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Record No. 6759

In the Supreme Court of Appeals of Virginia at Richmond

WILLIAM SINCLAIR CLARK

v.

KAY EUNICE GENERT CLARK

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

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Record No. 6759

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 2nd day of October, 1967.

WILLIAM SINCLAIR CLARK, Appellant,

against

KAY EUNICE GENERT CLARK, Appellee.

From the Circuit Court of Fairfax County
Albert V. Bryan, Jr., Judge

Upon the petition of William Sinclair Clark an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Fairfax County on the 31st day of January, 1967, in a certain chancery cause then therein depending, wherein the said petitioner was plaintiff and Kay Eunice Genert Clark was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

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COMMISSIONER'S REPORT

The undersigned A. Albert Balavage, a Commissioner in Chancery of this Court to whom the above styled cause was referred, respectfully reports that he proceeded to execute the Decree of Reference by taking the depositions of William Sinclair Clark and Kay Eunice Genert Clark, and their witnesses, the transcripts of which are filed herewith and made a part of this Report. Both parties were present in person and were represented by counsel.

After consideration of the evidence together with the proceedings in this cause, your Commissioner reports as follows:

1. That both parties hereto are, respectively, male and female of the Caucasian race, each being over the age of twenty-one years, and were lawfully united in marriage on April 20, 1963, at Fort McClellan, Alabama.

2. That the Defendant is and has been a *bona fide* resident of and domiciled in the County of Fairfax, State of Virginia, and has been so resident and domiciled for more than one year next preceding the institution of this suit; that the parties hereto last lived and cohabited as husband

page 25 } and wife in Atlanta, Georgia; that the Complainant is a non-resident of the State of Virginia, having his residence and domicile in the State of Maryland, and that this Court has jurisdiction to hear and determine this cause.

3. That there was one minor child born of this marriage, namely, Kevin Andrew Clark, born October 11, 1963; the said child is now in the custody of the Defendant.

4. That after careful consideration of the evidence and testimony of the parties and their witnesses, the undersigned Commissioner finds that on June 13, 1964, the Defendant wife wilfully deserted and abandoned the Complainant and the marital domicile of the parties, the address thereof being in Atlanta, Georgia.

The Defendant, Kay Eunice Genert Clark, admitted that she committed adultery; she admitted that her child, Jason Bradley Clark, born June 7, 1965, in the State of New York, (Complainant's Exhibit No. 1) was not the child of

her husband, William Sinclair Clark; other evidence was introduced proving such adulterous course of conduct.

The child of the parties, Kevin Andrew Clark, has been in the custody of Defendant ever since his birth. Notwithstanding the Defendant's aforesaid course of conduct, which, according to the evidence, took place during July through October of 1964, your Commissioner recommends that custody of the said child remain with the mother, Kay Eunice Genert Clark. There is no evidence that any of Defendant's aforesaid conduct had any effect on the child of the parties, nor that any of the acts took place in the home wherein the child of the parties resided. Complainant's parents testi-
page 26 } fied that the Defendant was a good mother to her children, and nothing in their testimony would indicate that she was not a fit and proper person to have the custody of the aforesaid child. Your Commissioner feels this testimony is highly significant, since Complainant's parents had the greatest opportunity to observe the manner in which Defendant was caring for the aforesaid child. This is a very young child and the evidence appears clear and in preponderance that the mother is a good mother and is taking proper care of him.

Then, in summary, your Commissioner finds:

That on June 13, 1964, the Defendant wife wilfully deserted and abandoned the Complainant and the home of the parties while the parties were living in Atlanta, Georgia, without just cause or excuse.

That the Defendant committed adultery during the months of July through October of 1964. Notwithstanding that such conduct is inexcusable, your Commissioner feels that the Defendant is nonetheless a fit and proper person to have custody of the child, Kevin Andrew Clark, and that the best interests of said child will be served by his remaining in her custody. Your Commissioner recommends that Complainant should have liberal rights of visitation.

That Complainant be granted a divorce *a vinculo matrimonii* on either of the aforesaid grounds, the statutory period of time having elapsed on the desertion and there having been no cohabitation between the parties since June 13, 1964.

That the question of support of the aforesaid
page 27 } child has been raised in the pleadings and in the record before this Court, and your Commissioner has referred the parties hereto to the Court for a hearing directly on this question.

5. That the testimony and evidence introduced by the parties before the undersigned Commissioner was duly corroborated as required by law.

As required by Section 8-256 of the Code of Virginia (1950), a copy of this report has been mailed to N. Brent Higginbotham, Counsel for Complainant, at 10370 Main Street, Fairfax, Virginia; to S. Page Higginbotham, Esq., Higginbotham & Fry, P. O. Box 391, Orange, Virginia, Counsel for Complainant; and to Quinlan H. Hancock, Esquire, Counsel for Defendant, at 128 North Pitt Street, Alexandria, Virginia.

Respectfully submitted,

A. ALBERT BALAVAGE,
Commissioner in Chancery

Commissioner's Fee—Paid

Filed Dec. 6, 1966.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

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EXCEPTIONS

Comes now the Complainant, by Counsel, and objects and excepts to the undated Commissioner's Report of A. Albert Balavage, Commissioner in Chancery to whom this cause was referred, filed herein, as follows, to-wit:

A. That part of Paragraph "4" of the Commissioner's Report wherein the Commissioner recommends that the custody of the child remain with the mother, Kay Eunice Genert Clark, and the Commissioner's reasons therefor. The Commissioner's report is erroneous on its face because the Commissioner found that the Defendant had been guilty of adultery and given birth to an illegitimate child. This is conclusive of the unsuitability of the mother to have custody of the child. On the other hand, the evidence fully sustains the fitness of the father to have the custody of the child. There was no evidence to the contrary.

B. That additional part of Paragraph "4" of the Commissioner's Report wherein your Commissioner "feels" that the

Defendant is a fit and proper person to have the custody of the child, Kevin Andrew Clark, and that the best interest of the said child would be served by his remaining in her custody.

page 29 } C. That the Commissioner erred in not reporting that the custody of the child should be granted to the father, William Sinclair Clark, and in not reporting that the welfare of the child would be promoted thereby.

WHEREFORE, the Complainant, William Sinclair Clark, objects and excepts to so much of the Commissioner's Report that awards the custody of the child to the mother and prays that the Report may be overruled in this regard and that an Order may be entered granting a divorce to the Complainant and granting to him the full and complete custody of the infant child in question.

WILLIAM SINCLAIR CLARK
By: N. BRENT HIGGINBOTHAM
Counsel

N. BRENT HIGGINBOTHAM and
HIGGINBOTHAM AND FRY
Counsel for the Complainant
Filed Dec. 9, 1966.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

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FINAL DECREE OF DIVORCE

THIS CAUSE came on to be heard upon the papers formerly read, the Report of the Commissioner in Chancery, and the Exceptions filed by the complainant to the Report of the Commissioner in Chancery; and the Court, after hearing argument of counsel, was of the opinion that all the Exceptions filed by the complainant should be overruled and that the Report and Findings of the Commissioner in Chancery should be confirmed; and it appearing to the Court from the evidence and the Report of the Commissioner in

Chancery that the defendant is and has been a *bona fide* resident of and domiciled in the County of Fairfax, State of Virginia, and has been such for more than one year next preceding the institution of this suit; that the parties hereto last lived and cohabited as husband and wife in Atlanta, Georgia; that both parties are members of the Caucasian Race and are over the age of twenty one years; that neither party is a member of the Armed Forces of the

page 32 } United States; and it further appearing to the Court that the complainant was married to the defendant on April 20, 1963, at Fort McClellan, Alabama; that there was one child born of this marriage, namely, Kevin Andrew Clark, born October 11, 1963; that the parties hereto have been living separate and apart since the 13th day of June 1964; that subsequent to that date the defendant herein did commit adultery, the said acts of adultery having occurred less than five years before the institution of the suit without the procurement or connivance of the complainant and that the parties have not cohabited after the knowledge of the fact of adultery, upon consideration whereof,

IT IS ADJUDGED, ORDERED AND DECREED that the complainant herein, WILLIAM SINCLAIR CLARK, be and he hereby is awarded a final decree of divorce (*a vinculo matrimonii*) from the defendant herein, KAY EUNICE GENERT CLARK, on the ground of adultery.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the defendant herein, Kay Eunice Genert Clark, be and she hereby is awarded custody and control of the infant child of the parties hereto, namely Kevin Andrew Clark, with the right to the complainant and complainant's parents to see and visit with said child and have said child visit with them at reasonable times and places; and defendant shall not change the residence of said child from the Counties of Arlington, Fairfax, Prince William or the City of Alexandria without Court approval.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the complainant, William Sinclair Clark, be and he hereby is ordered and directed to pay to the complainant the sum of $25.00 per week as support and maintenance for the infant child of the parties hereto.

page 33 } IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the complainant, William Sinclair Clark, be and he hereby is ordered and directed to pay to Quinlan H. Hancock, counsel for the defendant, the additional sum of $200.00 as a final counsel fee.

AND THIS DECREE IS FINAL.
Entered: January 31st, 1967.

A. V. B., JR.
Judge of the Circuit Court County
of Fairfax, Virginia

I ASK FOR THIS:
QUINLAN H. HANCOCK
Counsel for Defendant

SEEN OBJECTED AND EXCEPTED TO
FOR REASONS STATED IN RECORD:
N. BRENT HIGGINBOTHAM
Counsel for Complainant

* * * * *

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Comes now William Sinclair Clark, Complainant in the above styled case, by Counsel, and gives notice of appeal to the Supreme Court of Appeals of Virginia from a Decree of the Circuit Court of Fairfax County entered herein on January 31, 1967, awarding custody of the infant child of the parties hereto to the Defendant.

* * * *

The assignments of error are as follows:

1. The Court erred in ruling the mother to be a fit person to have custody of the child.
2. The Court erred in ruling that the welfare of the child would be promoted by its custody being granted to the mother, and by granting custody to the mother.
3. The Court erred in not granting the custody of the child to the father.
4. The Decree of the Court as to custody of the child is contrary to the law and the evidence, and without evidence to support it.

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Respectfully submitted and filed with the Clerk this 10 day of March, 1967.

S. PAGE HIGGINBOTHAM
Counsel for William Sinclair Clark
N. BRENT HIGGINBOTHAM
Counsel for William Sinclair Clark

Filed Mar. 10, 1967.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 3 }

Whereupon

KAY EUNICE CLARK the Defendant, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. P. Higginbotham:

Q. You are Kay Eunice Clark, are you not?
A. Yes.
Q. And how old are you?
A. I'm twenty five.
Q. Where were you born?
A. In Baltimore, Maryland.
Q. Baltimore, Maryland.
What education do you have?
A. I have a high school education and when I was in the service I passed a test given by the government services to the equivalent of one year of college.
Q. Did you at one time live in Alabama?
A. Yes, sir. I did.
Q. And did you live there with your parents?
A. No, I did not.
Q. Where were your parents?
A. They were at home in New York.

Com.
Hear.
page 4 }

Q. New York?

A. Yes.

Q. How did you get to Alabama?

A. The government sent me down there and it is while I was enlisted in the service.

Q. What does your father do?

A. He is a coal miner.

My real father is deceased.

Q. What does your mother do?

A. My real mother is deceased.

Q. You were married on April 20, 1963 to William Sinclair Clark, were you not?

A. Yes.

Q. And born of this marriage on October 11, '63 was one child, Kevin Andrew Clark?

A. Yes.

Q. And at that time you all were living—you were married where?

A. Fort McClellan, Alabama.

Q. At that time you lived in Alabama. Is that right?

Com. Hear. page 5 }

A. Yes.

Q. And your husband was in school?

A. He was in the service at that time.

Q. All right.

And then did you separate on June 13, 1964?

A. Yes.

Q. And up to that time had your husband ever struck you?

A. No.

Q. Had he ever cursed you?

A. No.

Q. Never beat you?

A. No.

Q. Now during the time that you were living together his parents came down from Virginia to visit you all. Is that right?

A. Yes.

Q. And while they were there you suggested that they allow you to come to Virginia and live with them. Is that right?

A. No, I didn't suggest it. I said that I was planning on leaving Bill and I wanted to come up to this area and then Bill's father suggested that I come and live with them until I could get settled.

Kay Eunice Clark

Q. But you told his parents that you were planning on leaving and that you would like to come to this area and you all could arrange whereby you could come to their home?

Com. Hear. page 6 }

A. Yes.

Q. And you did come to their home?

A. Yes.

Q. And you came to their home in June of '64?

A. Yes.

Q. And about four weeks or six weeks after you arrived here, you asked his parents if you could date. Is that right?

A. No.

Q. Did you ever discuss with his parents whether or not you could date?

A. Yes, several months later.

Q. All right.

And they advised you that you were a married woman and you should not date. Is that right?

A. That's right.

Q. Mr. Clark has a sister named—

A. Eleanor Clark.

Q. —Eleanor Clark. Is that right?

A. Yes.

Q. And they call her "Ellie"?

A. That's right.

Q. And what is her occupation?

Com. Hear. page 7 }

A. She is an accountant.

Q. An Accountant?

A. Yes.

Q. Is she a CPA?

A. Not yet. She is taking a course.

Q. And you asked Ellie if you could go along with her on her dates?

A. No, I did not. She suggested that I accompany her.

Q. And you went with her and her dates to some parties. Is that right?

A. That's right.

Q. And you commenced showing attention to men, and men commenced showing attention to you.

Mr. Hancock: Mr. Commissioner, let me interpose an objection at this point with respect to any questions or testimony at this time regarding the alleged charge of adultery against the defendant, and if the Commissioner takes the position that the objection will simply be noted and not controlled by the

Commissioner, I would reserve the right to instruct my client to refuse to answer these questions based on the fact that she is not required, certainly, to testify to anything that would tend to incriminate her insofar as any criminal offense is concerned which is what they have alleged in the bill of complaint.

Com. Hear. page 8 } The Commissioner: All right. Your exception is noted but I am going to direct the witness to answer the questions. You may take that up with the Circuit Court.

Mr. Hancock: Right. And I am going to instruct her to refuse to answer if it please, Mr. Commissioner.

Mr. Higginbotham: Now, Your Honor—

The Commissioner: Well, I'm directing her to answer the question.

Mr. Hancock: Well, this matter has risen before, Mr. Commissioner, and it is a matter in my opinion, that has to be determined by the Court as it was on prior occasions and I might say, in favor of my position and I would reiterate my position that she is not required to testify to anything that would tend to incriminate her insofar as any criminal offense is concerned, and that is what the complainant in this case has alleged.

The Commissioner: Do you have authority for that?

Mr. Hancock: Yes, I have the authority, the Circuit Court of Fairfax County.

The Commissioner: In this case?

Mr. Hancock: Not in this case, no, because of course this is the first time it has arisen.

Com. Hear. page 9 } The Commissioner: Well, how long—this hearing, it looks to me, will probably take more than one day from the looks of it.

Tomorrow is Friday and you can all probably take it up tomorrow because I'm not going to keep coming back on this case.

Mr. Higginbotham: I can't come back on it, Your Honor.

The Commissioner: It seems to me that this thing might be taken up tomorrow.

Mr. Hancock: You mean before the Circuit Court?

Mr. Commissioner: Get a ruling, since you are telling the girl not to answer. Certainly I can't force her to answer except to tell her to answer.

Mr. Hancock: Right, I understand.

The Commissioner: And I'm not going to go beyond that. So in view of the attorney's telling her not to answer that

question of course I have no way of forcing her to answer except to state my position for the record, so you go on to your other questions.

Mr. Higginbotham: I haven't gotten to that question yet, Your Honor. I was simply asking her if she didn't show interest in other men, and other men commenced showing interest in her.

Com. Hear. page 10 } Mr. Hancock: Well, if I may say this at this time, this would be, I suppose, a preamble to the allegation of charge of adultery in this case and because I feel that it is related I would instruct my client to refuse to answer that also.

Mr. Higginbotham: Your Honor, we have here the question of the welfare of a child involved and the acts and conduct of this young lady is certainly pertinent to the issue and I can see no reason why she shouldn't be required to answer questions that bear upon that issue.

The Commissioner: Well, I can say to you that I completely agree with that. I think that everything that she did is pertinent and is questionable or that of either party is questionable in a case of this kind but I have no way of forcing her to answer if her attorney tells her not to.

Mr. Higginbotham: I would like to ask the questions and let her refuse to answer. I think that is a proper procedure.

The Commissioner: I think you can do that. Have him advise—she is entitled to be advised by Mr. Hancock as to what she is entitled to do.

Mr. Higginbotham: All right.

By Mr. P. Higginbotham:

Q. You did commence showing interest in other men?

Com. Hear. page 11 } Mr. Hancock: You may refuse to answer that question.

The Witness: Do I say "I refuse to answer"?

Mr. Hancock: You don't have to say anything.

The Commissioner: Well, I think we ought to have for the record the reason for the refusal. I believe the attorney is entitled to that, what your grounds are for having her refuse that.

Mr. Hancock: Well, I have told the Commissioner.

The Commissioner: If you want that statement to stand for all of these series of questions I think that is all right, instead of telling her—

Mr. Hancock: It would shorten up the record. I would

agree with the Commissioner and Mr. Higginbotham that the activities of both of these parties with respect to custody has a bearing in this but procedurally I feel that he is required to approach this thing in a different fashion and for that reason I am instructing her to refuse to answer the question.

The Commissioner: All right. There is no use to belabor this. Just go ahead and ask the questions you want and you have a right, by the way, to consult with Mr. Hancock on any of these questions and answer accordingly.

The Witness: All right.

Com. Hear. page 12 }

By Mr. P. Higginbotham:

Q. You refuse to answer that question?

The Commissioner: She has. Go ahead to your next question.

By Mr. P. Higginbotham:

Q. How did you come to know one, a man by the name of James England?

Mr. Hancock: You may refuse to answer that question.

The Witness: Do I say "I refuse to answer"?

The Commissioner: You have to do the testifying. You may get advice from him but you have to say "I refuse to answer" and so on.

The Witness: Should I say "I refuse to answer the questions"?

Mr. Hancock: That's good enough, yes.

The Commissioner: Otherwise the record is void as to what your reply was, you see.

By Mr. P. Higginbotham:

Q. After you returned from Alabama did you come to know one Ray Praeter?

Mr. Hancock: You may refuse to answer that.

The Witness: I refuse to answer that.

By Mr. P. Higginbotham:

Q. Well, how long did you stay here in Fairfax?

Com. Hear. page 13 }

Mr. Hancock: You may answer that.

The Witness: I've been here since June 13, 1964.

Kay Eunice Clark

By Mr. P. Higginbotham:
Q. Continuously?
A. I have been home for several months to visit my relatives.
Q. You went home to have a baby, didn't you?

Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer that.

By Mr. P. Higginbotham:
Q. Well, did you give birth to a child?

Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer.

By Mr. P. Higginbotham:
Q. But you will agree that you had no sexual relations with Mr. Clark after you left him on June 13, 1964?

Mr. Hancock: You may refuse to answer that.
The Commissioner: All of these you will have to take up with the Circuit Court. You may as well not even waste time.
Mr. Higginbotham: Your Honor, I question the right of counsel to advise a witness when a question of crime is not involved. If this procedure is allowed to stand an attorney could stymie any hearing and that's exactly what is happening here.

Com. Hear. page 14

The Commissioner: Well, I don't agree with you on that. You have a right to take this matter up with the Circuit Court and it may be that the ruling will be that she has answered the question. I don't know. I can't rule on it.

By Mr. P. Higginbotham:
Q. I'll ask you when is the last time you did have sexual relations with your husband?

Mr. Hancock: You may refuse to answer that also.
The Witness: I refuse to answer.

By Mr. P. Higginbotham:
Q. Well, did you have sexual relations with him while you were living with him?
A. Occasionally.

Kay Eunice Clark

Q. Did you have sexual relations with him after you stopped living with him?

Mr. Hancock: You may refuse to answer.
The Witness: I refuse to answer.

By Mr. Higginbotham:
Q. I hand you a birth certificate from the State of New York.

Mr. Higginbotham: Do you want to see that?

Com.
Hear. (Handing document to counsel.)

page 15 } By Mr. P. Higginbotham:
Q. I hand you that birth certificate and ask you if you gave the information as shown on that birth certificate to the authorities?

Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer that.

By Mr. P. Higginbotham:
Q. Is your name included on the birth certificate?

Mr. Hancock: You may refuse to answer that also.
The Witness: I refuse to answer.
Mr. Higginbotham: Your Honor, we offer in evidence a certificate of birth of a child—
The Commissioner: No, I don't want you to read what is on that.
Mr. Higginbotham: We offer that in evidence.
The Commissioner: Show it to the counsel.
Mr. Hancock: I've seen it, but there has been no foundation, it hasn't even been identified.
Mr. Higginbotham: Well, it is an official record and we can offer it in evidence.
Mr. Hancock: There is no evidence that it is an
Com. official record and I object to it at this point.
Hear. The Commissioner: I am going to refuse this
page 16 } at this time. I don't think you have a sufficient foundation laid for this.

Mr. Higginbotham: We would like to have it objected to and have the Court pass upon it.
The Commissioner: All right.

By Mr. P. Higginbotham:
Q. You worked after you came back here to Fairfax, didn't you?
A. Yes.

The Commissioner: Before we go on, I am going to mark this as Proffered Exhibit No. 1 of the Complainant and as being refused by me because of inadequate or improper foundation for it's introduction.

(The document referred to above as Proffered Exhibit No. 1 of the Complainant was offered in evidence and refused.)

The Commissioner: All right, you may continue on.

By Mr. P. Higginbotham:
Q. You worked before you went to New York, didn't you?
A. Yes.
Q. Here in Fairfax?
A. In Washington.
Q. You didn't work while you were in New York?
A. No, I didn't.
Com. Hear. Q. You weren't physically able to work, were you?

page 17 } Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer that.

By Mr. P. Higginbotham:
Q. When you came back from New York, did you bring anybody with you?

Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer that.

By Mr. P. Higginbotham:
Q. Well, what does your family consist of now?

Mr. Hancock: You may refuse to answer that also.
The Witness: I refuse to answer.

Kay Eunice Clark

Mr. Higginbotham: Your Honor, we wish to take exception to her refusing to answer as noted in the record.

The Commissioner: I think it is a continuing one. Go ahead.

By Mr. P. Higginbotham:

Q. Will you tell us where you live?

A. Yes, I live in Annandale, Virginia.

Q. All right. And you won't tell us who your household consists of now?

Com. Hear. Mr. Hancock: You may refuse to answer.

The Witness: I refuse to answer that.

page 18 } By Mr. P. Higginbotham:

Q. Do you have a baby sitter?

A. Yes.

Q. Who does the baby sitter look after?

Mr. Hancock: You may refuse to answer that.

The Witness: I refuse to answer that.

By Mr. P. Higginbotham:

Q. Do you refuse to answer that you have two children living in your home now?

A. Yes, I do.

Mr. Hancock: Well, let the record reflect that her answer was "Yes" that she refused to admit that.

By Mr. P. Higginbotham:

Q. A baby was born to you in New York on June 7, 1965, was it not?

Mr. Hancock: You may refuse to answer.

The Witness: I refuse to answer.

By Mr. P. Higginbotham:

Q. It was a boy too, wasn't it?

Mr. Hancock: You may refuse to answer.

The Witness: (No response.)

Kay Eunice Clark

Com. Hear. page 19 } By Mr. P. Higginbotham:

Q. I ask you this question. Do you feel that it would be conducive for the welfare of a child to be brought up with another child who has no father, no legal father?

Mr. Hancock: You may refuse to answer that, not only because of grounds previously stated but the question as propounded is argumentative.

Mr. Higginbotham: Your Honor, on cross examination many things can be attested.

The Commissioner: There is no use wasting time so you will have to get a ruling on all of these things with the Judge. I can't force this girl to answer the question, don't you understand that?

Mr. Higginbotham: Well, if it is incriminating, or unless there is some basis for it I think the Court can direct her to answer it.

The Commissioner: The Circuit Court can.

Mr. Higginbotham: I think this Court has some powers to judge a person in contempt, failure to answer a legitimate question.

The Commissioner: I don't think so.

Mr. Higginbotham: All right, sir.

Com. Hear. page 20 } The Commissioner: Which reminds me, is what I suggested when I was first contacted in this matter, that a Judge be here.

Mr. Higginbotham: There was an order entered, Your Honor, directing you to take the testimony as to the paternity of this child and I don't see how, when the Court has directed you to do that, how she can, as a party to this suit, can defy the order of the Court and defeat the order of the Court.

The Commissioner: I understand your feeling on it but you must understand that I cannot force anybody to answer a question. I don't have the powers of a Circuit Court judge. This is a Commissioners' hearing only.

By Mr. P. Higginbotham:

Q. You had talked, while you were in New York you talked with Ellie Clark, did you not?

A. On the telephone, yes.

Q. And at the time, you told her that you were pregnant and that the father of the child was James England.

Mr. Hancock: You may refuse to answer.
The Witness: I refuse to answer.

By Mr. P. Higginbotham:
Q. But you do agree that you talked with her on the telephone?
A. Yes.
Q. Did you talk with her on this subject?

Com.
Hear.
page 21 } Mr. Hancock: You may refuse to answer.
The Witness: I refuse to answer that.

By Mr. P. Higginbotham:
Q. Then after you came back to Virginia you also talked with Ellie Clark, did you not?
A. I have spoken with her several times.
Q. Have you talked with her about this child?

Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer.

By Mr. P. Higginbotham:
Q. Then if you deny, or will not admit that you had this child, how do you expect to ask for custody of it?

Mr. Hancock: You may refuse to answer that too.
If Your Honor please, my objection not only goes to the former objection but again, I think the question as propounded, is argumentative.

(Discussion off the record.)

Mr. Higginbotham: Let me ask her this question.

By Mr. P. Higginbotham:
Q. Is there a child in existence by the name of Jason Clark?

Com.
Hear.
Mr. Hancock: You may refuse to answer that.
The Witness: I refuse to answer.

page 22 } By Mr. P. Higginbotham:
Q. Do you consider your husband to be a suitable person to have the custody of his child, don't you?

Kay Eunice Clark

A. I don't think he has taken enough interest in him.

Q. Are you asking for the support that Mr. Clark here, the complainant, be required to support Jason Clark?

Mr. Hancock: Your Honor, may it please the Court, I would again interpose an objection because I appreciate Mr. Higginbotham's position—

The Commissioner: Let me look at the pleadings, but go ahead and make your statement.

Mr. Hancock: —by asking Mrs. Clark the question as asked with the formal references to the child named Jason. It still, I feel, would be applicable to the alleged, or the charge or allegation of adultery, and for this reason at this time I would have to instruct her to refuse to answer that also.

The Commissioner: Let me take a look at the pleadings.

Mr. Hancock: The pleadings, of course, speak for themselves.

Com. Hear. page 23

The Commissioner: No, I think I am going to direct her to answer this question. Number Four of this bill of complaint states that the defendant, Kay Eunice Clark, be awarded custody and control of the two infant children, Kevin Andrew Clark and Jason Bradley Clark and the fifth count asks for maintenance and support for the two children.

Mr. Hancock: That is correct.

The Commissioner: I think she ought to answer that question.

Mr. Hancock: I would instruct her to refuse to answer, Mr. Commissioner, for my reasons previously stated.

The Commissioner: You just take it up with the Circuit Court. That is all you can do.

Mr. Higginbotham: Your Honor, under the circumstances I see no point in pursuing further cross examination of this witness.

The Commissioner: All right. Call your next witness.

Mr. Hancock: Let me ask you this.

I want to ask her a couple of questions in respect to what she did testify to.

CROSS EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, Mr. Higginbotham asked you about your telling your husband's parents that you were going to leave

him and this was while you were living where?

Com. Hear. page 24

A. In Atlanta, Georgia.

Q. In Atlanta, Georgia?

A. Yes.

Q. Would you tell the Commissioner why you told his parents that you had planned to leave him?

All right. Now just take it easy.

A. I left him because he told me he just didn't want me anymore and he just wanted me to stay down there until he finished his schooling and then we would call it quits. He said that I didn't have the intelligence for him or the physical attributes and he just didn't want to stay with me any longer.

Q. Where were you living at this time, Mrs. Clark?

A. I was living with him in Atlanta, Georgia.

Q. And was he going to college then?

A. Yes, he was.

Q. Where was he going to school?

A. He was going to Georgia Tech.

Q. And what was he studying?

A. He was studying Nuclear Engineering.

Q. And were you out working while he was going to school?

A. Yes.

Q. Was he employed?

Com. Hear. page 25

A. He had received an assistantship from the college that helped some.

Q. But was he working?

A. No, he wasn't.

Q. In other words, you worked while he went to school. Is that correct?

A. Yes.

Q. Is it your testimony that this is what he told you while you were living with him?

A. Yes. I had suggested going to a marriage counselor to just see if we could work it out but he told me he didn't want to spend the money on something that was useless and that he just didn't want any part of it.

Q. And did you explain this to his mother and dad?

A. Yes. I just told them that Bill and I had decided that it wouldn't work out and I wanted to come home.

Q. Were you desirous of trying to make the marriage work?

A. Yes.

Q. Was one of the suggestions in that direction that you both see a marriage counselor?

Mr. Higginbotham: We are going to object to this.

Com. Hear. page 26

The Commissioner: So that we have the procedure right here, you are now calling this witness as your own. Is that correct?

Mr. Hancock: No, I am cross examining her which I think gives me the right to lead her.

The Commissioner: I think you have gone beyond the scope of any direct examination at this point.

Mr. Hancock: Mr. Commissioner, he called her and asked her about the circumstances under which she left this man in—down I think, in Alabama he said, but actually in Georgia.

The Commissioner: Well, it is my recollection that he asked her whether she made a statement to someone about leaving.

Mr. Hancock: And I asked her why she made this statement.

The Commissioner: I would think you have gone beyond, at this point.

Go back to the last question.

(The reporter read from her notes as requested.)

By Mr. Hancock:

Q. Would you go ahead and answer the question, the question being "Was one of the things that you did in that direction to suggest that both—the two of you see a marriage counselor?"

Com. Hear. page 27

A. Yes.

Q. Was it your testimony that Mr. Clark refused to do that?

A. Yes.

Q. And shortly after that did you come up here and begin to live with your mother-in-law and father-in-law?

A. Yes.

Q. His parents. Is that correct?

A. Yes.

Mr. Hancock: That's all at this time.

(Witness excused.)

Mr. Higginbotham: Your Honor, would you permit us at this time to call a character witness?

The Commissioner: I think so.

Whereupon

PRESTON RAHE a witness, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. P. Higginbotham:

Q. What is your name, sir?

A. Preston Rahe, R-a-h-e (spelling).

Com. Hear. page 28 } Q. What is your occupation?

A. I am a physicist with Hittman Associates.

Q. What training do you have? What education?

A. I have a bachelor's degree in mechanical engineering from Georgia Tech and a master's degree in nuclear engineering from Georgia Tech.

Q. And how long have you known Mr. Clark?

A. I have known Mr. Clark since January of 1964. He and I went to graduate school together at Georgia Tech.

Q. And how well have you come to know him.

A. I think I know him quite well.

Q. Do you know what his general reputation is in the community, or being of good morals—

Mr. Hancock: I would offer an objection at this time because I don't think he has laid a proper foundation.

Mr. Higginbotham: All right. I asked him if he knew—

By Mr. P. Higginbotham:

Q. Do you know what Mr. Clark's general reputation is in the community within which he moves, lives and has his being—

Mr. Hancock: Again let my objection be noted on the record at least, because I don't think he has laid a proper foundation.

Com. Hear. The Commissioner: All right.

The Witness: Yes, I do.

page 29 } By Mr. P. Higginbotham:

Q. What is his reputation?

A. I would say it is quite good. He is quite respected by

the people in the community whom he knows and by the people with whom he works.

Q. And do you know the same question as his reputation for truth and veracity.

A. Yes, again I think the same answer would apply. What he says is well respected in the office and by his friends.

Mr. Hancock: By who?

The Witness: By his friends.

By Mr. P. Higignbotham:

Q. Do you know Mr. Clark's social habits, his personality and his disposition?

A. Yes, sir. I do.

Q. Based on what you know about Mr. Clark, do you think he is a suitable person to have the custody of his child?

Mr. Hancock: That asks for an opinion and I object to that, if the Commissioner please.

The Commissioner: Well, you can go ahead and answer and the objection is noted, for the record.

Com. Hear. page 30 } The Witness: Yes, I do. I have observed his behavior around other children. We have a child and he has always, I think, been quite fond of my child and of other children I have seen him around. I think he has an honest liking for children and from what he has told me of his child, Kevin, I think he has an honest liking for him and love for him.

Mr. Higginbotham: That's all.

CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Rahe, how old are you, please?

A. I am twenty four.

Q. And you and Mr. Clark, you say, went to school together?

A. Yes, we went to school together and after we graduated from school we went to work in the same company.

Q. You work in the same place?

A. Yes.

Q. You have known him for how long?

A. Since January of '64 which is two and a half years.

Q. And you, of course, consider him to be a close personal friend of yours, do you not?

A. I would say he is a good friend of mine.

Q. All right.
Com. And who in—scratch that.
Hear. What community do you live in?
page 31 } A. I live in the Towson community which is in the northern Baltimore—

Q. Towson, Maryland, is that what they call it?
A. Yes.
Q. Now where does Mr. Clark live?
A. Mr. Clark lives in Owings Mills community which is also in the northern section of the city and a little further to the west.
Q. Have you ever been there?
A. Oh, yes. I've been there.
Q. How many times have you been there?
A. Oh, I would say—I would say I have been to his place once or twice a month.
Q. Since when?
A. Since he began working for the company which was in January of '65.
Q. Once or twice a month since January of '65. Is this right?
A. Yes.
Q. And you say on those occasions you went to his place?
A. Yes, I've been to his place.
Com. Q. Now what—name the other members of his community that you have talked with to draw your conclusion about his reputation.
Hear.
page 32 } A. I talked with his landlady, Mrs. Spayde.
Q. Mrs. Spayde?
A. (Nodding head.)
S-p-a-y-d-e (spelling).
Q. S-p-a-y—(spelling).
A. D-e. (spelling).
Q. And when did you talk with her about his reputation?
A. Well, you understand the subject of the conversation was not specifically his reputation. I have talked with her and she had indicated to me that he has been a good boarder and said favorable things.
Q. Des he still live in this place with Mrs. Spayde?
A. Yes, he does.
Q. Is this a boarding house or what?
A. Mrs. Spayde has a farm, an estate, I guess you would say and she lives in a fairly large house I think by herself and then there is the carriage house in back of her place that she rents rooms, I think.

Preston Rahe

Q. And does he rent one of these rooms?
A. Yes, sir.
Q. All right. Now who else have you talked to in that community about his reputation?

Com. Hear. page 33 } A. Several people in the office live in the Owings Mill vicinity.
Q. Have you ever been to their place?
A. I've been to one of their places, yes.

Q. One of them. Is this correct?
A. Yes.
Q. And what is his or her name?
A. His name is Donald Solberg, S-o-l-b-e-r-g (spelling).
Q. And where does he live?
A. I don't know his exact address. He has since moved. He lives in the general Owings Mills vicinity.
Q. All right. And when did you talk to him about Mr. Clark's reputation?
A. I generally talk to him off and on throughout the week at the office and whenever Mr. Solberg and I have talked about Mr. Clark, he has always said very favorable things about him. I think he has a generally good impression of him.
Q. Well of course you share the feeling, having known him as long as you have, and having gone to school and worked with him. Isn't this true? There is no question about that, is there?
A. No.

Com. Hear. page 34 } Q. Are these the only two people that you have discussed his reputation with?
A. No, there have been various people in the office and in the course of a normal work day. I think he is well respected in the office and his opinions are well thought of.

Q. You mean from a professional standpoint, his occupation. Isn't that really true?
A. No, I wouldn't say that. I think in the course of an office day you would talk about personal things.
Q. Well Mr. Rahe, as a practical matter, isn't what you are saying that most of the fellows in the office think that he is a pretty decent sort of a guy. Isn't that true?
A. They think that he is a pretty decent sort of a guy and I think they value his opinion. They at times ask for his opinions on other people or on other matters unrelated to the job. They would ask for his opinion on things concerning the job too.

Preston Rahe

Q. You have testified that he is respected by other members of his community. Does this include all of his female friends as well as his male friends?

A. I would say yes. I would say so.

Q. And do you know the young lady that he goes with?

A. Yes, I do.

Q. What is her name, please?

Com. Hear. page 35 } A. Her name is Sherri Olsen.

Q. O-l-s-o-n (spelling)?

A. S-e-n (spelling) I believe.

Q. Where does she live?

A. I believe she lives in the city on Tyson Street, I think.

Q. In Baltimore?

A. In Baltimore. I've never visited her place.

Q. Incidentally, is she here today?

A. I haven't seen her.

Mr. Higginbotham: Your Honor, that question is improper.

The Commissioner: All right. Go ahead.

By Mr. Hancock:

Q. When, if you ever did, did you discuss his reputation with Miss Olsen?

A. On various social occasions they have been out to our place visiting my wife and I, and I have been out to the movies and to various other places.

Q. With them?

A. With them.

Q. Of course you are married, are you not?

A. Yes, sir, and I believe your question was when, or what, did I discuss.

Com. Hear. page 36 } Q. No, when did you discuss it, and I think you stated that this was on occasions when the four of you would go out socially. Is this correct?

A. Yes.

Q. Did your discussions with Miss Olsen about his reputation cover their proposed marriage plans?

A. No.

Mr. Higginbotham: Your Honor, that is going right far afield.

The Commissioner: He has answered it.

By Mr. Hancock:

Q. To categorize the people that you referred to properly

you have talked to one person who works in your office, is that correct, about his reputation?

A. I have talked with more than one. Referring to in the Owings Mills community, a representative person of that community.

Q. How many other people do you know of in that particular community?

A. In that particular community, probably one or two others who live there and work in the office.

Q. Can you name them?

Com. Hear. page 37 }

A. Yes, I think so. I believe Robert Weiner.

Q. When did you talk to Mr. Weiner about this?

A. I talk with Mr. Weiner off and on during the course of the day and he lives in what is known as the Pikesville area which is adjacent to the Owings Mills area.

Q. You talked to him, you talked with Mrs. Spayde, is that right?

A. Yes, that's correct.

Q. And you talked to Sherri Olsen, his fiancee or girlfriend. Is this correct?

A. I'm not aware of any proposed marriage plans between them.

Q. Well, the girl that he goes with.

Mr. Higginbotham: Let him answer the question.

By Mr. Hancock:

Q. Is this correct?

A. Yes.

Q. Now actually, Mr. Rahe, based on your friendship for Mr. Clark, did he ask you to come here and testify on his behalf this morning?

A. Yes, he did.

Mr. Hancock: That's all.

* * * * *

Com.
Hear.
page 38 }

* * * * *

Whereupon

RICHARD FARMAN a witness, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. P. Higginbotham:
Q. What is your name?
A. Richard Farman.

Mr. Hancock: What was your last name?
The Witness: F-a-r-m-a-n (spelling).

By Mr. P. Higginbotham:
Q. What is your occupation, sir?
A. I am an engineer. I work with Hittman Associates in Baltimore, Maryland.
Q. What is your education?
A. Bachelor of Science, U. S. Merchant Marine Academy, 1958, and PhD University of Maryland, 1965.
Com. Q. What is your age?
Hear. A. Thirty.
page 39 } Q. Do you know Mr. Clark, William Sinclair Clark?
A. Yes, sir.
Q. How long have you known him?
A. About a year and a half.
Q. And how well have you come to know him?
A. Well, we have become fairly close friends, I associate with him socially on various occasions.
Q. Do you move in the same circle of friends that he moves in?
A. Yes.
Q. Are any of your associates, his associates?
A. Yes.
Q. Do you know where he lives?

Richard Farman

A. Yes.
Q. Do you know where he works?
A. Yes.
Q. Do you know what his general reputation is in the Community in which he lives, works, moves, and has his being for good morals—

Mr. Hancock: Let the record note my exception and objection to the question as propounded.

Com. Hear. page 40 } Again I don't think that the proper foundation has been laid.

The Commissioner: You can go ahead, but Mr. Hancock's objection is noted.

By Mr. P. Higginbotham:
Q. Do you know his reputation for his morals?
A. Yes.
Q. What is it?
A. I think it is good.
Q. The same question as to his reputation for truth and veracity.
A. Yes.
Q. What is it?
A. Good.

Mr. Higginbotham: That's all.

CROSS EXAMINATION

By Mr. Hancock:
Q. Mr. Farman, you have known Mr. Clark about a year and a half. Is that correct?
A. That is correct.
Q. Do you work with him?
A. Yes.

Com. Hear. page 41 } Q. And do you also work with the gentleman who was previously in here, Mr. Rahe?
A. Yes.
Q. And with whom, if anyone, have you ever discussed Mr. Clark's reputation for truth and veracity.
A. I guess Mr. Rahe and I discussed Mr. Clark before. We work in the same office.
Q. Do you know when that might have been?

A. The date?
Q. No. The year. What year?
A. Last year.
Q. Was this when you first began to know him after you began to go to work together?
A. I couldn't give you a specific date, after I'd known him a few months. We all occupied the same office over a period of a few months.
Q. Now Mr. Higginbotham asked you if you knew where he lived. Where does he live?
A. In Owings Mills.
Q. Have you been there to his room?
A. Yes.
Q. Is this what he has there, a room there?
A. It's an efficiency apartment.
Q. I see.

Com. Hear. page 42 } And did he also ask you whether or not you *travelled* in the same group of friends, and I believe you said on many a social occasion. Is this correct?

A. Yes.
Q. Would Miss Olsen be with him on these occasions?
A. Yes, I've seen her with him.
Q. Are you a married man?
A. Yes.
Q. And I assume your wife was with you. Is that correct?
A. Yes, that's correct.
Q. Have you had occasion to discuss his reputation with Miss Olsen?
A. No.

Mr. Hancock: No further questions.

* * * * *

Com.
Hear.
page 43 }

* * * * *

Whereupon

ELEANOR CLARK a witness, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

Eleanor Clark

DIRECT EXAMINATION

By Mr. P. Higginbotham:

Q. Are you Eleanor Clark?

A. Yes, I am.

Q. A sister of William Sinclair Clark?

A. Yes.

Q. What is your age?

Com. Hear. page 44 } A. Twenty six.

Q. Are you unmarried?

A. Yes.

Q. And was is your occupation?

A. I am an accountant, a public accountant.

Q. Do you know—you know his wife, Kay Clark?

A. Yes, I do.

Q When did she come to your parents' home to live?

A. In June of '64.

Q. And where was Mr. Clark at that time?

A. He was in school at Georgia Tech in Atlanta, Georgia.

Q. Shortly after she came to your home, your parents' home, to live you were living there?

A. Yes, I was. I was in school.

Q. What did Mrs. Clark say as to dating or going out?

A. Well, I think she was becoming a little tired of staying home. She was living with her in-laws, of course.

Q. That isn't what I asked you. I specifically asked you what she said.

A. Well, she indicated that she wanted to go out and she said she was sure Bill must be going out and she would like to go out also.

Q. Did she go out any with you on your date parties?

Com. Hear. page 45 } A. Yes. She went with my date and myself several times. After that on quite a few occasions we went to this organization that she and I went to. It is just a social gathering on Friday evenings, one that different type people attend and you can go and meet people and socialize.

Q. So you all went to such an affair on several occasions?

A. Yes.

Q. How long did she live in your parents' home?

A. Well, when she came in June she stayed until February of '65.

Q. What happened in February of '65?

A. Well, she left to go home saying that since Bill was out

of school and was going to give her support she was going to go home and she told me to spend more time with Kevin.

Q. Did she go to New York?

A. Yes.

Q. While she was there did she call you on the telephone?

A. No.

Q. Did you talk with her on the telephone while she was in New York?

A. Well, I called her. I began to get an idea that something was wrong.

Q. Now just tell us what the conversation was.

Com. Hear. page 46 } A. Well, I called her and told her that I understood she was in trouble and she said yes, and I said "Well, who was the father" and she said Jimmy England. She said at that time it couldn't be anybody else but one person and I said "Who was that?" and she related Jimmy England and I asked her what she was going to do and she said she was planning to come back to the area after the child was born and she was planning to keep the child and I—well, essentially that was the conversation.

Q. Was that the only conversation you had with her while she was in New York?

A. Yes.

Q. What happened—

How long did she stay in New York?

A. She came back three weeks after the child was born in June of '65.

Q. Have you seen the child?

A. Yes, I have.

Q. What is the child named?

A. Jason Bradley Clark is it's name.

Q. When was it born?

A. June 7—June 6 or 7.

Q. 1965?

A. 1965, right.

Com. Hear. page 47 } Q. And who has that child now?

A. Mrs. Clark.

Q. After she came back did you talk to her about the birth of this child?

A. We talked on several occasions, yes.

Q. All right, tell us what she said.

A. Well, in the course of the time of our conversation on the phone and when she came back I understood from sources

Mr. Hancock: May I ask that it be confined to the conversation.

By Mr. P. Higginbotham:

Q. Well, don't tell what somebody else told you. You had a conversation with her about the paternity of this child?

A. Yes.

Q. Don't tell why you had it but tell what was said.

A. I asked her about her statement that it could only be Jim's child and I said that I understood there was another fellow involved. How did she know it was only Jim's child? And I related the name of Ray Praeter as being this other fellow and she said that was after the fact, and this conversation was more or less dropped.

This was immediately, three or four days after she returned to our home and was staying with us.

Com. Hear. page 48 } Mr. P. Higginbotham: Your Honor, may I confer just a moment?

The Commissioner: Yes.

(Brief discussion off the record.)

By Mr. Higginbotham:

Q. Did she ever have any conversation with you concerning the number of times that she had sexual relations with Jimmy?

A. Yes. She did. She indicated four to me.

Mr. Hancock: I didn't hear that.

The Witness: She indicated four to me.

By Mr. Higginbotham:

Q. Now, Miss Clark, do you know anything about your brother's habits, his morals?

A. As far as I am concerned, I would say—

Mr. Hancock: Your Honor please, I would object to the way that this question is asked. Does she know anything about her brother's habits or morals, which calls for a yes or no answer and no opinions and no conclusions.

By Mr. Higginbotham:

Q. Do you know?

Eleanor Clark

A. Yes.
Q. Are his morals good?
A. Yes.

Com.
Hear.
page 49 } Mr. Hancock: I think we are entitled before he is entitled to an answer to that question to know the basis as to how she knows this.

Mr. Higginbotham: Well, she ought to know. It's his own sister.

The Witness: I've lived with him for many years, and we were close.

The Commissioner: Well just a minute, Miss Clark. When an objection is made and some interruption is made by the attorneys cease testifying until you are given the green light to go ahead again. All right?

The Witness: Yes.

The Commissioner: Now you ask the question.

By Mr. P. Higginbotham:
Q. You testified that you are his sister?
A. Yes.
Q. Have you been closely associated with him?
A. Yes. Of course he was away at school four years and then he was in the service. I saw him from time to time. We are two and a half years apart in age and went to school together.

We were together during all of our younger years.

Q. All right. What kind of morals does he have?

Com.
Hear.
page 50 } A. I think his morals are high. I think he has high standards.

Q. All right. What kind of disposition does he have?

A. I think it is good.

Q. Based on all that you know about your brother do you think he is a suitable person to have the custody of his child?

Mr. Hancock: Objection. It calls for an opinion which she is not qualified to give.

The Commissioner: Will you go ahead and answer it. Mr. Hancock's objection is noted.

The Witness: Answer it?

The Commissioner: Yes.

The Witness: Yes, definitely.

Eleanor Clark

By Mr. Higginbotham:
Q. Does he love the child?
A. Yes.

Mr. Hancock: Same objection to that question.
The Commissioner: Go ahead and answer him.
Mr. Hancock: She already has.
The Witness: Yes.

By Mr. Higginbotham:
Q. Miss Clark, are you familiar with some of the associates of Mrs. Clark?
Com. A. Yes.
Hear. Q. Do you know what Mrs. Clark's general repu-
page 51 } tation is of being a person of generally good morals in the community in which she lives, moves, and has her being, among her associates?

Mr. Hancock: Objection.
The Commissioner: Well, your objection is noted, Mr. Hancock. You may go ahead and answer.
You may take up these various rulings with the Circuit Court, whether or not the testimony should be stricken, but in the meanwhile go ahead and answer.
The Witness: Would you repeat it, please?

By Mr. Higginbotham:
Q. Do you know what her general reputation for morals is, in the community in which she lives, moves and has her being, among her associates?
A. Her associates, or mutual associates, indicated to me that it wasn't good.

Mr. Hancock: I object to this because she is testifying as to hearsay testimony.
The Commissioner: You can't testify as to what anybody else says. I feel you may testify as to what her general reputation is. There is a difference there.
Mr. Higginbotham: A general reputation means
Com. how she is regarded by her associates and friends.
Hear. Can you answer that?
page 52 } Mr. Hancock: Let the record again note my objection and exception to it.

Eleanor Clark

By Mr. P. Higginbotham:
Q. Go ahead and answer it.
A. Low moral standards.
Q. Low moral standards.

Mr. Higginbotham: All right. That's all.

CROSS EXAMINATION

By Mr. Hancock:
Q. Miss Clark, you are 26 years old and unmarried. Is this correct?
A. That's right.
Q. How long have you known your sister-in-law?
A. Just two years when she came up to live with us in June.
Q. When was that?
A. June of '64.
Q. June of 1964. Did you know her before your brother married her?
A. No.
Q. All right. So that you did not accompany your mother and father down to Georgia at the time that she came back here to live with them and you. Isn't that correct?

Com. Hear. page 53

A. That's right.
Q. But you did learn that your brother had told her he didn't want to have anything else to do with her and for her to go ahead and leave and come back with your parents. Isn't that true? There isn't any question about that, is there?
A. No. No, I don't know that that's true.
Q. You don't know whether it's true or not but even your mother and father told you that, didn't they?
A. No.
Q. Did your brother tell you?
A. No.
Q. Well certainly Mrs. Clark, Kay Clark, told you, didn't she?
A. That is what she indicated.

Mr. Higginbotham: That is a self serving declaration, Your Honor.

Eleanor Clark

By Mr. Hancock:

Q. I don't care what it is. That's what she told you. Isn't that correct?

A. That's what she said.

Q. And then your mother and father took she and her child into your home. Isn't that correct?

Com. Hear. page 54

A. Yes. After Bill or Kay called, somebody called and asked to come down and get her.

Q. And your mother and father and yourself accepted she and this child without any reservations. Isn't that correct?

A. That's the type people they are. That's right.

Q. There is no question about it.

A. No, there is no question.

Q. And then during the course of the time that she lived there, from June of 1964 until February 1965, you were going to the social functions that you have described basically and mostly on Friday nights. Isn't that right?

A. Yes.

Q. And she didn't know anything about these until you told her about them, did she?

A. That's right.

Q. As a matter of fact, you suggested and asked her to go to these things with you, did you not?

A. No, not all the time.

Q. Well, originally you did though, Miss Clark. Isn't that correct?

A. I would like to say—

Q. Excuse me, do you understand my question?

Com. Hear.

Mr. Higginbotham: Let her answer.

The Witness: I am answering the question.

page 55

By Mr. Hancock:

Q. I said, well, do you understand what it is?

A. I think I understand it but I'm not taking full responsibility.

Q. My question to you originally did you suggest or ask her to go to one of these social functions with you?

A. I don't think you can say that I asked her to go. I think I would like to qualify that in this sense. She indicated to me that she wanted to go out and it wasn't a matter of my saying to her "I think you ought to go out so come and go with me" but the way it came out, I was going out at the

time and she was dissatisfied or she said—you know, she didn't like to stay home every weekend and always go places with my parents and I think I feel—you know, I was in deep sympathy with her. I didn't know what the complete story was with her and Bill but it started that she went out with my date and myself and then subsequently went and I admit at times, on my invitation and at times just when she wanted to go.

Q. That's right.

A. Okay.

Q. So that under those circumstances she didn't know anything about this until you talked to her about some of these functions to which you were accustomed to going.

Com. Hear. page 56 } A. That's right.

Q. And you knew when she went to these things that she was going to have an opportunity and occasions to meet other men other than her husband. Isn't that correct?

A. That is true. But I—

Q. You didn't frown on it.

Mr. Higginbotham: Let her answer the question.

The Witness: It's true you can meet people socially and have it perfectly on the up and up basis. In other words, just because the nature of the organization is such that you conduct yourself—well, you conduct yourself in accordance with your own standards.

By Mr. Hancock:

Q. What you are saying, is it not, is that you can go to these things and participate in these acivities and enjoy the company of male friends and what have you, but you're not supposed to get yourself pregnant. Isn't that right? That's what you're saying, isn't it?

A. Well, I am saying it is a personal matter as to how you conduct yourself in any organization of this nature.

Q. A personal matter. All right.

Do you know this fellow Jim England that you mentioned?

Com. Hear. page 57 } A. Yes.

Q. And did you see Mrs. Clark with him?

A. Yes.

Q. Did you ever object to that? Did you ever admonish her for it?

Eleanor Clark

A. I don't think so. I don't think I can say that I did.

Q. Did you ever write to your brother or call him or tell him that his wife was seeing another man?

A. I might—if I might just add something.

Q. No, you have answered my question, did you ever write—

The Commissioner: No, I think she ought to have a right to complete her testimony.

Mr. Hancock: Well I think she has as to that particular question, Mr. Commissioner.

The Commissioner: Well, she made a request, at least I'll consider it as such, to finish some answer that apparently she didn't—

What was it you wanted to say?

The Witness: Well, what I was saying was in regard to did I discourage this relationship, I would say I pointed out certain people that had—well, just low standards in the beginning, or at one point in time. Among these was Jim England, who had a bad reputation.

Com. Hear. page 58

By Mr. Hancock:

Q. And yet you, on occasion, took her to these places where he was. Is that right?

A. That's right.

Q. Did you ever write or call your brother and tell him that his wife was seeing another man other than himself?

A. No I didn't.

Q. And all during this time he was going to college. Isn't that right?

A. That's right.

Q. And she and the child were living in the home with you and your parents?

A. Uh-huh.

Q. Now between June of '64 when she came into your home and February of '65 when she ostensibly went to New York did your brother come home at all?

A. He came home after school was out in December, the end of December.

Q. But he hadn't seen his child between June of '64 and December of '65. Is this right?

A. That's right. June of '65? June of '64.

Q. December '64? I'm sorry.

A. December the same year.

Eleanor Clark

Com. Hear. page 59 } Q. The same year, right. And how long was he home for, do you recall?

A. He was there at least a week. I'm not real sure.

Q. Did he stay there in the same house?

A. Yes. But I believe there was only two days, one day, or a day and a half or a one day period where they were in the house at the same time. In other words, when Bill came home then Kay left to spend Christmas at her home so there was just a one day period, if that's what your question—

Q. My question was how long was he home for?

A. I don't really know. I can't tell you definitely.

Q. But he did stay there at your parents' home. Is that right?

A. (Nodding head).

Q. And is it your testimony that within a day Mrs. Clark left with the child Kevin and went home to New York for Christmas?

A. Uh-huh.

Q. How long did she stay up there?

A. I believe she was gone a week.

Q. And was Mr. Clark, her husband, still there upon her return?

A. No.

Q. He had gone on back to school?

Com. Hear. page 60 } A. No. I think he went to Baltimore.

Q. Went to Baltimore?

A. This is not too clear as to where he was. He was interviewing for jobs.

Q. Do you know whether or not Mr. Clark saw his son Kevin say between a week after Christmas, 1964 and February, 1965 when she went home to New York?

A. I don't remember that.

Q. All right.

It was after she had gone home to New York that you began to consider the fact that she was, as you described it, in trouble. Is that right?

A. It was in the beginning of April.

Q. And consequently you undertook to call her on the telephone. Is this correct?

A. I have inquired.

Q. You called her on the telephone. Is this correct?

A. Yes.

Q. And you discussed this matter with her. Is that correct?

A. Yes.

Eleanor Clark

Q. And this is when she told you that Jim England was the father of the child that she was to give birth to?

Com. Hear. page 61 } A. That is correct.

Q. Did you just have this one conversation with her in April?

A. Yes.

Q. And you mention the fact that the child was born around June 6 or 7 of 1965?

A. Right.

Q. How do you know that?

A. She told me that.

Q. When did she tell you that?

A. After she came back. She told me recently that he has just had a birthday.

Q. After she came back, and when you say she came back, she came back to your mother and father's home and to where you still reside. Is that right or wrong?

A. This is true.

Q. And is it not also true that your mother and dad asked her to come home, that is to her home?

A. Yes, for Kevin's concern.

Q. I'm not asking you the reason, but asked her to come down with both of the children. Isn't that true?

A. It was her idea to come back here. Now she was planning to come back and one day—

Com. Hear. page 62 } Q. Let me ask the question. Do you understand what I'm asking you. I'm not trying to trick you or anything like that.

A. Okay.

Q. But is it not correct that your father or your mother called her and asked her to come back to their home with both of the children?

A. I can't answer it unless I give you what happened.

Q. Do you know whether or not—

A. They didn't ask her to come back here but they asked her, they invited her to stay in our home because she on her own was coming back here, they invited her to stay in their home because of the circumstances of her coming back.

Q. I'm not asking you the reason, but they did ask her to come and stay in their home. Isn't that true?

A. They invited her to stay in their home and she came.

Q. All right. That is all I was asking.

And between—well, scratch that.

Do you know when she got back here?

A. It was around—

Eleanor Clark

Q. It was around June '65, wasn't it?
A. It was in June, yes.
Q. And she and Kevin and the little boy Jason moved in, back into the home. Isn't that correct? Here in Fairfax County, your home and that of your mother and father. Is that correct?
Com. Hear. page 63 }
A. Moved in?
Q. When I say moved in, they did stay there, did they not?
A. Temporarily, yes, sir.
Q. Now wasn't your brother in Baltimore someplace then?
A. Yes.
Q. He was not living there, was he?
A. No.
Q. Do you know whether or not he had seen his child or been with him in any way between say around Christmas of 1964 and June of 1965 when she came back here from New York? Had you ever seen them together?
A. Bill and Kevin?
Q. That's correct.
A. I don't know about the period of December to February but that is true, of February to June '65.
Q. So he didn't see the son or the son didn't see him from February till June 1965?
A. Right.
Q. And then Mrs. Clark, Kay Clark, Kevin and Jason continued to live in your mother and father's home where you were residing up until when?
Com. Hear. page 64 }
A. I wasn't residing there at the time.
Q. I see. Are you living there now?
A. I am.
Q. In any event, they lived there from June until when, if you know.
A. I don't. I don't remember the exact date they moved out. I think she was there—I don't really remember exactly.
Q. Approximately how long, do you know? A month or two?
A. Three weeks to a month, something like that.
Q. And is it not correct, Mrs. Clark during this period of time that we are talking about from say June until approximately July or whenever it was in 1965, Mrs. Clark, Kevin and Jason were living there, that she and the children shared their meals with your mother and dad?
A. (Nodding head).

Eleanor Clark

Q. Isn't that right?
A. That's true.
Q. And enjoyed the emoluments or benefits of the home just like you or anyone else who would be living there. Isn't that correct?
A. That's true, because it was a grandson, yes.
Q. Because it was a grandson.
Com. A. Uh-huh.
Hear. Q. In other words, what you are trying to do
page 65 } is to tell me why they did this. Is that right?
A. Yes, that's right.
Q. Now Mrs. Clark moved out, you say, within a month or three weeks or whenever it was, which would have been about July of 1965. Is that correct?
A. I believe it was around that time.
Q. Do you know where she is living at the present time?
A. She is living on Route 236 in Annandale.
Q. And have you visited her since that time?
A. Yes.
Q. And this child that she is supposed to have given birth to has been there, has he not?
A. Yes.
Q. And you didn't have any compunction about going to see her with this alleged illegitimate child, did you?
A. It's not the child's fault.
Q. I agree with that. My question is, you didn't have any compunction about going there where the child was?
A. No.
Q. How many times would you say you have been there since she left there in June or July of 1965?
Com. A. How many times have I visited at her home?
Hear. Q. Yes, right.
page 66 } A. I would say you could count them on one hand.
Q. How many times?
A. Maybe five.
Q. Five times, all right.
A. They are over our place quite a lot.
Q. That is my next question.
And she and the two children have visited, when you say our place you are talking about the home where you and your mother and father live. Isn't that correct?
A. That's correct, yes.
Q. And they come there to eat dinner and this type of thing, do they not?

A. Yes.

Q. Do you know how many times your brother has seen his son Kevin between the time she came back from New York in June of 1965 until she moved out of your mother and father's home in say July of 1965?

A. I don't think I am qualified to give the number of times because I lived there awhile and then there was a time when I didn't live there.

Q. How long did you live there during that time?

Com. Hear. page 67 } A. I moved back at the beginning of tax season, this year.

Q. Well, were you there between June and July of 1965 a year ago?

A. No.

Q. So you don't know whether Mr. Clark, your brother, saw his son during that time or not, do you?

A. No.

Q. And then Mrs. Clark moved out around July of 1965?

A. Uh-huh.

Q. And has been living at her present residence since that time. Isn't that correct?

A. Uh-huh.

Q. On any occasion that you have ever been to her home, the five that you can remember, have you ever seen your brother there?

A. At her home?

Q. Yes.

A. No.

Q. Have you ever seen any of his personal belongings?

A. No.

Q. Was there anything about her home that indicated the two of them had lived together or were living together?

Com. Hear. page 68 } A. No.

Q. And where had your brother been say, since December or January of 1965?

A. In Baltimore.

Q. And he has lived there continuously since that time?

A. I'm not sure when he moved there but he has been there continuously since the beginning of '65.

Q. But in any event, you said he came home in December of 1964 for Christmas and left, you thought, to go to Baltimore. Is that right, after Christmas?

A. I'm not sure what he did, whether he—at this particular time.

Q. Have you visited him in Baltimore since he has been over there?

A. Uh-huh.

Q. How many times have you been there?

A. Maybe four.

Q. And on any occasion—incidentally, is this to this room where he boards or rooms?

A. This is his home, his apartment.

Q. What is it, an efficiency apartment?

A. No. Well, yes, I'm sorry. It's an efficiency, in a group of four—a building with four apartments in back.

Com. Hear. page 69 } Q. Do you know the other occupants?

A. No, I don't.

Q. Have you met them?

A. No.

Q. In any event, on any occasion you've ever been to his home or apartment during that time, that is from December 1964 until the present time, have you ever seen Mrs. Clark there?

A. No.

Q. Have you ever seen any of her personal belongings in his place?

A. Uh-huh.

Q. Is there anything about his place to indicate the two of them were living together?

A. Uh-huh.

Q. Is it correct, Miss Clark, that to your best knowledge that they have not lived together since June of 1964 when she returned here from Georgia?

A. (Nodding head). Yes, that's correct.

Q. And if they had you definitely would know about it, would you not?

A. Yes.

Q. Now when did you learn that Mrs. Clark, your sister-in-law, had a reputation for having low morals?

Com. Hear. page 70 } A. After I began inquiring, after I had learned, or had a suspicion of her condition I began inquiring, talking with Jim England.

Q. This was back in—

A. Around April, the beginning of April.

Q. '65?

A. '65, yes.

Q. And did you reach that conclusion at that time?

A. Yes.

Eleanor Clark

Q. Now are you saying to the Court, Miss Clark, that in spite of the fact that you consider her to have low morals, that you continued to live in the same house with her upon her return from New York, and in addition to that you have gone to visit her on at least five occasions since she has been in her present residence?

A. Well, she is the mother of a nephew of mine, too, whom I am very fond of.

Q. And in spite of her reputation for low morals, because Kevin is your nephew, you thought it proper to go to see her. Is that correct?

A. Well, I think in order to—

Q. Well, did you go to see her? You did go to see her. Is that right?

Com. Hear. page 71

A. That's right, yes.

Q. Now Miss Clark, you stated that you do know this fellow Jim England. Is that right?

A. (Nodding head).

Q. Do you still see him?

A. I don't remember. I haven't seen him—I remember the last time I saw him, yes.

Q. When was that?

A. It was in October of '65.

No, I'm sorry, I'm sorry. I did see him in a party gathering New Year's Eve.

Q. This past year?

A. Yes.

Q. Do you still go to these things where he goes?

A. He has gotten married.

Q. When did he get married?

A. September of '65.

Q. Now Miss Clark, you have been out with this man yourself, haven't you?

Mr. Higginbotham: Your Honor, I don't think in cross examination you can embarrass a witness. It's a kind of matter we went into on direct examination. If you wish to show this witness has a bad reputation for truth and veracity it may be admissible but certainly to attack her character is not proper in this proceeding.

Com. Hear. (Off the record.)

Eleanor Clark

page 72 } By Mr. Hancock:

Q. Miss Clark, how many times, if you have, have you seen your brother with his son Kevin between July of last year and the present time?

A. I couldn't say how many times.

Q. Two or three, or less, or more?

A. I couldn't say how many times, actually. I don't sit down and figure them out.

Q. And on any of those occasions was it for a few hours or something when he would come over from Baltimore?

A. This is correct.

Q. This is correct?

A. Take him out for the day to the Zoo and places like this.

Q. And Kevin has been in Kay Clark's care and custody to your knowledge since the child was born. Is that correct?

A. Right.

Mr. Hancock: That's all.

RE-DIRECT EXAMINATION

By Mr. Higginbotham:

Q. Now does the mother of this child work?

Com. A. Yes, she does.

Hear. Q. And what hours does she work, how long is
page 73 } she away from home?

A. I think she leaves around 8 or 8:30 in the morning and she returns at 7 or 7:30 at night.

Q. And who looks after the child largely?

A. Friends of my parents that live four doors down.

Q. And do your parents assist in looking after the child in any way?

A. During the day?

Q. In the evenings.

A. Always. They take care of him, when they go to the store, and they see him most every evening. My father will go down and get him and bring him up to the house until she comes home.

Q. Do you have two other brothers?

A. Yes. Two brothers.

Q. What is his education?

Mr. Hancock: Mr. Commissioner, may I interpose an

objection to this line because I do feel that this is outside the scope of the cross examination.

Mr. Higginbotham: It may very well be, sir, if he gets custody.

Com. Hear. page 74 } The Commissioner: Your objection is noted, Mr. Hancock. You can go ahead and answer the question.

The Witness: Education of which one?

By Mr. Higginbotham:

Q. Your other brother.

A. My other brother is an attorney. He has a bachelor's in foreign service and a law degree from the University of Virginia.

Q. And do you have another sister?

A. No, just two brothers.

Mr. Higginbotham: That's all. Thank you.

* * * * *

Whereupon

JOHN D. CLARK, SR. a witness, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. N. Brent Higginbotham:

Com. Hear. page 75 } Q. State your name, please.

A. John D. Clark, Sr.

Q. You are the father of the complainant, William Sinclair Clark?

A. I am.

Q. Where do you live, Mr. Clark?

A. 5640 Inver Chapel Road, Springfield, Virginia.

Q. That is a home in a subdivision?

A. Yes, it is.

Q. Do you own it or are you buying it?

A. I'm buying it. I've got a contract with a rent option.

Q. You are renting with an option to purchase?

A. Yes.

John D. Clark, Sr.

Q. All right, sir. Would you describe this home. What value is this home?

A. $30,000.

Q. Does it have air conditioning?

A. Yes, there is central air conditioning.

Q. Central air conditioning. All right, sir. What other members of your family are there, Mr. Clark?

A. Living with me at home there is only one and that is Eleanor. Then I have John D. Clark, Jr. who is an attorney in San Francisco.

Com. Hear. page 76 } Q. And the defendant. You have reared all these three children?

A. Yes, sir. He is also a member of the Virginia Bar too.

Q. Have all these children been to college?

A. Yes, they have.

Q. And some of them, all of them have graduate school work?

A. Yes.

Q. You are attached to your grandson, Kevin Clark?

A. Very much.

Q. Okay, how often do you see him?

A. Every chance I get, practically every night. Sometimes I get tied up and I don't get to see him at night.

Q. Would you be willing, if your son Bill is awarded custody of Kevin, would you be willing to assist in looking after Kevin to the best of your ability?

A. Yes, I would.

Q. You'd be willing to have him come stay in your home?

A. Yes.

Q. If for some reason the Court did not see fit to award the custody of Kevin to either of the parents would you be willing to accept custody?

Com. Hear. page 77 } A. Yes, I would.

Q. Do you know anything about the present arrangements concerning Kevin during the day?

A. Yes, I do.

Q. What is that arrangement?

A. During the day a friend of ours of many years standing offered to keep Kevin during the day while Kay works. It is the Rausch family, one of the pillars of St. Michaels Church in Annandale. I feel like he has got pretty good care.

Q. Were your children raised in a religious atmosphere, Mr. Clark?

A. We tried to, yes.

Q. All of them became members of churches?
A. How's that?
Q. All of your children attended church regularly while you were bringing them up?
A. Yes.
Q. What time, if you know, does the defendant, Kay Clark, go to work?
A. About nine o'clock, about nine or nine thirty.
Q. Where does she work?
A. She works for a law firm in Washington, D. C.
Q. And what time, if you know, does she return from work?

Com. Hear. page 78 } A. Anywhere from six thirty to seven o'clock in the evening.
Q. And does Kevin oftentimes come and stay in your house until she gets there?
A. Yes, oftentimes, yes. Yes, I'd say that.

Mr. N. Brent Higginbotham: I'm going to let Mr. Page Higginbotham ask you some questions, if it's all right with you.
Mr. S. Page Higginbotham: I don't want to ask any questions.
Mr. N. Brent Higginbotham: All right.

By Mr. N. Brent Higginbotham:
Q. You are an attorney, Mr. Clark?
A. Yes.
Q. And how long have you been an attorney?
A. Twenty three years.
Q. In your experience as an attorney have you often had the occasion to deal in matters of child custody and matters of welfare of children?
A. To a limited extent.
Q. Would you be in a position, do you feel, to give an opinion as to what would be the best interest of this child Kevin as far as his custody arrangements would be?

Com. Hear. page 79 } Mr. Hancock: Mr. Commissioner, I appreciate Mr. Higginbotham's question and I would not under any circumstances question the long experience and capable experience of Mr. Clark before the Courts of this state and member of this Bar and Circuit. However, to permit any witness to express an opin-

ion as asked for by the attorney would usurp the functions of the Court.

The Commissioner: I don't think he ought to answer that question.

Mr. N. Brent Higginbotham: No further questions, Mr. Clark.

CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Clark, you are licensed to practice before this Court also. Is that not correct?

A. That is correct.

Q. And Mr. Clark, how long have you known your daughter-in-law, Kay Clark, who sits to my left? Approximately.

Well, may I ask did you know her prior to her marriage to your son?

A. No, I did not.

Q. Well, after they became married is it not correct that they moved down to the State of Georgia?

A. Yes.

Com. Hear. page 80 }

Q. And did you and your wife, Mrs. Clark, have occasion to, during the year, the spring of 1964, to visit with them in Georgia?

A. That's right.

Q. And Kevin had been born by that time, had he not?

A. Yes.

Q. He was an infant?

A. Yes.

Q. Mr. Clark, is it not correct that on that occasion or in the spring of 1964, that your daughter-in-law told you that your son had advised her that he did not love her and wanted her to return to live with you and your wife?

A. I don't remember the exact words but I am trying to recall.

Q. Didn't she tell you this was her reason for returning here to live with you and your wife around the 13th of June, 1964?

A. As I remember, she told me that she and Bill were splitting up and this is the gist of it, and then we—and that she was coming back, yes, that's just about the gist of it.

Q. Didn't she tell you that her reason for leaving down there and coming up here was because he had told her that he did not want to continue living with her any longer?

John D. Clark, Sr.

A. She didn't go into the details of why.

Com. Hear. page 81 } Q. All right. In any event was it on the occasion that you visited them in Georgia in the spring of 1964 that you and Mrs. Clark asked her to bring Kevin and come here to live in your home with you?

A. We told her she could, yes.

Q. And consequently did she, in June of 1964, return here with Kevin and take up residence in your home?

A. Yes.

Q. And were you and Mrs. Clark and I believe your daughter Eleanor, living there at that time?

A. Yes, we were.

Q. And did she then continue to live there with you and Kevin until around February of 1965?

A. That's true.

Q. Mr. Clark, during that time, where was your son?

A. Let's see; he was in Georgia Tech part of the time to finish up in Georgia Tech, his master's degree.

Q. Is it correct that he was not at your home during the time say, between June of '64 and February, 1965, he was not living there. Is that correct?

A. That's right. He was not living there.

Q. Do you know how many times he saw his son Kevin between June of '64 and say, February of '65?

Com. Hear. page 82 } A. No, I don't offhand.

Q. Would he only come there on occasion when he might be home from Georgia Tech?

A. Yes, that is true.

Q. Would this perhaps have been at Christmastime?

A. Probably so.

Q. All right, sir.

And during this time you had an opportunity, you and Mrs. Clark, to observe your daughter-in-law and of course how she took care of Kevin, did you not?

A. Yes.

Q. And is it not correct, Mr. Clark, that she did an excellent job in that respect?

A. I would word it a little different. She did a good job.

Q. Did a good job?

A. Yes.

Q. And it was apparent that she was devoted to the child. Is this correct?

A. Apparently so. Yes, sir.

John D. Clark, Sr.

Q. Now did there come a time during the months that I have mentioned, when she and your daughter Eleanor undertook to go out occasionally together?

Com. Hear. page 83 } A. Yes, that's right.

Q. And then Mr. Clark, is it not correct that it later came to your attention that she had returned to her home in New York to give birth to a child?

A. Yes.

Q. And may I ask when did you first learn that, please sir?

A. Learn that she was going to give birth to a child?

Q. Yes, sir.

A. I guess it was the latter part of April, or May, that same year.

Q. That would have been 1965. Right?

A. Yes.

Q. And after you learned this, Mr. Clark, did you or Mrs. Clark, that is your wife, ask or suggest to Kay Clark that she and Kevin and her new child return to this area and live in your home?

A. I have no recollection of that.

Q. Well, did she return here to do that?

A. She did, yes.

Q. Did she discuss that with you prior to her doing so?

A. Not to me.

Q. And do you know with whom she discussed it if she did?

Com. Hear. page 84 } A. No, I don't.

Q. Was it in the month of June of 1965 when she returned here from New York?

A. Somewhere around that time.

Q. And between say, December of '64 when your son came home from school at Christmas, and June of '65 when Kay Clark came back from New York to your home, where was your son during that time?

A. I think he was in Baltimore.

Q. And do you know whether or not he did, or made any effort to see Kevin while he was in New York?

A. In New York?

Q. Yes.

A. While Kevin was in New York?

Q. Right.

A. No, I don't know.

Q. You don't know.

A. No.

John D. Clark, Sr.

Q. Well, when Mrs. Kay Clark and Kevin and Jason I believe his name is, returned here from New York in June of 1965, is it correct that you then permitted she and the two children to live in your home?

A. Yes.

Com. Hear. page 85 } Q. And did you accept your daughter-in-law and your grandchild in spite of what you knew about her having another child?

A. A guest in our home is always welcome, especially Kevin.

Q. Well Mr. Clark, there wasn't any question about the fact that you acquiesced in this arrangement for them to stay there. Isn't that true?

A. Yes.

Q. All right.

A. Temporarily.

Q. All right, sir. And did there come a time when she found a place of her own and moved out?

A. Yes, I think that was in July.

Q. In July of last year, a year ago. Right?

A. Yes. She stayed there about a month, I guess.

Q. All right, sir. And during the course of that time you did of course have an opportunity to see how she cared for and took care, not only of Kevin but of the other child as well, did you not?

A. Yes.

Q. And do you know where she lives at the present time?

A. I think so.

Com. Hear. page 86 } Q. Right. And have you had occasion to visit her there?

A. Yes.

Q. On any occasion that you have ever been there have you ever seen your son there?

A. No, he has never been there.

Q. Have you ever seen any of his personal belongings there?

A. Not to my knowledge.

Q. Was there anything about her home to indicate that the two of them had been living together?

A. (No response).

Q. Since she moved out of your home to her present place you have never seen anything in her place on occasions that you have been there to indicate that the two of them are living together, have you?

A. No.

John D. Clark, Sr.

Q. And if they had lived together since June of 1964 you would definitely know about it, would you not?

A. I think so, yes, sir.

Q. Now since she moved out of your home about a year ago up until the present time, Mr. Clark, have you and Mrs. Clark invited she and the children over to your home for dinner or other occasions?

Com. Hear. page 87

A. Oh yes, several times.

Q. And has the relationship between your daughter-in-law and the two children and your wife and yourself and even Eleanor been cordial and pleasant?

A. We have been friendly.

Q. Well, when you say you have been friendly certainly if you were unfriendly you would not have had her there for dinner. Isn't that right?

A. That's true.

Q. And Mr. Clark, from all of your observations you know that Kay Clark is devoted to both of these children. Is that not true?

A. She seems to be.

Q. Yes. And isn't it also correct that she has given these children the proper attention, I mean when she can be with them, other than working, and has clothed them and fed them properly?

A. I think so.

Q. And would it be fair to describe her as being a good mother to her children?

A. That is the observation, in my opinion.

Q. Mr. Clark, during the time that we are talking about, say June of '64 until the present time which has been two years plus say at least a month, Kevin has not spent any time with his father with the exception of the visits that he has made perhaps on a weekend or something like this. Is this not correct?

Com. Hear. page 88

A. I think that is correct.

Q. Has he participated in the rearing, caring for or nurturing Kevin in any way other than these hourly visits or for several hours over the past three years?

A. Yes, he has given us money from time to time to buy Kevin things with. He sent Kay a check every month.

Q. Yes, I understand that.

A. Support, financially he contributes substantially towards that.

John D. Clark, Sr.

Q. Do you know what he is contributing towards Kevin's support at this time?
A. No, I don't remember.
Q. And is it correct that the amount of his contribution towards that is not sufficient to permit—

Mr. N. Brent Higginbotham: Your Honor, he said he didn't remember and I don't believe it should be answered in view of his last answer.
Mr. Hancock: I haven't finished my question yet.
The Commissioner: Go ahead and finish your question.

Com. Hear. page 89

By Mr. Hancock:
Q. Isn't it correct that the amount that he has been contributing has not been sufficient so that she would not have to work? In other words, she has had to work, has she not?
A. Yes.
Q. Mr. Clark, don't you honestly feel and haven't you even told me that you feel these children need Kay and she needs them?

Mr. N. Brent Higginbotham: Objection.
The Commissioner: Your objection is noted. You can go ahead and answer that question, Mr. Clark.
The Witness: You want me to answer it?
The Commissioner: Yes. Did you understand the question? Go ahead and re-ask the question.
The Witness: Can she read it back to me?
The Commissioner: He will rephrase it.

By Mr. Hancock:
Q. Don't you feel and haven't you even told me that Kay—that these children need Kay and she needs the children?

The Commissioner: Excuse me.
Mr. Hancock, any conversation in the hall aside from in this Court, testimony aside from what a witness says in this Courtroom, and I don't think you ought to phrase the question that way. I don't think that any conversation that you may have had with Mr. Clark elsewhere, I don't think that should be the premise for a question.

Com. Hear. page 90

I think you can ask him your question directly without in-

serting the fact that he may have had some conversation with you previously. I don't think that is being fair with him.

Mr. Hancock: Scratch that.

By Mr. Hancock:

Q. Mr. Clark, do you know approximately how long it was after Kay got back here that she went to work?

A. You mean from New York?

Q. Yes, sir.

A. Well, I don't remember exactly. I think it was three or four weeks.

Q. And she stayed with the children all day long of course, when she was not working. Isn't that right?

A. Yes.

Q. And since she has gone to work arrangements have been made for their care which you feel is also suitable and proper, do you not, sir?

A. Under the circumstances.

Mr. N. Brent Higginbotham: What was that question. I didn't get that.

Mr. Hancock: Off the record.

Com.
Hear. (Brief discussion off the record.)

page 91 } By Mr. Hancock:

Q. And the home where the children lived with Mrs. Clark is clean and wholesome, is it not, sir?

A. It is an apartment.

Q. Yes, sir, but it is clean and it is wholesome, is it not?

A. I would say there are times that I have been there it was fair.

Q. May I ask are you comparing that with your own home or what?

A. Comparing with my own experiences.

Q. All right, sir.

Is it not correct, Mr. Clark, that when the children are over at your home that it may be a little more unruffled—or ruffled, I should say, than when they are not there?

A. You mean kids?

Q. Children.

A. Not to a noticeable extent.

Q. All right, sir.

John D. Clark, Sr.

Mr. Clark, other than the monetary contributions on the part of your son, Mrs. Clark has been the one to live with the child Kevin and to generally look after and care for him since his birth. Isn't this correct?

Com. Hear. page 92 } A. I feel like there is more than a monetary care on the part of Bill.

Q. I am sure you do, but the fact is he has been living either in Georgia or Baltimore since the child's birth, is that not right?

A. That is true, but he had to live there because he had to go to school.

Q. I understand that, sir.

A. He got good grades, and then he's got a job that takes all of his time and he comes down whenever he gets a chance to.

Q. All right, sir. Have you had occasion to go to his room or apartment where he lives in Baltimore?

A. Yes, I have.

Q. And is this an efficiency apartment?

A. Not as I know an efficiency apartment.

Q. Do you know whether or not Kevin has ever been there?

A. Yes, he has been there.

Q. When? How many times, if you know, sir?

A. Twice, I believe.

Q. And do you know when they were?

Com. Hear. page 93 } A. I don't remember exactly just when they were.

Q. Mr. Clark, do you know Sherri Olsen?

A. I have met her.

Q. And when did you meet her, sir?

A. On one occasion she and Bill drove down to our home, one Sunday I believe it was.

Q. Do you remember approximately when it was?

A. No, I don't. It hasn't been very long.

Q. Has your son discussed with you any plans to marry this lady?

A. No.

Q. He has not?

A. No, sir.

Q. All right, sir. Now both your son and your daughter-in-law are over the age of 21, are they not?

A. Yes.

Q. And they are both members of the white, caucasian race?

A. Right.

John D. Clark, Sr.

Q. And neither one of them are now, or neither one of them were, on the date this suit was filed, members of the Armed Forces of either the United States or it's allies. Is that correct?

Com. Hear. page 94

A. That is correct.

Q. And is it also correct, Mr. Clark, that the two of them have lived separate and apart since June 13, 1964?

A. The two of them have lived separate from us?

Q. No, sir. Is it correct that the two of them have not lived together since June 13, 1964?

A. You mean Kay and Bill?

Q. Right.

A. That is right.

Q. And that separation has been continuous and uninterrupted since that time. Is that correct.

A. That is correct.

Q. Based on your conversations with the parties and your knowledge of the facts surrounding this case do you believe there is any hope or possibility of a reconciliation?

A. I see no hope.

Mr. Hancock: I believe that's all, Mr. Commissioner.

The Commissioner: Do you have any further questions?

RE-DIRECT EXAMINATION

By Mr. N. Brent Higginbotham:

Q. Mr. Clark, you never had an opportunity to observe Kay's conduct and behavior at the social gatherings that she went to, did you?

A. No.

Com. Hear. page 95

Q. When she went to these social gatherings who looked after Kevin?

A. We did.

Q. By "we" you mean you and your wife?

A. And my wife.

Q. Now this matter, this whole thing has been a source of extreme embarrassment to you, has it not?

A. Yes, it has been.

Q. And this business of your taking Kay and the two children in, was that not primarily because this was your grandson?

John D. Clark, Sr.

Mr. Hancock: I object to his leading the witness, Mr. Commissioner.

Mr. N. Brent Higginbotham: I'll withdraw the question.

By Mr. N. Brent Higginbotham:

Q. Why, Mr. Clark, did you take Kay into your home with the child that you felt was not your grandson?

A. I think it is because of Kevin.

Q. Is there any question in your mind but that your son Bill is extremely devoted to Kevin?

A. No question whatsoever.

Q. Now you testified that the arrangements, the present arrangements were suitable under the present conditions.

Com. A. I did?

Hear. Q. You don't mean that this arrangement is a
page 96 suitable arrangement for the future, do you?

A. No.

Mr. Hancock: Well, he's suggesting an answer to the question.

The Witness: I don't remember testifying to that. I certainly don't think so. I don't think it is suitable for the future.

By Mr. N. Brent Higginbotham:

Q. Why?

A. Well, it is a touchy situation. I feel sorry for all three parties, all the parties, to tell you the truth. In the future there may be some—there would be complications. Some day Kevin and Jason would find out that he is a half brother and then the care of the two children is dragging Kay down. I think if she were free to look for another mate, someone else, it would be better, I think, for her, but that is just my opinion.

Mr. N. Brent Higginbotham: No further questions, Your Honor.

RE-CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Clark, there is no question about the fact that you have a feeling of love for your son, is this not

Com. correct?

Mary Clark

Hear. A. (Nodding head).
page 97 } Q. Is it not also correct that you share a feeling of love for your daughter-in-law?
A. I've tried to be fair to Kay, yes.

Mr. Hancock: That's all. No further questions.

* * * * *

Com.
Hear.
page 100 } Whereupon

MARY CLARK a witness, was called for examination by counsel in behalf of the Complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. S. Page Higginbotham:
Q. State your name, please.
A. Mary Clark.
Q. You are the mother of William Sinclair Clark?
A. Right.
Q. Now Mrs. Clark, when did you first meet Kay Clark?
A. At their wedding in April, what was it, '63?
Q. And did you visit them when they were in Georgia?
A. Yes, we visited them in Alabama once, once I guess it was, and once in Georgia.
Q. Now about the time of the separation did you have any conversation with Kay concerning her coming and living with you?
A. Yes. We were down to visit them in Atlanta about the first part of May.
Com. Q. Be very brief.
Hear. A. And at that time she told us that they were
page 101 } going to separate and that she was interested in working in the Washington area and she wondered if it would be hard to get a job, and I don't know, we just got into the matter that she come and stay at our house, if they separated.
Of course at that time we hoped it wasn't going to happen.
Q. And was there hope also that they would be reconciled?
A. We hoped that for a long time, that's right.

Mary Clark

Q. All right. And did she come to your home?
A. Actually, we went down and got her, at their request.
Q. All right. Now when she came to your home the little child came with her?
A. Right.
Q. Is that Kevin?
A. Kevin.
Q. How long did she live in your home?
A. She came up around the middle of June, maybe the 15th or 14th, and she was there until the last week in February.
Q. What were the circumstances under which she left your home?
A. Well, when she left I thought it was because she was going to change jobs and wanted to go up to her home and visit a little bit before her new job.

Com. Hear. page 102 }

Q. Is that what she told you?
A. That was my understanding when she left. Also, Bill had started to work and was paying her for the child, which gave her some money.
Q. You know nothing of her conduct outside of your home after she came there to live?
A. No, I don't.
Q. Do you know anything about what happened in New York?
A. You mean about the other baby?
Q. Yes.
A. Well, yes. I know that she had a child. I didn't know when she left that she was going to have a child but I found that out subsequently.
Q. How did she happen to return to your home?
A. Well, my daughter had been in touch with her and knew that she planned to come back. She'd left her furniture at our house and a good deal of her clothes and that she had planned to return to work and she had told her that she was going to come back on the day that the new baby was three weeks old, drive that eight hour drive, come back, and she hoped to find an apartment and get into it that same day, and my husband and I were alone with four bedrooms and a baby sitter and the more I thought about it, I couldn't sleep. I got sick about it, the baby and maybe Kevin sleeping in a car that night so I called her up and told her that she could come there until she got an apartment and she said that was very nice, and that was the first time I talked to her. So she did.

Com. Hear. page 103 }

Mary Clark

Q. Stayed for about four weeks, just approximately four weeks?

A. Between three and four, I guess.

Q. Did Kay ever discuss with you the paternity, of the father of this child?

A. Well, on one occasion after she had come back with the baby a few days, Eleanor was over that night and the three of us were sitting in the living room just talking and she and Eleanor particularly, talking about the father of the child, Jim England as he was identified, and she indicated at that time she expected or wanted to get support for the child and they discussed it. Really, I wasn't in on it because I didn't know anything about it.

Q. From whom?

A. From Jim England.

Q. Mrs. Clark, have you helped look after this child?

A. Well—

Com. Hear. page 104

Q. And if so, to what extent?

A. Well, when he is around you know, naturally, and of course I did some baby sitting, particularly the first summer when she'd go out.

Q. How often did you see the child?

A. Probably four or five times a week, if not every day.

Q. Does the child eat any meals at your home?

A. Occasionally. We have found that he doesn't eat well at our house.

The Commissioner: Excuse me.

The Witness: We are grandparents. He is an attention seeker and the baby sitter feeds him with her children and he eats well, so we usually bring him down after the meal. We have no objection to feeding him except for his own good.

By Mr. Higginbotham:

Q. This child is largely looked after by a baby sitter, is this right?

A. Well, during the week.

Q. And Kay looks after him on the weekends?

A. That's right. We have a habit of taking him to our house until she comes home from work and either she stops by or sometimes his granddaddy takes him for a little ride, we let her know and we bring him home but she almost always stops by to pick him up unless there is an understanding ahead of time.

Com. Hear.

Mary Clark

page 105 } Q. Mrs. Clark, if the custody of this child is granted to your son are you willing to assist in looking after Kevin?

A. Yes.

Q. If custody were granted to you and your husband would you be willing to accept it?

A. Oh, yes.

Q. Would you request that it be granted to you and your husband?

(Discussion off the record.)

Mr. Higginbotham: We will withdraw that question.

By Mr. Higginbotham:

Q. Mrs. Clark, based on the situation as you know it, do you think the welfare of this child would be promoted by it's growing up with the second child of Mrs. Clark?

Mr. Hancock: Same objection, Your Honor please. I think to permit the witness to answer that would be usurping the functions of the Court, not an answer we're here to resolve.

Mr. Higginbotham: Let me lay a foundation then.

The Commissioner: All right. Go ahead.

By Mr. Higginbotham:

Q. Mrs. Clark, you are a mother, are you not?

Com. A. I am.

Hear. Q. And you have raised three children?

page 106 } A. Yes.

Q. Have you had anything to do with other children?

A. Oh, yes. I like children.

The Commissioner: I don't think that is sufficient foundation for anything aside from proving the fact that Mrs. Clark is a good mother which I don't think anybody doubts.

I don't think that Mrs. Clark should answer the question as to what she feels would best promote the interest of this child. I think she can go into the background and even being as close to everything as she and Mr. Clark have been, I would think she should be allowed to give her views as to what the future might hold. I think this might be proper and I would allow her to answer that to that extent, with the thought in mind that anybody who reads this record or is influenced by

it will consider such testimony from that standpoint, that she is merely expressing her thoughts in view of her closeness to the case as to the future and when it comes to the award, that's something else.

The Witness: Sometimes I think I am too close to it. This is something that has been on my mind a long time. I still just can't say something is black or white. I feel that if things were going on the way they were going on it would be very bad for them and I have no way of knowing exactly what type of home he would get if he were given to his mother. I just don't know, so as I say, I just feel that perhaps I am too close to it to answer it, but I am very much involved with it.

Com. Hear. page 107

By Mr. Higginbotham:

Q. Do you know any reason at all why your son is not a proper person to have the custody of this child?

A. No.

Q. When Kay came to your home, was anything discussed with you about dating?

A. When she first came up from Atlanta she asked if Dad and I would object to dating a little, and I told her that she was married. Until such time as she wasn't married that was something you just couldn't consider, or words to that effect, I mean. At the time, as I said, we had hopes that the marriage would not break up.

Mr. Higginbotham: Thank you, Mrs. Clark. Answer Mr. Hancock's questions.

CROSS EXAMINATION

By Mr. Hancock:

Q. May I ask how old a lady you are, please?

A. Fifty eight.

Q. And how old is your husband, John D. Clark, Sr.?

A. I said 58, I believe I'm 59. I had a birthday the other day. I'm 59 and he will be 62.

Com. Hear. page 108

Q. 62, and you folks have raised three children. Is this correct?

A. Right.

Q. And they are all grown and emancipated. Isn't that correct?

A. Yes.

Mary Clark

Q. And Mrs. Clark, you say you first met your daughter-in-law Kay when they got married. This is correct?

A. Right.

Q. Did you go to the wedding?

A. Yes.

Q. Where was that held?

A. It was held at Fort McClellan down in Alabama.

Q. I see. Your son was in the army at that time?

A. Navy.

Q. I'm sorry, Navy.

And then there came a time when they moved to Georgia and he attended college down there. Is this correct?

A. Yes.

Com. Hear. page 109

Q. This, of course, was after he was discharged from the Navy. Isn't that right?

A. Yes.

Q. Was Kevin born at that time?

A. Kevin was already born.

Q. Yes, Ma'am. And actually the way it worked, that Kay stayed home and worked to some extent while he was going to school. Isn't that correct?

A. I think when she started to work, she worked full time.

Q. Yes, Ma'am. But while she was working and taking care of the baby as best she could, he was going to college I guess, at Georgia Tech.

A. Getting his master's.

Q. Yes, Ma'am. And there came a time while they were living in Georgia that you and Mr. Clark went down to visit them?

A. Right.

Q. Before you left to go down there did you have any prior knowledge of difficulties between them?

A. No, they had come up to visit us around, I believe, Thanksgiving and Kay stayed and then Doug and I drove her up to her home while Bill went back and finished his getting out of the service, and then he came back up for Christmas

Com. Hear. page 110

and he went up—or rather, we had taken her up and then he went up to her home for Christmas and they came back and at that time, no, I didn't have any idea of any trouble. I mean I think there were little difficulties that you expect in fairly newly married couples that we didn't take seriously at all.

Q. Yes, Ma'am.

Mary Clark

When you got to Georgia to visit with them did you then learn that there was trouble between them?

A. Actually we were there for a day or two before we realized. This one evening Bill had studying to do, and Kay and the baby and Doug and I went for a ride and during that time she told us that they were going to break up.

Q. Yes, Ma'am. Mrs. Clark, may I ask you, didn't Kay tell you at the time that Bill had told her that he didn't care for her any more and that frankly just didn't want to live with her?

A. Not exactly that wording.

Q. Do you recall what she did say?

A. She said she just couldn't understand what was wrong.

Q. Wasn't it apparent to you though, that she was desirous of trying to hold the marriage together?

A. No, I don't have that feeling. I don't mean that she was trying to break it up but I don't really have the feeling—well of course this was a very short period that we were there.

Com. Hear. page 111

Q. Yes, Ma'am.

A. And we came home the next morning after she told us this. I was more disturbed than my husband. We came home and I felt disturbed for several days and I remember my daughter said every young couple has trouble and they talk about splitting up and she completely couldn't believe that there was anything to it until we had gotten the call.

Q. Did you and your husband go down to Georgia and get Kay and the baby?

A. At the time she told us when she said she'd like to come up here and could she. Well, I can't exactly remember how it came about but our first thought was, we'll keep the door open and if she is with us it does keep it open so we said, well, yes, that she could get a job up there and all.

So then we got this phone call asking—

Q. Excuse me?

A. —asking us to come down.

Q. And then she and Kevin came back from Georgia?

A. (Nodding head).

Q. Was this around the 13th of June, 1964?

A. About then, I think.

Q. Now Mrs. Clark, is it correct that Mrs. Clark has been a resident of and domiciled in this state continuously since that time with the ex-

Com. Hear.

page 112 } ception of the temporary visit to New York around approximately February of 1965?

A. Right. You see, the furniture they had was sent up to our house and stored, and that was left there when she went home, as well as her clothing.

Q. Yes, Ma'am. And during the course of that time—scratch that.

Is it your statement that she has definitely been both a resident and domiciled in this state for a period of at least a year before your son instituted this proceeding. Is this correct?

A. That would be my understanding providing you took that period that way. That's right.

Q. And is it also correct that she and your son have not lived together since June 13th of 1964?

A. I'd be sure of that.

Q. Yes, Ma'am.

Now Mrs. Clark, after Kay and Kevin returned to you in approximately June of '64 you stated that there came a time that she inquired of you whether it would be proper or otherwise for her to go out. Was this right?

A. Yes.

Q. Was your daughter Eleanor living in your home at that time?

Com.
Hear.

A. Yes.

page 113 } Q. And did it take place that she and Eleanor would on occasions go out, on maybe a Friday night or something like this?

A. Eleanor took her out—I may be wrong on my timing but I believe she asked me that before she ever went out with Eleanor but I may be wrong on that because in the beginning when she went out with Eleanor she went out with Eleanor and her date.

Q. Well, in any event actually you didn't really think there was anything bad—

A. I never thought it was a date.

Q. —anything immoral.

A. This affair they go to, I've never been to one but my understanding is, they get a large group together, some of them dance, some of them just stand around and talk and get acquainted and I never considered that dating.

Q. Yes, Ma'am. So under those circumstances there wasn't anything unusual about her desire to get out on occasion, and be with some other people, is it not?

Mary Clark

A. That's true, because she was working and as I say, even then I didn't consider that going out like that was anything that would be detrimental to her marriage.

Com. Hear. page 114

Q. All right. And then there came a time around February of '65 that she—scratch that. Incidentally, she and Kevin lived with you from then, that is June, until February of the following year when she left to go to New York. Is that right?

A. That's right.

Q. And then she was up in New York until June of 1965. Is that correct?

A. Yes.

Q. Last year?

A. It was three weeks after the baby's birth that she came back and I can't remember the date but it would be the latter part of June.

Q. Yes, Ma'am. Did you and/or Mr. Clark, your husband, go to New York and bring the children down?

A. No, she was driving. She had her own car.

Q. I see. Had you talked to her about this before she came, Mrs. Clark?

A. Just as I indicated before, when I found out she was planning to drive down with the two babies and get an apartment and move in, in one day three weeks after the birth of her child, which is an eight hour drive and I called her then after practically a sleepless night after I had heard about it and I talked to my husband and said "She just can't do that" and "We'll just call". I called her and said "Kay, you can come and stay here until you can get an apartment" and that was the way it was.

Com. Hear. page 115

Q. And you honestly felt, of course, that this was the better thing to do under the circumstances.

A. Well, she had planned to come back and work. She had her furniture. My understanding was she was coming back and live there and that she expected to get a job and get an apartment. Well, I just couldn't see anything else when the two of us were there with four bedrooms and she had no place, really, to go.

Q. Then she continued to reside with you from then up until—

A. Well, she started looking for an apartment and it became apparent that she should first look for a job because of getting an apartment and so she started job hunting and with the two it just took that long.

Mary Clark

Q. All right. And then, how long—about July of last year she found an apartment. Is this correct?

A. (Nodding head).

Q. And she and Kevin and the little boy Jason have been living there ever since that time. Is that correct?

Com. Hear. page 116 } A. Right.

Q. Now Mrs. Clark, is it correct when she came here in June of '64 that you did have an opportunity of course with her living there in your home, to observe her care of Kevin up until the time she left in February of '65. Isn't that correct?

A. Yes.

Q. And taking into consideration the fact that you didn't feel there was anything very wrong with her going out with Eleanor on occasions to be with other people, she did do a good job of caring for the child, did she not, Mrs. Clark?

A. Yes.

Q. And in all respects other than this one indiscretion on her part, Mrs. Clark—

Mr. S. Page Higginbotham: Objection.

Mr. Hancock: Let me finish, please.

By Mr. Hancock:

Q. —don't you honestly feel that she is a good mother for the child?

Mr. S. Page Higginbotham: He is not correctly stating the evidence.

The Commissioner: Go ahead and answer the question.

Mr. S. Page Higginbotham: The evidence is four acts of indiscretion.

Com. Hear. page 117 } The Witness: What you have just said, not of my knowledge, my understanding. I only know of the birth of the child.

The Commissioner: Just answer the question.

The Witness: Right. As far as I know.

The Commissioner: As far as you know, what?

The Witness: That she was a good mother. Isn't that the way you put it?

By Mr. Hancock:

Q. Yes, Mrs. Clark, and she still is as far as you're concerned, is she not?

A. She is very much interested in her children; yes, sir.

Mary Clark

Q. Yes, Ma'am. And between—well, after she came back here from New York she again lived in your home with both children until she got this place about a year ago. Isn't that right?

A. (Nodding head).

Q. And since the time that is, when she got her own place, Mrs. Clark, have you had occasion to visit over in her apartment?

A. Yes, we go over quite frequently and take Kevin home.

Q. Yes, Ma'am.

A. Well—

Q. And I believe they have been to your home on occasions, numerous occasions, to dinner and this type of thing. Isn't this correct?

Com. Hear. page 118 } A. She's been up for meals and as I say she drops by very often. If Kevin's there, in fact, she drops in to see whether we are going to bring him home or whether she should take him.

Q. And haven't you, and actually Kay and the children enjoyed a rather pleasant relationship since all this happened?

A. Yes, it hasn't been unpleasant.

Q. Mrs. Clark, you said that your son was in Georgia in 1964 when she left to come back. Is it correct that he remained there until December of that year?

A. Yes.

Q. And then he came home, I believe on Christmas vacation?

A. Just before Christmas.

Q. Yes, Ma'am. And this was, I guess, the first opportunity he had had to see his son approximately since June 13th, '64 until December '64?

A. Correct.

Q. And then Kay left and went to New York in February of '65 and got back in June of '65. Is that correct?

A. Yes.

Q. Did your son see—I said your son, did William Sinclair Clark, did he see Kevin between February and say June of '65?

Com. Hear. page 119 } A. Not that I know of. None of us did.

Q. So that there was a period of at least from June of '64—

Mr. S. Page Higginbotham: There is no dispute as to that, Your Honor.

Mary Clark

Mr. Hancock: All right.

By Mr. Hancock:

Q. From June of '64 to June of '65 he saw him approximately one time. Is that right? In December, as far as you know?

A. Yes, in that one period. It was only for a matter of a couple of days because she was going to her home for Christmas.

Q. For Christmas. Now after she got back from New York in June of '65 until say July of last year, '65, was your son living in Baltimore?

Mr. S. Page Higginbotham: That's not controverted.

The Witness: Owings Mills.

Mr. Hancock: Owings Mills.

By Mr. Hancock:

Q. Do you know how many times he saw his son during that approximate month?

A. No, I don't have any idea.

Com. Hear. page 120

Q. Well, she was living there at your home. If he had been to see the child you would have known about it, would you not?

A. I would have known it but I can't remember. I mean I'm just not sure one way or the other.

Q. All right.

A. I don't think he would have come while Kay was there but I can't say he never stopped in. I just can't remember. I know he wouldn't have come to stay.

Q. Yes, Ma'am.

Now Mrs. Clark, since she moved out of your home in July of last year, into her own place, do you know whether or not your son has seen Kevin since that time?

A. Oh, yes.

Q. Could you tell us how many times?

A. Oh, no. I have no idea.

Q. Pardon me?

A. I wouldn't have any idea. I've never made any record or kept track. Every time he has come home he has had Kevin.

Q. That's what I want to know. How often does he come home?

A. It is very irregular. It depends upon his work and when he can come, I guess.

Mary Clark

Com. Hear. page 121 } Q. Well, is he still working in Baltimore?
A. Yes.
Q. And he works pretty long hours. Is this right?
A. Yes. And Saturdays.
Q. Saturdays also?
A. Also, he was taking some courses, or a course in school, last year.
Q. Well, actually I don't guess he has had much time to spend with the boy, has he?
A. No, and then another thing, until right now he has been a baby. It has just been the last very few months that he is matured enough that a father, for instance, could take him.
Q. Is it correct, Mrs. Clark, that the relationship between Kay and Kevin and the other little boy is a pleasant, wholesome relationship?
A. Yes.
Q. And it is obvious to you that when—you can actually see through her actions towards the child and vice versa, a good deal of love between them. Isn't this correct?
A. Yes.
Q. And is it fair to state, I guess because of your son's activities, you know, going to school and working so hard, that you have not had an opportunity to witness the same relationship—
Com. Hear. page 122 } A. Bill, I think, is unusually devoted to Kevin.
Q. But I guess he just hasn't—
A. Well, he hasn't had the chance, but I mean Bill is a person who has always liked small children and has always been attracted to them and they to him and from the time that Kevin was an infant I used to see Bill sit and hold him and look at him in a way that I just never saw a man look at a child, just like he thought he was the most wonderful thing that ever happened.
Q. This would be prior to June, 1964?
A. Right. But I think Bill—I'm sure he is very, very fond of Kevin.
Q. So far as Mrs. Kay Clark's place of residence is concerned, Mrs. Clark, on occasions that you have been there, you have never seen your son Bill there. Is that correct?
A. Oh, no.
Q. And you've never seen any of his personal belongings there?
A. No.

Mary Clark

Q. There has been nothing about her place to indicate that the two of them had lived together. Is that right.

A. I feel that they have not.

Q. And is it correct that they again have not lived together since June 13 of 1964?

Com. Hear. page 123

A. I am very sure of that.

Q. And if they had you definitely would know about it?

A. I feel certain. We were close enough to the situation that we certainly would have known it.

Mr. Hancock: No further questions.

RE-DIRECT EXAMINATION

By Mr. S. Page Higginbotham:

Q. Mrs. Clark, do you know whether Kay has told Jason who the father—or has told Kevin who the father of Jason is?

A. Well, of course Kevin is still just a baby himself.

Q. He is old enough to understand, isn't he?

A. I doubt it. He is not three years old yet.

Q. Do you know whether the father of Jason has come to see Jason?

A. No, I don't believe so.

Q. You don't believe so.

A. No, I don't believe so. I mean, I wouldn't know for sure but I don't believe. It's my feeling.

RE-CROSS EXAMINATION

By Mr. Hancock:

Q. In that regard, Mrs. Clark, isn't it correct that after Kay returned here from New York, and to your best knowledge and belief that she has not only not seen the alleged father of this child but she has not gone out with any men or male otherwise. Isn't that correct?

Com. Hear. page 124

A. To my knowledge that is correct.

Q. And she lived there, of course, with you about a month when she came back and you have seen her and vice versa, she has seen you practically every day since then?

A. Frequently.

Q. Because I think you stated that you all pick Kevin up

sometimes at the baby sitter's and keep him there until she comes to get him after work?

A. That's only a few doors from us.

Q. Yes, Ma'am.

Mr. Hancock: I believe that's all.

RE-DIRECT EXAMINATION

By Mr. S. Page Higginbotham:

Q. Mrs. Clark, suit was instituted within a few days after she returned from New York.

A. That's right.

Q. And do you know when she employed counsel to advise her as to her conduct?

A. Well, probably quite quickly after that because—probably immediately because she was immediately thinking in terms of getting counsel—

Com. Hear. page 125 }

Q. I'm sorry. I didn't hear you.

A. I think immediately she started thinking in terms of having counsel, when she came back. I think suit was filed quite quickly. I think she immediately planned it.

Q. Has Kay any time indicated that Bill is the father of this child Jason?

A. No.

Mr. S. Page Higginbotham: That's all.

* * * * *

The Commissioner: When you have the boy Kevin to come over to visit with you, which is frequent from what I understand, does Jason come along?

Com. Hear. page 126 }

The Witness: Well, we don't bring him down but if his mother brings him—

The Commissioner: Do they both stay at the same baby sitter's?

The Witness: Yes.

The Commissioner: Do they spend—when you see them, are they together pretty much? I know that the one is a real baby now and the other is three.

The Witness: I haven't as my husband usually goes and picks him up.

Mary Clark

The Commissioner: Picks him up.

The Witness: And he walks, he walks down there. The baby isn't walking.

The Commissioner: Why doesn't Jason come along? Why doesn't somebody bring Jason over when you bring Kevin over?

The Witness: Well, Jason is not our grandchild. I mean, we certainly have no objection when Kay brings him in but we don't have quite the same feeling.

The Commissioner: Well, I understand that.

How often has Jason been in your home?

The Witness: Well, every time his mother has been there during the past year.

Com. Hear. page 127

The Commissioner: Which would be how often, on a weekly average?

The Witness: I'd say over the course of a week that she has probably come in for maybe a few minutes at least four times out of the week.

The Commissioner: With Jason.

The Witness: With Jason, that's right.

The Commissioner: And what happens then? Does he say anything, and crawls around?

The Witness: She puts him down on the floor and he plays around and we have some toys and we usually get something to entertain him.

The Commissioner: Where is the other boy?

The Witness: With his granddad. Well, he has a tricycle which is quite often at our house and a wagon but he likes to be with his granddaddy. He is usually right under his heels no matter what he is doing.

The Commissioner: Have you or Mr. Clark yourselves brought Jason along over when maybe she wasn't there?

The Witness: No. Except that a few days ago when Kay had an appointment with Mr. Hancock and was a little late and the baby sitter had an appointment, she called me and asked me if I had any idea when Kay was coming home and I told them no, I assumed she had gotten tied up and she said that the children had a swimming meet and she was going to

Com. Hear. page 128

have to go down to the pool and I said, "Why don't you drop the children off here?" and she did and I went out to the car and took Jason and just as I did his mother drove up but that is the only time that Jason has ever been left there under the circumstances and of course I knew his mother would be along.

The Commissioner: Are you and Mr. Clark fond of Jason?

The Witness: We are fond of all children and Jason is a sweet child.

The Commissioner: How close to you does Mrs. Clark live?

The Witness: I would say about ten minutes, wouldn't you, Kay?

Mrs. Kay Clark: Yes.

The Witness: I've never timed it. It's not too far.

The Commissioner: Has she ever mentioned to you that she might move from that area and move somewhere else?

The Witness: I think on one or two occasions she has not been too happy with her apartment but she indicated wanting the area there, in the same area as far as I know. She has never indicated anything about leaving the area. In fact, as I understand it she likes the Washington area.

The Commissioner: Do you think possibly, and you may not be able to answer this question but I am going to ask it, do you think that possibly when this hearing is all over that she will move from the area, move away from you and Mr. Clark?

Com. Hear. page 129

The Witness: I never thought she would. I have no way of knowing, of course.

The Commissioner: You don't have any feeling toward that from anything that has been said by her?

The Witness: No, my feeling is that she likes it.

The Commissioner: All right. That is all I have.

(Witness excused.)

Whereupon

*JOHN SINCLAIR CLARK the complainant, was called for examination by counsel in behalf of the complainant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. S. Page Higginbotham:

Q. All right, Mr. Clark, you are the plaintiff in this suit, are you not?

A. Yes, sir.

Q. You are married to Kay Eunice Clark, as alleged in the bill of complaint?

A. Yes.

*EDITOR'S NOTE: *Should be William Sinclair Clark.*

John Sinclair Clark

Com. Hear. page 130

Q. And after you were married you lived together down in Georgia or Alabama?

A. We originally lived in Alabama for a period of eight months from the time we were married until the time I got out of the service.

Q. And then did you go to college?

A. And then I went to—after Christmas vacation I started the first of January at Georgia Tech.

Q. Did you have a child born on October 11, 1963 named Kevin Clark?

A. Yes, sir.

Q. And then how long did you live together?

A. We lived together until June of 1964.

Q. And then in 1964, June '64, she came to Virginia?

A. Yes, sir. My parents picked her up and took her to their home.

Q. Did you visit her while she was here in Virginia?

A. When I finished my program I finished and received my master's, I came to my folks home and she was there and my son Kevin was there. She left a day and a half later for a vacation in New York.

Q. Did you see her any more between that and the time that she left for New York again?

A. My memory is a little foggy. I do believe that I visited Kevin once in that period but I'm not sure whether I saw her during that period.

Com. Hear. page 131

Q. Did you know, when she left to go to New York, why she left?

A. I know the reason that she gave my parents, by keeping in close contact with them. I wanted to hear how Kevin was doing. I knew that she was going up there for a two or three week period as a vacation.

Q. Now Mr. Clark, you knew the circumstances under which she returned to Virginia. Is that right?

A. Yes, sir.

Q. And immediately after she returned to Virginia you filed suit for divorce for the custody of your child?

A. Yes, sir.

Q. Why did you want custody of your child?

A. Because I had, when we were married, certain suspicions, and to me the action, the second child, the birth of the second child, was to a certain extent more or less proof that this condition did exist.

Mr. Hancock: I think that is something for the Court to decide. If he is talking about that in his own mind, that is something else.

The Witness: Yes, sir. That is the way I felt and I think this is her weakness. I am not sure what her reasons are but I don't want my son growing up with this and also with a brother who does not have a father.

Com. Hear.

page 132 } By Mr. Higginbotham:

Q. Do you think that situation will affect him more or less as time goes on?

A. I think the older he gets the more it is going to affect him.

Q. In what way?

Mr. Hancock: Now Mr. Commissioner, if the Court please, this is a purely philosophical opinion that is being offered to the Court and I don't think it is proper.

The Commissioner: I note your objection, but you go ahead and answer the question.

The Witness: Yes, sir.

Mr. Hancock: Assuming, for instance, that the Court rules that Mrs. Clark should retain custody of this child, he has got a perfect right to come in here if there is such a change but to sit here and conjecture as to what effect this is going to have, I don't think it is proper.

The Commissioner: I think he has a right to conjecture about his son. I think he has a definite right.

Mr. Hancock: I don't agree with that, that is why I state my objections.

The Commissioner: Yes, I think he has a right to conjecture about that boy of his. You go ahead and answer the question. Mr. Hancock can take his objection up with the Circuit Court.

Com. Hear.

page 133 }

The Witness: Yes, sir. Would you repeat the question?

By Mr. Higginbotham:

Q. The question was, do you feel that the situation you have spoken of here with reference to your son living with a half brother who has no legal father, that that situation would be more adverse to your son as time went on, or less adverse and if so, why?

John Sinclair Clark

Mr. Hancock: That question is not only objected to for the reasons previously stated, but is leading as well.

The Commissioner: All right. Your exception is noted. Go ahead and answer.

The Witness: The adverse condition or the adversity toward Kevin would increase as time went on and it would be the type of situation where he and his half brother who would grow up as a brother, assuming that this would be the case, would be apart of course, when I did not have custody, if when I visited him or he came to visit me. In other words they would be growing up with a different background. This would cause a certain amount of friction not to mention the more important point that he would ask his mother, "Who is Jason's father?" and she could lie and say

Com. Hear. page 134 } —

Mr. Hancock: Your Honor, Mr. Commissioner, this is highly irregular.

The Commissioner: Your objection is noted.

Mr. Hancock: I'm going to go on repeating this.

The Commissioner: You have a continuing objection on the record. Go ahead.

The Witness: Would you repeat my last few words?

(The reporter read from her notes as requested.)

The Witness: She could lie and say that it was I or that she had been married again or he had been killed in an automobile accident or some other excuse or tell the truth, and if she told the truth then the second child would be branded in our society as a bastard and this would have some effect on Kevin.

The older he got the more effect it would have on him.

By Mr. Higginbotham:

Q. Do you think, Mr. Clark, that you could ever have the same affection for Jason that you could for Kevin?

A. No, sir. I have never seen Jason. He is not my son and I'm sure I couldn't show the same affection.

Q. Now what is the relationship between you and Kevin?

Com. Hear. page 135 } A. As has previously been mentioned Kevin has been very much of a baby. When he was born I spent quite a bit of time. I got up in the middle of the night and fed him very often. Of course at that time Kay was rather tired from taking

care of him all day and being in the hospital and until the time we separated and while Kay was working in Atlanta I was working too, but while she was working in Atlanta I took Kevin back and forth to the baby sitter's. We had three different baby sitters and some of them lived quite a distance from where we lived.

My relationship, of course he was only six or eight months old at that time, was very much a father to a young baby. Up until maybe about three or four months ago he has still been very much of a baby.

Now he recognizes me and I think our relationship is growing.

Q. How often do you see him?

A. This, as mentioned before, is highly irregular. I would say it averaged out over the period, once or twice a month, although certainly within the last three or four months, I'm not going to school any more, I would say it was more like once a week or once every other week.

Q. Have you felt like visiting this child in the home of the mother?

A. I beg your pardon?

Com. Hear. page 136 } Q. Have you felt like visiting this child in the home of the mother, or have you?

A. No, sir. It is much—I have certain emotional feelings about visting in the home of the mother and it is much more convenient to see the child when he gets away from the baby sitter, when he leaves the baby sitter in the evening which is the usual time I see him.

Q. When your child is at your father's home?

A. I see my child at my parents' home.

Q. Mr. Clark, what arrangements would you make to care for that child if custody were granted to you?

A. If custody were granted to me, then temporarily I would try to keep him very much in the same situation as he is now, that is, to let him live with my folks and stay with the same baby sitter.

This would, of course, be a temporary arrangement that as my folks are a little old if I do remarry, naturally I would take this into account and if it was the choice of my spouse. Then if I don't remarry within a reasonable period and as Kevin gets old enough to be able to take care of things himself so that a man could take care of him, then I would bring him to live with me and find a suitable arrangement.

Q. Mr. Clark, do you know anything about the emotional

Com. Hear. stability of your wife, and if so, whether or not she is suited for disciplining and rearing of this child?

page 137 } Mr. Hancock: That question is objectionable and I object to it.

The Commissioner: Your objection is noted. Go ahead and answer.

The Witness: Of course I am not a psychiatrist and her emotional stability during the period of time that I was living with her was not emotional. Very, I guess stoic, is the best description and I do feel that regardless of anything else I can say, that she loves that child, as damaging as that might be.

On the other hand I do feel that there is something wrong that she would want to raise Kevin in the situation that he is in now, thinking about the duress that this situation and Jason would cause for him in the future.

I don't think she loves him enough. I don't know what she thinks about—

Q. Have you discussed with her the fact of raising those two children up together, how it may harm both?

A. I believe my parents and Mr. Brent Higginbotham.

Q. All right. Have you discussed it with her?

A. No, sir.

Com. Hear. Q. Mr. Clark, do you live in a boarding house and would you describe the place where you live?

page 138 } A. I live in a carriage house apartment. It is a large efficiency apartment, a living room that is very large. There is a kitchen. It has a rest room and it has a large utility room with a long closet in which there is a long hall in which there is a long closet.

It is a large estate with a very large pasture and lawn area.

Q. If the Court grants you custody of the child do you desire to have the child kept away from the mother or very limited visiting rights or how do you feel about the mother seeing the child?

A. I think the mother should have liberal visiting rights and whenever it is convenient to visit the child or have the child visit her whenever she wishes.

Q. Now about the education of this child, do you know what education your wife has?

A. Yes, sir. She has a high school education.

Q. And have you planned for the education of your child?
A. Well, I have a graduate degree and I assume that he will have at least a college degree and I will make preparations for this.

Com.
Hear. Mr. Higginbotham: That's all the questions.

page 139 } CROSS EXAMINATION

By Mr. Hancock:
Q. Mr. Clark, how old are you, please?
A. Twenty eight.
Q. Where do you live at the present time?
A. Owings Mills, Maryland.
Q. How long have you lived there?
A. Since January of 1965.
Q. You and Mrs. Clark were married on the 20th of April, 1963 in Fort McClellan, Alabama?
A. Yes, sir.
Q. And is it correct that Mrs. Clark was pregnant by you at that time?
A. Yes, sir.
Q. So that any suspicions that you had after you married her were brought about by the fact that you had had relations with her before you married her. Is that right?
A. I'm sorry. I don't understand your question.
Q. You mentioned the fact that while you were living with your wife you began to have certain suspicions. Were they occasioned by the fact that you had had relations with your wife before you married her?

Com.
Hear. A. Perhaps subconsciously, but there were
page 140 } physical situations which caused me to be suspicious.

Q. All right. But the fact is, Mr. Clark, that after you married her you wanted to continue your education. Isn't that right.
A. Yes, sir.
Q. Which you have successfully done. Right?
A. Yes, sir.
Q. And during the time that you were in the process of securing your education Mrs. Clark was working and trying to take care of the child as best she could. Is this correct?
A. Mrs. Clark was working during the day and we were both taking care of the child in the evening.

John Sinclair Clark

Q. All right. Now is it correct that around spring or approximately early June of 1964 that you informed Mrs. Clark that as far as you were concerned she was beneath your educational standards and you didn't want to live with her anymore?

A. No, sir. I did not say that.

Q. What did you say to her?

A. Mrs. Clark and I had a discussion concerning our marriage. During this discussion it was brought out that our marriage was not what it should be and that there were quite a bit of differences but the educational level was not brought up by me and as was mentioned earlier by Mrs. Clark, the physical attributes of which she also accused me, was not brought up by me. She asked me if these were reasons. I did not mention those, *per se*.

Com. Hear. page 141

Q. Well, did you agree with what she said if she said them?

A. No, I didn't agree.

Q. Well, there isn't any question about the fact that you made it known to her that you did not want to live with her anymore. Isn't that right?

A. No, sir. It is not quite that way.

Q. May I ask you this, and I assume of course, you are going to give me a truthful answer.

Mr. S. Page Higginbotham: Just a moment, Mr. Hancock, we object to that remark of counsel.

Mr. Hancock: Well scratch it, I didn't mean anything by it. No offense.

By Mr. Hancock:

Q. When she indicated to you, or you found out that it was her intention to return here to live with your parents, that certainly did not discourage you, did it?

A. Did not discourage me?

Q. That's right. It didn't make you feel bad, did it?

Com. Hear. page 142

A. Well, the whole situation has made me feel bad, sir, and I can't say that it did not make me feel bad.

Q. Well, weren't you glad to know that she was coming on up here and living with your parents?

A. I was glad, when we separated, that she was with my parents as opposed to somewhere else.

Q. All right, and this was true in spite of the fact that you knew when she left that she was going to take your son with her. Isn't that right?

A. I don't—

Q. You don't understand what I am saying?

A. If you say is it true that she took my son—

Q. No. I am asking you if the fact that isn't it true that you were glad that she was going to move up here with your parents even though she was going to bring the child with her too?

A. I don't know how to answer that. I'm glad that she was going to live with my parents, yes, sir. I was sorry to see the child leave. I didn't want to separate from the child.

Q. Well let me ask you, Mr. Clark, what did you do to try to get her to stay?

A. Truthfully, I have to answer nothing.

Com. Hear. page 143 } Q. Nothing.

Now your mother and dad came down and got them and there is no doubt about the fact that she was upset and distressed because her marriage was breaking up. Isn't that right?

A. Who?

Q. Kay.

A. No, sir. I did not notice this emotion.

Q. You didn't notice that emotion. All right.

Was your failure to notice it based upon your own elation at the fact that she was leaving?

A. No, sir.

Q. And when your mother and father came down and got them this was in June, around June 13 of 1964. Is that right?

A. Yes, sir.

Q. And then you continued to remain at Georgia Tech.

A. Yes, sir.

Q. Until say, December of '65. Is that right?

A. December of '64.

Q. I'm sorry, '64. And you did not see your son during that time. Is that correct?

A. Yes, sir.

Q. In the meantime, your son was living with your wife in the home of your mother and father and your sister here in Fairfax County?

Com. Hear. page 144 } A. Yes, sir.

Q. Did you send your wife any money during that time?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Because you were going to college, isn't that right? Is that right

A. Well, I didn't have any money to send.

Q. Didn't have any money.

So that your mother and father were actually caring for your wife and your son, as far as you knew. Is this right?

A. Yes, sir.

Q. How far is it from Georgia Tech up to where your mother's home or father's home is in Fairfax County?

A. I think it's 700 miles.

Q. And did you make any effort to come home to see your son between June of '64 and December of '64?

A. No, sir; I was in class.

Q. Did you ever get off on a weekend?

A. On a weekend, but the only method of transportation I had was a car and it is a 16 hour drive which means 32 hours round trip on a weekend.

Q. Did planes—

Com. Hear. page 145 }

A. I was in college and I did not have money for this.

Q. In other words, what you are saying, you couldn't afford to do it. Is that right?

A. Yes, sir.

Q. Can I assume from what you have said that your educational process was more important to you than to come home and see your son?

Mr. Higginbotham: That is rather argumentative, Your Honor. He has answered the question that he didn't come home during that period of time and that is about all he can say. I don't think he can keep repeating that.

The Commissioner: Go ahead and answer the question.

The Witness: Would you repeat the question?

By Mr. Hancock:

Q. I said, can I assume from the fact that you did not come home, that you felt that your educational process was more important than coming home to see your boy?

A. No, sir. It is not what you can assume. You can assume that I did not have the money to come home.

Q. That was your reason you're saying for not coming home. Is that right?

A. Yes, sir.

John Sinclair Clark

Com. Hear. page 146 } Q. All right. But you did come home in December. Isn't that right?

A. Yes, sir.

Q. Well, didn't you come home because you had a Christmas vacation?

A. No, sir. I came home because I had finished my degree.

Q. In other words, you were through then?

A. (Nodding head).

Q. Where did you get the money to come home at that time?

A. Well, I have a credit card and I bought the gas. I was working, contrary to prior testimony, I did work while I was at Georgia Tech.

Q. You mean between June of '64 and December of '65? I'm sorry, I keep saying '65. '64?

A. From March of '64 until December of '64 I worked as a research assistant.

Q. As well as going to school.

A. As well as going to school.

Q. And this was during the time that you didn't send any money home to your wife at all. Is that right?

Mr. Higginbotham: He has answered the question that he didn't send any money home to his wife.

The Witness: No, sir.

Com. Hear. page 147 } By Mr. Hancock:

Q. All right. Now when you got home in December of 1964 you were only here about a day and a half when Mrs. Clark took Kevin and went home for the Christmas holidays to her parents in New York. Is this right?

A. Yes, sir.

Q. Can I assume that you saw Kevin for awhile during those two days?

A. Yes, sir.

Q. All right. And then when was the next time that you saw your son?

A. My memory is a little hazy but I believe there was one occasion in late January or early February where I saw him prior to Mrs. Clark's going to New York.

Q. Well, Mr. Clark, assuming that you saw him then because you appear to me to be uncertain, I think that is correct, you are uncertain.

A. I am uncertain.

John Sinclair Clark

Q. Okay. You didn't see him again until when?
A. Until July of 1965.
Q. All right.
So now, Mr. Clark, unless you saw the boy around February of '65 you saw him one time in the summer of '64, between June of '64 and July of '65. Is that right?
Com. Hear. page 148 } Is this right?
A. Well, assuming that I did not see him in February?
Q. Yes, assuming that you did not.
A. Yes, sir; twice in that period.
Q. Well, this is what I want to ask you, Mr. Clark. You mean to tell me that you saw him, you knew you saw him once and posisbly twice in an entire year and you're even uncertain that you saw him the second time during that time?

The Commissioner: I think he has answered that question.
The Witness: I have seen him so many times since then that it is a little foggy and under consideration, you realize during this period of time Mrs. Clark was in New York having another baby.

By Mr. Hancock:
Q. To the best of your knowledge. Is that right?
A. Yes, sir.
Q. As a matter of fact, you say that you have never seen Jason. Is that right?
A. That's right.
Q. So from your own personal knowledge, Mr. Clark, you don't know whether she has ever had another baby or not, do you?
Com. Hear. page 149 } A. Well, I'm sure she had another baby.
Q. I mean from your personal knowledge.
A. The personal fact. Is that what you mean by actually seeing it?
Q. Yes. Isn't that right?
A. Yes, sir.
Q. Now when you got out of school in December of '64 did you have your master's degree then?
A. Yes, sir.
Q. Did you then later go to work?
A. Yes.
Q. Where did you go to work?
A. In Baltimore.

John Sinclair Clark

Q. And what is the name of the place you went to work?
A. Hittman Associates, H-i-t-t-m-a-n (spelling).
Q. Have you been working for them continuously since that time?
A. Yes, I have.
Q. What is your position or capacity now?
A. Now I am in charge of the Map Analysis and Computer Section.
Q. When, if you did, did you begin to send any money to Mrs. Kay Clark for the support of herself or your son Kevin?
A. January of 1965, immediately after I started working.
Com. Hear. page 150 } Q. And she left here in February of '65 to go to New York. Is that right?
A. Yes, the end of February.
Q. Did you send any money while she was in New York?
A. Yes, sir.
Q. How much did you send up, do you know?
A. During this period of time it was between $600 or $800 until the time I found out that she was pregnant.
Q. And will you tell me when it was that you found that out?
A. Yes, sir. It was the Monday after Palm Sunday.
Q. And I have to assume that somebody told you this. Right?
A. Yes, sir.
Q. Would you tell me who it was?
A. My sister Eleanor.
Q. Sister Eleanor.
Because you had learned she was pregnant you had made up your mind not to send any more money for Kevin. Is this right?
A. No, sir. I kept sending her money for Kevin but with this situation, that it was for Kevin.
Com. Hear. page 151 } Q. Did you cut down or what?
A. No, sir. It was only for Kevin.
Q. How much had you been sending her?
A. I don't think that I had gotten to a pattern of a certain amount per month.
Q. You would send it to her when you felt like it, so to speak?
A. Or when I had it. I was just establishing myself. I had debts in college.
Q. Were you getting paid on a regular weekly, or bi-monthly or monthly basis?

A. Bi-weekly. Every two weeks.
Q. Every two weeks.
Then in April you cut it down to what?
A. I was sending her then $50 a month.
Q. $50 a month. Was that for Kevin?
A. That was for Kevin until the first of this year.
Q. All right. Now when she returned from New York in June of 1965 were you apprised of the fact that she and Kevin were back here? I mean, this was made known to you, was it not?
A. Yes, sir.
Q. You knew they were living in your mother and dad's house?

Com. Hear. page 152

A. Yes, sir.
Q. And you were in Baltimore?
A. Yes, sir.
Q. How long had she been back—scratch that. Do you know when she got back here?
A. Well, not within the exact day but within a couple of days, she came back around the end of June.
Q. 1965?
A. 1965.

Mr. Higginbotham: We are dealing here with matters that are not in dispute. Every witness here has testified about go into the examination of matters and proving matters that are not in dispute. Every witness here has testified about these dates and I see no reason to keep proving them.
The Commissioner: Well, let's go ahead. Let's move along.

By Mr. Hancock:
Q. When did you leave Baltimore to come over here after you learned that she was back here?
A. When did I leave Baltimore?
Q. Did you come over from Baltimore to see your son, Mr. Clark?
A. Yes, sir.
Q. When did you do that?

Com. Hear. page 153

A. I think it was about two weeks after she was back.
Q. Was there any reason why you could not have gotten over here any sooner?
A. I can't think of anything right now but I assume there was something.
Q. Assume there was something. All right.

John Sinclair Clark

And how long did you see him on that occasion?

A. I'm sure it was a period of a couple of hours.

Q. And that was the first time you had seen him since December of the year before. Is that right?

A. Except for the possibility of seeing him—

Q. In February?

A. Yes, sir.

Q. You were aware that your wife lived with your mother and dad from June until July of last year. Is this right?

A. From the end of June until some time in July. Yes, sir.

Q. And how many times did you come over, if you did, to your mother's home for the purpose, or for any purpose during that time?

A. Just one time while she was there.

Q. And then when she moved out into her present place have you ever been there to see your son?

A. I've never been there. No, sir.

Com. Hear. page 154 } Q. And there is no question about the fact, in your mind, that you would have been permitted to do that if you wanted to do it. Is that correct?

A. It is much more convenient for me because of the long distances back and forth to my parents' home, at which time my parents would pick Kevin up earlier and it is a much more pleasant situation to be in my parents' home and that's why I chose this.

Q. But the long distance you are talking about, from Baltimore to here?

A. To my parents.

Q. Right. Because your wife lives within ten minutes of your mother and dad. Isn't that right?

A. I assume. I don't know for a fact.

Q. I see. You've never been there.

After she moved away from your mother and father's home to her present residence when did you then go back to see your son at your mother's home?

A. I can't testify to the fact. I would assume it was within a two week period. Certainly within a month.

Q. And when did you go to see him again?

A. I would assume it was another two weeks or a month.

Q. Well, don't misunderstand me, I—

A. I didn't keep exact track—

Com. Hear. page 155 } Q. Do you know when you went back?

A. I can tell you approximately how many times I have been there in the past year.

Q. How much?

John Sinclair Clark

A. Twenty or twenty two times.

Q. Twenty to twenty two times, all right. So if it was 24 approximately it would average out about maybe twice a month. Is that right?

A. That's right. That's what I stated earlier.

Q. Now Mr. Clark, is it correct that you are going with this young lady named Sherri Olsen?

A. I am dating Miss Olsen.

Q. How old is she?

A. Twenty four.

Q. How long have you been going with her?

A. I started—I met her at a party the end of January.

Q. Of this year?

A. Of this year.

Q. Is it correct that you had been going with other girls or women, as the case may be, prior to your dating this young lady?

A. No, it is not true.

Q. It is not, you say?

Com. A. No, sir.

Hear. Q. You and your wife have been separated page 156 } since the spring of 1964. Is that right, Mr. Clark?

A. June of 1964.

Q. Have you had relations with Miss Olsen or any other female woman since that time?

A. No, sir.

Q. Tell me if you will, Mr. Clark, what is your gross pay in your present employment please?

A. $10,800 a year.

Q. $10,800.

And I understand you to say you get paid every two weeks. Is this correct?

A. Yes, sir.

Q. And what is your bring home pay when you get paid?

A. $319 and some odd cents.

Q. Now what deductions—well, scratch that.

What is your gross pay before it comes out to $319?

Mr. Higginbotham: We object to that question because the Court can figure that out and you can't ask a question that the Court can answer. That's wasting time.

Mr. Hancock: Your Honor, this is going to be a part of this thing, if Your Honor please, that there is a prayer in here for support of the child, if Your Honor

Com. Hear. page 157 } please, and I think now is the time to go into it.

Mr. Higginbotham: You've got his gross a year and you've got his net take home.

Mr. Hancock: Well, Mr. Higginbotham, I appreciate your position but I think I have the right to ask him these questions and I intend to do it.

Mr. Higginbotham: All right, sir.

Mr. Hancock: So if you want to let the record note your objection we can go ahead.

The Witness: $416.

By Mr. Hancock:

Q. $416. Now can you tell me what is deducted from that to make it come out to $319?

Mr. Higginbotham: We can furnish a written statement on that if that will be satisfactory.

The Witness: This is minus $61.50 for income tax, $17.47 social security, $10.98 state tax, $6.24 for insurance.

By Mr. Hancock:

Q. Do you have any bonds of any kind deducted?

A. No, sir.

Q. How much money have you been sending to your wife for Kevin's support within the past, say, six months?

Com. Hear. page 158 } A. $70.00 a month.

Q. And when, may I ask, was the last time that you sent that to her?

A. This month.

Q. Pardon me?

A. July.

Q. July?

A. Yes, July.

Q. Mr. Clark, at the present time what you want to do about your son is to put him in the home where your mother and father reside to the extent of permitting the child to continue with the same baby sitter he has now?

A. Yes, sir. I think the baby sitter and the situation has, in a great extent, been responsible for the development of the child right now.

Q. Right. So you certainly don't have any—you don't feel there is anything wrong with the arrangements that Mrs.

Clark has made about the baby sitter or whoever made them. Is this right?

A. No, sir.

Q. Do you plan to marry this Sherri Olsen?

A. Miss Olsen and I are very good friends. I have discussed the situation here and we have since broached the subject of marriage. We have certain feelings toward each other.

Com. Hear. page 159 } Q. Have you asked her to marry you?

A. No, sir. However, will you permit me to finish?

Q. Sure.

A. We have decided to wait until this particular matter, custody, my divorce and custody is cleared up, so there won't be any external emotions to come into play.

Q. Well, pardon me for smiling but I would hope that you would wait until this divorce is over with.

Mr. Clark, actually you are not prepared to take this child at the present time. Isn't this correct?

A. I don't know if that is true. Are you asking could I take care of him if he were given to me this minute?

Q. Yes, sir.

A. I think I would certainly make arrangements awfully quickly.

Q. I know, but what I am asking you is this. Those arrangements are not in existence at this time. Isn't that right?

A. No, sir.

Mr. Hancock: No further questions.

* * * * *

Com.
Hear.
page 161 } Whereupon

KAY EUNICE CLARK the defendant, was called for examination by counsel in behalf of the defendant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hancock

Q. State your full name, please?

Kay Eunice Clark

A. Kay Eunice Clark.
Q. Where do you live at the present time?
A. I live in Annandale, Virginia.
Q. What is your address there, please?
A. 4104 Wadsworth Court, Apartment 104.
Q. How long have you been residing at that address?
A. Since July 17, 1965.
Q. Where did you live prior to that time?
A. 5640 Inver Chapel Road, Springfield, Virginia.
Q. Was that the home of your mother-in-law and father-in-law?
A. Yes, it was.
Q. How long did you live there?
Com. Hear. page 162 } A. From the 28th of June, 1965 until the date I moved into my apartment.
Q. And prior to that time were you staying temporarily in the State of New York?
A. Yes, I was.
Q. And how long were you staying there?
A. I left for New York, I believe it was the 29th of February, the 24th, somewhere around there.
Q. That would have been 1965, is that correct?
A. Yes.
Q. And where did you live prior to that time?
A. I lived at the home of my In-laws.
Q. Is that the same address here in Fairfax County, Virginia?
A. Yes.
Q. How long had you been living there?
A. Since the 13th of June, 1964.
Q. Can you state for a fact that you have been both a resident of and domiciled in the State of Virginia for a period of at least one year immediately prior to the filing of this suit?
A. Yes.
Q. What is the name of your husband?
A. William Sinclair Clark.
Com. Hear. page 163 } Q. Where is he living at the present time, if you know?
A. In Owings Mills, Maryland.
Q. To your knowledge, how long has he been residing there?
A. Since January of '65.
Q. And prior to that time where did he reside?
A. In Atlanta, Georgia.

Kay Eunice Clark

Q. When and where were you married?
A. At Fort McClellan, Alabama.
Q. And when were you married?
A. April 20, 1963.
Q. And were there any children born of the marriage?
A. Yes.
Q. How many?
A. One.
Q. What is his or her name and age?
A. Kevin Andrew Clark. He will be three in October.
Q. And was Kevin born on October 11, 1963?
A. Yes.
Q. Are you and Mr. Clark living together at the present time?
A. No, we are not.
Q. How long has it been since you last lived together?

Com. Hear. page 164

A. The day that I left, June 13, 1964.
Q. June 13, 1964?
A. Yes.
Q. Where did you and Mr. Clark last live together?
A. In Atlanta, Georgia.
Q. Have you and Mr. Clark lived together since the 13th day of June in 1964?
A. No.
Q. Has your separation from him been continuous and uninterrupted since that time?
A. Yes.
Q. Have you talked with him since that time?
A. No.
Q. Based on your knowledge of the facts surrounding this case is there any hope or possibility of a reconcilliation?
A. No.
Q. Are you both over the age of 21?
A. Yes.
Q. Are you both members of the white or caucasion race?
A. Yes.
Q. Are either you or Mr. Clark at the present time or were you either on the date the suit was filed, members of the Armed Forces of the United States or any of it's allies?

Com. Hear. page 165

A. No.
Q. Mrs. Clark, after you and Mr. Clark were married where did you take up residence?

Kay Eunice Clark

A. At the time we were married we were both in the service and we were stationed at Fort McClellan, Alabama.

Q. And what branch of the service was he in?

A. The Navy.

Q. And what branch of the service were you in?

A. The Army.

Q. And is it correct that you were pregnant at the time of your marriage?

A. Yes.

Q. And by whom were you pregnant?

A. By William Sinclair Clark.

Q. Your husband, or your husband to be.

A. Yes.

Q. After your marriage ceremony and while you were both in the service, where did you begin to live together, if you did?

A. At Fort McClellan, Alabama.

Q. And how long did you stay there?

A. Until Thanksgiving of that year.

Q. And what occurred, if anything, then?

Com. Hear. page 166 } A. Well, he was due to get out of the service shortly so we went up to visit his parents and it was decided that I would stay there until he went down and completed—I think he had a month to serve, so he went back down there to finish his service and then he came back up.

Q. And did you do that?

A. Yes.

Q. Did you live here in Fairfax County with his parents?

A. Yes.

Q. And was Kevin with you at that time?

A. Yes.

Q. And then did you later join your husband?

A. Yes, in January.

Q. Where?

A. In Atlanta, Georgia.

Q. And when was this?

A. This was in January of 1964.

Q. And what was he doing at that time?

A. He was just entering school.

Q. Was that Georgia Tech?

A. Yes.

Q. Had you discussed with him before your departure the fact that you and the child were coming down?

Kay Eunice Clark

A. Before he left to go to school?
Com. Q. Yes.
Hear. A. Yes.
page 167 } Q. And what were supposed to be the arrangements regarding your living with him under those circumstances?

A. Well, I was to stay with his parents until he went down and registered at school and found an apartment and his parents would bring me down.

Q. And did this eventually occur?

A. Yes, it did.

Q. And while you were living down there did you become employed?

A. Yes.

Q. And did you contribute to the household as a result of that?

A. Yes, sir; I did.

Q. What was your husband doing at that time?

A. He was attending school.

Q. And did there come a time around the month of June, 1964 when you became aware of discord in the marriage?

A. Yes. Well, I had been aware of it for several months.

Q. How did you become aware of it?

A. Well, it was just that he was engaged in a hobby which took—
Com. Q. What kind of a hobby?
Hear. A. He is a bird watcher and he bands birds and
page 168 } he would come home from school, he would usually get home about 4:30 and then he would go out until, oh perhaps 5:30 or 6:00 and then come home. This was not every day but a great part of the time.

And on the weekends he would go out bird watching and of course in the afternoon and in the evening of the weekends he would study.

Q. Was Kevin with you at that time?

A. Yes.

Q. Did he show much if any attention to the child?

A. Well, he gave him some attention whenever his hobby and his studying allowed him.

Q. All right. And did there come a time fairly close to June 13th, 1964 that you had a conversation with him regarding your marriage?

A. Yes.

Q. And would you tell the Commissioner the circumstances and the conversation that took place?

Kay Eunice Clark

A. Well, I really don't know how it started but I think I said something to the effect that there was something wrong with the marriage and I just didn't know what it was and I wished that he would talk to me about it to see if we could straighten it out and I suggested that we go to a marriage counselor to see if it could be straightened out and he said that he didn't see any hope for it so he didn't think it was necessary to go and he had mentioned that—well, perhaps I brought it up, I'm not too sure, but about educational difference and I suppose I had brought up the fact of my physical attributes because he didn't show me any attention at all. He very rarely spoke to me unless it was something that had to be said and he said that he just didn't think that we were right for each other and that there were too many differences and that he was on a different social plane and that he didn't think I would fit into the kind of life that he hoped to lead.

Com. Hear. page 169

Q. Now Mrs. Clark, do you know of anything that you did or failed to do that would justify his saying these things to you?

A. No. I tried very hard.

Q. Do you feel that you tried to do everything you could do to make a success of marriage?

A. Yes. I fixed the meals that I knew he liked. I kept the house clean. I took care of Kevin. I just don't know.

Q. Did he ever complain to you about your care of the child?

A. No.

Q. And as a result of that conversation what, if anything, did you do?

A. You mean of our conversation together?

Q. Yes, the one that you had with him.

A. Well, I didn't do anything immediately but his parents came down in May for a visit and I believe I indicated to them that we were having difficulties and that was about it and then they went back.

Com. Hear. page 170

In June, I can't remember just what brought it about, but I guess I had mentioned that I couldn't see going on living together if he didn't want to, and he said well, he couldn't do anything to provide support for me at that time and that he wanted me to stay until after he finished school so that he could do something.

I decided that I couldn't see going on supporting all of us just to have it end anyway so I believe what brought it about,

my actual leaving, was his parents would call occasionally just to chat and see how we were doing and on this occasion they called and Bill chatted with them and I chatted with them and then I decided that was probably a good time—I'm really not too sure.

Q. Excuse me, did they finally come down?

A. Yes.

Q. Did you and Kevin come up here with them?

A. Yes.

Com. Hear. page 171 } Q. Where did you go to live at that time?

A. At their home.

Q. How long did you continue to live in their home at that time?

A. Until February of '65.

Q. Did your husband send you any money at all for either your support or that of his son?

A. No.

Q. During that time?

A. No.

Q. Who else, if anyone, was living in the home besides you and Kevin and Mr. and Mrs. Clark, Sr.?

A. There was Eleanor Clark, my sister-in-law.

Q. And is Eleanor the young lady who testified here today that, being more specific, is Mr. Clark's sister?

A. Yes.

Q. Did you know Eleanor prior to your coming there, prior to that time?

A. No, I did not.

Q. Did you become friends with her?

A. Yes.

Q. Did there come a time, Mrs. Clark, when you and your sister-in-law Eleanor would go out together socially?

Com. Hear. page 172 } A. Yes.

Q. Would you tell the Court the circumstances under which that arose and how it came about?

A. Well, I had been there approximately for, I guess, a month, something like that and Ellie, of course, was going out dating, going to parties, and she said that she understood how I felt, that I was very blue and everything but that she didn't think that it was very good for me so she said it would be nice, you know, if I would go out with her and her dates occasionally.

Q. Did she make any reference to your husband at that time?

A. No. Well, she said—the only thing she said was that she knew Bill and that she was sure there was something to cause me to leave, but that was all, that she was sympathetic and she didn't want me to mope around the house and that, so I did accompany her several times on her dates and which eventually led to my going out to these parties with her.

Q. Do you know this chap whose name has been mentioned here, one Jim England?

A. Yes.

Mr. S. Page Higginbotham: Now Your Honor, just a moment. You recall that question was asked of her this morning in cross examination, as an adverse witness and she claimed the Fifth Amendment and said such an answer would be incriminating.

Com. Hear. page 173 } The Commissioner: She is not claiming that now.

Mr. S. Page Higginbotham: She knew that. We made that point this morning, Your Honor.

The Commissioner: She is not claiming it now.

Mr. Higginbotham: I understand, but we think it is highly unusual for it to be incriminating this morning and not be incriminating this afternoon and we believe—

The Commissioner: You may think so, but she is not claiming it now.

Mr. Higginbotham: We take the position, Your Honor, that this claiming incrimination this morning was not in good faith and I think it is very obvious.

The Commissioner: Your comments are noted for the record, Mr. Higginbotham.

You can go ahead and answer the question.

The Witness: Yes, I knew him.

By Mr. Hancock:

Q. Where did you happen to meet him?

A. At one of the parties that my sister-in-law and I attended.

Q. Was this one of the parties that Ellie—Eleanor or Ellie as you call her, took you to?

Com. Hear. page 174 } A. Yes.

Q. And did it come about, Mrs. Clark, that you became intimate with this man?

A. Yes.

Q. Why?

Kay Eunice Clark

A. Well, as I said before my husband and I weren't getting along and he didn't show me any affection or anything to show that he cared for me at all and I just came to feel that I was not really a woman.

Q. All right.

As a result of your relationship with this man did there come a time in February of 1965 when you left Fairfax County to go to your mother's home in New York?

A. Yes.

Q. How many times between June of 1964 and December of 1964 did you see, if you did, Mr. Clark appear at your mother's home?

A. Between June of '64 and December of '64?

Q. Right.

A. None at all.

Q. All right. Was Kevin with you during that entire period of time?

Com. Hear. page 175

A. Yes, he was.

Q. Did you see Mr. Clark in December of 1964?

A. Yes, for a period of about a day and a half.

Q. Is that at your mother-in-law and father-in law's home?

A. Yes.

Q. What did you then do?

A. I had planned to go home for Christmas which I did?

Q. Did you take Kevin with you?

A. Yes.

Q. How long were you gone, approximately?

A. I think it was only about, well, five days.

Q. Upon your return was your husband there at that time?

A. No. He had departed for Baltimore.

Q. And did Kevin remain with you from that point on?

A. Yes.

Q. When, if you know, did Mr. Clark, your husband, see the child, if any?

A. Well, I believe it was one time in February of '65 and then not again until the 28th of June, the night that I returned from New York.

Q. 1965?

A. Yes.

Com. Hear. page 176

Q. In the meantime, I think you said—did you leave to go to New York in February?

A. Yes.

Q. And while you were there, Mrs. Clark, did you give birth to this child known as Jason?

Kay Eunice Clark

A. Yes.

Q. While you were there did you have any conversation with either your mother-in-law or your father-in-law?

A. While I was in New York?

Q. Yes.

A. Well, my mother-in-law, upon learning that I was returning to the area, called me and said that it was going to be a hard journey for me and that she would feel better and she thought it best if I would return to her home until I could find a suitable apartment.

Q. Did you do that?

A. Yes.

Q. How did you return here?

A. I drove.

Q. And you had Kevin and the baby with you?

A. Yes.

Q. Did you take up residence in the Clark home at that time?

Com. Hear. page 177 }

A. Yes, for approximately a month.

Q. And when did you get here?

A. The 28th of June.

Q. When, if you know, did your husband come over from Baltimore, to see Kevin, if he did?

A. Well, he and his lawyer came over on the 28th—let's see, no, it was the evening after I returned. He and this lawyer came over and he saw Kevin for a little while that evening.

Q. Did he make any effort to take the child away from you then?

A. No. Kevin didn't know him at the time. When his father picked him up he started crying, so his grandmother had to take him away from him.

Q. You mean Mrs. Clark, Sr.?

A. Yes.

Q. Did your husband send you any money while you were in New York, Mrs. Clark?

A. Well, he gave me $100 initially in February and he said he would try to send $200 a month, and in March he sent—I believe it was $175 and then in April he sent me $50. This was the time that he found out about the second child and he wrote me a letter stipulating that the $50 was only for Kevin.

Q. Well, he testified that he sent you between $600 and $800. Did he do that?

Com. Hear. page 178

A. Not during that period of time. It was only a month's difference.

Q. All right.

Did you continue to reside with Mr. and Mrs. Clark on your return from New York until you got your apartment?

A. Yes.

Q. During the course of that time, how many times, if any, did Mr. Clark come to see his child?

A. Well, he came to see him for a few hours once more before I found an apartment of my own, and I don't believe he saw him again for about two to two and a half months after that and then I think, since then he has tried to be rather regular in his visits.

Q. How often has that been?

A. Well, he saw him I know, at Thanksgiving.

Q. For how long?

A. For how long?

Q. Yes.

A. Well, each visit would be just several hours duration.

Q. Mrs. Clark, while you were living in the Clark home between June and July of last year, did Mr. and Mrs. Clark, Sr. accept you and Kevin and Jason?

A. Well, they didn't say anything to the contrary.

Com. Hear. page 179

Q. Did you and your children share your meals there?

A. Yes.

Q. Did all three of you sleep in the home?

A. Yes.

Q. And was Ellie there during this time?

A. No, at that time she was living in an apartment of her own.

Q. I see. Well now, was it between June of '64 and December of 1964 that Ellie was living in the Clark home where you were living?

A. Yes.

(Discussion off the record.)

By Mr. Hancock:

Q. Mrs. Clark, after—scratch that.

When—well, scratch that, also.

How long a period of time in terms of months or weeks or days did you see this fellow Jim England?

Kay Eunice Clark

A. I think it was a period of about two and a half to three months.

Q. All right.

And after this occurred, did your relationship with him cease?

A. Yes.

Com. Hear. page 180 } Q. And have you undertaken to participate in that type of activity with him, or for that matter, anybody else since that time?

A. No, I have not.

Q. And are you regretful and sorry for what has occurred?

A. Yes.

Q. Mrs. Clark, will you relate to the Court and describe in your own words, the relationship between yourself and Kevin and Jason, both of whom live with you?

A. Well, they are my sons and I love them both equally, but individually.

Q. Well, let me be a little more direct, and Mr. Higginbotham can object if he thinks I'm leading you.

Do they get along well together?

A. Yes. Jason is just beginning to be able—well, he can stand up and he walks with the aid of the furniture and he and Kevin can now tumble to some extent on the floor and can roll cars back and forth toward each other and enjoy each other's companionship to the extent that they can at their ages.

Q. Do they appear to be happy and well adjusted as far as you are concerned?

Com. Hear. page 181 } A. Yes. If, for some instance, Jason falls on the floor and hurts himself and starts crying Kevin will come in, "Mommy, Mommy, Mommy, Jason crying." So he'll come in and get me to go to attend to Jason and I sometimes give them their baths together and they play in the tub together and Kevin seems to be very fond of him and he takes good care of him. Whenever Jason does cry or something he is always running to him.

Q. Now would you describe the facilities that you have where you live for the children and yourself?

A. Well, I have a two bedroom apartment with a kitchen, a dining room, a living room adjoined. The living room is quite large and it is large enough so that Kevin can ride his tricycle around without bumping into things. They have ample room to play.

Kay Eunice Clark

Their bedroom is quite large and outside there is a wooded area that occasionally, when the weather permits and I have the time, I take Kevin and walk through the woods with him. There is a little path leading through the woods and they have a swimming pool with a wading pool there that I occasionally take Kevin down to see him go swimming.

Q. Are there children in the project, in the apartment?

A. Yes.

Q. Do they have other playmates there?

A. Yes, it is a family type dwelling.

Q. And you consider the environment there, wholesome and to their well being?

Com. Hear. page 182

A. Well, to the extent possible, yes.

Q. By that you mean—

A. They don't have the opportunity to make playmates around there simply because by the time we get home it's just about their bedtime.

Q. All right.

A. But around the baby sitter's home they have quite a few friends.

Q. Now Mrs. Clark, based on the amount of money that your husband is paying you, do you have any choice but to pursue some type of employment?

A. No, I have to work.

Q. And what is the nature of your occupation at this time?

A. I am a legal secretary.

Q. For whom are you employed?

A. With the law firm of Cox, Langford and Brown in Washington, D. C.

Q. And how much do you earn there as a result of your labors?

A. Well, I just recently got a raise which will make it about $5700 a year.

Q. Have you at my request prepared a list of your expenses on a monthly basis?

Com. Hear. page 183

A. Yes.

Q. I hand you what purports to be the original of that list and ask you if you can verify it?

A. Yes. That is the list I typed.

Mr. Hancock: Mr. Higginbotham, here is a copy and Mr. Commissioner, we will offer this to the Commissioner in the original form if we may, please, and show a copy to the witness.

Mr. Higginbotham: Until the proper foundation is laid we would have to object. We would like to know whether it is for one, two or three persons. Could you give us the background?

Mr. Hancock: I'd be glad to go into that.

The Commissioner: Well, before we go into that, I don't know if I want to hear it. This decree of reference doesn't go into the approximate support and I'm not going to go into it. There is some reference here to an amended decree of reference but I don't see it in here, unfortunately.

Did you say there was an amended decree of reference?

Mr. Hancock: Yes. Judge Jennings, Mr. Commissioner, entered that in my presence on, I believe it was July 15 although I may not—

The Commissioner: Do you have a copy of that?

Com. Hear. page 184 }

Mr. Hancock: Mr. Higginbotham just gave me this copy of it.

The Commissioner: This is a copy of the amended—

Mr. Hancock: That is my understanding.

The Commissioner: Is this a copy of the amended decree of reference?

Mr. N. Brent Higginbotham: That is what the original looks like, which has been filed. You notice there is a typographical error or erasure at the bottom. For appearance reasons this one was not used.

The Commissioner: Well, rather than make possibly everybody come back you may go ahead and put this evidence in but I am not going to rule on it unless I am specifically directed by the Court to do so.

On the amounts of money and so forth it is my understanding that the Circuit Court wants to do that themselves but this will be received in as Defendant's Exhibit No. 1, I think is the number on it.

(The document referred to above was marked as Defendant's Exhibit No. 1 for identification and was received in evidence.)

In order to save possibly going through this again I am going to allow the testimony on this point but I want it clearly understood that I am not ruling on it unless the Circuit Court tells me to do so.

Com. Hear.

page 185 } By Mr. Hancock:

Q. Mrs. Clark, your list of expenses — well, scratch that.

In the preparation of this list would you tell the Court whether this is for you yourself, I mean—scratch that, you, Kevin and Jason, all three of you?

A. No, this is just for—

Q. One of you, or what?

A. This is just for Kevin and myself.

Q. Now the child care of $80, is that any more or any less for one or both of them?

A. Well, when this woman first contacted me she said that she would charge $20 for the first child because she would be feeding him his meals and everything like that and $2 a week for the smaller child because I was furnishing all the baby food and all the milk, everything he needed.

Q. Now how much, if any money, is Mr. Clark paying you at the present time for either your support or your support and Kevin's?

A. He is paying me $70 a month.

Q. $70 a month?

A. Yes.

Com. Q. How often do you get paid, Mrs. Clark?

Hear. A. Twice a month.

page 186 } Q. And what is your bring home pay on each of your pay days?

A. $191.02.

Q. $191.02. $191 and two cents?

A. Yes.

Q. Are you aware of any outstanding obligations that your husband has at the present time?

A. No. Well, his car.

Q. His car?

A. You mean, that he owes? I think his car.

Q. Is it your desire that you be awarded custody of both Kevin and your son Jason?

A. Yes.

Q. And would this be subject to the right of Mr. Clark to visit with Kevin in a liberal way?

A. Yes.

Q. And is it also your request that you be awarded support for yourself and Kevin?

A. Yes.

Mr. Hancock: Mr. Higginbotham?

Kay Eunice Clark

CROSS EXAMINATION

Com. Hear. page 187

By Mr. S. Page Higginbotham:

Q. Mrs. Clark, you committed adultery within a matter of a few months after you got back to Virginia, didn't you?

A. Yes.

Q. And at that time you didn't love your husband, did you?

A. At that time I really wasn't too sure.

Q. And you really didn't love your child either, did you?

A. I most certainly did.

Q. Well, why would you go out and have sexual relations with another man when you had a child and a husband that you were yet married to?

A. I don't know.

Q. You don't know. Now you know Ray Praeter too, don't you?

A. Yes, I met him.

Q. And you admitted to Miss Clark that you had relations with him.

A. I most certainly did not. I never had with anyone but Jim England.

Q. Well, you went to a party one time—

Com. Hear. page 188

Mr. Hancock: Let me interrupt. You see, we are back to that conversation about Ellie and when he brings these things up I still will say that Mrs. Clark has a right to explore them, and it brings us back to this part about expunging this record and I still say we have a right to have it in the record and it ought to be brought before the Court for a determination of whether or not it is admissible—

Mr. Higginbotham: She denied it.

Mr. Hancock: —and what's good for the goose is good for the gander.

The Commissioner: You'll get a ruling on that from the Circuit Court, Mr. Hancock.

Mr. Hancock: Mr. Balavage, if you can tell me how I can do it I will try to do so, but I don't know how I'm going to do it if it is not in the record.

The Commissioner: All right. Go ahead. What is the next question.

By Mr. S. Page Higginbotham:

Q. You went to a party at a place called View of the Chase, didn't you?

Kay Eunice Clark

A. Yes, I believe I did.
Q. You went to several parties there, didn't you?
A. Yes.
Q. And you met a Link Bouvet there?
A. I believe that is what his name is.
Com. Hear. page 189 } Q. And one time you went outside with him and stayed two and a half hours, didn't you?
A. I don't know if that was the length of time. That's what Ellie told me. I really don't know.
Q. I am asking you what you did.
A. I said I don't know.
Q. You did go out with him, didn't you?
A. Yes, we went out there to talk, yes.
Q. And you knew that people were looking all over for you, didn't you?
A. No, I did not because I never saw anyone until they came out. We were only about 20 yards from the place.
Q. What do you propose telling your son as to the fatherhood of this child?
A. As to Jason?
Q. Yes.
A. Well, of course that is quite aways off. I haven't really dwelt too deeply on that subject but it is my hope that eventually I will find a suitable individual to marry.
Q. And then you would adopt Jason, wouldn't you?
A. Yes.
Q. And then you would have Jason's name changed to the same name of your new children, is that right?
Com. Hear. page 190 } A. Yes.
Q. And if you also had the custody of this child, you'd have children of different names, wouldn't you?
A. Yes, that is the usual thing when people get married.
Q. You realize yourself the problem of having this child without a father, don't you?

Mr. Hancock: Let the record show my objection.
The Witness: They will have a father.

By Mr. Higginbotham:
Q. And this is by your proposed future marriage?
A. Yes.
Q. All right.
And if you should get the custody of this child what would

you tell Jason and what would you tell Kevin as to why Mr. Clark comes for one and doesn't come for the other?

A. I will simply tell them that they had two different fathers. By the time they get old enough divorce isn't going to be so uncommon that they have never heard of it.

Q. I see.

Don't you think it would be better now from your standpoint, Mrs. Clark, and for the child's standpoint and for Mr. Clark's standpoint while these children are yet infants, to separate them so that this issue will not rise in the future?

Com. Hear. page 191 } A. I don't think that two children this small will grow up not loving one another as brothers and I think that when they become of age, that they will be able to accept it because they will have the same thing if Kevin is awarded to his father because I will have another name and how would explain that to the child too.

Q. Mrs. Clark, you have lost considerable weight, haven't you?

A. I have always been thin.

Q. You have lost about 30 pounds, haven't you?

A. That is not true. I have never weighed over 120 pounds.

Q. As a matter of fact, you are not physically able to care for these two children and work, are you?

A. I have done so ever since my first one was born.

Q. And you have deteriorated very rapidly in the last ten months, haven't you?

A. No, I have not.

Q. You have lost weight?

A. I weigh 110 now. When I came back from Atlanta, Georgia I think I weighed about 113.

Q. And you are not more nervous than you were?

A. At this particular instance, yes.

Com. Hear. page 192 } Q. Now Mrs. Clark, you realize that you are going to—unless you do remarry, that you are going to have to work, don't you?

A. Yes.

Q. You are not asking for support for the young child?

A. No, I am not.

Q. And you realize that having committed adultery there is a good possibility that you can't get support for yourself?

A. Yes, I realize that.

Kay Eunice Clark

Q. And don't you think that your physical condition is such that with two growing boys and your having to work that you could not manage?

A. Well, let me say this. I have managed so far without much help from outside.

I now have a new job and it requires a top secret clearance and as soon as that takes effect I will start a new job which is located in Virginia which starts from 8:30 to 5:00 which will bring me home about 5:30 in the evening. That will give me much more time to do the things that I have to do in the care of my children.

Q. Mrs. Clark, don't you think that this educational differential that you have spoken of between you and your husband would make your husband better suited to care for this child than you?

Com. Hear. page 193 } A. I don't see why. I love my child.

Q. Why didn't you go to college?

A. My parents couldn't afford it.

Q. You joined the Army when you were how old?

A. I had worked for a law firm for several months and then I joined the service.

Q. How old were you?

A. When I joined the service?

Q. Yes.

A. I was only 18.

Q. You were 18?

A. Yes.

Q. Did your parents or anyone object to you, at 18, becoming what is it, a WAVE or WAC?

A. A WAC, but they had certain reservations about it.

The Commissioner: You are not claiming there is anything uncommon about that, are you, Mr. Higginbotham?

Mr. Higginbotham: We don't condemn it.

The Commissioner: I don't think it is uncommon.

Mr. Hancock: It looks like, to me, that she should be commended for it.

Mr. Higginbotham: I wouldn't want a daughter of mine in it.

Com. Hear. page 194 } The Commissioner: Well, it is a matter of choice but I don't think it is uncommon at all.

Mr. Higginbotham: I was probably wrong in asking that question, sir.

By Mr. Higginbotham:

Q. Now you say you had been rejected by this man, is that what you are telling the Court?

A. Well, now he never gave any indication that he wanted me.

Q. All right, but it was you who recalled he wanted you to stay on with him until he finished school?

A. Only till he finished school.

Q. All right, but that would have been how long?

A. That would have been June, that was December.

Q. And you left there six months before he left, is that right?

A. No, he told me that we would separate at the end of his schooling.

Q. But when he told you that he wanted you to stay until he finished his schooling, how much more schooling did he have. That is the question.

A. Well, he had six more months.

Q. Six more months. So you broke up the marriage six months before he wanted to, isn't that right?

Com. Hear. page 195

A. Yes, but the only reason he wanted me to stay—he didn't give me any reason he wanted me to stay, only that he couldn't support me.

Q. And it was you who called and asked his parents to come for you. Is that right?

A. Well, they called and I said for them—

Q. But he said—

The Commissioner: Beg your pardon, Mr. Higginbotham. You are going to have to give Mrs. Clark time to answer these questions, now.

Mr. Higginbotham: I beg your pardon, sir.

By Mr. Higginbotham:

Q. All right, Mrs. Clark. Take your time.

A. Well as I said, they would call frequently to chat with us because they were interested in what we were doing and their grandson and on this particular occasion I believe they had called and it was brought up probably by me that I wanted to leave and they said they would come down and get me.

Q. The question, Mrs. Clark, is simply this. You were the one that called his parents to come for you. Is that right?

A. As I said, I believe they had called to inquire about our health and what we were doing.

Com. Hear. page 196 } Q. You didn't ask them to come for you?
A. No, I didn't.
Q. You didn't ask them to come for you?
A. No, I didn't.

Q. All right.

Then when you got here you say you went out with Mr. England and you were thinking that you had been rejected as a woman and that was the reason you went out with him?

A. At that particular time I was very depressed over what had happened and I went out merely with the thought of meeting people my age and talking and I had no intention of doing anything wrong at all.

Q. Well, how about the second time. Did you have any intention of doing anything wrong?

A. I don't know, but I can assure you if I did, I would have taken precaution.

Q. Well, how about the third time?

A. I just don't know.

Q. Where did these acts take place?

A. Where or why?

Q. Where.

A. Well, three times they were in his apartment.

Com. Hear. page 197 } Q. You went to his apartment?
A. Yes.
Q. Did you get in bed with him?
A. Yes. On three occasions I did.
Q. It took you a good while to get to his apartment, didn't it?

Mr. Hancock: Mr. Commissioner, may I interrupt and offer this objection for the record. It may very well be that counsel for the complainant has a right to go into the morbid details of this. I can only say that this lady has ultimately bared her soul here and of course admitted—

Mr. Higginbotham: Now that may be debatable, Your Honor.

The Commissioner: I don't think it is necessary for her to go into all the details.

Mr. Higginbotham: I'll just put it on the record for what it is worth.

The Commissioner: I don't think it is necessary to go into these details, Mr. Higginbotham. I don't think she ought to

go into those details. She has admitted to a course of conduct here and I see no reason for it.

My feeling on that, by the way, is the same feeling that prompted my ruling on Eleanor.

Mr. Higginbotham: I think we are going into the very heart and soul of this woman's character and her moral makeup.

Com. Hear. page 198

The Commissioner: I don't feel there is any need to go into any detail on that.

Mr. Higginbotham: All right, sir.

I would like to take exception to the Court's ruling.

Could I have the birth certificate? Would the Court permit that? I was objected to this morning. We now offer it, in evidence.

Mr. Hancock: We would raise no objection to it at this time, Your Honor.

The Commissioner: All right. This will be allowed in as Complainant's Exhibit No. 1.

(The document referred to above was marked as Complainant's Exhibit No. 1 for identification and was received in evidence.)

Mr. Higginbotham: The Court would permit me to ask as to the sequence with reference to time, these acts took place, over what period of time and how far between?

The Commissioner: Are you claiming these acts were performed in front of that child or in the presence of that child?

Mr. Higginbotham: No, Your Honor.

The Commissioner: Then I don't see any relevancy.

Com. Hear. page 199

Mr. Higginbotham: We must note exception on the ground that whether or not this was a temporary thing or whether it covered a long period of time under the circumstances in which it took place all go to the character of this party and has a definite bearing.

The Commissioner: Well, I think you may have an answer to what period of time that Mrs. Clark knew this man England. I think that is all right.

Over what period of time did you know him?

The Witness: I knew him for approximately two and a half to three months.

The Commissioner: Two and a half to three months.

The Witness: Yes.

The Commissioner: Which would be from what time to what time, approximately?

The Witness: I think July, the latter part of July through October.

The Commissioner: Of last year?

The Witness: Yes.

The Commissioner: And you haven't seen him since that time?

The witness: No, I haven't.

The Commissioner: All right, do you want to go ahead?

By Mr. Higginbotham:

Com. Hear. page 200

Q. You had considered adopting out this child, didn't you?

A. At first I thought to save everyone from the shame of it that it might be the best thing to do.

Q. You came back and accepted the hospitality of Mr. and Mrs. Clark. Did you not?

A. Yes.

Q. And you used Kevin as a method of getting this hospitality offered to you. Isn't that right?

A. I did not make the phone call. Mrs. Clark made the phone call. I had no intention of going back there at all.

Q. You would have no objection whatsoever to this child's living in Mr. and Mrs. Clark's home?

A. They are very nice people but he is my son and I think I can do just as well.

Q. And don't you think it would be better, Mrs. Clark, for you to let your husband now have this child, separate these children before they become attached, and you have the second child and Mr. Clark have the first child?

A. No, I don't. He hasn't shown that much interest in him.

Q. I see. If he had shown interest in him, would you say that that would be a good solution?

A. I don't know.

Com. Hear. page 201

Q. Well, then, is the reason you are claiming the son shouldn't go to Mr. Clark is because he didn't show any interest?

A. No, it is because I love my son and I want him.

Q. Mrs. Clark, the child is now largely being attended to by Mr. and Mrs. Clark and the baby sitter. Is that right?

A. Yes. And the same arrangement would be made, I understand it, if his parents were to have him, because they both work.

Q. You understand, Mrs. Clark, don't you that one of the main issues in this case is the psychological effect and mental effect it will have on these children when they learn the true identity of the situation.

Mr. Hancock: Well I think, Your Honor, the Court please, what the issues are in this case are to be decided by the Court.

The Commissioner: Mr. Higginbotham, you are making an assumption now that may or may not be true.

Mr. Higginbotham: Your Honor, on cross examination as I understand it, we can test the judgment of a witness and certainly we can test the judgment of this woman and see if she recognizes things that we think are important.

The Commissioner: But aren't you making an assumption there, Mr. Higginbotham, that may not be true? You think that is the way it is going to be and you are assuming that for the purpose of that question but it may not be that way.

Com. Hear. page 202 } Mr. Higginbotham: If the child, the custody of the child, is given to her that issue has to be met.

The Commissioner: It may not be detrimental to it. I don't know that and you don't either.

Mr. Higginbotham: It certainly wouldn't be normal.

(Discussion off the record.)

By Mr. Higginbotham:

Q. Do you feel that you could raise these two children together without this problem coming up here that we mentioned, of showing to them what the true identity of their parents is?

Mr. Hancock: Mr. Commissioner—

The Commissioner: Go ahead, let her answer it.

Mr. Hancock: I was just going to offer my objection because at the age of these children at this time, even assuming that Mr. Higginbotham's assumption is correct, this would of necessity have to occur at a time when these children are old enough to understand this situation so assuming the Court as I feel they probably should give her custody at this time, the right would be reserved to Mr. Clark to come in at what he would consider to be the proper time to prove a change of circumstances if possible, to change the custody.

Kay Eunice Clark

Com. Hear. page 203 } The Commissioner: Your objection is noted.
Do you still remember the question?
The Witness: Would you repeat the question?
The Commissioner: Repeat the question, and then you answer it and your objection is noted.

By Mr. Higginbotham:

Q. Do you feel, Mrs. Clark, that you can raise these two children together and when they become old enough to understand about parenthood, that you can explain to them their parenthood without having a real problem presented?

A. Well, I hope by that time I will have been married, my second son Jason will have a father and in that case I see no reason to bring out in the open that Jason had no father. In the case I do not remarry, I take my children to church regularly, I also have a class of toddlers that I care for during the church service and I think, with the proper background and love that they will understand and be able to accept it.

Q. You don't have a single member of your family or anyone else that you can turn to to help you with these children, other than the Clarks. Do you?

A. Well, I've got my family.

Q. Your father is dead and your mother is dead. Isn't that right?

Com. Hear. page 204 } A. Well, true but I had been living with my aunt and uncle, but I haven't needed that much help. I wouldn't need the help of the Clarks now.

True, they have me over there for dinner and everything but I can manage by myself. I don't need to go over there but I do because I like them and I am trying to encourage the relationship between the grandparents and the grandchild and I just think that they are very nice people.

Q. Mrs. Clark, you haven't given much thought to the welfare of the child, have you, as time goes on. You haven't really thought about the problems being presented, have you?

A. Well, I have realized that there will be problems.

Mr. Higginbotham: All right. That's all.

The Commissioner: Do you have any more questions?

Mr. Hancock: Just one or two.

RE-DIRECT EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, I understood you to respond to Mr. Higgin-

botham that you never did discuss with Eleanor Clark a man named Ray Praeter or whatever his name is.

A. Praeter or something like that.

Q. Praeter.

A. Yes.

Com. Hear. page 205 } Q. Is this correct?

A. Yes.

Q. In other words, is it your statement that you never did discuss this man with her?

A. No. Just recently she informed me that William Clark had gone over to see this Jim England and that Jim England —

Q. You mean your husband?

A. Yes. —and that Jim England had given him a list of individuals that could be named and Ray Praeter was on the list.

Q. Have you ever stated to Eleanor Clark that you ever had anything to do with Ray Praeter or whatever his name is?

A. The only thing I told her was that at one time she and I were attending a party at which he was in attendance and it was right across from the apartments where he lived and he and I had always gotten along well together and we talked mostly about Kevin because he was interested in small children. He had several nephews and he said he was very proud of them.

He invited me over for some coffee which we did have and that is all that happened.

Q. Now Mrs. Clark, I want to ask you this again. Is it your testimony that the only man you have ever had anything to do with from a physical standpoint is this man England with the exception of your husband, since you've been married?

Com. Hear. page 206 } A. Yes, that is right.

Q. And that you saw this man a number of times between July and October of 1964, England?

A. Yes.

Q. And you have not seen him since that time. Is that correct?

A. Well, in December of that year Ellie called to invite me over for dinner and she said that Jim England and his roommate were going to be there so I went over there for dinner and then I left shortly afterwards by myself and went home.

Kay Eunice Clark

Q. Have you ever had anything to do with this man since then?
A. No.
Q. All right. Now I understood you to say that you take Kevin to church on Sundays. Is this correct?
A. Yes.
Q. And that you had a class of—how did you describe it, toddlers?
A. The toddlers.
Q. You mean little children?
A. Yes.

Com. Hear. page 207

Q. That you care for during the course of that time—during the church period?
A. Yes. There is a list of women with young children and the members of the church are responsible for getting them to take care of the children. They contacted me, asked me if I would be willing to take care of them during the church service and I said yes, I would, so I do it. It is not every Sunday. It is on a regular basis about every five weeks.
Q. Mrs. Clark, you are talking about, in terms of, a possible remarriage. Do I understand that you have no plans for that at this time, Mrs. Clark?
A. No, I do not.
Q. Are you too, saying that you would like a normal happy, husband and wife relationship if this is possible?
A. Yes.

Mr. Hancock: All right. No further questions.

RE-CROSS EXAMINATION

By Mr. S. Page Higginbotham:
Q. Do you testify that Jim had made up a list of men who had been with you?
A. That is what Ellie told me.

Mr. Higginbotham: That's all.

* * * * *

Com. Hear. page 208

The Commissioner: How close do you live to the Clarks?
The Witness: I would say it is about a ten minute drive.

The Commissioner: Do you plan on staying in that area for some time?

The Witness: Yes. As I say, I have just recently acquired a new job and I think I would like very much to stay within that area.

The Commissioner: And without repeating all of the testimony, the boy visits frequently at their house, there is a back and forth relationship there?

The Witness: Yes.

The Commissioner: Does Jason go over there too?

The Witness: Well, when I go over there, yes.

The Commissioner: All right. That is all I have.

(Witness excused.)

Whereupon

GAIL COTTER a witness, was called for examination by counsel in behalf of the defendant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Com. Hear. page 209

By Mr. Hancock:

Q. Would you state your full name, please?

A. Gail Cotter.

Q. Mrs. Cotter, are you in any way related to the defendant and cross complainant, Mrs. Kay Eunice Clark?

A. A sister.

Q. And do you also know her husband, William Sinclair Clark?

A. Yes.

Q. How long have you known him, approximately?

A. Well, as long as they've been married.

Q. And do you know where your sister is living at the present time?

A. Yes, I do.

Q. And how long, approximately, has she been living there?

A. A year in July.

Mr. Higginbotham: Your Honor, is there any contest about those things?

The Commissioner: Let him go ahead. I think we will move along quicker. If you have an objection, go ahead and

make it but he has a right to develop his case any way he wants.

Mr. Hancock: I'll try to be brief.

May we go off the record for just a second?

The Commissioner: Certainly.

Com.
Hear. (Discussion off the record.)

page 210 } By Mr. Hancock:

Q. Since your sister moved to her present residence a year ago, this month did you say?

A. This month, yes.

Q. Have you had occasion to go there and visit with her?

A. Yes.

Q. How often would you say that has been, Mrs. Cotter?

A. Well, I go there about once a month and she comes to see me.

Q. And where do you live?

A. In Rockville.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. Four years.

Q. And have you had occasion to observe the physical makeup in which she lives, in her home?

A. Yes.

Q. Would you describe that to the Commissioner, please?

A. Her apartment?

Q. Yes.

Com.
Hear. A. Well, a furnished living room, a dining area, kitchen, two bedrooms, and a bath.

page 211 } Q. And on the occasions that you have been there have you had occasion to see your sister with one or both of her children?

A. Yes.

Q. Can you describe the relationship as you have observed it between them, please?

A. It has always been very happy.

Q. Would you describe the place where she lives as being clean and neat and wholesome?

A. It is always clean and of course it has got toys, a lot of toys around. With kids you've always going to have toys.

Q. Do you consider your sister to be a fit and proper person to have the care and custody of these children?

A. Yes.

Mr. Hancock: That's all.

The Commissioner: Well, as long as this lady came all the way from Rockville to testify I think that you ought to go ahead and ask her, or question her on the two year period.

By Mr. Hancock:

Q. Mrs. Cotter, you have stated that your sister has resided in her present residence in Fairfax County for one year. Is this correct?

Com. Hear. page 212 }

A. Uh-huh. Correct.

Q. Where was she living prior to that time?

A. With her in-laws.

Q. Would that be Mr. and Mrs. Clark?

A. Mr. and Mrs. Clark.

Q. And was that in their home also in Fairfax County?

A. Yes, that's right.

Q. How long was she there?

A. Oh—

Q. Approximately.

A. About two years. I've really lost track of time.

Q. Well, did she stay there for approximately a month after having returned from the State of New York?

A. Oh, yes.

The Commissioner: Well, let me ask her this.

To your knowledge, for how long a period have Mr. and Mrs. Clark lived separate and apart without any cohabitation.

The Witness: I didn't hear the last part. In a separate apartment, did you say?

The Commissioner: Separate and apart, without any cohabitation.

The Witness: Is that what you mean, at her present apartment? One year.

Com. Hear. page 213 }

Mr. Hancock: She is confused, Your Honor.

The Commissioner: Do you know when Mrs. Clark returned to this area?

The Witness: It was in August of '63. My years, I get my years confused.

The Commissioner: Well, let me see if I can shorten this again.

Do you know for how long they have been living separate and apart without living as married people live?

The Witness: Well, at least two years.

Gail Cotter

The Commissioner: From what date to what date?

The Witness: It was in the year '63. I can't remember whether it was the spring or the fall, though.

The Commissioner: Do you feel you would know if they had cohabited within that period of time?

The Witness: I wouldn't have known because I was living in another state at the time.

The Commissioner: Well, I think that is all on that as far as I am concerned unless you have some questions. If you have anything further, this record is being built up.

CROSS EXAMINATION

By Mr. S. Page Higginbotham:

Q. You say you are Mrs. Cater?

A. Cotter.

Com. Hear. page 214 } Q. C-o- (spelling).

A. C-o-t-t-e-r (spelling).

Q. How many brothers and sisters do you have?

A. I have one brother and two sisters.

Q. Your sister there never went to church until she came here and lived with the Clarks, did she?

A. Yes, she went to church.

Q. Is she a member of the church?

A. I believe she was. I'm not sure. I think she was a member of our Baptist Church.

Mr. Higginbotham: I have no further questions.

The Commissioner: Do you have anything else to ask this lady?

Mr. Hancock: No, sir.

The Commissioner: How many times have you seen her with the children over the past two years?

The Witness: The past two years?

The Commissioner: Yes. Well, the past year, one child is young.

The Witness: Yes. 25, 30.

The Commissioner: Do you have children of your own?

The Witness: No.

The Commissioner: Do both of the children appear to be normal, healthy children?

Com. Hear. page 215 } The Witness: They sure do.

The Commissioner: I think that is all the questions.

Mr. Hancock: Could I ask her this.

RE-DIRECT EXAMINATION

By Mr. Hancock:

Q. Mrs. Cotter, do you also know Mr. and Mrs. Clark, Sr., the parents of Mr. William Clark?

A. Yes.

Q. Have you had occasion to visit your sister there while she was visting at their home?

A. Yes.

Q. And was their relationship between—scratch that. Were both children living with her there?

A. Let me see.

Q. About a year ago, did you go there at that time?

A. Not when she was living—no, not with the two children.

Q. Just the one.

A. Just the one, yes.

Q. Well, on occasions when you have been there when she had Kevin there with her did the relationship then between she and the child and the Clarks appear to be normal and happy?

A. Yes.

Com.
Hear. Mr. Hancock: All right. That's all.

* * * * *

page 4 }

* * * * *

Whereupon

KAY EUNICE CLARK the defendant, was called for examination by counsel for the complainant as an adverse witness, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Page Higginbotham:

Q. Mrs. Clark, when did you first meet James England?

Kay Eunice Clark

A. I believe the first time I met him was in the latter part of July or sometime in August.

Q. Did you meet him at a party?

A. Yes.

Q. Was he married?

A. No.

Q. When did you first become interested in him?

1/31/67 page 5 } A. Oh, I guess around the first of October. I'm sorry—September.

Q. Where did you see him enough to become interested in him?

A. I only met him at these parties, while attending these parties.

Q. How often would you see him at these parties?

A. Well, it would depend on when Ellie and I went. Sometimes we went twice a week, sometimes we would only go once a week.

Q. When was the first time you left the party and went out alone with him?

A. I don't remember the exact date but it would be in September.

Q. Where did you go the first time you went alone with him?

A. He brought me home.

Q. He brought you home?

A. Yes.

Q. And nothing happened that time?

A. No.

Q. Well, how did Ellie get home?

A. She had a friend of hers bring her home. Sometimes she had her car so that she would just drive her own car home.

1/31/67 page 6 } Q. Were you interested in Jimmy for the purpose of marrying him?

A. No.

Q. That was not a motivating cause of your going with him?

A. No.

Q. When was the next time that you were alone with Mr. England?

Mr. Hancock: Your Honor, may it please the Court, I would like to make an objection at this point. I realize Your Honor has given both parties an opportunity to present testimony and evidence today with respect to this particular phase of this case.

The proof shows, of course, that act or acts of adultery were committed. Mrs. Clark, of course, has admitted that herself.

If this testimony is being offered to show that her acts in some way influenced or affected the child, I think it might be important but the details of where she went, how this act or acts were committed and so forth, I don't feel would help Your Honor particularly in deciding the issues in this case and for that reason I feel it is immaterial and
1/31/67 irrelevant and would offer an objection to it.
page 7 } The Court: Objection overruled.

By Mr. Page Higginbotham:

Q. Now Mrs. Clark, I will try to be brief.

The next time you were alone with him, did he take you home and is that all he did?

A. Well, I should say that during the time when I would attend these parties, Ellie and I, Ellie was dating a roommate of his and she and I both liked to play bridge and Jim and his roommate did so quite often. After the parties we would go over there to play bridge and of course during those times nothing happened and I really can't remember the next time.

There were several times when we attended these parties he brought me straight home.

Q. But several times you went over to his apartment to play bridge?

A. Yes.

Q. Did anyone else also occupy the apartment besides Mr. England?

A. Well, his roommate at that time Ellie dated. He also had another roommate.

Q. When was the first time you went to the apart-
1/31/67 ment alone with Mr. England?
page 8 } A. Well, again, I don't know the exact date but it would be September.

Q. Well, just approximately.

Is that first time you went alone to the apartment, is that the first time you had sexual relations with him?

A. No.

Q. And you left the party at that time and went to his apartment?

A. Yes.

Q. When was the time that you had your first sexual relations with him, Mrs. Clark?

A. Well, I am sure it was in September. It had to be in September.

Q. And you say love was not involved?

A. Well, there was a deep infatuation at the time.

Q. Well, now, on this occasion when this first act of sexual relationship took place, did he drive you there to the apartment?

A. Yes, sir.

Q. What time did you get there?

A. Well, I think—the parties usually broke up around midnight or something like that and so we left at that time and judging, just depending on where the party was held, that is the time it would take to get from the party to the apartment.

1/31/67 page 9

Q. And when you go there, did you undress?

A. Yes.

Q. Did he in anyway force himself upon you?

A. Only to the amount—most men are usually a little aggressive.

Q. Did he undress?

A. Yes.

Mr. Hancock: Your Honor, I would object to this. I just can't possibly see—

The Court: Objection sustained.

Mr. Page Higginbotham: Your Honor, for the record, we would like to note our exception.

By Mr. Page Higginbotham:

Q. Was this in his bed?

Mr. Hancock: Objection.

The Court: I doubt that this much detail is necessary. For that reason, I'll sustain the objection.

Mr. Page Higginbotham: Your Honor, would you permit us to note our exception?

1/31/67 The Court: Yes.

page 10 By Mr. Page Higginbotham:

Q. Could I ask how long you stayed in bed with him?

Mr. Hancock: Objection.

The Court: Objection sustained.

Mr. Page Higginbotham: Your Honor, we would note our exception to the Court's ruling.

By Mr. Page Higginbotham:

Q. Could I ask how long did you stay at the apartment that night?

A. I wouldn't say over two hours. It could have been longer but I really don't know.

Q. Did he use any precaution to keep you from getting pregnant?

Mr. Hancock: Objection.

The Court: Objection overruled.

The Witness: No.

By Mr. Page Higginbotham:

Q. Did you realize that you might become pregnant?

A. Well, yes, I did.

Q. Then you must have gotten home around two or three o'clock in the morning?

A. I judge somewhere around there.

1/31/67 page 11 } Q. Now Mrs. Clark, without going into too much detail, did the second act take place in his apartment?

A. Yes.

Q. How long after the first act?

A. Perhaps two weeks, I think.

Q. Did you date him in between?

A. Well, I still saw him at these parties and he would call me on the telephone during the week.

Q. You didn't ever really date him; did you?

A. Well, no, not a date as such.

Q. He never came to the house and picked you up?

A. No, but he would bring me home.

Q. Would you always wait until the party was over?

A. Yes, because it wasn't any planned thing that we would do.

Q. And the second time, did you all go to bed together?

A. Yes.

Q. And did you stay in his apartment about two hours?

A. I would say so.

Q. And on the second occasion, did you get pregnant or do you know when you got pregnant?

A. It was the latter part of September.

Kay Eunice Clark

Q. Mrs. Clark, did you object to Mr. England having relations with you without using anything to prevent you from becoming pregnant?

1/31/67 page 12 } A. Well, I didn't voice my objection at the time.

Q. Did you discuss with him what would be done in case you did get pregnant?

A. No, I didn't.

Q. Now coming to the same situation with reference to the third act of sexual relationship, did that take place in his apartment?

A. Yes.

Q. How long after the second act?

A. Well, that would have been in October. It could have been the next week or the following week. I really don't know.

Q. Well, did substantially the same thing happen the third time that happened the first two times?

A. Yes.

Q. And how about the last time?

A. Yes.

Q. The same thing happened?

A. Well, no. That took place in the car. I drove my car to the party and I was coming home and I left the party and he said he wanted to talk to me. So he followed me out to the car and I told him at that time that I didn't see any reason to continue the relationship and several times—well, I won't say several times—he had mentioned once before that he wanted, you know, to settle down, and he kept questioning me as to my marital status, how it was progressing and things like that, so that is what he wanted to discuss the fourth time.

1/31/67 page 13 }

Q. And while you were parked, he had sexual *realtions* with you?

A. Yes.

Q. Did you tell him you were a married woman and had a child?

A. Well, he knew that.

Q. When did he get married, Mrs. Clark?

A. In September of '65.

Q. In September of '65?

A. Yes.

Q. The same year?

A. Yes, I think that is right.

Q. The same year you were having sexual relations with him?

A. No. This was in '64 when I had sexual relations with him.

Q. When did you first know you were pregnant?

1/31/67 A. Well I had a good idea the last of October.

page 14 } Q. You also became friendly with Ray Praeter?

A. No, sir, I did not. I stated that before. I have never had any sexual relations with anyone other than James England.

Q. You knew Ray Praeter?

A. Yes, I met quite a few of Ellie's friends at these parties.

Q. And I believe Ellie asked you if this was Ray Praeter's child; didn't she?

A. No, she did not.

Q. You didn't discuss that over the telephone?

A. When she called me on the telephone, she asked me if I knew whose child it was and my response was that there could be only one individual and she said, "Jimmy England", and I said, "Yes."

Q. And did she ask you about Ray Praeter and did you say that that was after the fact?

A. No, I did not. She must have misunderstood me.

Q. You left the party one time with Bouvet; didn't you?

A. Yes, we went outside on the patio.

Q. You were gone about two hours?

1/31/67 A. I don't know how long we were gone.

page 15 } CROSS EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, during the months of September and October 1964 when you were seeing Mr. England, where were you living?

A. In the home of my in-laws, Mr. and Mrs. Clark?

Q. Who else was living in that home at that time?

A. Eleanor Clark.

Q. Eleanor Clark?

A. Yes.

Q. And was your son, Kevin, living there with you at the time?

A. Yes.

Q. Who introduced you to these parties to which you have referred?

A. My sister-in-law, Eleanor—

Mr. Page Higginbotham: She has already answered that, Your Honor, in the depositions.

The Court: Objection sustained.

By Mr. Hancock:

Q. Where was Kevin at the time you were at these parties with Ellie?

1/31/67 page 16 } A. He was under the care of my mother-in-law.

Q. Mrs. Clark, Sr.?

A. Yes.

Q. Have you ever had Kevin around this fellow, Jim England?

A. He did see Kevin one night. I can't really remember the circumstances but Ellie, as I say, was dating his roommate and I can't remember if they came to pick us up to go to a party or perhaps they just brought us home. I think that was it and they came in the house.

Q. Into Mrs. Clark's home?

A. Yes, and of course it was early and Kevin was there and my in-laws.

Q. And was that the extent of any association, if that is the proper word, between Mr. England and your son?

A. Yes.

Q. Since October 1964, have you ever seen or had anything to do with Mr. England since that time?

A. No.

Q. The Bouvet who I assume Mr. Higginbotham was referring to, the information he asked you about your being with him on an occasion for two hours, where was this?

1/31/67 page 17 } A. He and several roommates rented a house out in Maryland and they gave a large, sort of a house warming party and this is where I met him.

Q. What did you do out on the patio with Mr. Bouvet?

A. Well, he told me about his personal problems. He was going through a divorce and he told me about his little three-year old girl and I talked about Kevin.

Q. Did you do anything more than have a conversation with him?

A. No.

Mr. Hancock: No further questions.

Kay Eunice Clark

RE-DIRECT EXAMINATION

By Mr. Page Higginbotham:

Q. Mrs. Clark, I believe you stated you went to Mr. England's apartment. Now had you been living by yourself, Mr. England would have visited you in your apartment, wouldn't he?

Mr. Hancock: I would object to this. This is pure conjecture.

The Court: Sustained.

By Mr. Page Higginbotham:

Q. May I ask it this way: would you have invited him to visit you at your apartment?

Mr. Hancock: I object to that too, Your Honor.
1/31/67 I think he is just asking indirectly what he can't
page 18 } ask directly.

The Court: Objection overruled.

The Witness: Please restate the question.

By Mr. Higginbotham:

Q. Had you had an apartment rather than living with the Clarks, would you not have invited Mr. England to visit you at your apartment?

A. I really can't say for certain because it was only due to the circumstances that I went to his apartment. If I had my own apartment, I probably would have had my own transportation and would come home by myself.

I really can't give you a definite yes or no.

Mr. Page Higginbotham: Nothing further, Your Honor.

The Court: Since the hearing before the Commissioner on July 21 of last year, has there been any change in your situation at home, I mean in your apartment? Are you still working?

The Witness: Yes, I am.

The Court: What hours?

The Witness: I changed jobs and I work from 8:30 until 5:00 now. That is the Institute for Defense Analysis, located in North Arlington.

1/31/67 The Court: And what arrangements are pres-
page 19 } ently being made to take care of Kevin and his half brother?

The Witness: They are still under the care of Mrs. Charlotte Raush. She lives four doors down from my in-laws and they are very good friends.

The Court: What arrangements are you making regarding —are they there when you get home?

The Witness: You mean in my house?

The Court: Yes.

The Witness: Not in my home. I pick them up from the babysitter's house.

The Court: What is the health of the children?

The Witness: Excellent.

The Court: Does counsel have any questions along this line?

Mr. Hancock: Your Honor, I am frank to admit that I had planned to bring out this same information on direct examination. Perhaps in the interest of time, I have one or two questions I would like to ask Mrs. Clark somewhat in line with this.

The Court: All right. Basically on what, if anything, has transpired since the July hearing before the Commissioner.

1/31/67 Mr. Hancock: That is correct, Your Honor.

page 20 } RE-CROSS EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, would you tell the Court whether or not Mr. Clark has been to see the child or exercised his visitation with the child since that time or right around that time?

A. You mean since July?

Q. No, since we were—yes, since we were here in July for that matter.

A. Well, he has been down no more than twice a month. I think more often once a month. He has seen him several hours each visit and this month in particular, he has only seen him one hour and that was when he came down on the 12th before our January 13th hearing.

Q. You mean the evening before the last hearing, he saw the child for about an hour?

A. Yes.

Q. Has he been to see him since that time?

A. No.

Q. Has he given you any money since that time for the child's support?

A. Not for this month; no.

1/31/67 page 21 } Q. When you say this month, you mean January and February?

A. January.

Mr. Hancock: No further questions.

RE-DIRECT EXAMINATION

By Mr. Page Higginbotham:

Q. Mrs. Clark, you went to a party since the last hearing with the Commissioner and left these two children alone in the apartment; didn't you?

A. You mean the New Year's Eve party?

Q. I don't know which party it was. I am asking you if on one occasion you didn't leave the children home alone in the apartment and went to a party?

A. Well, my neighbor downstairs in the same apartment building, she invited me down along with the other residents of the unit to come down, you know, to celebrate a little bit and I went down between 10:30 and 11:00. The boys are in bed by 8:30 and I was home between 1:00 and 1:30 and I came up several times to check on the boys to make sure that they were covered and that they were sleeping.

Q. Now the child is real fond of Mr. Clark, isn't he?

A. Which Mr. Clark do you mean?

Q. Your husband?

1/31/67 page 22 } A. That is a very difficult question to answer because Kevin never says to me, "I want to see Daddy;" I always have to prompt him. Whenever his father is coming down, I say to Kevin, "Do you know who is coming down?" And of course he doesn't know and I say, "Your Daddy is coming," and of course he gets excited but actually I believe he prefers his grandfather because he sees him all the time.

Q. But the child is always happy after he sees his father; isn't he?

A. Kevin is a very happy child. I have never known him to be unhappy.

Q. And Mr. Clark, your husband, has never visited the child in your apartment?

A. That's right.

Q. The only time he has seen the child is at his father's, at the child's grandfather's home?

A. Right.

Q. And when he sees him there, you don't always know; do you?
A. I believe so; I do.
Q. All right.

1/31/67 Mr. Page Higginbotham: That's all.

page 23 } RE-CROSS EXAMINATION

By Mr. Hancock:
Q. Mrs. Clark, you still maintain a cordial and friendly relationship with Mr. and Mrs. Clark, Sr.?
A. Yes.
Q. Do I understand from the Court's question about your job that your hours are in the sense of the word better now than they were even before when we had the hearing?
A. Yes.
Q. Does this give you more of an opportunity to spend time with Kevin?
A. Yes. The boys are under my care by 5:30 most of the time.

Mr. Hancock: No further questions.
The Court: You may step down.

1/31/67 (Witness excused.)

page 24 } Whereupon

MARY E. CLARK a witness, was called for examination by counsel for the complainant, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Page Higginbotham:
Q. Mrs. Clark, state your name, please.
A. Mary E. Clark.
Q. You, as the mother of Mr. Clark, have already testified in this cause, have you not?
A. Yes, sir.
Q. Mrs. Clark, what is the relationship between Kevin and his father?
A. Well, I think he's very fond of his father.

Mr. Hancock: Excuse me, it seems to me that this is certainly repetition. These questions were asked at the time of the hearing.

The Court: That is true with all of this, but it's a little hard for me to get much sense of the credibility of the witnesses from the cold transcript, and it will be all right with me if it's not too repetitious if you want to bring
1/31/67 out some additional testimony.
page 25 } The only reason I say that, Mr. Hancock, is that it's very unusual for a Commissioner to pass on this sort of a question.

I'll overrule your objection, although I concede it was asked before the Commissioner.

Mr. Hancock: Thank you, sir.

By Mr. Page Higginbotham:

Q. Since the last Commissioner's hearing, or, rather, since the Commissioner's hearing, what has been the situation between Mr. Clark and Kevin?

A. Well, when they're together, they seem to have a real good time. Kevin is getting older now, and enjoying the kind of thing a boy likes with his father.

When Kevin comes in the house and his daddy is there, or vice versa, he really runs across the room and leaps up on him. "Daddy, daddy, daddy," he calls him.

Q. Mrs. Clark, have you in the last few months noticed any change in Mrs. Clark as to her nature, dress, attitude, and so on?

A. Well, I feel as though she's shortened her dresses, and made up a little bit more than she used to. That's just my personal opinion.
1/31/67 Q. Anything with reference to the tightness of
page 26 } her clothes?
A. Some of them are pretty tight.

Mr. Hancock: If the Court please, this seems to get to the point of ridiculousness, as far as I'm concerned.

Mr. Page Higginbotham: Your Honor, we object on part of counsel. I think if he has some objection, he ought not to characterize it. He may think it's ridiculous. I certainly didn't ask it to be ridiculous. If I'm wrong, I stand to be corrected by the Court without characterization by Mr. Hancock.

Mr. Hancock: Your Honor, in representation of my client, I feel that I'm entitled to state my thoughts within, I trust,

good discretion. I don't mean to offend anybody, but that is exactly what I do think this type of question borders upon.

After all, with all due respect to Mrs. Clark and Mr. Higginbotham, I don't know whether Mrs. Clark is an expert in the fashion field or not, but perhaps some of us just dress a little more poorly than others. But again, I don't see how this is going to help Your Honor decide this case, whether perhaps she has a skirt that may be too small or too tight for her.

1/31/67 The Court: Objection overruled.

page 27 } Mr. Page Higginbotham: Your Honor, give me just a second to confer.

By Mr. Page Higginbotham:

Q. Mrs. Clark, do you know anything about the time Mrs. Clark picks up the children from the babysitter in the afternoon?

A. About the time?

Q. Yes.

A. Not unless she happens to stop in the house on her way home.

Q. Well, is it always at 5:30?

A. Well, no, but then she doesn't stop in real often.

Q. Is it late on occasions? That's what I'm getting at.

A. Yes, but she really doesn't stop in very often.

Q. Mrs. Clark, I believe you have testified to this. Is your situation still the same, that is, if the custody of the child is submitted to Mr. Clark, are you willing until he can get set up, to help look after the child?

A. Yes. Yes, I am.

Mr. Page Higginbotham: You may cross ex-
1/31/67 amine.

page 28 } CROSS EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, in relation to Mr. Higginbotham's last question to you, can I assume from your answer that he is not set up to take care of the child, if the Court awarded him custody?

A. Well, I don't know what you mean.

Q. Well, if he is set up to take care of the child at this time, why would it be necessary for you to do so until he was so prepared?

A. Well, I don't think usually a man is able to handle a three year old child by himself.

Mr. Hancock: Thank you.
The Court: You may step down.

(Witness excused.)

Whereupon

JOHN DOUGLAS CLARK a witness, was called for examination by counsel for the complainant, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Page Higginbotham:
1/31/67 page 29 } Q. Mr. Clark, state your name, please, sir.
A. John Douglas Clark.
Q. And you are the father of the complainant in this hearing?
A. Yes, sir.
Q. Just two questions, Mr. Clark.
One; do you know how Mr. Clark regards his child, and if so, state how he does regard him?

Mr. Hancock: Your Honor, I feel that that question, how Mr. Clark regards his child, it seems to me he's asking for information which would be solely within the knowledge of his son.
The Court: Well, I think you will have to testify as to what he observes, or what is apparent to him.
Mr. Page Higginbotham: Yes.

By Mr. Page Higginbotham:
Q. What have you observed concerning the relationship between Mr. Clark and the child. I'll just ask you one question.
A. Whenever Bill comes down home, he always asks ahead of time if we could have Kevin over there so he could see him, and when he comes in, why, Kevin's eyes light up and he always says, "Hello, daddy," and I notice Bill re-
1/31/67 page 30 } sponds to the reaction. His eyes light up, and it's just a regular, natural, father and son relationship.

And I notice when I have him over there with me, when he gets tired, why, he always says, "Take me home, granddaddy," but he doesn't when Bill is there.

Mr. Page Higginbotham: All right, sir. Answer Mr. Hancock's questions.

CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Clark, on the occasions when you're talking about, is when your son comes over from Baltimore, is that correct?

A. That is correct.

Q. Is he still working in Baltimore?

A. He's still working in Baltimore.

Q. Is he still living in Baltimore?

A. Yes, he's still living there.

Q. And is it correct as far as you're concerned, that he gets over maybe once or twice a month?

A. Sometimes it's once or twice, and sometimes it's more.

Q. Is it correct that the last time he was over, is when we were here on the 13th?

1/31/67 page 31 } A. The 13th?

Q. Yes, the time when we were here in Court, this past occasion?

A. Yes, I believe that is true, yes.

Mr. Hancock: No further questions.

The Court: Step down.

(Witness excused.)

Whereupon

WILLIAM SINCLAIR CLARK the complainant, called for examination by counsel on behalf of the complainant, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Page Higginbotham:

Q. All right, Mr. Clark. You are William Sinclair Clark, the plaintiff in this suit?

A. Yes, sir.

William Sinclair Clark

Q. Mr. Clark, state to the Court, the relationship between you and Kevin, and how you regard him.

A. Well, he is my son, and of course I regard him very highly. I'm extremely fond of him. I love him, and I want the best for him.

Q. Is there any reason why you haven't visited your son in the mother's home?

1/31/67 page 32 } A. Yes, sir, there is a very good reason. I think it might be a little too confusing to him if I visited him in that situation, or that setting.

Q. Now how does the son regard you? Is he old enough to know you?

A. Yes, sir, he knows me.

Q. Can you tell whether he loves you and is fond of you?

A. Well, I of course think so. He's given me no indication that he isn't.

Q. Is he happy and contented when he's with you?

A. Yes, sir, as much as any three year old child is. He is bored. I have to keep active and think of things to do to keep him from getting bored, but he is happy, yes, sir.

Q. When he's with you, does he want to leave you and go back to his mother?

A. I've never had that indication. He sometimes gets tired, and many times it's in the evenings after work and he gets tired, and he wants to go to bed.

Q. Mr. Clark, a point has been made about your not having arranged for the care of this child. What do you have to say as to that?

1/31/67 page 33 } A. I'm sorry, sir.

Q. If the custody should be granted, you haven't set up the program for the child yet, and if so, why haven't you?

A. Program?

Q. Yes.

A. Well, first of all I didn't know when judgement would be made. As far as setting up a program, yes. I think for the present for him to stay with my parents. They've agreed to keep him and continue with the same babysitter, and not change his setting drastically. Temporarily it's my plan, and then when he gets older, I shall make arrangements to care for him myself.

Q. Now Mr. Clark, have you given any consideration to changing jobs so that you'd be closer to the child, and if so, state what consideration you have given.

A. Yes, sir. I am very much in the middle of changing jobs. My mother typed up new resumes for me, and I am now preparing cover letters, and I would like to get down into this area primarily to be closer to Kevin.

Q. Are there jobs here that you can perform?

A. Yes, sir.

Q. Engineering jobs, is that what you are?

A. Engineering computer applications.

1/31/67 page 34 Q. Mr. Clark, have you been able to observe anything as to the intelligence of this child, as to whether he's bright, whether or not he's the type child that may take college training?

Have you gotten any insight into the child along that line?

A. Of course I am biased. I think he's a very bright child, very responsive, and very mechanical minded. The folks have to, when he's there, they almost have to guard everything. They have to keep an eye on him or he'll take everything apart, and as a three year old, this is a little unusual, and my plans are to make sure that he does get a college education.

The Court: Does that conclude your examination?

CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Clark, as far as your hopes and aspirations of Kevin are concerned, whether his custody is with you or his mother, you would still plan to try to get him a college education, would you not?

A. Yes, sir.

1/31/67 page 35 Q. As I understand your testimony, it is the same as it was back at the time of the hearing. What you want the Court to do is to take the child and turn him over to your parents, isn't that correct?

A. Turn him over to my parents? No, sir.

Q. Well, to this extent, you want to leave—

A. I would like custody, and my parents would care for him the majority of the time, temporarily, until I could adjust my situation.

Q. Now on page 136 of the transcript, you stated, "This would, of course, be a temporary arrangement, that as my folks are a little old, if I do remarry, naturally I would take this into account and if it was the choice of my spouse." Does that mean that if you remarry, you would leave it up to her to decide whether the child came with you or not?

A. That would be decided before I ever married.
Q. You mean between you and your spouse, is that correct?
A. Yes. She would have to agree.
Q. You do not have any arrangements to take the child at this time, yourself, is that correct?
A. Myself, personally?
Q. Yes.
A. No, sir. My parents are prepared.

1/31/67 page 36 } Mr. Hancock: May it please the Court at this point, Your Honor, if it is permissible to do so, I would like to, in substance, call Mr. Clark as my own witness, relative to information about his income, the purpose being for the Court to make a determination with respect to the child's support.

It may be a little presumptuous at this point, Your Honor, prior to Your Honor's ruling, but I feel that it is a part of this.

The Court: It's a part of it, but I think we had better get the custody matter disposed of, then if—then with that disposed of, if it becomes necessary, well perhaps the support maintenance could be agreed upon. If it can't, and it is still an issue, we will hold a hearing.

Mr. Hancock: All right, sir. I have no further questions at this time.

RE-DIRECT EXAMINATION

By Mr. Page Higginbotham:

Q. Mr. Clark, if for some reason the Court awarded you the custody of the child, and was not in agreement that the child should stay temporarily with your parents, would you be willing to make other arrangements?
A. I would make other arrangements.

1/31/67 page 37 } Q. Would you be willing to make whatever arrangements the Court would suggest?
A. Yes, sir.

Mr. Page Higginbotham: That's all.

The Court: Does Kevin presently spend the weekend with your parents, or just Saturday, or just Sunday, or what?

The Witness: I think it's—it's nothing, there's no definite schedule planned.

The Court: What has the practice been?

William Sinclair Clark

The Witness: Possibly parts of each day, but overnight, not too often. Possibly parts of Saturday and maybe all day Sunday.

The Court: And overnight on occasion?

The Witness: On occasion.

The Court: And approximately how often, if you know?

The Witness: I would estimate once a month, or once every other month.

The Court: Do they try to keep him overnight when they know you are coming down from Baltimore? Is that the practice, or is that just chance?

The Witness: No, sir, just chance; usually it's when Kay has some arrangements, as I understand, to keep
1/31/67 him as a convenience for her, but when I'm there
page 38 } he very seldom spends the night.

The Court: Do you ever make the request that he spend the night when you know ahead of time that you are coming?

The Witness: No, sir.

The Court: You do?

The Witness: No, sir.

The Court: You don't.

Mr. Higginbotham asked you if you'd be willing to abide by any suggestion the Court made regarding your arrangements for the care of Kevin if you are awarded custody. In absence of some suggestion by the Court though, would it be your plan to leave him with your mother and father temporarily?

The Witness: Yes, sir.

The Court: And how long would you anticipate that to be?

The Witness: Until I could relocate in this area, and find an alternate situation. Certainly, when I did that, he would be spending weekends with me, and of course when I remarry, then he'll come and live with me.

The Court: Is your remarriage imminent?

The Witness: No, sir.

1/31/67 I'd like to clear this up.
page 39 } The Court: Is it waiting some decision on the custody of Kevin?

The Witness: No, sir. I haven't any prospects at the present time.

The Court: But until you did remarry, you would leave Kevin with Mr. and Mrs. Clark, your mother and father?

The Witness: Unless I found a situation, which, as I say, close by, where I would have an opportunity to take care of

him myself. Either a housekeeper or a convenient babysitter, and of course he would still spend a lot of time with the folks.

The Court: Well, if you are awarded custody, is it your plan to actively seek employment in this area, if necessary, to leave your present position?

The Witness: I'm going to leave my present position regardless. I am trying to locate, primarily, in this area.

The Court: Without regard to what the outcome of this hearing might be?

The Witness: Yes, sir.

The Court: You are determined, or I mean have made up your mind to leave your present employment?

The Witness: Yes.

1/31/67 page 40 } The Court: I have no further questions, unless counsel has.

Mr. Hancock: Yes, I'd like to ask him one or two, Your Honor.

RE-CROSS EXAMINATION

By Mr. Hancock:

Q. Mr. Clark, with respect to your prospects of marriage, do you still go with Sherri Olsen?

A. No, sir.

Q. You do not?

A. No, sir.

Q. When did you stop going with her?

A. September.

Q. Now don't you know, Mr. Clark, that Kevin has spent only two, or possibly three nights with your mother and dad since 1965, or since, yes, 1965?

A. I thought it was more.

Mr. Hancock: No further questions.

Mr. Page Higginbotham: I don't have any further questions.

The Court: You may step down.

(Witness excused.)

1/31/67 page 41 } Mr. Hancock: Your Honor, I would like to ask Mrs. Clark in rebuttal, really, one question. It may be that I can ask her from the counsel table, if it's permissible.

The Court: Let me see if Mr. Higginbotham has any more evidence.

Mr. Page Higginbotham: That's all the evidence we have, Your Honor.

The Court: All right.

REBUTTAL

Whereupon

KAY EUNICE CLARK the defendant, was recalled for examination by counsel for the defendant, and, after having been previously sworn, was examined further and testified as follows:

DIRECT EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, would you tell the Court how many nights Kevin has spent with Mr. and Mrs. Clark, Sr., since June of 1965?

A. Well, no more than three, and those times it was because I had been invited to bridal showers for some of the girls in the firm, the law firm where I work, and since I thought that I'd be getting home possibly around 10:30 or 11:00, I thought it best, and I asked them if they would like Kevin to stay over that night and they of course said yes. They're always willing to have Kevin with them whenever possible.

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Mr. Hancock: That's all, Your Honor.

CROSS EXAMINATION

By Mr. Page Higginbotham:

Q. Where did Jason stay on those occasions?

A. Well, I have a babysitter for him. He stayed over at the babysitter's where he stayed during the day.

Q. You chose to separate them?

A. Well, it wasn't my choice. It was a courtesy to the grandparents to have him that evening if they wished.

Mr. Page Higginbotham: All right.

Your Honor, would you permit me to ask her one more question?

The Court: Yes.

By Mr. Page Higginbotham:

Q. Mrs. Clark, you are planning to change apartments, aren't you?

A. Well, I was thinking of moving to the Americana Fairfax Apartments which are located a block down from where I now live.

Q. And is the babysitter going to continue to work for you?

1/31/67 page 43 } A. No. She said now that her second to the youngest child has entered nursery school, she would like me to find someone else.

Q. Do you know whether or not she's going back to babysitter in case Mr. Clark gets custody of the child?

A. Well, I don't know. I've never brought the subject up to her.

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Mr. Hancock: Your Honor, if in this case the Court by any reason would give custody of this child to Mr. Clark, I daresay the Court would have to do just what Mr. Higginbotham says, and that is trust in Mr. Clark's judge-

1/31/67 page 45 } ment, because he has not offered one scintilla of evidence in this case to indicate that he has any arrangements to even take custody of this child.

Now if I may be somewhat repetitive, I'm sure, in my argument, Mrs. Clark has admitted to the Court her indiscretions. The penalty which she must pay for that is to be denied, or at least let's say denied a divorce, and Mr. Clark entitled to one on the grounds that she committed adultery. In addition to that, Your Honor, we have to assume that this denies her the right to any support from Mr. Clark, but is her indiscretion sufficient to penalize the child involved in this case?

Now when Mr. Higginbotham talks about the law, we all know that the law in this state is, that in the case of any children, unless it can be proven or shown that it is detri-

mental to the child's best interest, to leave it with the mother. As contrasted with the common law, the mother is the natural custodian of the child.

There is no evidence in this realm to indicate that Kevin's situation has been, and certainly so far as the infant is concerned, will continue to be wholesome and pleasant, and in his best interest. Now is the Court under those circumstances going to take this child and remove him from the care, love, and affection of his mother and place it, at Mr. Clark's request, in the hands of his mother and father?

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Now, I know Mr. Clark, and I have had the pleasure of meeting Mrs. Clark, Sr. I am satisfied that they are like any other grandparents, that they would come forth beyond the call of duty, and do anything in the world for their grandson, but I ask the Court in all seriousness, is it really fair to them, at their age, to saddle them, if that is the proper term, with the responsibility that Mr. Clark would normally have to bear but he's not really even asking for. He wants something on paper in his name that says that he has custody of his child, but he then wants to leave it with his mother and father until he either finds other work in this area, or until he gets married.

When Your Honor asked him how much of a temporary arrangement this will be, he never has answered the Court. The only thing he has stated is that "when I get relocated, I expect, or when I get married, I expect to make some arrangement for him."

Your Honor, taking all of these facts into consideration, there is no evidence before the Court that Mrs. Clark is anything but a good mother, and to repeat myself at the other hearing, what better testimony could she have than the very people that Mr. Clark is asking to put the child with in the first place, his mother and father. They, above all people, have had more of an opportunity to observe her, her relationship with the child, and her care of the child. And in this record both of them have testified of her interest in the child, her love of the child, and her care of the child.

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Your Honor, I think from the evidence, the Court could conclude that to take Kevin out of his present circumstances, and to change it, even though it may not be completely drastic because certainly he knows his grandmother and his grandfather, but the fact is that it would not, in my opinion, be justified under the evidence, and for that reason I would ask the Court to award custody of the child to his mother, where it should be according to the evidence in this case and the law.

* * * * *

1/31/67
page 50 } The Court: The marks, if you will, against the defendant, Mrs. Clark, are these four acts of indiscretion, which, unfortunately, resulted in this illegitimate child. In all other respects she appears to be from the evidence, despite some suggestions to the contrary, I cannot conclude that she's anything but, a fit mother.

Both Kevin and his half-brother appear to be well cared for, happy children, so the real issue as pointed out by Mr. Higginbotham, is whether the presence of his illegitimate half-brother in the house is sufficient to compel a finding that it is not in his best interest to remain with his mother, who is otherwise a fit and proper person.

The uncertainty of the father's position and circumstances, and readiness to take the child make the choice, although a very difficult one, really between the mother, the natural mother, and the grandparents, since at this time he is unable for one reason or another to decide just what he's going to be able to do for Kevin. He will work, naturally. He will, for the time being, work at a distance from here so that he will do no more, really, than visit with the child
1/31/67 with the grandparents as he is presently doing.
page 51 } It isn't fair, I don't think, or right, or to the child's best interest, which is the most important thing, to have them raised by their grandparents, and they are quite young, and certainly for the time being, if it becomes necessary later, it can be changed, but for the time being, there is no question in my mind, but that Kevin's best interest require that he remain with his mother, and therefore, I will award custody to her, of Kevin.

If it appears later that the presence of this illegitimate child, and Mrs. Clark doesn't remarry and have her new husband adopt this child, if the presence of him as he becomes older and Kevin becomes older, creates a situation that's detrimental to Kevin's best interest, the matter can be reconsidered, but I feel at this time that Kevin's best interests require that he remain with his mother, and I will enter a decree to that effect.

* * * * *

1/31/67
page 52 } The Court: Well, I wonder, so you will have a final appealable decree, if I ought not proceed now to fix the support?

Mr. Page Higginbotham: Yes, sir.

The Court: And I don't know to what extent counsel has explored settlement of this issue, and I don't want, Mr. Higginbotham, for you to be in the position of exploring settlement if you feel it would waive your position on appeal, but certainly *pendente lite* which would include the appeal period, the child will remain with his mother, and there will have to be some support for that period.

Is it worthwhile for you to explore the support matter, even if Mr. Hancock would consider it as permanent, and Mr. Higginbotham consider it *pendente lite?*

The case isn't final of course, until the appeal is disposed of.

Mr. Hancock: I would be most happy to discuss it with counsel for the plaintiff if Your Honor would permit us to do so.

The Court: I didn't know whether it had been explored at all in view of the positions of the parties on the custody question.

1/31/67 page 53 } Mr. Hancock. Not to any great extent, Your Honor. I wonder if I might inquire at this point, Your Honor. I took the liberty of preparing two decrees in accordance with the Commissioner's reports. I might state that both of those would award custody to Mrs. Clark. One however, would grant the divorce to Mr. Clark on the grounds of adultery; the other would grant it to him as recommended by the Commissioner, on the grounds of desertion. However, I think the evidence is clear that the parties had not resided together for a period in excess of two years, Your Honor, so I think the divorce certainly could be granted for that matter to either party on those grounds, if the Court is so disposed.

The Court: Well, certainly there has been a determination of fault on the part of Mrs. Clark. I don't know what Mr. Higginbotham's position on the matter, in view of the determination of fault, whether he cares what ground it's on, but in my own view it would serve no useful purpose to have a finding of adultery, provided there is—I mean a divorce granted on that ground, unless the evidence supports that ground as well as desertion, as well as two year's separation.

Mr. Hancock: That's my understanding.

1/31/67 page 54 } Mr. Page Higginbotham: Your Honor, this suit was originally brought on the grounds of adultery, and we think the relief that Mr. Clark's entitled to at the time the divorce was brought is what the divorce ought to be granted on.

The Court: Has there been any amendment to the pleadings?

Mr. Page Higginbotham: There has been an amendment to the pleadings, but the fact that the Court—this proceeding was so slow as to allow the two years to run, it shouldn't take away from Mr. Clark, his right to have a divorce on the grounds of adultery.

The Court: Well, I believe if the evidence supports either ground, I believe the complainant would be entitled to take it on the ground he wanted it on.

Mr. Hancock: Your Honor, the first occasion where this did arise, I might say, was in a matter in Alexandria. It was right after the three year statute was passed, and I must admit that Judge Sinclair in that case, where there was clear evidence of adultery and clear evidence of a three year separation, that the Court did feel that equitable principle did apply, and the party, let's say from a married standpoint, the least at fault was entitled to relief on the more serious grounds if that's the case, if I make myself clear.

1/31/67
page 55 } The Court: You mean he granted a divorce on ground of adultery?

Mr. Hancock: Yes.

The Court: I think when the evidence supports, I think the complainant is entitled to pick his ground.

Mr. Hancock: I might say in that case the Court also awarded the custody of the children to the mother.

The Court: Well, that is the issue in the case, and I will grant the divorce on the ground of adultery to Mr. Clark. I will, however, award custody for the reasons I've outlined to Mrs. Clark, and I will fix support if you gentlemen want to produce evidence on that subject.

Mr. Hancock: Excuse me, may I ask Mr. Higginbotham, Your Honor, whether he feels it would serve any purpose for us, perhaps, to take a five or ten minute recess to discuss that for this purpose.

Mr. Page Higginbotham: Yes, sir.

The Court: All right, we'll take a five minute recess.

1/31/67 (Brief recess.)

page 56 } Mr. Hancock: Your Honor, I regret to say the negotiations were unsuccessful, and I would ask the Court to hear evidence and set the support.

The Court: All right. Call the first witness.

Kay Eunice Clark

Whereupon

KAY EUNICE CLARK the defendant, was recalled for examination by counsel for the defendant, and, after having been previously sworn, was examined further and testified as follows:

DIRECT EXAMINATION

By Mr. Hancock:

Q. Mrs. Clark, are you employed?

A. Yes.

Q. Where do you work?

A. I work for the Institute For Defense Analysis in Arlington.

Q. Is that a government agency?

A. It's a non-profit organization which deals in contracts with the Department of Defense.

Q. How often do you get paid?

A. Twice a month.

Q. And what is your net, or bring-home, pay?

1/31/67 A. Well, I get $200.02 per pay check.

page 57 } Q. $282.

The Court: $200?

The Witness: Yes.

By Mr. Hancock:

Q. $200 net, is that what you said?

A. You mean my take home pay?

Q. Right.

A. Yes.

Q. So you actually have at hand about $400 a month, is that correct?

A. Yes.

Q. Mrs. Clark, I believe at the time of the hearing in this case, you submitted to the Court through the Commissioner a list of your monthly expenses, is that correct?

A. Yes, sir.

Mr. Hancock: Your Honor, may I look at the file briefly?

By Mr. Hancock:

Q. Mrs. Clark, directing your attention to Defendant's Exhibit No. 1 dated July 21, 1966, I ask you whether or not this is a list that you submitted at that time?

A. Yes, I would say it is.

Mr. Hancock: May I refer the Court to the original of this list. I believe you gentlemen have a copy of that, do you not?

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Mr. Page Higginbotham: Do you have an extra copy?

Mr. Hancock: I'm sorry, I don't think that I do.

By Mr. Hancock:

Q. Mrs. Clark, would you look at this copy and tell the Court whether or not this is a true and accurate copy of the original, which is in the Court file?

A. Yes.

Q. Would you take that list, please, and delete from it any items listed therein that may be applicable only to yourself, please, and recite what they are for the record. Would you like a pencil?

A. Yes.

Q. To begin with, is your rental still $136.50 a month?

A. Yes, it is.

Q. Is your child care still the same?

A. Yes.

Q. Would you tell the Court whether or not that represents child care for one or both children?

A. That's for both.

Q. And what arrangements do you have with the babysitter from a financial standpoint?

1/31/67 page 59

A. Well, the understanding that she would charge $20 per week for the first child, and two additional dollars for the second child.

Q. $20 for the first child, and two additional dollars per week for the second child?

A. Yes.

Q. Do you actually pay her two additional dollars, I mean $22 a week, is that what it is?

A. Yes.

Q. Well, then technically, is this for Kevin, the $80?

A. Yes, that is.

Q. And the food. How many people does that include?

A. Three.

Q. All of you?

A. Yes.

Q. Can I assume that it would be somewhat less, certainly, for just Kevin. Is that correct?

A. Yes.
Q. Do you know how much less?
A. It's hard to say, really.
Q. I realize that.
Well, would it be fair to state that it would probably not be a third of this amount?
1/31/67 page 60 } A. I don't think so.
Q. Who is the milk for?
A. That's for both boys.
Q. Both boys?
A. Yes.
Q. And can I assume that it would be perhaps 50 per cent of this amount?
A. Yes.
Q. And the cosmetics, I assume they are for you alone?
A. That's just for me.
Q. And the newspaper would certainly be for yourself alone, is that correct?
A. Yes.
Q. And the clothing for the $10 a month?
A. Well, that's for the boys, when they need additional socks and clothing.
Q. You mean for both boys?
A. Well, no. This is primarily for Kevin, because Jason is getting the hand-me-downs, except for a few socks and things he needs for himself.
Q. And you have shoes listed for Kevin of $10 and $5, is that correct?
A. Yes. $10 would be for his good shoes, which are Buster Brown, and they usually run around $10 a pair.
1/31/67 page 61 } Q. And shoes for yourself would certainly come out of this?
A. Right.
Q. The dry cleaning, do the children have any of that, or I should say Kevin. Does Kevin have any clothes which requires dry cleaning?
A. Occasionally, some of his better dress pants and a coat.
Q. And Kevin is at an age where he requires haircuts, is that correct?
A. Yes.
Q. And the automobile payment is yours, but do you use this car to transport Kevin?
A. Yes.

Q. And the gasoline then is used in the car, is that correct?
A. Yes.
Q. The insurance is $7. Who is that for?
A. Well, the insurance, that's for the car, accident.
Q. Automobile insurance?
A. Right.
Q. And the $10 for repair maintenance on the vehicle?

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A. Yes.
Q. Mrs. Clark, I understood you to previously testify that apparently it has been the habit of Mr. Clark to send you an amount of money each month that approximated $70 a month, is that right?
A. Yes.
Q. When is the last time that you received any funds from him for Kevin's support?
A. In December.

Mr. Page Higginbotham: We've already been over that, and we've got to have this record typed up, and it's no use to put anything in there unless it's absolutely necessary, and we object to his repetition.
The Court: Objection sustained.

By Mr. Hancock:
Q. How old is Kevin at this time?

Mr. Page Higginbotham: That's in the record, Your Honor.
The Court: Objection sustained.

By Mr. Hancock:
Q. Does Kevin attend any school at this time?
A. Well, I was thinking of putting him in nursery school for a few hours in the morning, but my mother-in-law suggested that I waited until fall when he would be four. He's three and a half now.

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Q. Do you know what that expense will be?
A. Well, if I move into the Americana Fairfax, they charge $48 a month for a morning or afternoon session.
Q. Based on the present circumstances, Mrs. Clark, what do you feel is a minimum figure that Mr. Clark should pay for Kevin's support at this time?
A. Well, just taking into consideration a third of the rent, of child care, it would be $125.
Q. $125 a month?

A. Yes.

Mr. Hancock: Thank you. That's all I have.

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Whereupon

WILLIAM SINCLAIR CLARK the complainant, was recalled for examination by counsel for the defendant, and, after having been previously sworn, was examined further and testified as follows:

DIRECT EXAMINATION

By Mr. Hancock:
Q. State your name, please.
A. William Sinclair Clark.
Q. Mr. Clark, are you employed at the present time?
A. Yes, sir.
1/31/67 Q. Where do you work?
page 65 } A. Hittman Associates, in Baltimore.
Q. You might want to spell it?
A. H-i-t-t-m-a-n.
Q. What is your position there?
A. I'm a computer engineer.
Q. How long have you been employed there?
A. Two years and one month.
Q. What is your gross annual salary?
A. Before everything—before taxes?
Q. Yes.
A. $10,800.
Q. $10,800?
A. Yes, sir.
Q. How often do you get paid?
A. Every two weeks.
Q. And what is your gross pay?
A. Take-home pay?
Q. No, gross pay before anything is deducted.

William Sinclair Clark

A. $416.
Q. $416.
A. Yes, sir.
Q. And what is your net pay?
1/31/67 A. $316.
page 66 } Q. What is deducted, or what does the $100 deduction represent? Other than say, federal income tax?
A. State income tax, city earnings tax, social security, insurance.
Q. Do you have any bonds or savings deducted from your salary?
A. No, sir.
Q. Is it correct that your monthly net income is approximately $632 a month?
A. Yes, sir.
Q. Mr. Hancock: No further questions.

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The Court: Well, I will award $25 per week for the support of Kevin. I will allow $200 fee to be applied to your fee, Mr. Hancock. I have taken into account that your client is working, and I am not undertaking, by fixing that amount, to say that is the value of your services, but that is all of your fee that I am requiring the complainant to pay in addition to the $75, and that can be paid in 60 to 90 days.

I will deny the request, which I assume is being made, for the defendant to pay a part of the cost in this proceeding.

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A Copy—Teste:

Howard G. Turner, Clerk.

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