am not too familiar with Norfolk, but it's on the other side of Granby Street, and I went down there. I spent the night there a couple of times, and went downstairs there and washed up and shaved.

Dep. III
12/20/57 By Mr. Harrell:
page 63 } Q. Is that the Navy Y or the Central Y?
A. The Navy Y.
Q. Now, you heard Mrs. Kelly testify that to her recollection on different occasions you asked your wife: "What is the matter with you, do you want a divorce?" Have you ever made that statement to her in her presence or anyone else's presence or at any time?
A. No, sir, I never made any statement. I never said that at all. With all due respects to the elderly person she is in error there.
Q. Mrs. Kelly stated that you caused her to cry and react very nervously in her presence, is that true?
A. No, never have.
Q. Now, Mrs. Detterman stated that you were very frigid to your wife when she was in the hospital and made other statements about the way you talked to her. Did you make those statements to her when she was in the hospital?
A. No. In fact I can't even remember being in that hospital.
Q. All right, now—

(To the Commissioner): I don't know what you had in your mind, Mr. Davis. I looked at page 108, and it didn't have anything about—

Harry Lee Smith, Jr.

Dep. III
12/20/57 page 64 } The Commissioner: Page 108, down at the bottom of the page, line 22. "Question: Where was the station wagon at the City Hall Garage?"

Mr. Harrell: Oh, I see.

The Commissioner: I want to give you an opportunity to explain this thing, if you can, but speaking from my own experience and stopping at hotels and parking my car, I never know where the car is parked and I just simply get it from the front door there and the doorman would tell them to get my car and that's that, and this is so unusual. And knowing Mr. Etheridge as I do and how meticulous and accurate he is, I just don't see how the captain could have walked all the way down beyond the police station from the hotel, went in that brightly lighted garage and went over and got in the car and slept there. Under all that, it's just incredible to tell you the truth.

Mr. Harrell: Well, first of all, Mr. Etheridge says the car wasn't there.

Dep. III
12/20/57 page 65 } The Commissioner: Well, of course, he has no record of it, but without that, assuming that he does not have any record of it for some reason and that Captain Smith's testimony is true and correct up to that point, you are asking me to believe something that is incredible that he should have walked into a brightly lighted garage and go over there and got in the car and slept there all night where there is a man on duty with strict orders not to let anybody occupy any of those automobiles while they are parked in the garage. Now, that is the problem that he's got facing him, and—

Mr. Fine: Excuse me, may it please the Commissioner. Sir, in reference also, if your Honor please, to what you have said, sir—

Mr. Harrell: Well, your Honor—

Mr. Fine: Just a moment, now. You said this man said that the car was in his garage. Now, mark you, the hotel bill has no charge for garage on that bill at all, none whatsoever, and he says the man took the car there.

Dep. III
12/20/57 page 66 } The Commissioner: It is most usual for a person to pay for it at the door. I pay for it at the door when the man brings the car back.

Mr. Fine: Of course, it's both ways, sir.

Harry Lee Smith, Jr.

By Mr. Harrell:

Q. Did you put the automobile in the garage yourself?

A. No.

Q. Did Miss Vance put the car in there?

A. Not as I know of.

Q. Did you get the car out that evening; I mean the next day?

A. No.

Q. Now, when you went there to sleep in there, were the lights bright inside the garage or what?

A. No, the place is not brightly lighted up.

Q. How far from the entrance to the garage was the car?

A. It was over on the far side by the wall.

Q. Were there any lights over there?

A. There was one dim light; it wasn't too bright in that place.

Q. Had you ever been in this garage before then?

A. No.

Dep. III Q. Have you ever been in there since?

12/20/57 A. Nope.

page 67 } Q. Approximately how many cars were in there when you went in?

A. Well, I'd say approximately 15 cars. There might have been more, I don't know. I didn't—

Q. And the man who was on duty, where was he when you went in there?

A. He was in a little office there in the corner. I walked in that garage. I stopped there for a moment, I saw the car over there, I walked over there and got in that car. And during the night another—somebody—another car came in there because I woke up, and then the next morning I got up and shut the car door, I don't even know if I locked it or not, and walked out.

Q. Now, why—

A. By the way, that door wasn't locked when I went in there either.

Q. Now, what did you sleep under, if anything?

A. I just got under a blanket, rolled up in a blanket.

Q. Were you lying on the seat, on the floor, or what?

A. Part of the seat there.

Q. Which seat?

Dep. III A. I was on the folding seat there and I was

12/20/57 right on the seat there.

page 68 } Q. All right.

A. The second seat, not the front seat.

Harry Lee Smith, Jr.

RE-CROSS EXAMINATION.

By Mr. Fine:

Q. As I understand it you say this man had a jacket on?

A. I think he had. It looked like something like a jacket, I'm not definitely sure.

Q. Now, you remember this was in May. Was that a cold night in May?

A. I don't remember.

Q. You don't remember, but he had a jacket on; and you say it wasn't late at night?

A. It wasn't. I don't think it was. It might have been around nine or ten o'clock, or something like that.

Q. All right. And you say that this man was to the back of you, he didn't see you, you say?

A. Oh, yes; I don't know whether he saw me.

Q. You mean to tell the Court you just walked in there without him seeing you?

Dep. III 12/22/57 page 69

A. I walked right in there just big as day.

Q. And didn't say anything to anybody. You didn't say anything to anybody about your sleeping there?

A. No.

Q. And you say nobody saw you leave?

A. I don't know if anybody did or not. I didn't care.

Q. You didn't speak to anybody?

A. I didn't care if anybody saw me.

Q. And you said that you got an extra set of keys to get in there?

A. Yes.

Q. You had a set, didn't you?

A. I got them from her.

Q. But you found that the door was open?

A. Yes.

Q. And you said you slept on a blanket?

A. Yes, I was wrapped up in a blanket.

Q. I thought you just said you slept on top of the seat.

A. I wrapped up in a blanket on the seat.

Q. Wrapped yourself up in a blanket?

A. That's right, on the seat.

Q. And this was on May the 6th?

A. That's right.

Q. Was that a cold night?

A. Well, I—

Harry Lee Smith, Jr.

Dep. III
12/20/57
page 70 } The Commissioner: He said he didn't remember.

A. I took my coat off because I didn't want it to get messed up.

Q. You took your coat off but you slept in your pants and your shirt?

A. That's right.

Q. And then had a blanket on top of you?

A. That's right.

Q. I see. Now, you say that you haven't talked about a divorce at all. Well, didn't you, as a matter of fact—have you forgotten to tell the Court that you instituted a suit in Porto Rico and claimed you were a resident of Porto Rico, didn't you, to get a divorce?

A. I didn't say that. I don't think I said anything about a divorce at all at the time of the question that was asked me about this thing.

Q. Well, shortly after your wife joined you at Porto Rico, which is in the testimony here, she became ill and had an epileptic seisure and her mother came down and got her, is that correct? That is in the record here. Do you want me to refresh your memory?

Mr. Harrell: Well, your Honor, if it's in the record I don't see why he has to read and go back into it.

Dep. III
12/20/57
page 71 } By Mr. Fine:

Q. Well, how soon after she left Porto Rico did you file your suit for divorce?

A. After I got that letter from you.

Q. And you filed a suit?

A. About ten days after she left.

Q. About ten days after she left.

Mr. Harrell: Now, your Honor—

By Mr. Fine:

Q. You had a lot of love for your wife then, didn't you. You waited just ten days after she left?

Harry Lee Smith, Jr.

A. She didn't have no love for me. Ten days after she left she gets a lawyer to write to me.

Q. And didn't you at that time take all the money you had out of the bank account which amounted to $800.00 out of the Building and Loan Association?

A. I might have, I don't know.

Q. You know you did, didn't you?

Mr. Harrell: I object. This is repetitious. This has been gone over before, and I think the record—

The Commissioner: I think it has been pretty well covered.

Dep. III By Mr. Fine:
12/20/57 Q. I will ask you this: This is a withdrawal
page 72 } made by you, isn't it, to-wit: $800.00?

(Document handed to witness for examination).

A. I guess I remember making a withdrawal.

Mr. Fine: That's it, isn't it?

I would like to introduce that, if your Honor please.

The Commissioner: I don't know what the exhibit number will be.

Mr. Fine: Suppose we make it Complainant's Exhibit A, and date it today. That will take care of it, wouldn't it, sir?

(Received and marked for identification as Complainant's Exhibit A).

By Mr. Fine:

Q. Now, Mr. Smith, you do sort of talk out of turn and kind of hurt your wife, and I ask you if this letter isn't—

Mr. Harrell: Just a moment, before he reads it in the record I would like to have an opportunity to look at it.

(Document was handed to counsel for scrutiny).

Dep. III
12/20/57
page 73 } Mr. Fine: (Reading) "This is the end of you and me. I found out the truth about you and what you said about your mother. Just drop out of my life."

Harry Lee Smith, Jr.

Q. And that is signed by who?

(Shown to witness).

A. It's Mr. Smith.
Q. You know that isn't. Isn't that signed "M. Smith?"
A. It looks like a "Mr." to me.
Q. Isn't that your father?
A. I guess so, I don't—
Q. Don't you know it's your father?
A. I don't know if it's his handwriting or not.

Mr. Harrell: I object to that. I request if that letter was not written by the defendant in this case that it be stricken from the record.

Mr. Fine: You just wait a minute. You let me examine him. He is on cross examination.

By Mr. Fine:

Q. You got that, didn't you?
Dep .III A. I don't remember it.
12/20/57 Q. You don't remember it at all?
page 74 } A. No, I don't.
Q. Don't you remember anything? Didn't you and your father have a misunderstanding?

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

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