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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE SUPREME COURT OF VIRGINIA

AT RICHMOND

740184

ANNA JEAN GAGLIANO, Appellant

v.

ANGELO VINCENT GAGLIANO, Appellee

APPELLEE'S APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

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ANNA JEAN GAGLIANO, PLAINTIFF

v.

ANGELO VINCENT GAGLIANO, DEFENDANT

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DATE: JUNE 29, 1973
9:00 a.m.

BEFORE: HON. RICHARD L. WILLIAMS, JUDGE

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**APPEARANCES:**

MRS. PHOEBE P. HALL
Counsel for Mrs. Gagliano

MR. GEORGE W. WARREN, IV
Counsel for Mrs. Gagliano

MR. W. H. C. VENABLE
Counsel for Mr. Gagliano

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1 THE COURT: Mrs. Hall, you have the
2 first move in this case.
3 MRS. HALL: What is the order you feel
4 these matters should be taken up in, Judge?
5 We would request that the motion to
6 reduce the arrearage to the judgment be taken up first.
7 Secondly, the motion to increase support.
8 Thirdly, the motion to suppress, to not
9 allow the defendant to go further until he has complied
10 with the Court order.
11 THE COURT: The motion to suppress, and
12 then the motion not to permit to go further? All right.
13 Fine.
14 What motions do you have, Mr. Venable?
15 MR. VENABLE: Your Honor, their basic
16 motion seems to be to enter an order either modifying the temporary
17 interlocutory order of this Court of May 10, 1971, and in
18 modifying it, it prospectively effectuates the intent behind that
19 order, which I assume would follow the arrearage motion.
20 THE COURT: The settlement agreement has
21 never been incorporated by reference to any decree, has it,
22 Mrs. Hall?
23 MRS. HALL: No, sir, it has not. The
24 plaintiff would object to its entry.

1 THE COURT: Until there is an agreement
2 by the parties that they want a settlement agreement
3 incorporated in the reference the Court has no authority
4 to incorporate them, do they?
5 MRS. HALL: That is our interpretation
6 of the law.
7 THE COURT: What is your position on
8 this, Mr. Venable?
9 MR. VENABLE: My position is there was
10 an agreement as evidenced by the figures that the Court --
11 especially in this case in view of Judge Young's letter
12 about the temporary support order. Now, that agreement
13 is very much before the Court because Judge Young, himself,
14 in the letters filed will indicate -- on Your Honor's
15 bench, he asked the parties to go ahead and draft the
16 $250.00 a month very temporary support order until such
17 time as they worked out their problems. There was an
18 agreement subsequently with the order, and the order and
19 the sketch order and everything else has been sent to
20 counsel on the other side. Assuming we got in that delay,
21 it would have gone out and would have been sent to the
22 Court in the --
23 THE COURT: In an agreement the Court
24 approves where it affects support money for an infant there

is no way that a court can do anything except have a form of adjudication in an infant's right. This is the infant, right?

MR. VENABLE: You are talking about the child support regardless of whatever order is entered. I feel that the Court has the opportunity to review the agreement of the parties and make an adjudication thereafter, that it is such that at any time to vary. The law is very clear that the Court is not bound by what the parties say as to the child support. I think the Court can be bound as to alimony.

THE COURT: Suppose you proceed to put on your evidence on the arrearage, Mrs. Hall.

MRS. HALL: Yes, sir, Your Honor. My law partner, George Warren, is here today as co-counsel with me, and he will be giving the direct examination.

THE COURT: That is perfectly agreeable with the Court. You can do it however you want to.

ANNA JEAN GAGLIANO, being first duly sworn, testified as follows:

NOTE: A document is shown to Mr. Venable.

1 MR. VENABLE: Might I ask for a delay.
2 This is the first time I have seen it. I would like to
3 review it if I could and see if I want to note an exception
4 and et cetera.
5 THE COURT: Now, specifically, limit
6 your evidence to the question of arrearage before you go
7 into your second motion for increase in support, Mr. Warren.
8 MR. WARREN: All right, sir.
9 THE COURT: I would think that the
10 question of arrearage should be a matter of counsel largely
11 agreeing on it unless it is going to be contested.
12 MR. VENABLE: It is very much contested.
13 THE COURT: All right, fine. We will
14 recess for five minutes while he looks that over.
15 If anybody has any more exhibits that
16 they intend to put in evidence, I am directing you to
17 exchange them right now so they can be looked over. We
18 will not have delays throughout the trial.
19 MR. WARREN: All right, sir.
20
21 NOTE: There followed a brief recess.
22
23
24

1 DIRECT EXAMINATION

2

3 BY MR. WARREN:

4

5 Q State your full name for the Court,
6 please, ma'am.
7 A Anna Jean Gagliano.
8 Q You are going to have to speak up.
9 What is your present address?
10 A Annville, Pennsylvania, Box 741,
11 Apartment 1.
12 Q Are you married to Angelo Vincent
13 Gagliano?
14 A Yes, sir.
15 Q Is he here today?
16 A Yes, sir.
17 Q Did you institute a suit for divorce
18 against him in this Court?
19 A Yes, sir.
20 Q Pursuant to the institution of that
21 suit, did you appear with your counsel here for a temporary
22 order for support?
23 A Yes, sir, I did.
24 Q All right.

1 MR. WARREN: If Your Honor please, I
2 have three things that are more convenient exhibits than
3 anything else. One of them is a letter from Judge Young
4 dated February 18, 1971, which there should be a copy in
5 your file for the Court. It would be easier --
6 THE COURT: That is February 1?
7 MR. WARREN: February 18, 1971. I
8 have the original one.
9 THE COURT: I have it here in front
10 of me.
11 MR. WARREN: I have also a courtesy
12 copy of a letter which was directed to Dr. Gagliano. A
13 courtesy copy was sent to Mrs. Hall. It is signed by Dr.
14 Gagliano's previous counsel of record, Mr. Owings. And I
15 would like to introduce that at this time. But if counsel
16 wants to stipulate that the letter was written -- I would
17 be glad to put Dr. Gagliano or Mrs. Hall on the stand to
18 identify the letter.
19 MR. VENABLE: I would like to know the
20 purpose of the letter so that I could comment on its
21 admissibility.
22 THE COURT: What is the relevancy?
23 What is the import of the letter?
24 MR. WARREN: The import of the letter is

1 about the order that is the subject of arrearages at this
2 time to Dr. Gagliano.
3 THE COURT: Well, how does it in any
4 way modify the order of March 10, 1971? Was that the first
5 order that was entered after the February 18th letter?
6 MR. WARREN: That is the only order on
7 that with regard to support and so forth that has been
8 entered in this cause.
9 THE COURT: That calls for $350.00 per
10 month.
11 MR. WARREN: It does, indeed.
12 THE COURT: Well, now, as far as the
13 Court is concerned there can't be any modification of a
14 Court order by an ex parte agreement. And later they
15 note an --
16 MR. WARREN: It is not intended as
17 modification. It simply confirms Dr. Gagliano's counsel's
18 understanding of the import of the order.
19 THE COURT: But the order speaks for
20 itself, doesn't it? How can you collaterally attack the
21 veracity of the Court order?
22 MR. WARREN: I am going to support it.
23 THE COURT: If I were you, I would
24 rely on the order itself. If tampering be done with it, it

1 should be a matter of the other side to worry about it, and
2 not you, Mr. Warren.
3 MR. WARREN: Mrs. Gagliano, did the
4 Court finally enter an order, in fact, requiring the payment
5 of your husband to you of temporary support monies?
6 MR. VENABLE: We can stipulate on
7 March 10th an order was entered for $350.00.
8 THE COURT: I have it right in front
9 of me, Mr. Warren.
10 BY MR. WARREN:
11 Q Mrs. Gagliano, since that time have you
12 kept a record for yourself of the payments you have
13 received?
14 A Yes, sir, I have.
15 Q You have in your hand a document which
16 says June 29, 1973 --
17 MR. VENABLE: To save the Court time,
18 the document as to payments received runs February of 1971,
19 through May, 18, 1973, and we are perfectly willing to
20 stipulate that is the money Dr. Gagliano has paid to Mrs.
21 Gagliano.
22 MR. WARREN: You are willing to stipulate?
23 MR. VENABLE: Stipulate 100% as to that
24 extent.

1 MR. WARREN: That the fashion the way
2 the payments are --
3 MR. VENABLE: The fashion of the payments,
4 we are willing to stipulate that. That is the amount of
5 money with one exception, Your Honor, I forgot that which
6 was August of 1971.
7 THE COURT: What is her testimony?
8 What gross figure does she attest has been paid during
9 this period of time, Mr. Warren?
10 MR. WARREN: Testified that she
11 received $1,900.00, that her son received $5,400.00, and
12 by our computations we suggest to the Court the total due
13 to June 19th of this year was $10,150.00.
14 THE COURT: According to my arithmetic
15 what you say was due is --
16 MR. WARREN: $10,150.00 through June
17 19th of this month.
18 THE COURT: And $7,300.00 has been
19 paid; is that correct?
20 MR. WARREN: There is no law to the
21 effect that payments made out of the indirect payment for
22 medical bills and stuff like that is not to be counted as
23 credit. We are prepared to brief that.
24 THE COURT: What payments have been

1 made according to Mrs. Gagliano's testimony pursuant to
2 the order?
3 MR. WARREN: Yes, sir, those are
4 reflected in this list of payments I intend to enter. I
5 ask the Court to accept as exhibit --
6 THE COURT: I accept it. What is the
7 dollar value of the payments that have been paid pursuant
8 to the order of 3-10-71? Give me that bald figure, if you
9 will.
10 MR. WARREN: Your Honor, he made
11 $1,900.00 worth of payments directly to Mrs. Gagliano.
12 THE COURT: What do you think for the
13 other side arguing the other $5,400.00 also be credited?
14 There is some doubt in my mind whether it should be. Was
15 that paid pursuant to the Court order?
16 MR. WARREN: I think that is up to Dr.
17 Gagliano. She is admitting her son received that sum.
18 MR. VENABLE: We in our stipulation
19 don't agree to the splitdown of the 19 and the 54.
20 THE COURT: Pass up the exhibit that
21 your client is using so I can mark it.
22 MR. WARREN: I believe the Court has
23 the original one of that, that June 29, 1973, at the top.
24 THE COURT: This has nothing to do with

1 that. This is the current living expense.

2 MR. WARREN: It looks very similar. You

3 have that.

4 THE COURT: I don't have it.

5 MR. WARREN: I beg your pardon. I

6 would like this to be marked as --

7 THE COURT: Plaintiff's Exhibit No. 1.

8 NOTE: Plaintiff's Exhibit No. 1 was

9 received in evidence and marked by the

10 Court.

11 THE COURT: All right, fine. Proceed.

12 MR. WARREN: I think with regard to

13 this single point of the establishment of arrearages I

14 have no further questions.

15 THE COURT: Fine. Mr. Venable, suppose

16 you do your cross-examination on this point now before you

17 proceed to the other.

18 MR. VENABLE: Certainly, sir.

19

20 CROSS-EXAMINATION

21

22 BY MR. VENABLE:

23

24 Q Mrs. Gagliano --

1 MR. VENABLE: Does the Court wish me
2 to use the podium?
3 THE COURT: It is your option.
4 BY MR. VENABLE:
5 Q In August of 1971, a check, or sometime
6 near then, a check from an apartment complex written to
7 Mr. Gagliano was received by you; is that correct? It was
8 sent to your address rather than to Mr. Gagliano?
9 A Yes, I received a check. It was the
10 deposit from the house we were renting. The lease was in
11 both our names, and I think that that check was made out in
12 both our names. It was a check of an $80.00 deposit
13 returned.
14 Q And as a result of the conversation
15 with Mr. Gagliano, you agreed to deposit that check in your
16 account and agreed to credit him to his account for that
17 check on the support; is that not so?
18 A He asked me to do it that way, yes.
19 Q In June of 1971, June 19th to be
20 specific, you signed a contract with your husband entitled
21 "Separation Agreement" dated June 19th; is that not
22 correct, ma'am?
23 A Yes, sir.
24 Q Which and among other things you and

1 Mr. Gagliano attempted to split up your property that you
2 may or may not have jointly, set the amount of money which
3 you considered at that time to be specific for the support
4 and maintenance and education of your child. In return, he
5 also agreed to pay the expenses of a college education? He
6 agreed to pay your attorney's $300.00, and you agreed to
7 divide proceeds of a family automobile and at that point you
8 fully discharged your husband of any further duties on your
9 husband to maintain and support you; is that not correct?
10 A That is correct.
11 Q You further agreed in that contract to
12 execute any and all documents, instruments, deeds, titles or
13 any other papers which may be necessary to effectuate the
14 terms of that agreement; is that not correct, ma'am?
15 A Yes, sir.
16 Q Now, February, March, April, and May you
17 have stated to the Court that Dr. Gagliano paid you $350.00
18 each and every month; is that correct?
19 A That is correct.
20 Q And that in June of 1971, he began
21 paying you $250.00 a month for the support of your child
22 and has so continued until today; is that not correct?
23 A He has sent checks of $250.00 to my
24 son, Andre Gagliano, at $250.00 a check except for August.

1 It was $150.00.

2 Q August was the month in which you

3 deposited the deposit return check from the real estate --

4 A Which he deducted from the child

5 support.

6 Q That was per your agreement?

7 A It was something I did. He requested

8 me to do it. I didn't -- what should I say, rebel. Yes,

9 I accepted it.

10 Q You acquiesced in it and accepted it;

11 is that correct?

12 A Yes.

13 Q And since June of 1971, the date you

14 signed the agreement with your husband, the contract, with

15 your husband, for the support of your child of the $250.00

16 a month until your husband filed to amend his Bill of

17 Complaint a month and a half ago, you have never complained

18 of the amount of money which you were receiving or requested

19 $350.00 a month; is that correct, Mrs. Gagliano?

20 A No, I have never complained.

21 Q After the automobile, Dr. Gagliano

22 went to Viet Nam, was drafted to go to Viet Nam --

23 MR. WARREN: I am sorry. Mrs. Gagliano

24 is the one who is supposed to be testifying, Judge, I think

1 it perfectly admissible to speed things up --

2 MR. VENABLE: I will change it.

3 MR. WARREN: She did not go to Viet

4 Nam.

5 THE COURT: He is refining the question.

6 BY MR. VENABLE:

7 Q Did Dr. Gagliano go to Viet Nam during

8 the first week of July of 1971 to the best of your knowledge?

9 A To the best of my knowledge, that is

10 what I was told.

11 Q You had an agreement with Dr. Gagliano

12 that he would pay half of the family automobile; is that

13 correct?

14 A That is correct.

15 Q And after the proceeds --

16 A $650.00. It was property. It was part

17 of our property settlement.

18 Q Part of this contract that you entered

19 into?

20 A Part of the property settlement.

21 Q The settlement, contract, whatever you

22 want to call this paper you signed on June 19th; is that

23 correct, that that was part of the agreement written up in

24 the agreement?

1 A Yes, but it was part of our property
2 settlement.
3 Q You accepted a note from Dr. Gagliano,
4 did you not?
5 A No, sir, I didn't. I never saw a note.
6 I had asked --
7 Q You have never seen the note?
8 A No, sir.
9 Q Did you know the existence of the note?
10 A Yes, I did know.
11 Q Have you ever made any formal demand --
12 A I have asked my husband to pay me the
13 money. When we separated I desperately needed the money.
14 I didn't have a car. It was the only family car we had.
15 He took it. I could never receive the money that he just
16 was not able to --
17 Q Were you aware --
18 A He just refused to pay.
19 Q Were you aware that Dr. Gagliano sent
20 to you through your attorneys a note which your attorney had
21 agreed upon instead of money, because he was financially
22 embarrassed, and that was the reason stated? Do you know
23 that that occurred?
24 A That may have occurred.

1 Q And you have received since making a
2 demand through your attorney within the past month and a
3 half $600.00, have you not?
4 A May 18th. A couple of weeks ago, after
5 two and a half years after I had asked for that money, I
6 have received $600.00 of the $650.00. Yes, sir.
7 Q Do you know where that note is today?
8 A No, sir, I can't answer that question.
9 Q Have you directed your attorneys not
10 to proceed with this case since June 19, 1971, for any
11 reason?
12 A No, I cannot remember that I have.
13 Q You have never directed your attorneys
14 to halt proceedings in this case at any time or for any
15 reason?
16 A I mentioned to my attorney that I did
17 want my car payments. I needed the money.
18 Q Did you direct your attorneys not to
19 proceed with this case until their fee had been paid at any
20 time since June 19, 1971?
21 A I am sorry, I did not understand your
22 question.
23 Q Have you directed your attorneys not to
24 proceed further with this case until they had been paid the

1 $300.00 awarded in your contract with Dr. Gagliano of
2 June 19th?
3 A I don't know. I can't answer that
4 question.
5 Q You don't remember ever so doing that?
6 Is that your answer?
7 A I can't answer that question.
8 Q Well, that is because you don't
9 remember?
10 A Because I don't remember.
11 Q Have you ever refused to take
12 depositions in this case and direct your attorneys not
13 to do so?
14 MR. WARREN: I object to this question.
15 She does not have to take depositions.
16 MR. VENABLE: We are not maintaining
17 she does, Your Honor.
18 MRS. HALL: A refusal assumes she is
19 required to do something.
20 MR. VENABLE: I will rephrase the
21 question.
22 BY MR. VENABLE:
23 Q Have you directed your attorneys that
24 you do not wish --

1 THE COURT: Mr. Venable, what is the
2 relevancy of this?
3 MR. VENABLE: It goes to the agreement.
4 The agreement of the temporary order and her actions which
5 would be indicative of her intent.
6 THE COURT: How does this approve or
7 disapprove the agreement? Maybe she is trying to leverage
8 now proceeding with the divorce and make life uncomfortable
9 for him. How does that prove or disprove of the existence
10 of the agreement if it is bona fide?
11 MR. VENABLE: It goes to the intent of
12 the agreement. It goes to her intent whether or not the
13 agreement is in full force and effect by the way she has
14 used the agreement and relied upon the agreement to show
15 her ratification of the agreement.
16 THE COURT: But his performance of the
17 agreement on minimum time and payment and her acceptance
18 of those payments is evidence of ratification of it, I
19 would take on a continuing basis.
20 MR. VENABLE: Yes, sir. It is not
21 that important of a question.
22 THE COURT: Does it say then in the
23 agreement that she agrees to proceed expeditiously with
24 getting her divorce? If she did, it would not be enforceable.

1 MR. VENABLE: I didn't think it would
2 be under a theory that it effectuates or encourages the
3 divorce. The law of the enforceability of the property
4 settlement contract which is -- whether it encourages a
5 divorce once the parties have proceeded into a divorce
6 and filed the proper papers. I think a search of the
7 records would fail to find support for any property in
8 that an agreement to go forward and prosecute one side or
9 the other of a divorce would not effectuate the divorce.
10 In the State of Virginia, therefore, it could be
11 enforceable. It is a minor point, one I don't think we
12 should belabor.
13 MRS. HALL: We would be perfectly
14 willing to stipulate for the record that Mrs. Gagliano
15 discussed with us the fact that her husband had not paid --
16 MR. VENABLE: I think if Mrs. Hall
17 wishes to testify she should withdraw from this case and
18 take the stand.
19 THE COURT: Listen to what the
20 stipulation might be. Maybe it will save an awful lot
21 of ground. Proceed.
22 MRS. HALL: We would stipulate that
23 Mrs. Gagliano discussed with us --
24 MR. VENABLE: Might I stop you for just

1 a moment and ask you whether or not this is going to be a
2 stipulation as to the intent and the purposes --
3 THE COURT: Until there is a tender of
4 a stipulation and we hear it, Mr. Venable, it is difficult
5 to decide whether you want to so stipulate or not. Why not
6 let us hear it and see what mileage we can get out of it?
7 MRS. HALL: Mrs. Gagliano asked us
8 not to proceed further with the divorce decree until our
9 attorney's fees were paid and until her husband paid her
10 for her share of the car, and that she asked that we not
11 proceed until her husband paid the share of the car.
12 After he called her up and stated that he would not abide
13 by that separation agreement and that, in fact, there was
14 no separation agreement. He threatened her life. We will
15 stipulate that.
16 THE COURT: Now, I doubt if that
17 stipulation is agreeable with you, Mr. Venable?
18 MR. VENABLE: No, sir, it is not.
19 THE COURT: Proceed with your examination.
20 The stipulation will not be received.
21 BY MR. VENABLE:
22 Q Mrs. Gagliano, you are a registered
23 nurse, are you not?
24 A Yes, sir, I am, sir.

1 Q You are now so professionally employed,
2 are you not?
3 A Yes, I am, sir.
4 Q And you were a registered nurse in
5 February -- January of 1971, were you not? You were a
6 registered nurse in January and February of 1971, were you
7 not?
8 A January and February? No, sir, I was
9 not.
10 Q You were a registered nurse in
11 February?
12 A In February I was not employed.
13 Q You were a registered nurse?
14 A I was a registered nurse.
15 Q You had been a registered nurse prior
16 to your marriage?
17 A Yes, I graduated in '58. I was married
18 in '63. I continued my nursing profession while my husband
19 was a student until the year of '69 when he finished medical
20 school. He had a salary and was interning. At that time
21 we had a small child, Andre.
22 Q You have been a registered nurse all
23 that time?
24 A At that time I was home with the child

1 for the year and a half before we separated.

2 Q When did you return to active nursing?

3 A I had to return to active nursing when

4 my husband deserted us and that was in March of 1971.

5 Q So in March, 1971, you were an active,

6 practicing registered nurse; is that correct?

7 A I went back to my profession.

8 THE COURT: Let us get some dates

9 straight. The divorce was filed on January 10, 1971. Was

10 this when the allegation of desertion occurred?

11 MRS. HALL: January 10th.

12 THE COURT: The divorce was filed

13 according to the information the Court filed the same day

14 that the separation took place; is that so?

15 MR. VENABLE: Yes.

16 THE COURT: According to filing in the

17 Court you returned to work then in March, Mrs. Gagliano?

18 THE WITNESS: It was in March, sir,

19 that I returned to work.

20 THE COURT: That would follow the

21 actual separation which occurred on January 10, 1971, some

22 two months?

23 THE WITNESS: Right.

24 THE COURT: All right, fine.

1 BY MR. VENABLE:

2 Q Dr. Gagliano paid you $350.00 in
3 February before the support order had been entered, had
4 he not, according to your list of payments?

5 A Yes, I believe so.

6 Q Dr. Gagliano was an intern at the time,
7 was he not?

8 A Yes, sir, he was interning.

9 Q And you reached that figure between
10 yourselves and lawyers at that point; is that correct?
11 It was an agreed upon figure between the two of you?

12 A What figure?

13 Q The $350.00 a month for February.

14 A That was a Court order.

15 Q The Court order was March 10th. You
16 testified also that he paid you $350.00 in February before
17 the Court ever entered an order in this case.

18 A Now, I did not receive money until there
19 was a Court order.

20 THE COURT: That has no relevancy as
21 far as the Court is concerned. Anything between the parties
22 prior to that will not be helpful to me. Just show what
23 occurred since the entry of the order.

24 MR. VENABLE: Judge Young entered into

1 a separation agreement that gave effecuation to an agreed
2 price of $350.00 as a temporary support order directing
3 the parties -- this was a very temporary support order
4 until they worked out their agreement.
5 The agreement was worked out on June 19.
6 Mrs. Gagliano has ratified this agreement, at that time,
7 and since that time, as a continuing course of conduct,
8 not only in receiving the monies, but also in her pushing
9 for attorney's fees and her pushing for the note and the
10 pushing for the payment on the car and any other thing that
11 may have come about as a result of the separation agreement.
12 Then my legal position I would develop
13 later as to the liability as to modify on a temporary
14 interlocutory order. For this point I think I have gone
15 as far as I need.
16 THE COURT: Let me ask the parties this.
17 Under the law nowadays there is no obligation on Dr. Gagliano
18 to pay their son a nickel after he gets to be 18. Under this
19 settlement he agreed to pay his college education and put
20 him through graduate work, which is worth a bare minimum of
21 $50,000 to your son, which he legally is not obligated to
22 do.
23 Now, have you all stopped and thought
24 what this means to the kid? He is the one who we are really

1 concerned about. Can't you be smart enough in the face of
2 these known facts to reach some agreement about this sort of
3 thing instead of leaving it to a court? Can't you work this
4 out yourselves?
5 MR. VENABLE: We are here on a contempt
6 citation.
7 THE COURT: Before I give you -- I
8 will declare a recess and give you a chance to do a little
9 talking.
10 Has he paid these legal fees assessed?
11 MR. VENABLE: Yes, sir.
12 THE COURT: Is there any squabble about
13 that?
14 MR. WARREN: He has, in fact, paid that
15 amount of legal fees.
16 MRS. HALL: I would like to say that
17 we indeed would be delighted to try and work out some kind
18 of agreement as to future payments. The issue before the
19 Court at the moment is arrearages.
20 THE COURT: I understand that. I would
21 think it would be helpful if we could dissolve that issue
22 before we approach the others. Let us get out of dead
23 center on that, Mr. Venable. I don't mind telling you in
24 a case that I recently had where something akin to this

1 came up had been a settlement agreement worked out and
2 never really incorporated into a decree and it modified the
3 arrangements of a court order, an outstanding court order.
4 MR. VENABLE: Temporary or permanent?
5 THE COURT: Temporary until it is
6 modified by the court order.
7 I don't hesitate to tell you right now,
8 even though your client has in good faith done what he
9 thought was right under that settlement agreement, that he
10 may be looking at an arrearage judgment of 2850. Take that
11 as a fact and get that albatross off your back.
12 MR. VENABLE: That is what I am trying
13 to do, Your Honor.
14 And has the Court definitely made up
15 its mind?
16 THE COURT: That was my impression.
17 Counsel make these side bet agreements, but when they come
18 back in I have to look at the law and --
19 MR. VENABLE: I might point out to
20 the Court this is a different situation, and for a variety
21 of reasons, than the normal situation.
22 The Judge in this case did something
23 that is very unusual. In reviewing divorce files he made
24 it very clear it was a very temporary order and directed

1 the parties to reach an agreement on the matter which the
2 parties did within a month or two of his direction.
3 Then everything was on the now complaining
4 party to go forward with what would have been a very simple
5 procedure to have submitted depositions taken and obtain a
6 decree.
7 All the cases in Virginia dealing with
8 the finality of a divorce decree in relation to support,
9 deal with final orders of the court and not interlocutory
10 orders, especially in interlocutory. Secondly, the inability
11 to go back, I believe, is clearly stated in final orders
12 generally as to children.
13 We are not trying to maintain -- I
14 don't think the other side is maintaining he has been in
15 arrears as to his child.
16 His wife, herself, agreed $250.00 is
17 what the child needed, which would leave $100.00 on the
18 alimony, which she has the right to contractually waive.
19 While the Court does not have power
20 unless ratified to incorporate a separation agreement
21 under the laws of contracts in Virginia, the separation
22 agreement, if ratified, is binding, and the parties can
23 contract out of alimony in this situation.
24 The finality of the Court order as to

1 the child if the Court wishes consider that in the light
2 of an interlocutory order to still be the law -- still
3 exist -- but the finality of a very temporary order has
4 been contracted out of by the party.
5 THE COURT: Each payment as it becomes
6 due is something that when you approach it in retrospect,
7 as I look at the law, before it concluded that you could
8 not, once it became to you payable, and there had never
9 been any modification to the Court order --
10 MR. VENABLE: As to the final order
11 the Court directed people to modify it.
12 THE COURT: A Court order is a Court
13 order until it actually is modified by a Court order.
14 MR. VENABLE: I understand that, sir.
15 What I am trying to say to that extent I fully agree with
16 the Court. What I am trying to say because of the nature
17 of the temporariness of the order because the Court directed
18 the parties to enter into an agreement to settle their
19 problems that the Court now has the ability to retroactively
20 modify the temporary order to be consistent with the intent
21 of the Judge who entered to make it temporary until the
22 parties got their agreement together.
23 THE COURT: I follow your position on
24 it. But getting back to the point that I was exploring --

1 assume that that is the worst that can happen to your
2 client is having arrearage of no more than that. Obviously,
3 there is because their bona fide disputes he owed that or
4 not, that is the most exposure -- can the parties with that --
5 MR. VENABLE: We would like to say that
6 our position to the Court and to the other side is not to
7 have arrearage and to live fully to the terms and agreement
8 of this contract. Dr. Gagliano wants to send his son to
9 college. He is willing to take on the legal obligations
10 himself to do so.
11 THE COURT: Fine. Now, the arrears
12 question is a simple matter.
13 If I am wrong in the law, it is just a
14 matter of my looking at the books for another hour to see
15 whether this modification ought to take place. That should
16 not be any major hangup one way or the other.
17 MR. VENABLE: Except for payments he
18 is still a resident --
19 THE COURT: But realistically, if I
20 tell you that, in my best judgment, this is the law you
21 can't conclude you could not get any relief from the
22 Court of Appeals, Dr. Gagliano for all times is hooked on
23 that figure. You know what it is, so there is no great
24 secret to it. It is not something that is going to be

1 dangling over his head the rest of his life.
2 That still leads us to how much
3 negotiating can you do to revitalize this agreement that
4 competent attorneys made in good faith.
5 MR. WARREN: May I speak to that for a
6 moment? It is so difficult when a case has been going on
7 as long as this one has been, a tremendous exchange of
8 correspondence between attorneys. Mr. Gagliano has
9 changed attorneys and a variety of circumstances, all of
10 which were very painful, including Dr. Gagliano, without
11 question transpired.
12 I can say that since my entry into
13 the case and my review and my discussions with Mrs.
14 Gagliano. She came down here yesterday.
15 Now, speaking as her counsel we
16 absolutely repudiate that agreement in its entirety,
17 period. We are glad to discuss, Your Honor, a new
18 agreement. We would be happy to if we felt it was in the
19 best interest of our client and Andre, as well. We are
20 cognizant of the responsibility to a child and the cost
21 of a college education.
22 Both parties here, I think, have put
23 evidence on.
24 The Court will be able to see that she

1 has good reason to believe a support agreement might not
2 be lived up to and what she can get from month to month
3 is ultimately a great deal better for Andre.
4 THE COURT: I understand your position
5 on the thing. I am going to recess for ten minutes to
6 give you a chance to talk.
7 Before I do, I want you to be able to
8 advise both of your clients either one of them feeding on
9 their hate of each other in this divorce will end when
10 they leave here today. This divorce is going to be pretty
11 well finalized. All you are talking about is money. So
12 bear that in mind and put some sense in your negotiations.
13
14 NOTE: The Court recessed for ten
15 minutes. After the recess the hearing
16 proceeded as follows:
17
18 THE COURT: Proceed, gentlemen.
19 MR. VENABLE: Your Honor, after
20 discussions with counsel we really did not even get into
21 the negotiation. I think the position is that we are
22 totally far apart. The motion before the Court at the
23 moment is the question of arrearages which is intimately
24 tied into the validity of the agreement. It is our position

1 as stated to the Court that if arrearages are to be found
2 the validity of that separation agreement have no legal
3 force and effect.
4 If it has legal force and effect, there
5 can be no arrearages. We believe that it has force and
6 effect because it was directed to be entered into by the
7 Court, or suggested by the Court.
8 THE COURT: Address yourself to the
9 effect of paragraph 8 of the settlement agreement.
10 MR. VENABLE: Paragraph 8?
11 THE COURT: Do your clients agree to
12 submit this agreement to the Court for confirmation and
13 ratification and approval?
14 MR. WARREN: If Your Honor please, this
15 is a court of equity. I don't know that -- I guess he is
16 supposed to take the position that she can by law have to
17 go through with this contract. There is a legion of cases --
18 some of them very recently -- that the parties cannot make
19 any kind of modification whatsoever of a court order. I
20 would be delighted to brief that point. I would be glad
21 to quote at any length if the Court might like to hear
22 it the Virginia Supreme Court decisions which address
23 themselves to that specific point.
24 It cannot be done regardless of anything

1 she may say in the contract. She cannot change that order.
2 I also have cases legion that say that
3 the Court is without any jurisdiction to make any decree to
4 include support and whatever. I have seen cases that show
5 not to make a pro to no entry cause terrible hardship and
6 be contrary to both parties, I would think.
7 THE COURT: It is your position then
8 that while this was done on the request of the Court order to
9 do it, it was negotiated in good faith by competent counsel
10 for both parties. Your client is now repudiating it.
11 Is that your position? Answer my
12 question. Is your client now disputing the fact this was
13 done under -- with the advice of counsel under direction
14 of the Court and seemingly entered in good faith? Your
15 client now wishes to repudiate this contract?
16 MR. WARREN: If Your Honor please, Mrs.
17 Hall was the counsel then, and she would like to respond to
18 that. We agree she does -- she wishes to repudiate it now.
19 We don't agree to any of the other qualifications as having
20 actually happened. She can illuminate. I am saying that
21 it was not --
22 THE COURT: Address yourself to my
23 question, Mrs. Hall.
24 MRS. HALL: Your Honor, if the Court

1 please, I believe that I was the only attorney who was
2 present at this hearing that the Court is talking about.
3 I know that Jerry Owings was counsel of record for the
4 defendant. The Court at that time in speaking about
5 working out the problems, the Court at that time stated
6 you are not getting a divorce. Judge Young stated this.
7 MR. VENABLE: If I might --
8 THE COURT: Don't bother to respond
9 to that.
10 Your client today despite being
11 excited does not remember and despite the fact it has
12 been seemingly accepted for two years now wishes to
13 repudiate the agreement of June 19, 1971. Is that what
14 you are telling the Court?
15 MRS. HALL: Your Honor, yes, we are,
16 and we are --
17 THE COURT: Bearing in mind the only
18 beneficiary of this agreement is her infant son?
19 MRS. HALL: Yes, sir. And we would
20 have evidence that would show that he has breached this
21 contract; that he has anticipatorily repudiated the contract.
22 He would not abide by this contract. He would not pay
23 those expenses.
24 THE COURT: I will proceed to hear

1 evidence on support money in this case. My suggestion to
2 counsel should have been seriously considered. You are
3 taking away from an infant what looks to be or could be
4 thousands of dollars.
5 MR. WARREN: If Your Honor please, we
6 discussed in good faith a stipulation agreement which we
7 felt we could advise our client to accept on behalf of her
8 infant son. Now --
9 THE COURT: Well, did you tell her
10 that her interest in her infant son and Dr. Gagliano's
11 are coextensive. It is a mutual problem. It is not her
12 feelings toward the son. It is what is good for the son.
13 MR. WARREN: Absolutely. The welfare
14 of the child is paramount.
15 THE COURT: There is no --
16 MR. WARREN: But, if Your Honor please,
17 a bird in hand is worth two in the bush. Mrs. Gagliano can
18 testify to a plan she is adopting considering her meager
19 total income of putting monthly payments aside in a fund
20 for her son's college education. She has no reason to
21 believe that 12 years hence Dr. Gagliano will be in
22 agreement with this provision of any stipulation agreement
23 or Court order.
24 The history of their relationship since

1 they were last here in the Court can be documented and can
2 be testified to by the party.
3 I think the Court might be constrained
4 to find that her position is reasonable under all the
5 circumstances. I know that if the Court were to order a
6 sum which reflects the needs of the child, the ability of
7 the father to pay, and the circumstances of the wife, that
8 the accrued benefit by the time the child is 18 might be
9 far beyond any stipulation agreement that says when he gets
10 to be 18 put him through.
11 Suppose when he gets to be 18 he has
12 a bad accident and cannot go to college? What if he has
13 brain damage? What good is that stipulation going to be
14 to him?
15 Now, Mrs. Gagliano has 12 more years
16 before Andre is 18. She has undertaken his care by herself.
17 I think that the Court needs to look at the entire picture.
18 We are perfectly willing to enter into
19 a stipulation agreement that we think is fair and would
20 involve substantially more payments of support money for
21 Andre. We are looking to Andre's welfare.
22 THE COURT: Fine. We will proceed to
23 put on your evidence.
24 Incidentally, since the defendant is

1 here today, any deficiency in that one deposition can be
2 rectified here on the spot.
3 Now, it may be that your corroborative
4 evidence is going to have to be retaken.
5 MR. VENABLE: We can take care of that.
6 THE COURT: You will be living
7 separate and apart when you leave here today. That will
8 not be suppressed, but I am sure somewhere you can find a
9 witness who can corroborate --
10 MR. VENABLE: We have a corroborative
11 witness here in town.
12 THE COURT: I will hear the evidence
13 today.
14 MR. VENABLE: He is at the hospital. He
15 may be in surgery, but there is no -- that phase of the
16 case will have finality as quickly as competent proof can
17 put before the Court.
18 THE COURT: All right. That narrows us
19 down to a motion to increase support, since there has been
20 repudiation of the agreement of June 19, 1971.
21 Proceed with your evidence.
22 MR. WARREN: I would like to call Dr.
23 Gagliano to the stand, please.
24

1 ANGELO VINCENT GAGLIANO, being first duly
2 sworn, testified as follows:
3
4 DIRECT EXAMINATION
5
6 BY MR. WARREN:
7
8 Q Would you state for the record, please,
9 your name and your address at present?
10 A Angelo Vincent Gagliano, M.D. I am a
11 resident anesthesiologist at the Massachusetts General
12 Hospital. I live at 90 Millway Street, Medway,
13 Massachusetts.
14 Q Do you own that house?
15 A Yes.
16 Q Would you describe your duties at the
17 hospital?
18 A Resident in anesthesia.
19 Q Could you state, please, what your
20 salary is there?
21 A $10,900.00 a year.
22 Q Excuse me?
23 A $10,900.00 a year.
24 Q All right, sir. Could you state when

1 you anticipate that you will finish your residency in
2 anesthesiology?
3 A Approximately 18 months.
4 Q Are you up for a salary review of any
5 kind?
6 A I will receive approximately $600 a
7 year at the next salary raise. I don't know when that will
8 be.
9 Q Within the next year?
10 A Probably, if Phase II does not cut
11 that off.
12 Q Doctor, when did you start your
13 residency in anesthesiology?
14 A In 1970. July of 1970.
15 Q All right, sir. Going backward when
16 did you graduate from medical school?
17 A June of 1969.
18 Q What other work did you do on the side,
19 please, sir?
20 A What other work do I do?
21 MR. VENABLE: I object to that. It is
22 a well established principle that any type of moonlighting
23 or overtime work is not relevant to any issue of support in
24 the State of Virginia.

1 THE COURT: What is your position on
2 that, Mr. Warren?
3 MR. WARREN: It is absolutely absurd.
4 His income from any source whatsoever bears on the question
5 of his ability to pay support.
6 THE COURT: Moonlighting is not required
7 under the law. If he has investment income and things, this
8 is income, but nobody requires mankind to handle two jobs
9 to handle support money.
10 MR. WARREN: I would suggest to the
11 Court that if he has a history of that, if that is a
12 standard way for a resident in anesthesiology to operate --
13 THE COURT: He is a doctor. Anything
14 he does as a doctor --
15 MR. WARREN: I am asking the Court --
16 THE COURT: All right, Mr. Warren. If it
17 will be shown that it is a transitory burden placed upon
18 people who become doctors that they do a lot of moonlighting,
19 I will let you develop it. If you think I am going to
20 require him to do this throughout his life, you are wrong.
21 Go ahead. You can go ahead if you think this is terribly
22 important to your case.
23 MR. WARREN: Well, the Court has, I
24 suppose, already indicated otherwise, but if I might be

1 permitted just simply --

2 THE COURT: Put it in the record.

3 MR. WARREN: All right, sir. I would

4 like to except to any ruling that Dr. Gagliano's income from

5 his practice of medicine in whatever source not be

6 computed in his estranged wife's and infant child -- I

7 might say, if Your Honor please, doctors, like other

8 professional persons, have a great deal of control over

9 their income.

10 If the Court were to take the position

11 that he could limit his income deliberately, I suppose he

12 could work an hour a week or something and live on $100 a

13 month. I should think --

14 MR. VENABLE: That is totally improper.

15 MR. WARREN: The doctor has a

16 professional opportunity to make an income from a variety

17 of sources. Now, probably every resident in his hospital

18 does other things besides live on that $10,900.00 a year

19 salary. I should think that should be rightfully included

20 in computing his obligations. I think that is different

21 from driving a bus eight hours a day and working nights in

22 a hamburger stand.

23 THE COURT: I have ruled. I am going

24 to let you put the evidence on, Mr. Warren. I don't

1 understand why it was necessary for you to editorialize it
2 as much as you did. You can proceed.
3 BY MR. WARREN:
4 Q What other work do you do other than as
5 a resident in anesthesiology?
6 A At the hospital, Massachusetts General
7 Hospital, I work approximately 80 hours a week. I don't
8 have very much time left over. On occasions I have,
9 contrary to the rules of the hospital, which state very
10 specifically that, "no unauthorized moonlighting will be
11 allowed," I have done it in order to be able to make my
12 payments.
13 Q All right, sir. Now, do you own any
14 income producing property, please, sir?
15 A No.
16 Q What about your residence?
17 A What about my residence?
18 Q Do you not rent part of that out?
19 A It is a one family house.
20 Q A one family house?
21 A Yes.
22 Q All right, sir. Now, I take it that
23 you have passed all the licensing requirements to practice
24 as an M.D.; is that not correct?

1 A Yes, I have.

2 MR. WARREN: Thank you. I don't have

3 any more of this witness.

4 MR. VENABLE: I have no cross-examination.

5 THE COURT: You may stand down, doctor.

6

7 MR. WARREN: I would like the witness

8 first to identify two wage and tax statements for 1972.

9 THE COURT: Mr. Warren, I am marking

10 your income and expense statements as exhibit No. 2 so it

11 will have identity.

12 MR. WARREN: Yes, sir.

13 THE COURT: Have they given you copies

14 of this?

15 MR. VENABLE: I presume June 29, 1973,

16 income and expense statement totalling $872, is that what

17 you are talking about? I have got it.

18 MR. WARREN: I have two other exhibits.

19 They are wage and tax statements. I believe I gave them to

20 you previously when we exchanged exhibits. One is from the

21 Good Samaritan Hospital. I would like that marked Plaintiff's

22 Exhibit No. 3. The other one is from the Pennsylvania State

23 University. I would like to have that marked as Plaintiff's

24 Exhibit No. 4, please.

1 THE COURT: So marked.

2

3 NOTE: Plaintiff's Exhibit No. 2,
4 Plaintiff's Exhibit No. 3 and Plaintiff's
5 Exhibit No. 4 were so marked by the Court
6 and received into evidence.

7

8 ANNA JEAN GAGLIANO, after being previously
9 sworn, testified as follows:

10

11 RE-DIRECT EXAMINATION

12

13 BY MR. WARREN:

14

15 Q Does those two wage and tax statements
16 reflect all of your income for the year 1972, please,
17 ma'am?
18 A Yes, they do.
19 Q I would like you to identify an earning
20 statement and ask if that reflects your present earnings,
21 your present employment? I believe I gave you a copy of
22 that, Mr. Venable?
23 MR. VENABLE: All right.
24 BY MR. WARREN:

1 Q Does that accurately show your present
2 regular pay and your net income and taxes and so forth?
3 A Yes, sir, it does.
4 MR. WARREN: Thank you, very much. I
5 would like to have this exhibit marked.
6 THE COURT: It will be marked Plaintiff's
7 Exhibit No. 5.
8
9 NOTE: Plaintiff's Exhibit No. 5 was
10 marked by the Court and received into
11 evidence.
12
13 BY MR. WARREN:
14 Q With reference to Plaintiff's Exhibit
15 No. 2 labeled, "Income and Expense Statement, June 29,
16 1973," do you have a copy of that in your possession, Mrs.
17 Gagliano?
18 A Yes, I do.
19 Q All right, ma'am. Is the amount of
20 income indicated therein true and correct to the best of
21 your knowledge and belief?
22 A Yes, sir, at the present time.
23 Q The itemized listing of expenses therein
24 are also true and correct to the best of your knowledge and

1 belief?

2 A Yes, sir, they are.

3 Q Now, could you explain with regard to

4 your circumstances surrounding your rental of your apartment,

5 please, ma'am?

6 A Yes, sir. At the present it is $130.00

7 a month for a two-bedroom apartment. My brother is the

8 landlord. Due to my financial situation -- when I moved

9 into Pennsylvania, he allowed me to rent at $130.00 a

10 month. This apartment usually rents for $155.00 to $160.00.

11 He has reduced the rent for me.

12 Q With regard to the babysitting expenses

13 is that monthly expenses of $125.00? Does that relate to

14 any babysitting expenses due to your working or if you go

15 out for an evening or take a vacation?

16 MR. VENABLE: If Your Honor please, I

17 would object to the leading form of the question. She is

18 perfectly capable of describing what she needs the money

19 for without being led.

20 THE COURT: Rephrase that question.

21 BY MR. WARREN:

22 Q Explain the babysitting expenses, ma'am.

23 A My babysitting expenses run about $125.00

24 a month. I pay $100.00 a month just for my working hours.

1 That is $100.00. Then for different classes I have to
2 attend to keep up with my medical profession, I do, you
3 know, go out. I have other babysitting costs for socializing,
4 if I go out in the evening, and so forth. It is about $125.00
5 a month.
6 Q Now, with regard to the $20.00 a month
7 expenses for uniform and shoes and hose, could you explain
8 how you arrived at that figure, please?
9 A Yes, sir. It would take me -- I
10 usually have about five uniforms. I buy five uniforms a
11 year and three pairs of shoes a year and hose, and so forth.
12 Q How much does it -- how much does a
13 uniform cost?
14 A On an average a uniform costs me
15 $20.00 to $22.00.
16 Q How much does a pair of shoes cost?
17 A A pair of shoes -- it would cost me
18 $20.00. The hose cost me $2.00 to $3.00, depending upon the
19 type.
20 Q What type do you wear?
21 A I wear special support hose.
22 Q Let us skip on down through the things
23 to the expense of operating a car. How far are you located
24 from where you work?

A I am located 20 miles from the medical center, which would be one way. I have a 40 mile drive roundtrip each day. This is just back and forth to work.

Q How many days a week do you work?

A Five days a week.

Q What shift are you on or schedule do you work?

A I have been working three o'clock in the afternoon to eleven o'clock at night. My son is in kindergarten. His schedule is from eight to eleven. The most convenient thing I felt and the best thing for the child would be for me to be there in the morning. I want to be there to see him go and to see him return. I decided to work the evening hours so that the babysitter would have him in the evening. It would be a more stable situation.

Q The last item is $40.00 educational fund for Andre's college. Explain to the Court what that is and how you go about that.

A Yes. My husband asked me or inferred that I would be responsible for my son's education. At the time he had his surgery in February I thought about it very seriously. I have started a fund. It is as much as I could possibly put aside for him. I do this every month. I do it. I am trying to put $20.00 out of each of my

1 paychecks, if possible. I want to start now so I can raise
2 a fund for his education.
3 Q You are paid how frequently? How
4 frequently are you paid?
5 A Every two weeks.
6 Q Now, in what month and in what year
7 did your son have his surgery?
8 A My son had his surgery -- it was March
9 21st. I think it was that time.
10 Q What year?
11 A It was just this past '73.
12 Q Did you have occasion to discuss this
13 purported contract with your husband?
14 A At that time?
15 Q Yes.
16 A Yes. He did visit when my son had his
17 surgery. At that time he told me that he thought, you
18 know, it was a two year period and our divorce would be
19 going through.
20 Q What did he say about the contract?
21 A Well, he seemed to think that the
22 contract did not exist. He asked me about setting up
23 Andre's --
24 Q Did he make any statement to you

1 categorically about the existence of any contract?
2 A Yes, he did. At one time he had never
3 known of a contract. This is when I asked for the $650.00
4 car payment. He never saw or had known of a contract.
5 Q All right. Tell us, now, what he did,
6 if anything, with regard to the provision for your son's
7 education that are contained in that contract?
8 A It said it would be my responsibility.
9 If I have custody of the child, it would be my responsibility.
10 Q Did he tell you he intended to live up
11 to those provisions or not? What did he tell you?
12 A He told me that I should --
13 THE COURT: Since it has been repudiated,
14 why is that relevant?
15 MR. WARREN: This education, an expense
16 of $40.00 a month, Judge --
17 THE COURT: There is no obligation on
18 either parent to educate a child. Why is that relevant?
19 There is no obligation on any parent after the child reaches
20 18 to educate a child past 18.
21 MR. WARREN: Surely, there is a moral
22 obligation. In making that expense -- it was not done
23 trivially.
24 THE COURT: Keep the case under proper

1 control. Address your evidence to the exhibits as opposed
2 to morality.
3 BY MR. WARREN:
4 Q Ma'am, I would like to ask you to state
5 to the Court what your plans are for the fall and what you
6 anticipate your income to be? Tell us why you have arrived
7 at those plans.
8 A My income should remain the same as it
9 has been stated. I do intend to -- I need to grow in my
10 profession, which means I need to go back to school. I
11 have always had the desire to go back and finish my degree.
12 I have 60 credits that I need yet for my degree in nursing.
13 I feel like I should accomplish this as I have to raise a
14 son.
15 Now, remaining at my level in nursing,
16 I don't think that I could do a very good job. I just feel
17 I would need to have more of an education. It would benefit
18 my son and also benefit myself.
19 Q You will note at the bottom of this
20 exhibit you have told the Court you anticipate a reduction
21 in your income. Now, would you please explain that to the
22 Court? I take it you intend to work part-time; is that
23 correct?
24 A This is when I start school. I doubt

1 that I will be able to work full-time -- 48 hours a week --
2 and give my child the motherly needs and physical needs and
3 all that goes along with raising a child. I will have to
4 do part-time work.
5 Q Do you have an undergraduate degree of
6 any kind at this time?
7 A I have my registered nursing -- my
8 three year diploma.
9 Q Do you have an undergraduate degree at
10 any time?
11 A No.
12 MR. WARREN: I have no further questions.
13
14 CROSS-EXAMINATION
15
16 BY MR. 'ENABLE:
17
18 Q Mrs. Gagliano, what church do you belong
19 to?
20 A What church do I belong to? At the
21 present time -- they have changed the name. It is -- I
22 think the Second Congregational Methodist United Brothers
23 Church.
24 Q Do you regularly attend it?

1 A Yes, I have been trying within the past
2 year to give my child a religious education. We go on the
3 Sundays that I am not working. I do take him to church.
4 Q Prior to this past year that you have
5 tried to give your child a religious education you were not
6 a regular churchgoer, were you?
7 A I was not as regular as I am now. I
8 feel now that religion is important for my son.
9 Q Regardless of the reasons for that, you
10 were not a regular churchgoer. Now you are, is that your
11 testimony today?
12 A I have always attended church.
13 Q That is not my question. We can drop
14 it there. You work for what hospital?
15 A I work for the Hershey Medical Center.
16 Q Hershey Medical Center. Is that akin
17 to MCV? Is that a state teaching hospital?
18 A It is a Pennsylvania State teaching --
19 yes, it is associated with the Pennsylvania State University.
20 Q Like most state universities -- teaching
21 hospitals -- they have credits, and it is almost like MCV?
22 It is like MCV in almost every aspect except for an emphasis
23 on research?
24 A It is totally different.

1 Q Okay. Do they have clinics for people
2 in the area to come to, free clinics?
3 A Free clinics? No. They don't have
4 free clinics. Everything is very private.
5 Q Do they charge the nurses? Do they
6 charge the nurses on their staff for medical care?
7 A They do charge the nurses on the staff
8 for medical care.
9 Q Do the doctors charge you when you talk
10 to them about any problem?
11 A It depends upon the doctor you talk to.
12 If you have just a very small problem and he can take care
13 of it while he is on the ward. If you make a clinic
14 appointment -- set up a clinic appointment, the doctor
15 has no way of billing you. The University bills you
16 because you go through their office.
17 Q Do you pay regular retail prices for
18 your drugs?
19 A I have never bought any drugs there.
20 I think that I would, if I did.
21 Q You have never bought any drugs? Where
22 do you purchase drugs, if not at the hospital? Have you
23 had to buy any recently?
24 A I really -- I go to different drug stores.

1 Q For your typical drugs or your prescriptions?
2 A What drugs are you talking about?
3 Q About the prescription drugs?
4 A Prescription drugs, such as?
5 Q Any that have been prescribed for you?
6 Any drug that would need a prescription.
7 A I take those prescriptions to different
8 drug stores.
9 Q I see. Have you been sick in the last
10 year, Mrs. Gagliano?
11 A Have I been sick within the past year?
12 I would say I have had minor illnesses. I do have a
13 problem of colitis, when I become very upset and very
14 nervous. I think my husband was aware of this.
15 Q Have you had colitis this past year?
16 A I have not been treated for it this
17 past year.
18 Q What did you spend $350.00 on? Did you
19 spend it on doctor bills and drugs for last year? Why do
20 you anticipate you will need to have $350.00 this year?
21 A Yes, it was -- I had an optometrist
22 and dental bill of $280.00 for crown work I had done.
23 Q Cosmetic work on your teeth? Crown
24 work?

1 A Crown work, yes, sir. I lost a tooth
2 and it had to be replaced.
3 Q Do you anticipate that you are going to
4 incur $350.00 in medical and dental bills?
5 A I would not hope so. My teeth are in
6 very bad condition and I have to keep after them. Yes, I
7 do.
8 Q What were you driving last June? What
9 type of transportation did you have last June?
10 A Last June? Last year I was driving a
11 1968 Plymouth Fury. I went out and bought -- after I
12 separated I drove that until April of this year.
13 Q Then you bought a '73 Maverick?
14 A Then I had many problems with the car.
15 I was driving -- I was going to work from three to eleven
16 shift. Consequently, the car was breaking down. I was
17 advised that the car was worn out and that I should --
18 MR. VENABLE: I object to what the lady
19 was advised, Your Honor. I want to know what she drove
20 last year and what she is driving this year. I have not
21 objected to her rambling on different subjects on each
22 question.
23 THE COURT: Frame your questions more
24 precisely for a more responsive answer.

1 BY MR. VENABLE:

2 Q What automobile were you driving last

3 year?

4 A A 1968 Fury Plymouth.

5 Q What automobile are you driving this

6 year?

7 A A 1973 Maverick.

8 Q Did you purchase it new?

9 A Yes, I did, sir.

10 Q What insurance payments other than your

11 automobile are you provided at work?

12 A Provided at work?

13 Q Yes. What insurance policies are

14 provided in the course of your employment which are deducted

15 from your salary?

16 A The only one that is provided for me is

17 the Blue Cross-Blue Shield.

18 Q Do you not also deduct from your

19 salary life insurance at work?

20 A That is deducted from my salary. The

21 life insurance, yes, that is deducted from my salary. What

22 I am trying to say is that they give me my health benefits

23 free, but Blue Cross-Blue Shield, they take the life

24 insurance off each paycheck.

Q That is not what I asked for.

A It is something that the University says you must pay this amount and you must take out the life insurance.

Q Now, other than the life insurance, automobile insurance and health insurance, what other types of insurance do you carry?

A Well, I carry an endowment for myself and I am carrying an endowment for my child. I also carry insurance so that if I should become ill for a period of two weeks I would be paid, you know, when I cannot work. I forget what the name of the insurance is. It is a protection plan so that if I am not able to work they would pay me the money, you know.

Q Is this the insurance that costs you $45.00 a month? The endowment and the paycheck insurance that you have listed on your expenses --

A My protection insurance for illness does cost me $55.00 a half year.

Q I am asking you -- let me rephrase this, please. Categorize for me the policies, not the numbers, just the type of insurance and the amounts which make up the $45.00 a month amount that you have listed under insurances not deducted from salary?

1 A I pay $18.85 per month on Andre and
2 myself on the endowment.
3 Q $18.00 a month? How much is for you?
4 A $18.85.
5 Q Is that combined for the two of you?
6 A Yes, sir.
7 Q Are they two separate policies or a --
8 A Two separate policies.
9 Q How are those premiums broken down?
10 A I cannot answer that.
11 Q What are the other policies?
12 A My protection -- I pay $64.00 -- $63.90
13 or something like that every half year.
14 Q That is roughly $10.00 a month?
15 A Right. My car insurance --
16 Q Other than your automobile insurance,
17 life insurance and health insurances?
18 A I pay $25.00 a year for my license
19 insurance. I also have an endowment -- twenty year endowment.
20 I pay $27.00 every six months for it.
21 Q Which is roughly $4.25 a month; is that
22 correct?
23 A I pay $27 -- yes, it is $52.00 a year.
24 I think that is it.

1 Q That is $4.00 a --
2 A I sat down with my policy and figured
3 them out rather closely.
4 Q That is an endowment of what kind?
5 A It is the 65-year endowment. It
6 includes --
7 Q For yourself?
8 A Yes.
9 Q What other policies do you have?
10 A I think that should conclude them.
11 Q According to my figuring that totals
12 up to somewhere in the neighborhood of $34.00 --
13 A But my car insurance --
14 Q I said other than your automobile
15 insurance.
16 A I have my car insurance included, I
17 think.
18 Q On the list you will find you have your
19 automobile insurance listed separately. Have you included
20 it twice on this list, Mrs. Gagliano?
21 A I don't know, sir.
22 Q Would you look at your list and please
23 tell me what you have done there? Did you prepare your
24 list? Was it prepared for you and you checked it over?

1 A I prepared this list, sir.
2 Q Did you type it yourself?
3 A I didn't type it. I had written it.
4 Then it was typed.
5 MRS. HALL: Judge, I can perhaps
6 explain what happened here.
7 MR. VENABLE: I am asking her to
8 explain the amounts. It is her testimony --
9 THE COURT: It is cross-examination.
10 Mrs. Hall, you will have a chance to rehabilitate the
11 witness on re-direct, if you think it is necessary.
12 BY MR. VENABLE:
13 Q Can you explain to me why you have
14 $45.00 for insurance not deducted from salary and your
15 automobile insurance separately --
16 THE COURT: Mr. Venable, you have called
17 this irregularity to the Court's attention.
18 MR. VENABLE: I can drop it?
19 THE COURT: No purpose is served by
20 continuing it.
21 MR. VENABLE: I will drop the remarks,
22 Your Honor.
23 BY MR. VENABLE:
24 Q Would you please tell me what comprises

1 the $30.00 a month personal expenses? What items went
2 into that?
3 A The $30.00 a month would be cosmetics
4 and small things you need around the house, such as paying
5 for the newspaper and little things like that.
6 Q Household supplies?
7 A You know, people are coming --
8 Q What household supplies have you put
9 in personal expenses that you did not include up above
10 in household supplies?
11 A It would not be household expenses.
12 It is small items that I need through the month for
13 myself.
14 Q For yourself personally?
15 A Yes.
16 Q What comprises the $20.00 a month
17 educational expense and entertainment expense? Is that
18 educational expense for Andre and entertainment expense
19 for Andre? Is it entertainment only to Andre or does it
20 refer to the two of you?
21 A It refers only to Andre, but, of
22 course, if I am going to take him out and entertain him
23 in the park or take him to the zoo I have to pay a fee. I
24 have given the child swimming lessons. It cost me $30.00.

1 Q Is that educational? Is that one of
2 your educational expenses?
3 A I would say it is. I think it is
4 necessary that the child needs to know how to swim. He
5 has been bought a tennis racket. He is a very active child.
6 He is at an age now that he likes to learn. I am of the
7 philosophy that he should have educational toys and things.
8 Q That is all for Andre?
9 A That does not include myself. That is
10 all for Andre.
11 Q Do you take Andre to church?
12 A Yes, I take him to church on the
13 Sunday mornings that I am not working.
14 Q Is this $10.00 for church your contribution
15 each and every month to the church in the collection plate,
16 is that what that is?
17 A Yes, it is. It is collection plate
18 money.
19 Q How much of this clothing money is for
20 yourself and Andre? How much of that amount is for Andre
21 and how much for yourself?
22 A Excuse me. Let me look at this list.
23 I would say that 75% of that money is spent on Andre. Andre
24 has grown very fast. He is a big boy. I would tell you

1 that in his kindergarten -- he has three different wardrobes
2 of school clothes. He has outgrown them.
3 Q Your answer is that 75% of that is for
4 Andre? How much of the laundry and dry cleaning is for
5 Andre?
6 A I would say half of it.
7 Q And how much of the food and household
8 supplies -- the $125.00 figure is for Andre?
9 A Excuse me. Could you repeat that
10 question?
11 Q How much of the $125.00 you have listed
12 for food and household supplies exclusive of his milk and
13 exclusive of your meals at work is that $125.00 figure?
14 How much is for Andre and how much for yourself?
15 A I don't know how to answer that question.
16 Q What would it cost you in food a month
17 to live?
18 A I would say perhaps half of that cost.
19 Q Now, where you live sounds like a rural
20 address. It is a rural or urban --
21 A It is really not truly rural. It is
22 beyond --
23 Q Is this an apartment complex?
24 A Four apartments in the building. There

1 are three buildings.

2 Q Are there any one-bedroom apartments

3 there?

4 A There are no one-bedroom apartments.

5 Q Do you know how much it would cost to

6 rent a one-bedroom apartment?

7 A Yes, I do. It would be $145.00.

8 THE COURT: I don't require a mother

9 and her son to double up.

10 MR. VENABLE: I am not trying to make

11 that. I am trying to determine a list of expenses and I

12 am trying to determine what is Andre's expense and what is

13 the mother's expense. We are not going to ask them to

14 double up.

15 BY MR. VENABLE:

16 Q You say $145.00 a month.

17 A Where I am renting, yes. It would be

18 $145.00 a month.

19 Q Do you believe that Andre increases

20 your electric or telephone bill? Does the fact that you

21 have him with you?

22 A Yes, I certainly do. He loves to speak

23 to his grandparents who are in New York City. He gets on

24 the telephone and he does speak with them. He has some

1 out of state friends he speaks with.

2 Q What is your basic rate on the telephone?

3 A Basically it is $9.00.

4 Q $6.00 is long distance? How much of it

5 is Andre's? Would you say half of it?

6 A I would say all of it. Probably when

7 he speaks to his grandmother it could be anywhere from

8 $5.00 to $6.00.

9 Q You don't maintain the utilities --

10 your electric bill is increased because of Andre's presence

11 in the apartment, do you? You would pay the $20.00 electric

12 bill regardless, is that right?

13 A I suppose so. I would say, yes.

14 Q Is the expense of operating the car

15 that you have put down here, this $60.00 figure, is that

16 based on a per mile basis? How did you arrive at that?

17 A Yes.

18 Q It is not based on your actual expenses,

19 is it?

20 A It is based on the miles I drive to

21 work, yes.

22 Q Multiplying by how much per mile --

23 A Yes.

24 Q It is not based on your out-of-pocket

1 expenses, is it?

2 A No.

3 Q Now, this reduction in income $200.00

4 a month you have in this statement would come about if you

5 went back to school full-time? You have 60 credits to get

6 a B.S. degree?

7 A Yes, sir.

8 Q How long will it take you on a part-time

9 basis in school to get your B.S. degree?

10 A It would depend on how many credits I

11 took first semester. It would take anywhere from six to

12 ten years.

13 Q If you went on a part-time basis by

14 taking one course a year it would take you six to ten

15 years? That would be one course a semester type thing,

16 is that not true?

17 A I think the minimum would be part-time

18 would be four years.

19 Q Four years part-time, that would not

20 interfere with your ability to work full-time, would it?

21 A If I did it part-time?

22 Q It is possible whether or not -- let

23 me rephrase the question. It is possible whether or not

24 you would deem desirable, it is possible even today to work

1 full-time as a nurse and go to school and care for your son.
2 It is possible to do it whether it would be a desirable way
3 to raise your son, but it is possible?
4 A It is certainly possible. I don't think
5 it would be desirable to my son. I don't want my son under
6 those conditions.
7 Q It is also possible -- I think you have
8 stated it is not desirable, but it is also possible to go
9 to school part-time and raise your son and maintain your
10 present standard of income; is that correct?
11 A No, I don't think going part-time and
12 raising a son and -- nursing is a full-time job. It is
13 eight hours. It is long hours.
14 Q As a part-time --
15 A It is strenuous.
16 Q As a part-time nurse how much would you
17 be working each week?
18 A It depends. Some hospitals will not
19 even employ part-time nurses.
20 Q Have you investigated whether or not
21 you can work as a part-time nurse?
22 A I have investigated.
23 Q Can you work?
24 A I have not received an answer.

1 Q You don't know yet whether or not this
2 anticipation in the fall --
3 A Whether or not I can work part-time?
4 Q Have you enrolled in school for the fall?
5 A Not as yet.
6 Q You are currently earning how much a
7 year? Do you know?
8 A I earn $3.95 an hour.
9 Q Do you know what your annual income is?
10 A No, sir, I cannot answer that.
11 Q I hand you -- you should have a copy of
12 your exhibits showing through June 8, 1973, $3,857.28.
13 A It is about $7700.00.
14 Q When do you expect a raise?
15 A I have no idea. I was told that a
16 raise would come in July which would have been a very small
17 raise of ten or six cents an hour. It was going to be
18 frozen because Pennsylvania -- they cannot afford to give
19 us a raise.
20 Q Has it been frozen?
21 A I don't know. I can't answer that.
22 Q Does a nurse with a -- does a nurse
23 with a B.S. degree doing the same job that you have -- both
24 of you are R.N.s with the same amount of service, would she

earn the same amount of money?

A No, sir. The nurse with the B.S. degree has an increased salary. She starts at a higher rate. She has more opportunity for promotions.

Q Doing the same work you are doing with the same amount of service? Does that nurse with the B.S. degree earn more money than you do on that floor?

A Yes, she does.

Q How much more?

A I don't know, but it is a considerable amount.

Q If you don't know, how do you know it is a considerable amount? Do you have any idea?

A I have a friend who received 30 or 40 cents per hour more than what I do with a B.S. degree.

Q With the same amount of service doing the same job you are doing?

A Yes, sir.

MR. VENABLE: I have no further questions.

THE COURT: Just a moment, Mrs. Gagliano. According to the records here you were married in 1963?

THE WITNESS: Yes, sir.

THE COURT: And were you working at that time?

1 THE WITNESS: Yes, sir.

2 THE COURT: Was your husband in school?

3 THE WITNESS: Yes, sir, he was in school

4 until 1969.

5 THE COURT: What was he doing? Was he

6 in undergraduate school in 1963?

7 THE WITNESS: In '63 he was beginning

8 his medical school.

9 THE COURT: Where did he go to medical

10 school?

11 THE WITNESS: Well, he did two and a

12 half years in Lausanne University of Lausanne, Switzerland.

13 He transferred to Duke University, where he finished two

14 and a half years, or was it two years?

15 THE COURT: From 1963 until your son

16 was born in 1967 had you always worked?

17 THE WITNESS: I have always worked.

18 THE COURT: And your husband had always

19 been a student?

20 THE WITNESS: Had always been a student.

21 THE COURT: From 1967 until you

22 separated in 1971 how much of that time did you work?

23 THE WITNESS: When my baby was ten

24 weeks old I went back to work part-time. I think I worked

1 three to four evenings a week at Duke Hospital part-time
2 until I became seven months pregnant with my second pregnancy.
3 Then I quit work and that was in April
4 of '70. He had already finished medical school.
5 THE COURT: So the entire time that you
6 were married except when you were out for pregnancy purposes
7 you worked during your marriage, did you not?
8 THE WITNESS: Well, we moved to Richmond
9 and this was the only time that I did not work, this year
10 and a half we were married in Richmond.
11 After he became an internist, is when
12 his salary came, you know, as an intern --
13 THE COURT: That was back in '70?
14 THE WITNESS: Yes, his internship
15 started in '70.
16 THE COURT: And then after he left on
17 January 10 according to your allegations, did you then go
18 back to work?
19 THE WITNESS: Yes, I had to. By mid-March
20 I had gotten myself a car and I went back to work.
21 THE COURT: During the years that you
22 were married and living together, did you always dwell in
23 apartments?
24 THE WITNESS: Yes, we never owned property.

1 We always rented.

2 THE COURT: All right. And at the time

3 the alleged settlement agreement was executed on June 19,

4 1971, did you sign that as your name appears? You need to

5 have a copy of the exhibit.

6 MR. WARREN: Your answer is yes?

7 THE WITNESS: Yes, I have seen it. I

8 have signed it.

9 THE COURT: And you were then represented

10 by counsel?

11 THE WITNESS: Yes, sir.

12 THE COURT: And it was your feeling at

13 the time that you executed that on June 19, 1971, that

14 $250.00 a month would be reasonable support money for your

15 son, Andre?

16 THE WITNESS: Your Honor, I could not

17 say that I felt it was reasonable, but I signed that contract

18 trying to avoid conflict, threats and all kinds of things

19 that I had been previously faced with. I wanted to reach

20 an agreement.

21 I first of all wanted a reconciliation

22 of my marriage which I was refused. I did sign that

23 agreement.

24 THE COURT: All right. Now, from the

1 19th --

2 THE WITNESS: Let me find my copy of it,
3 sir. It seems to have disappeared.

4 THE COURT: I have it. On Plaintiff's
5 Exhibit No. 1 it appears that these $350.00 payments were
6 made from February until May of 1971; is that correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: And then from June of 1971
9 until May 18 of 1973, $250.00 a month has been paid by your
10 husband and you have accepted that, did you not?

11 THE WITNESS: Payments went very well
12 up until -- let me see. It was to May of '72. I had been
13 receiving -- Andre had been receiving $250.00 checks from
14 his father for support. Then he began to send these checks
15 $500.00 every other month. I have asked him and told him
16 it was quite inconvenient for me to make a budget on this
17 type of thing. I did receive my money every two months.
18 Then he said that he wouldn't do it. He didn't say he
19 couldn't pay it. It was just more convenient for him to
20 handle it that way.

21 THE COURT: After the manner of the
22 payment was changed to $500.00 a month, it reflects a
23 two-month payment of $250.00 a month?

24 THE WITNESS: Yes, correct.

THE COURT: You accepted all those payments understanding they reflected the agreement of June 19, 1971?

THE WITNESS: Well, the checks were written out to Andre. Yes, I used them. I signed his name. I signed my name and used them for his care.

THE COURT: Fine. Thank you. Is there anything further from this witness?

MR. VENABLE: Only one very short question, Your Honor.

RE-CROSS-EXAMINATION

BY MR. VENABLE:

Q Mrs. Gagliano, is it not true that during the time that Mr. Gagliano was in school he received money from home and borrowed money to pay his tuition, is that not true?

A It is true he borrowed very small amounts of money for his tuition and have received small amounts of money. I can't tell you how much from his home. It was just pocket money.

Q That is your interpretation, is that

1 not correct?

2 A $10.00 is pocket money.

3 Q Are you stating for the record that he

4 received only $10.00 from his home and borrowed $10.00 to

5 pay his tuition?

6 A Excuse me?

7 Q Has he not received more than $100.00

8 and $200.00 a month on occasions from his home?

9 MR. WARREN: I object to counsel

10 testifying.

11 MR. VENABLE: It is cross-examination,

12 Your Honor.

13 THE COURT: Well, bear in mind a witness

14 is supposed to have some knowledge of these facts either on

15 direct or cross-examination.

16 Mr. Venable, I suggest your client might

17 be better able to respond to that.

18 MR. VENABLE: I will waive this point,

19 Your Honor. I have no further questions.

20 THE COURT: May the witness stand down?

21 MRS. HALL: I would like to have the

22 witness recite the facts that led up -- the things her

23 husband did and said that caused her to enter into that

24 agreement and to not stir up any trouble about the fact he

1 was not paying her the way he should have been.
2 THE COURT: Well, since you have
3 repudiated it, Mrs. Hall, do you think that is terribly
4 relevant?
5 MRS. HALL: Judge, I think you have
6 asked her some questions that she has not really fully
7 answered them in terms of explaining what happened. I
8 got the impression you were taking into consideration the
9 fact that she entered into this agreement --
10 THE COURT: Not at all, but is it not
11 incumbent upon the Court to understand what the standard
12 is that the husband has established for his wife in life
13 and take that into consideration when considering the
14 question of support money and alimony?
15 MRS. HALL: I understand the standard
16 is also his ability to pay and her needs and the child's
17 needs.
18 THE COURT: No, it is not based upon
19 the common life. Is it not based upon that standard which
20 he has established for his wife in life and obligations to
21 maintain her in that standard throughout life?
22 MRS. HALL: You have to consider that
23 he was a student and that she was putting him through
24 school.

1 THE COURT: It would be a matter for
2 argument later on, Mrs. Hall. Now, since no one has gone
3 to the trouble to establish the standard, that is the
4 reason I asked those questions. I want to hear your
5 argument on it later on.
6 Most of the cases I have read have
7 been overruled. This does seem to be a very germane form
8 of evidence in making an ascertainment of support money or
9 alimony paid to a wife.
10 Suppose we recess for about ten minutes
11 and in the interim you might conclude that you have exhausted
12 everything this witness needs to say.
13
14 NOTE: A short recess was taken.
15
16 THE COURT: Does that conclude your
17 evidence on your motion for an increase in support money
18 and alimony, Mr. Warren?
19 MR. WARREN: Yes, sir, I believe it does.
20 THE COURT: Fine. Mr. Venable, would
21 you put your client back on so he can conclude the cross-
22 examination on the depositions that you took in support of
23 your counter-claim or cross-bill?
24 MR. VENABLE: I will have a few questions

1 relevant to the support as to his income.

2 THE COURT: You may do that, but I was

3 going to -- I want the record to be completed. I will

4 consider this as ore tenus testimony. I want the record

5 to be completed. It will be in the record, and I will

6 consider it ore tenus testimony.

7 Why don't you make him -- he is now

8 available, as I understand it, Mr. Warren, for those

9 questions which were prostrated by the witness in Boston

10 when his deposition was taken. You may ask those questions

11 that you feel were proper and should have been answered

12 in Boston.

13 MR. WARREN: If Your Honor please, there

14 is a motion before the Court one to suppress both of the

15 depositions and also there is a motion to have the Court

16 stay his hand with regard to proceeding to the entry of

17 any further decree in the matter until he complies. We

18 have not taken that up yet and that is before the Court at

19 this point.

20 THE COURT: The law on whether you

21 deny people relief because they have not paid their debts

22 is constantly developing in this country, Mr. Warren. I

23 am surprised that you are bold enough to suggest --

24 MR. WARREN: I can quote the Court

1 recent decisions of the Virginia Supreme Court on all force
2 of that point.
3 THE COURT: I have been reading some of
4 those cases and that is the reason I was inspired to
5 mention it to you. Now, which cases are you referring to?
6 MR. WARREN: I would like to quote
7 from Gloth v. Gloth, 154 Va. 511.
8 THE COURT: 154 Va. 511? Now, don't
9 quote from it, just tell me what it says in summary form.
10 MR. WARREN: When a husband refuses to --
11 I will paraphrase it. When a husband refuses to pay the
12 alimony decreed, the court refused to proceed further until
13 the husband purged himself of contempt by paying the alimony
14 past due.
15 THE COURT: That goes back to the days
16 you kept people in jail because they had not paid their
17 fines. I am suggesting to you the law has evolved -- the
18 law has evolved and gotten more refined since that time.
19 In other words, I can hold him in contempt and put him in
20 jail for not paying, can I not?
21 MR. WARREN: I suppose that is the
22 alternative available to the Court.
23 THE COURT: And that I think will support
24 my position simply because you could not put him in jail for

1 not paying, for not paying his alimony. If it's been
2 decreed by the court so that it makes it a very clear
3 distinction between the constitutional right of the court's
4 prerogative to jail people for contempt and indirectly put
5 them in jail for not paying their debts. There is still a
6 clear distinction. I don't think it has been overruled by
7 any decision of either our own court or the United States
8 Supreme Court.
9 I suggest the law may be that while I
10 can't put him in jail summarily for failure to comply with
11 a Court order, that is a very direct and clear way of
12 redressing his wilful frustration of the Court order to
13 withhold relief that he is otherwise entitled to and that
14 may be beyond the scope of the authority that I have. I
15 can fine him, put him in jail and a lot of things.
16 MR. WARREN: If Your Honor please, I
17 don't think the doctrine of clean hands -- the Court
18 proceeding to enter any decree in this cause with regard
19 to granting the relief that is prayed by Dr. Gagliano until
20 she has some money in hand, that is, in so far as arrearages
21 have been found as being due and owing as of this point of
22 time.
23 THE COURT: Now, unless I find that the
24 arrearage payments are current or if I find there is

arrearage --

MR. WARREN: I guess that is illogical --

THE COURT: -- award according to your evidence that has been put on.

MR. WARREN: Surely.

THE COURT: Your point, your objection is not in the record so proceed with your cross-examination of this witness that was frustrated.

ANGELO VINCENT GAGLIANO, after previously being sworn, testified as follows:

CROSS-EXAMINATION

BY MR. WARREN:

Q. Doctor, would you please state what the mortgage payments are on your house?

A $340.00 a month.

Q $340.00 a month. Do you own any dogs?

A I own two dogs.

Q What was the purchase price of each of those dogs, please, sir.

A I paid a hundred for one and couple

1 hundred for the other.

2 Q Are they show dogs?

3 A I don't remember the exact amount. Those

4 are exactly what they are.

5 Q Are they thoroughbred animals?

6 A They are registered with the A.K.C..

7 Q Have you shown --

8 A I have one -- shown one of them

9 obedience trained.

10 Q Do you own any automobiles?

11 A Yes, I do.

12 Q Please tell the Court what kind?

13 A I own a Datsun 1972, and I own the

14 Ford that was in question that was previously mentioned.

15 Q What kind of a Datsun?

16 A It is a 240 Z.

17 Q What is the purchase price?

18 A $4,000.00.

19 Q How much?

20 A $4,000.00.

21 Q Is that car paid for?

22 A No, it is not.

23 Q What are your payments?

24 A $140.00 a month.

1 Q Did you tell the Court what your
2 payments were on your mortgage?
3 A $340.00 a month -- $341.63.
4 Q For your mortgage?
5 A Yes.
6 Q And your payments on your car are
7 $140.00. Could you explain to the Court why you find a
8 need to have two automobiles?
9 A Well, like I use one for pleasure and
10 the other car is fairly well broken down. It is fairly
11 run down. It costs a lot to maintain it. It is worth
12 right now a couple hundred dollars.
13 Q How much has it cost you to maintain
14 it the past few years?
15 A Lately very, very high. It has
16 80,000 miles. It is broken down.
17 Q Could you answer my question? How
18 much it is costing you roughly on a monthly basis in the
19 last couple of months?
20 A It costs me well over $200.00 to
21 maintain the car that is barely worth $200.00.
22 Q All right, sir. What would you say
23 your expenses associated with your job would be?
24 A With my job you have to wear a white

1 coat but that is kind of minor. The biggest expenses are
2 gasoline. I have to travel 30 miles each way to work every
3 day.
4 Q 60 miles roundtrip?
5 A 60 miles.
6 Q How much would you say your expenses
7 on operating your car are on a monthly basis?
8 A I really couldn't say. I couldn't
9 say. I just recently moved, and my expenses have really
10 changed a great deal. I was living in Rhode Island and
11 expenses were a lot different.
12 Q When did you move from Rhode Island?
13 A In the end of March of this year.
14 Q Of what year?
15 A Of this year, 1973.
16 Q When did you start your term of
17 employment?
18 A April, 1973.
19 Q April, 1973?
20 A Yes.
21 Q All right, sir. Now, the home you
22 bought, could you describe it to the Court just very
23 briefly in general terms?
24 A It is an old brick house.

1 Q How many rooms does it have?

2 MR. VENABLE: Before we go a lot more

3 far afield, it is my impression this was cross-examination

4 of a deposition. If perhaps it is serving some other

5 purpose, we don't have any objection to going into the

6 man's income with an ore tenus attempt to put forward those

7 things necessary for the Court to find whether the parties

8 have lived separate and apart for two years. When he is on

9 the stand in reference to the needs of the wife or his

10 ability to pay, we can do that now, but if it is part of

11 the ore tenus --

12 THE COURT: Perhaps it is an inappropriate

13 time to do it. It is going to have to be developed some

14 more. Bear in mind, that the cross-examination that was

15 frustrated would have been responsive to whether he had

16 made proof necessary to get a divorce on living separate

17 and apart for two years, but if this is part of your case

18 reflective on the question of alimony and support money,

19 then proceed.

20 MR. WARREN: It is indeed. Your Honor,

21 those are the questions that were frustrated in the main.

22 THE COURT: Proceed on it.

23 MR. WARREN: All right.

24 BY MR. WARREN:

1 Q Mr. Lucy asked you the question and I
2 am quoting from the deposition on page 10.
3 "Question: What is your gross income,
4 doctor?
5 "Answer: $10,900.00."
6 MR. VENABLE: We have estalished this
7 previously.
8 BY MR. WARREN:
9 Q That is the gross income?
10 A That is what my gross income is.
11 Q Could you tell us what your utility
12 bills are in this big old house?
13 MR. VENABLE: I object to counsel
14 continually editorializing it as a big house or a small house
15 or things of this nature. Your Honor, I think he can ask
16 him these questions in a straightforward manner as to how
17 much it costs him to live and what kind of house he lives
18 in.
19 THE COURT: Proceed. Bear in mind,
20 the mention of the house and this sort of thing are not
21 particularly helpful to the Court.
22 BY MR. WARREN:
23 Q You were going to tell us what your
24 utilities are?

1 A As it happens, I have only moved there
2 a couple of months.
3 Q Now, what bills have you paid?
4 A It is hard, very hard for me to say.
5 They are the standard bills similar to bills when I was in
6 Rhode Island so far as I have been able to recollect.
7 Q What would they be?
8 A Approximately $20.00 a month for
9 electricity. Approximately $10.00 or $15.00 for telephone.
10 Heating about $30.00 a month. I have not lived there in
11 the wintertime. I expect it to be the same kind of house.
12 Q All right, sir. Now, what was the
13 purchase price of the house, please?
14 A $40,000.00.
15 Q Now, could you simply state for the
16 Court what your other personal expenses are of significance?
17 A Yes. My gross -- my net salary that I
18 take home every month is $750.00, of which $340.00 is
19 payment for the mortgage. Also $140.00 for the car payment
20 and $250.00 for the child support, which would leave me
21 very little to get along with. And I have really tapered
22 the rest of my expenses to meet what I can earn. The other
23 expenses are pretty standard for insurance and things like
24 this. I don't pay --

1 Q Give us a monthly sum of your
2 insurance?
3 A What my heat and hot water and units
4 would cost?
5 Q Insurance.
6 A Insurance, back and forth and commuting
7 to work?
8 Q Insurance, please, sir. What does it
9 cost you?
10 A Approximately $300.00 for both cars.
11 Q A yearly figure?
12 A Yes, that is right.
13 Q Do you have any other extraordinary
14 expenses?
15 A Extraordinary expenses? I have to eat
16 once in a while.
17 Q What do you think it costs you in a
18 month's time?
19 A An average of about $100.00 a month.
20 Q Do you employ a housekeeper?
21 A No, I don't.
22 Q Do have any plans to rent any part of
23 the house you now own?
24 A I may in the future. I don't plan to

1 right now.

2 Q All right, sir. Coming to other

3 questions that were not answered in the previous depositions,

4 could you state whether you have, in fact, visited with your

5 wife since the date of the separation, that is, January 10,

6 1971?

7 A Yes, I have.

8 Q Could you tell us where that was?

9 A Excuse me?

10 Q Tell us where that was.

11 A Where?

12 Q Yes.

13 A Well, I visited her when we were still

14 living in Richmond. We were living at separate addresses.

15 On several occasions we did visit.

16 Q When?

17 A At her present address in Pennsylvania

18 I have visited several times. The primary intent was to

19 see my son.

20 Q I would like to ask you more specific

21 questions with regard to any interruption of this separation.

22 Have you had occasion to spend the night with your wife in

23 the same bedroom since your separation?

24 A There was one occasion in which under

1 very unusual circumstances we did spend the night in the
2 same bedroom. It was certainly not with the intention of
3 cohabiting or with reconciliation.
4 Q Tell the Court some of the circumstances.
5 A In February about a month after our
6 separation, her father passed away. I thought it would be
7 nice if I offered to take her up to Pennsylvania to the
8 funeral. When we got up there, her brother -- her
9 brother-in-law and her sister offered us a place to stay
10 overnight. We were just circumstantially put in a situation
11 where we had to share the same bedroom so as not create
12 any kind of a fuss. At the time I just agreed to it.
13 Certainly, we had not spent any nights together other than
14 that.
15 Q That is the only time?
16 A Really the only time.
17 MR. VENABLE: That time that you visited
18 was in February of 1971?
19 THE WITNESS: Yes, sir.
20 MR. WARREN: Your Honor, I have no
21 re-direct for the purpose of ore tenus. I am now at the
22 Court's pleasure.
23 I am prepared to go forward about his
24 ability to pay for his wife's needs prior to that time.

THE COURT: It has been covered unless there is something held back, Mr. Venable.

MR. VENABLE: Yes, sir, I did. I held back on the schooling and income earned.

RE-DIRECT EXAMINATION

BY MR. VENABLE:

Q Dr. Gagliano, you were married on what date?

A September 19, 1963.

Q Address your remarks to the Judge.

A September of 1963, sir.

Q How old was your wife at that time?

A Going on 26 -- 25 going on 26.

Q 25 or 26. Had you just graduated from college?

A I had previously completed college, yes, sir.

Q Had she completed college at that time?

A As far as I know she had just completed nursing school. She was a registered nurse.

Q She was a registered nurse at that time?

A Yes, sir. She had been for several years.

Q This is in 1963?

A Yes, sir.

Q When did you enter medical school?

A September of 1963.

Q Where did you enter medical school?

A In Lausanne, Switzerland.

Q How long did you stay in medical school in Switzerland?

A Three years. From 1963 until 1966.

Q During that time, did your wife work in Switzerland?

A Yes, she worked part of the time, yes.

Q Part of the time as an R.N.?

A Part of the time as a nurses' aid. She was not able to get a job as an R.N. right away.

Q While in Switzerland, how did you support yourself?

A Well, essentially, our expenses -- my tuition was only $200.00 a year. I borrowed approximately $3,000.00 from a New York City bank prior to going over so I would be able to make expenses meet for a full year. Now, that was my initial intention.

1 Q Did you have some part-time employment
2 while you were there in school?
3 A Not while I was in school there, but my
4 parents sent a substantial amount of money every month.
5 Q How much was that?
6 A In the range of $100.00 to $150.00 a
7 month. Her parents also sent some money.
8 Q What percentage of your expenses, your
9 living expenses, not your school expenses, what percentage
10 of your living expenses were contributed to by your wife?
11 A At that particular time?
12 Q During the three years in Switzerland.
13 A I would have to say approximately 25%.
14 Q What percentage of your schooling
15 expenses were contributed to by your wife during those
16 three years in Switzerland?
17 A Essentially none.
18 Q When you returned to the United States
19 in 1966 -- excuse me. Had you not been married while you
20 were going to medical school in Lausanne, would you have
21 had to rent a private apartment?
22 A I would not have. I would have stayed
23 at one of the hostels they had for the students there.
24 Q Did they have hostels for the married?

1 A No, they did not have any. It was
2 difficult to get an apartment because they were very
3 expensive.
4 Q When did you return to the United States?
5 A I returned in the summer of 1966.
6 Q Where did you go?
7 A At first I worked while I was waiting
8 for admission to Duke University which began in January of
9 the following year. I had a six month wait in between, at
10 which time I worked at a hospital.
11 Q Was your wife then working? Was she
12 working when you returned?
13 A She worked part of the time, yes.
14 Q When did she deliver the baby?
15 A March of 1967 which was the following
16 year.
17 Q Following spring? From the time you
18 returned to the United States until that baby was born --
19 A I would say about four months, about
20 four months of that time.
21 Q How did you pay for the tuition and
22 cost of school at Duke while you were finishing your three
23 years at Duke?
24 A Essentially, she and I borrowed another

1 additional $5,000.00.

2 Q Did you work while you were at Duke?

3 A Yes, I worked in the blood bank there.

4 Q Did you receive money from home while

5 you were at Duke?

6 A Yes, sums of money.

7 Q After the baby was born, in the spring

8 of '67, which is nine months after you returned to the

9 country --

10 A Yes, sir.

11 Q -- did she go to work again?

12 A She returned to work a couple of months

13 afterwards.

14 Q And when did she stop work?

15 A Definitely in January, 1969, when I

16 officially graduated from medical school. I had to wait

17 six months for my degree, at which time I earned $1,000.00

18 a month. At this time, she stopped working in January of

19 1969, and that was the last time she worked until after we

20 separated.

21 Q Was it your wish that she not work?

22 A There were times when I thought that

23 she should return work.

24 Q Dr. Gagliano, during the three years

you were at Duke University, what percentage of your medical school expenses were paid for you by your wife?

A Again, I have to say about 5%.

Q Of your medical school expenses?

A Medical school expenses probably less than 10%. Because of the amount of money I had to borrow for tuition and books and living and expenses.

Q How much did she contribute to you?

A Of the living expenses I would say 50% to myself while she was working.

Q How much of the time did she actually work from the time you returned to this country in 1966 until you graduated in 1969?

A I would have to say '68 and half of '67. It was about a year and a half.

Q A year and a half of that period?

A 18 to 20 months.

Q When you lived in Switzerland, what kind of accommodations did you live in?

A It was an apartment type walk-up. It was a walk-up apartment type dwelling with two bedrooms.

Q Were these apartments -- would you please characterize for the Court how you would rate these apartments in terms of newness?

1 A They were old tenement type houses. They
2 are the type we see here. They are very hard to obtain.
3 There is a terrific housing shortage.
4 Q When you went to Duke, what kind of
5 housing did you and your wife enjoy?
6 A I would say it was an inadequate
7 apartment. It certainly was not luxurious. It was a
8 two bedroom unfurnished, uncarpeted type of place.
9 Q When you graduated in 1969, was when she
10 stopped working all together?
11 A That is right, sir.
12 Q And she didn't work until after --
13 two years later?
14 A That is right. It was two and a half
15 years.
16 Q During the time that you graduated from
17 medical school and during your internship, what type of
18 housing were you living in?
19 A We rented a home in Richmond.
20 Q You rented a home?
21 A Yes.
22 Q What type of home was this?
23 A It was basically a small five room
24 house. It was a two bedroom type thing, again. It was

1 unfurnished and fairly inexpensive.

2 Q To obtain a two bedroom apartment in

3 Boston what rent would you have to pay?

4 A Well, they vary considerably, but for

5 something reasonable and decent, you would have to pay

6 $300.00 or more for a two bedroom, if you can find one.

7 Q Did you search for such an apartment

8 when you moved to Boston?

9 A Yes, I did. For the living that I

10 have -- I have a couple of dogs and that certainly is not

11 admissible in any apartment in Boston. Now, that is one

12 of the reasons I did purchase a home. It was so I can have

13 some real estate and pay about the same amount in rent, which

14 is about $340.00 in rent.

15 Q When you married your wife, she was a

16 registered nurse? She was 25 or 26 years old?

17 A Yes.

18 MR. VENABLE: I have no further questions.

19 THE COURT: Mr. Warren, do you have any

20 further questions?

21 MR. WARREN: Yes.

22

23

24

1 RE-CROSS-EXAMINATION

2

3 BY MR. WARREN:

4

5 Q Dr. Gagliano, you mentioned, first of
6 all, a $3,000.00 loan. Could you tell us the date you
7 obtained that loan?
8 A Yes, September of 1963, at the New York
9 State Higher Education from the First National Bank from
10 New York City. It is a government guaranteed loan.
11 Q What did the New York State Higher
12 Education have to do with it?
13 A The bank loans money through New York
14 State Higher Education. They do not have anything to do
15 with the Federal Government, though, if that is what you
16 meant.
17 Q What is the interest on the loan,
18 please, sir, if any?
19 A I believe it is 4%.
20 Q 4%?
21 A Yes.
22 Q And have you repaid the loan?
23 A I am beginning to make the payments.
24 They were due after I finished my service in the United States

1 Navy.

2 Q After you finished the military service?

3 A Yes. Well, I paid a portion of it, a

4 very small portion, a couple of hundred dollars just before

5 I was drafted. Now, I am out of the service and they want

6 the money. As a matter of fact, I paid $320.00 to Duke just

7 last week.

8 Q On the $5,000.00 what was the date you

9 made that loan?

10 A There was two loans involved in that.

11 There was one for 1967 and 1968. Now, each of those years

12 it was approximately $2,500.00 for each loan.

13 Q I see. And was that a government

14 guaranteed loan of some kind?

15 A It was not. That interest rate was

16 about 5%.

17 Q About 5%. Thank you, sir. How much of

18 that have you repaid?

19 A Just $320.00 of it. It was just recently.

20 Q What kind of arrangement do you have for

21 repayment?

22 A On a yearly basis.

23 Q How much do you have to pay a year on it?

24 A Well, I have not figured it out

1 mathematically. It will be approximately for 23 months --
2 it will be about $1,000.00 a year for the next 10 years.
3 Q You testified that you had lived in an
4 apartment while you were in the service in Rhode Island.
5 You could have lived on the base, could you not?
6 A No, there was no housing at the time.
7 Q No housing for --
8 A No off base housing at the time.
9 Q All right, sir. Now, I ask you how
10 much did you contribute to the family income during the
11 period you were in medical school other than these loans?
12 A I did mention I worked part of the time.
13 Q What would you say it came to?
14 A What years are you talking about?
15 Q During the years you were in school?
16 A Which school?
17 Q All of the medical schools.
18 A I was in medical school for six years.
19 You have to make it pretty specific as to what years you are
20 talking about. There were years I did not work very much
21 and that is true. I did have money. I had borrowed it.
22 You can't go to a medical school in a foreign country and
23 speak French and try and work at the same time. It is
24 impossible.

1 Q All right, sir. Now, I ask you if you
2 had any income other than the jobs, other than the loans
3 you have told us about during this period of time that you
4 were in school at Duke or Switzerland.
5 A It has been mentioned that my parents
6 and her parents gave us gifts from time to time, very
7 substantial gifts.
8 Q What do you define as substantial?
9 A I think that a set amount of $20.00,
10 every single week, from each parent, plus $100.00 bonus once
11 in a while is --
12 Q Give us a total?
13 A I really couldn't give you an exact
14 amount because they came in and I didn't write them down.
15 They certainly helped a great deal.
16 Q You would say their contributions amounted
17 to $5,000.00 or $10,000.00?
18 A I would say they amounted to several
19 thousand dollars each year.
20 Q Do you mean by several three to five?
21 A Three to five. I would say about three
22 to five thousand dollars each year.
23 Q From her parents and your parents?
24 A They not only gave us money, but they

1 gave us gifts as well.

2 Q You mean cash?

3 A No, gift gifts. They not only gave us

4 cash, but gifts, such as clothing and this kind of thing.

5 They would take us out and buy us a dress or a suit or a

6 pair of shoes or things like that. We did not see it in

7 money. We did see clothing and other kinds of things.

8 Q How much of that $3,000.00 to $5,000.00

9 was cash money?

10 MR. VENABLE: I think he has testified

11 that $20.00 a week came in. Certainly you can multiply

12 that.

13 BY MR. WARREN:

14 Q Would you say her parents and your

15 parents both contributed to you equally?

16 A I would say that.

17 MR. WARREN: Thank you.

18 MR. VENABLE: I have no further questions.

19 THE COURT: You can stand down, Doctor.

20 Is there anything further, gentlemen?

21 MR. WARREN: Sir, I would like to put

22 Mrs. Gagliano on as a rebuttal to what he has just testified

23 to.

24 THE COURT: Come around here, Mrs. Gagliano.

1 MR. VENABLE: As Mrs. Gagliano takes the
2 stand, Your Honor, we have a question on ore tenus of
3 corroborative testimony. What would be the Court's pleasure?
4 I can attempt to locate this doctor at MCV who was willing
5 to testify or I can reach an agreeable time to take
6 depositions within the next five or ten days with counsel.
7 THE COURT: It would be more convenient
8 if you agreed to take his deposition.
9 MR. WARREN: Surely, it is going to
10 be in Richmond, and we will be present with these questions.
11 MRS. HALL: We will only ask that we
12 be awarded attorney fees and costs for those depositions.
13 Now, by his own actions he has caused the necessity for
14 taking them.
15 THE COURT: That is an agreeable request,
16 Mrs. Hall.
17 MR. VENABLE: We have no objection to
18 that as to these depositions. We would object to attorney's
19 fees and counsel and court costs for the depositions we had
20 to take in Boston and for all actions since June 19, which
21 is another issue before this Court.
22 THE COURT: Well, I will hear you on
23 that narrow issue, but as I recall from reading these
24 depositions, your counsel in Boston frustrated the

1 cross-examination, did he not?

2 You took those and paid for them, have

3 you not?

4 MR. VENABLE: They costs $25.00 for a

5 copy and attorney's fees, which we have not paid for.

6 THE COURT: I will take it up later.

7 MR. WARREN: That is a separate issue.

8

9 ANNA JEAN GAGLIANO, after previously being

10 sworn, testified as follows:

11

12 RE-DIRECT EXAMINATION

13

14 BY MR. WARREN:

15

16 Q You have heard the testimony under oath

17 of your husband, Mrs. Gagliano. Now, he testified to having

18 made very substantial loans during the period of time he

19 was in medical school in Lausanne, Switzerland, and while

20 he was at Duke University, and then when he became an intern

21 at MCV.

22 Your testified to certain periods of

23 time when you worked and he worked. He said he contributed

24 by borrowing money. Now, who actually in your household

1 during that period of time paid the bills, such as, the
2 rent and utilities and so forth?
3 MR. VENABLE: He is again very badly
4 leading his witness. I think the question can be phrased
5 better than that.
6 THE COURT: This is really a lot of
7 replowing of the same thing. Now, just go ahead, Mr.
8 Warren, and see if you can be a little more precise. Don't
9 lead and don't feel that the Court has not been following
10 the evidence very carefully. I don't need any repetitive
11 influence. I cannot impress that upon you too much as to
12 how attentive I am to these things when people testify.
13 MR. WARREN: I do not mean to imply
14 about the Court's inattentiveness, because that is not my
15 feeling. I am trying to establish this witness -- this
16 witness would have reason to know whether or not the loans
17 ever, in fact, were made.
18 THE COURT: Ask her that. That is
19 relevant for impeachment purposes only.
20 MR. WARREN: Yes, sir.
21 BY MR. WARREN:
22 Q Did you or did you not pay the bills
23 and handle the family checks during the marriage?
24 A Yes, sir, I did. My salary paid our

1 living expenses. We did not depend upon our parents. They
2 would send us pocket money. We appreciated it, but there
3 was no saying that they were going to send us a certain
4 amount each week. We were totally independent of our
5 parents. They did help us. From my salary the bills were
6 paid by me and so forth.
7 Q Your husband testified that two sets of
8 parents made equal contributions during the period something
9 between $3,000.00 and $5,000.00 a year; is that true?
10 A That is not true unless I did not
11 receive -- unless he received it. I don't know of it. Well,
12 the only thing I can -- we received pocket money -- $10.00
13 in a letter every two weeks or something like this. I
14 don't ever know of anything amounting to $3,000.00 to
15 $5,000.00 a year.
16 Q Would you have been in position to know?
17 A I should have, yes. I don't know why
18 I didn't know if it happened.
19 Q Now, what would you say to two sets of
20 parents contributing during that period on a yearly basis?
21 A I would say perhaps maximum or total
22 of $500.00 from both parents. They would send Christmas
23 gifts and things like this. The actual cash money coming
24 I would say $500.00 from both parents for the year.

1 Q Did you estimate the total amount of
2 these gifts?
3 A The total value of the gifts?
4 Q Yes.
5 A There were not that many gifts.
6 Q There were not that many gifts? Could
7 you estimate the total value of the gifts?
8 A $100.00 a year.
9 Q Were you aware that in 1963, your
10 husband made a $3,000.00 loan toward his education?
11 A I know that he made a loan. I think
12 it was before our marriage. He needed money. We needed
13 money to get to Europe. This was -- I do think it was
14 before the marriage. He didn't have money to go to Europe.
15 This was a loan he made for the voyage and expenses and
16 so forth. As far as I know, I never saw it. It was not
17 made after the marriage.
18 Q Since you were married, he has testified
19 in 1967 and in 1968 --
20 MR. VENABLE: This witness has sat here
21 through all the testimony and has heard counsel has repeatedly
22 directed answers he wishes to receive by going back over and
23 over what this man testified on the stand here. He can just
24 ask the questions as to the woman's knowledge.

1 THE COURT: She had to have knowledge
2 of the loan in '63, so that has been established as an
3 absolute, uncontradicted fact. He may wind up the same
4 way. Go ahead. I agree that it is leading.
5 BY MR. WARREN:
6 Q Do you know of any other loans?
7 A I know of a loan -- at one time after --
8 I think it was after the baby was born.
9 Q The year, please?
10 A The baby was born in '67. There was
11 enough money to cover tuition at that time. As far as I
12 know, it was not more than a $1,500.00 loan taken out at
13 that time through Duke University. Now, that is the only
14 loan I know of that was taken out during our marriage for
15 his education.
16 Q What about any other loans for any
17 other purposes?
18 A There was a car loan taken out.
19 Q Anything else?
20 A I don't think so.
21 Q What percentage of your total family
22 budget was paid for by your salary alone?
23 A All of it. My whole salary went into
24 supporting the three of us, such as, rent, food, clothes,

1 car payments and paying as much of the tuition as I
2 possibly could.
3 Q 100% of your salary went into the
4 expenses? What percentage of expenses was your salary?
5 A I am afraid I don't understand the
6 question.
7 Q You are testifying that you used 100%
8 of your salary --
9 A Yes.
10 Q -- for expenses. I am asking you whether
11 100% of your salary equalled 100% of your expenses or was
12 it 50% or what percentage?
13 A We were living as students live. You
14 know, we were just even even. I guess it would be a 100.
15 It was a student type of life.
16 Q Now, with regard to your pregnancies,
17 you had how many pregnancies?
18 A I had three pregnancies.
19 Q And what were the results of each of
20 the pregnancies?
21 A My first son was born in '67. He is
22 living and well. My second pregnancy was a stillborn
23 child.
24 Q Was that full term?

1 A I think it was three weeks. It was
2 very close to -- it was very close to. I have an RH
3 factor problem. I had a stillborn child. Now, that was
4 right when I quit work at Duke. I quit work at seven
5 months. I worked up until April, and the baby was born in --
6 June. It was stillborn. We moved to Richmond. At the time
7 of our separation and our marital problems, I found out I
8 was pregnant. My husband refused to accept the pregnancy.
9 There were many conflicts. I was very confused about the
10 matter knowing that if he was going to leave me I could not
11 go on with the pregnancy. I had a therapeutic abortion in
12 January of 1971.
13 Q One other matter that concerns times
14 when you two have been together since the separation we
15 are talking about, can you tell us when and where and tell
16 us very briefly the circumstances of the times when you have
17 been together since that separation?
18 A We remained in Richmond for the first
19 six months after our separation, and there were many
20 occasional visits once a week, sometimes twice a week. At
21 this time we did have sexual intercourse.
22 MR. VENABLE: Did or did not?
23 THE WITNESS: We did. After January 10th
24 there were other occasions. My father passed away. My

1 husband explained when he was answering his questions.
2 BY MR. WARREN:
3 Q Did you occupy the same bedroom?
4 A The same bedroom. And we had sexual
5 relations and that was in February.
6 Q How long were you there?
7 A I was there two days, and my husband
8 was there just for the funeral day and then that night he
9 left.
10 Q He spent one night with you?
11 A One night, yes.
12 Q Was there another time?
13 A I and Andre were leaving to go to
14 Pennsylvania to find an apartment. My husband offered to
15 drive with us up there.
16 We stayed with my sister and brother-in-law.
17 We stayed in the same bedroom.
18 Q You are not saying that all four of you
19 stayed in the same room? Explain.
20 A We used -- two of us used their bedroom.
21 Q Did you have relations at that time?
22 A Yes, I think we did. There have many
23 occasions since he has come back from the service that we
24 have been intimate. I don't know if we had relations. There

1 has been a lot of confusion in our separation.

2 Q Has there been representations made to

3 you that you may be able to reconcile?

4 A I have asked my husband for a

5 reconciliation. He feels this is not possible.

6 Q During the time wherein you were intimate

7 were these intimacies --

8 A It did seem like there would be a

9 possibility of a reconciliation.

10 MR. WARREN: Thank you. Witness with

11 you.

12

13 RE-CROSS-EXAMINATION

14

15 BY MR. VENABLE:

16

17 Q When you went apartment hunting, was it

18 in May or in June?

19 A It was towards the end of May.

20 Q Towards the end of May? Last of May?

21 A Yes.

22 Q Of 1971?

23 A Yes.

24 Q Now, Mrs. Gagliano, how much did you earn

1 in 1966 and 1967 for the school year in Lausanne, Switzerland?
2 A How much did I earn?
3 Q Yes.
4 A Well, it would come out in francs.
5 Q What was it in American money to the
6 best of your ability?
7 A I am sorry but I cannot answer that. I
8 think I was receiving a thousand francs per month -- $250.00.
9 I cannot be sure.
10 Q Did you work each and every month from
11 the time you arrived in Lausanne, Switzerland?
12 A Many days I worked six days a week while
13 I was in Switzerland. They have --
14 Q You went to work immediately after
15 arriving in Switzerland? Each and every month from that
16 day forward for the three years you were in Switzerland,
17 is that your testimony?
18 A We would come home in the summertime.
19 Q So you didn't work during the summer?
20 A I did work. I worked at Fordham City
21 Hospital and Hisaccordia Hospital during our summer
22 vacation.
23 Q Did you work each and every month of
24 each year for the three years you were in Switzerland?

1 THE COURT: Bear in mind, Mr. Venable,
2 that the remoteness of this time is going to be a computation
3 of seven years. And the issue on support money and alimony
4 has little or current --
5 MR. VENABLE: This is only because of
6 statements made by counsel putting him through school.
7 THE COURT: Because other irrelevant
8 testimony slips in don't ever feel it becomes less irrelevant
9 on cross-examination.
10 BY MR. VENABLE:
11 Q You don't actually deny that loans were
12 made or that Angelo worked in the fashion in which he
13 said, do you?
14 A Worked in what fashion?
15 Q Held the jobs he said he held. Do you
16 actually deny that or that he made the loans? I know your
17 testimony is that you don't know of loans except one for
18 $1,500.00. Do you deny on the stand that this man borrowed
19 the money he said he borrowed?
20 A Would you repeat the question, please?
21 Q Do you deny that this man borrowed the
22 money he said he borrowed?
23 A I don't know how to answer it.
24 Q Just yes or no.

1 A I deny it, because I don't have the
2 knowledge of it.
3 Q In other words, your answer is you have
4 no knowledge?
5 A That's right.
6 Q Is that correct?
7 A Right.
8 MR. VENABLE: I have no further questions.
9 THE COURT: You may stand down. Thank
10 you.
11 Anything further, gentlemen?
12 MR. VENABLE: Not in this line of
13 evidence, Your Honor.
14 THE COURT: Does counsel desire to argue
15 the case?
16 MR. WARREN: Yes, sir.
17 THE COURT: Would you like a five minute
18 recess to get your notes together before you argue it?
19 MR. WARREN: That would be very kind of
20 the Court.
21
22 NOTE: A short recess was taken.
23
24

1 THE COURT: Counsel, I would suggest that
2 perhaps ten minutes is adequate for each side to argue this,
3 but I will not cut you off if you extend it.
4 You may proceed, Mr. Warren.
5
6 MR. WARREN: If Your Honor please, one
7 of the motions before the Court is that the Court establish
8 whether or not there is, in fact, arrearage, if so, make it
9 a sum -- enter judgment at this time for that amount. The
10 Court has ample testimony and exhibits on that. I will
11 not address myself any further to that.
12 THE COURT: You contend the arrearage of
13 $8,250.00?
14 MR. WARREN: We would except to any
15 credit being given against the original temporary order
16 of $350.00 a month beyond the $1,900.00 paid directly to
17 her. However difficult it might be for the husband if he
18 makes indirect payments on behalf of the wife and child, if
19 they are not made as support payments and in the form
20 prescribed they cannot be included. And we would like to
21 ask the Court for time to brief that particular point of law
22 if it be the Court's pleasure.
23 We would ask the Court for an entry of
24 arrearages of $8,250.00.

1 We would respectfully except and object
2 to any other entry. I might add we would be willing to
3 accept the $80.00 credit that was discussed with regard to
4 the rent deposit. It was returned and some discussion about
5 whether it should be credited. It was not on the exhibit
6 that we tendered. We would concede that.
7 THE COURT: Does the original order spell
8 out the manner and the form this payment is to be made?
9 MR. WARREN: If Your Honor please, I
10 think the Court probably has the original order.
11 THE COURT: The payments that are
12 reflected on your exhibit 1, as I understand it, were made
13 out in such a way that they could be negotiated by the
14 plaintiff and used --
15 MR. WARREN: Suppose she forged her
16 son's name. He could scarcely open a bank account. What
17 the purpose of that was I am not in a position to suggest,
18 but in any event, they are not made to her. At that time
19 her husband was in the military service. He was as far
20 away as -- Indian Ocean off the coast of Africa -- and
21 she was not in a position to send them back. The checks,
22 she negotiated them.
23 THE COURT: He may have thought they
24 were being paid pursuant to their agreement of June 19th?

1 That is not beyond realm of --

2 MR. WARREN: Not at all. In fact, it

3 may very well have been. We feel the law is very clear that

4 it makes not the slightest bit of difference what the parties

5 thought. When the order is entered until a further order is

6 made, it stands forever. The order stands forever.

7 The parties have no -- they are not able

8 to make any agreement that makes an alteration to the extent

9 it was child support. The child is an innocent third party.

10 The Court is deciding -- the Court should decide how much

11 is to be paid the child. I submit I would be glad to brief

12 that point as well.

13 In other words, there are cases where the

14 husband paid out thousands of dollars on payments -- there

15 was a husband who made thousands of dollars on a mortgage

16 payment for his wife and child living in the home. The man

17 made thousands of dollars worth of mortgage payments over a

18 period of time. The Court gave him not a nickle's worth

19 of credit. Although, it was stipulated he and she both

20 thought it was for that purpose. The Court told him that

21 it was sorry but he was supposed to pay the support and if

22 he paid any other additional payments that is a gratuity.

23 Counsel constrains the $500.00 payments

24 are that the $250.00 of those payments to be applied on the

1 arrearage or that they are -- they are whatever the difference
2 $350.00 and $5.00 is a 25525 gratuity and only the $1,900.00
3 paid directly to her can be credited to his arrearage at
4 this time.
5 THE COURT: I understand your position
6 on that.
7 MR. WARREN: Another motion before the
8 Court is that the Court require Dr. Gagliano to post
9 securities as satisfactory to the Court in the Clerk's
10 Office of this Court should the Court find any arrearage
11 and make any other decree to secure his payment of the
12 arrearage of any future alimony and child support that may
13 be ordered by the Court. This is in light of the fact that
14 the parties live hundreds of miles away from here. They also
15 live hundreds of miles apart.
16 If Your Honor please, I have what
17 purports to be a copy of what is in the Court's file. It
18 does say that it is ordered that Angelo Vincent and Ann
19 Jean support and maintain of herself and infant child --
20 the part so specified -- if Your Honor please, I hand the
21 exhibit which I tendered a copy to counsel for the other
22 side. I have not presented it to the Court.
23 I simply ask the Court's pleasure with
24 regard to it.

1 THE COURT: Present anything that you
2 have that will shed light on the case. The Court is willing
3 to receive it. What is it?
4 MR. WARREN: It is a letter -- it is a
5 carbon copy of a letter written by Mr. Owings who was then
6 counsel for Mr. Gagliano. It directed Dr. Gagliano --
7 MR. VENABLE: It is the same letter we
8 have discussed earlier today, Your Honor.
9 MR. WARREN: We have had no discussion
10 transpire. The Court has to focus on the understanding of
11 the parties with regard to what was going on, and what was
12 to be expected of them. I would respectfully submit that is
13 of no relevance with regard to our legal position, but to
14 the extent that the Court might regard it as relevant, it
15 would shed some light on what they thought.
16 THE COURT: I reject your tendered exhibit.
17 MR. WARREN: All right, sir. I respectfully
18 except to the rejection of the exhibit.
19 I would like it to be marked Plaintiff's
20 Exhibit No. 6, refused.
21
22 NOTE: Plaintiff's Exhibit No. 6 refused
23 was marked for identification.
24

1 THE COURT: You can proceed.

2 MR. WARREN: We now come to the question
3 of alimony and support from this day forward. We would ask
4 the Court for some $800.00 a month to be divided any way the
5 Court sees fit, as far as prescribing what part of that might
6 be alimony and what might be support to the child of the
7 parties.

8 I have already asked for security with
9 regard to whatever the Court orders for future support.

10 I would also like to renew my motion
11 that has been filed in a written fashion that this Court
12 stay its hand with regard to the entry of any decree of
13 force or any other order for which we have asked until such
14 time as Dr. Gagliano satisfies any arrearages or whatever
15 conditions the Court finds need to be satisfied that have
16 not yet been so satisfied.

17 Then, lastly, I would ask the Court to
18 set as a sum certain counsel fees due by the husband to the
19 wife on account of her expenses in connection with this
20 litigation.

21 THE COURT: What are you asking for, Mr.
22 Warren, specifically?

23 MR. WARREN: I would ask, if Your Honor
24 please, we have not yet even taken the deposition that is

1 going to be required to finish this thing off. I would
2 suggest to the Court that perhaps we could set a time when
3 counsel might be heard solely on the question of counsel
4 fees. We have gone as far in this Court as we will and
5 everything has been accomplished at this time. I have no
6 idea how long the depositions will take.
7 THE COURT: You are looking at one more
8 corroborative deposition. It is on a narrow point that could
9 not take over an hour or so. Accept as a fact it is going
10 to take you another hour or so to complete the deposition
11 and project what you think is reasonable attorney fees from
12 that.
13 MR. WARREN: We would ask for $1,500.00
14 plus all taxable costs. We would be prepared to tender the
15 Court an itemized list of hours spent --
16 THE COURT: I want your itemized records
17 and lists of your calls that you are claiming as supportive
18 evidence of a fee of $1,500.00. Send a copy of it to Mr.
19 Venable. If he wants to put on any evidence, write me a
20 letter saying why he thinks that. It is irregular. I
21 will permit him to do so.
22 MR. WARREN: Thank you. I feel we have
23 covered it.
24 MR. VENABLE: Your Honor, let me just

1 very briefly respond to some of Mr. Warren's remarks in
2 reverse order.
3 Just to make sure I understand about the
4 counsel fees, just for the record, let me object to any award
5 of attorney fees in the least except for these depositions
6 that were caused by my bad negligence, or whatever you want
7 to call it, by my instructions to counsel in Boston that
8 were misunderstood. I think is 100% my responsibility.
9 THE COURT: Mr. Venable, if the only
10 grounds is living separate and apart for two years for a
11 divorce is required in order to precipitate some award of
12 counsel fees which can be paid to the wife's attorney, if
13 it was the husband's fault.
14 MR. VENABLE: As I have tried to state
15 in my motion, the questions which were asked in Boston and
16 refused were proper questions that should have been answered.
17 THE COURT: I am saying, though, that if
18 the living separate and apart is your grounds for a divorce
19 as you allege in your cross-bill, am I not supposed to make
20 some inquiry back behind the commencing of the living
21 separate and apart to ascertain fault?
22 MR, VENABLE: We have no objection to
23 that. We object to counsel fees, in that counsel fees have
24 been set at a point and the papers made to the Court and

1 anything from that time has been at her own instigation or
2 her attorney's inquiry.
3 There is no scintilla of evidence that
4 this man did not pay what he thought he was supposed to be paying.
5 There is not a scintilla of evidence that this man has not
6 paid what he thought he was supposed to be paying. There is
7 not a scintilla of evidence to cause the Court to doubt Dr.
8 Gagliano is not going to do what he has been told to do. A
9 security deposit to me is an extreme method of the misuse
10 of the judicial process. If there is any bona fide or proven
11 or anything in the record --
12 THE COURT: So that you won't devote an
13 unnecessary amount of time to that issue, Mr. Venable, I am
14 going to refuse any security deposit. I have required it
15 in some cases. I don't consider this an appropriate case.
16 I don't mind giving counsel guidance on these points to
17 streamline it for them on alimony and support.
18 MR. VENABLE: Your Honor, the first thing,
19 as to arrearages, is the doctrine that first, fault has to
20 be shown before it can be considered in the divorce. It is
21 fault. Even after fault has been shown as to child support
22 it is based, first, upon a consideration of the child's needs
23 and upon a consideration of the father's ability to pay.
24 The Court in its impossible task in every

1 instance must seek to balance those two things.

2 What is before the Court today is not a

3 determination of what this child needs. It is also a

4 principle of law that there must be some change in circumstances

5 over and above what the child needs from the last time that

6 there was an entry of an order two years ago. An order then

7 was entered for $350.00 not splitting the two.

8 It is very obvious and apparent that the

9 mother considered the split to be $250.00 for the support of

10 the child. We don't have to come to that. Further evidence

11 brought before the Court today totalled up to only $284.00.

12 There was some questionable expense about $40.00 a month

13 for the clothes of the child, and that fact she testified

14 and cannot rise any higher than her own testimony.

15 A single bedroom costs her more than

16 where she was living now giving the child $40.00 a month

17 as its share of the cost of shelter. You only have a $30.00

18 difference from what Dr. Gagliano has been paying. It is

19 absolutely no showing of a change of circumstances.

20 Now, I know Dr. Gagliano is not going

21 to begrudge this $34.00 difference. But the point I am

22 trying to make is that when it comes to alimony, not only

23 does the woman have to show need to even get it considered --

24 I mean fault to get it considered, she has to show a need for

1 alimony. A need separate and apart from her child, because
2 the child support is a separate issue. She must show for
3 herself alone a need for alimony.
4 This young lady is a registered nurse.
5 She was a registered nurse when she married this man. She
6 was 26 years old. She had all the opportunity in the world
7 to get her education and she chose to complete it with a
8 three year nursing degree rather than a B.S.. She was a
9 registered nurse when she married this man.
10 The standard of living which they would
11 have enjoyed. But it is a misnomer during the time they
12 were married, there was no sacrifice on her part but
13 willingly entered into.
14 There is no evidence that this woman
15 put this man through medical school and is deserving of
16 lifelong support as a result thereof.
17 The standard of living which she enjoyed
18 after he left school is no different than it is now, when
19 she, by her own admission, she stopped work and did not
20 work until they were separated and that standard is no
21 different than it is today.
22 As a matter of fact, her standard of
23 living, her income, is in excess of what he was earning then.
24 Her potential as a professional registered nurse is even

1 greater in a field that is screaming for nurses.

2 She has no need for her own personal

3 support. Even if she were entitled to it, the mere fact

4 that a man and woman have lived together for a period of

5 time under the cases in Virginia, it is not grounds to grant

6 her alimony, and if it is granted, then it must be based on

7 her need as gauged against what standard was granted to

8 her or what she gave up while she was married to this man.

9 So even if the Court felt that she once

10 was deserving of consideration or she had any need in

11 assessing what the need would be, it would be zero.

12 Looking at her expense sheets, most of

13 these expenses are basically directed to herself, such as

14 endowments, paychecks, lenses and $360.00 for an eye doctor.

15 It was all things of this nature. I don't believe they have

16 even begun to meet the burden of showing fault. There is

17 no evidence of that before this Court, two, of showing

18 need and, three, of showing standards where any amount of

19 money could be awarded at all.

20 As to the child, it was agreed upon as

21 to the price of what was needed to support that child. By

22 her testimony today she has increased it only $34.00.

23 What the Court decides as to what the

24 child needs is acceptable to Dr. Gagliano. He does not, nor

1 do I, necessarily feel you have an easy job on that point.
2 Coming to arrearages this is the most
3 mechanistic approach to the law I have ever enjoyed hearing,
4 the approach that has been argued before Your Honor today.
5 On one hand this woman comes to you and
6 says this is a Court of equity, and on the other hand she
7 says this is a Court of form that would take the Court and
8 the Commonwealth of Virginia and the United States back 300
9 to 400 years in what they could or could not do.
10 It is incredible that the argument would
11 be made that under an order of support for a wife and a
12 child that the check made out in the child's name was not
13 for support or did not meet the intent of the order.
14 I have made my argument to the Court
15 about it being contemplated when it entered that $350.00
16 order upon the direction of the Court. They agreed upon a
17 figure. The only reason that Court order was not modified
18 was because of the nature in which it would be modified as
19 contemplated by the Court.
20 These papers, once the agreement had
21 been entered, which has been steadfastly refused for two
22 years, this is simply nothing more than a case of someone
23 who won't let go.
24 I respectfully point out to the Court as

1 to the arrearages, the interlocutory order was designed for
2 a specific purpose. It is not a mechanism of law or a rule
3 of law in any way pertaining to the wrapup or finalizing
4 of a divorce.
5 MR. WARREN: If the Court would like to
6 make inquiry as to the circumstances of the initial separation,
7 the parties are here for ore tenus, and she would be glad to
8 submit to questions from the Court.
9 THE COURT: I don't believe it is
10 necessary.
11 MR. WARREN: Depositions were filed
12 sometime ago that dealt in some considerable detail with the
13 aspect of the separation. They have been filed and valid
14 exhibits have been for sometime.
15 The tendered bed and board decree was
16 rejected by the Court. It was not held up by the Court. It
17 was submitted to the Court and the Court refused to enter it.
18 The last thing I might point out is
19 that the Virginia Supreme Court case most specifically with
20 the question that has just been mooted so strenuously by
21 husband's counsel which is of a diehard case dealing -- the
22 citation of that is 210 Va. 101, May 1969, case.
23 There the Court sets out -- Section 20-109
24 in its entirety says that three things have to occur before

1 that contract can become a valid decree and supercede any
2 other decree of the Court and if any one of those things
3 should fail so does the contract signed by the party to whom
4 such relief might be awarded. Two is that it be filed with
5 the pleadings and depositions and then that such party not
6 raise objections thereto prior to the entry of the decree.
7 Now, that last thing has not happened.
8 THE COURT: Well, Mr. Warren, if I
9 follow your suggestion on the amount of arrearage, it would
10 be such a monumental triumph of form over substance it would
11 defy everything I understand the law to be. If the Court
12 comes to that, such an important matter, I think the Supreme
13 Court ought to do it rather than the trial judge.
14 But I follow your position on the effect
15 of an award being outstanding and never modified by another
16 Court decree.
17 MR. WARREN: Are you questioning me, Your
18 Honor? I am sorry.
19 THE COURT: I was asking. I follow the
20 thrust of your argument on the point.
21 MR. WARREN: I would like to renew our
22 offer to brief any points that the Court might be pleased to
23 have us brief. We have looked at the law that we are talking
24 about before we came in here. We are prepared to brief it on

1 five days' notice or any notice.

2 THE COURT: I am familiar enough with

3 the law, Mr. Warren. All parties would be better off to

4 have the Court make a disposition from the bench today and

5 I am prepared to rule on everything save the ultimate

6 question of whether the defendant was entitled to relief on

7 his cross bill and that is a deficiency in the record from

8 an evidentiary standpoint. There is no corroborative

9 evidence to date on it -- I assume counsel made arrangements

10 for that deficiency.

11 MR. VENABLE: Yes.

12 THE COURT: I find that the decree

13 entered by Judge Young on March 10, 1971, was never modified

14 in the sense that it has to be modified to make a settlement

15 agreement viable to change the effect of an outstanding

16 award in a decree of the Court.

17 I find that Dr. Gagliano in reliance

18 on what he thought was a bona fide agreement entered into

19 in June of 1971 has made payments in the sum of $7,300.70

20 that comply with the dictates of Judge Young's decree and

21 are creditable against a $250.00 award that was outstanding

22 against him. Now, that means that from the date of the

23 entry of that award until today he is in arrears of two

24 hundred twenty seven, twenty seven.

1 Under the law I have no option but to
2 enter judgment against him for that amount in favor of Mrs.
3 Gagliano. I find that it was not a wilful attempt on his
4 part to frustrate an order of the Court. He was relying
5 totally upon an agreement that had been negotiated by the
6 same counsel for the plaintiff that now represents her and
7 he was represented by counsel. So there will be no penalty
8 attached to that sum. It will bear no interest except from
9 the date of the entry of the judgment which is today.
10 Coming down to the next phase of the
11 plaintiff's motion and that is for a change in the amount
12 of the support money and alimony Dr. Gagliano is ordered to
13 pay, I find from the evidence that originally it was $250.00
14 for the support of the child and that was not unrealistic
15 and that due to the passage of two years there has been some
16 modest increase in living costs and I am going to change
17 that figure to $300.00 per month.
18 He is going to pay for the support of
19 the child and that is going to remain in effect until the
20 child is 18, at which time he is relieved by law of any
21 further payments.
22 I find from the evidence that Mrs.
23 Gagliano has not shown that the standard of living she had
24 been accustomed to while she was married to Dr. Gagliano was

1 such that she does not have the capability of maintaining
2 her own way in life and that she generates sufficient income
3 to do that. I make no allowance of alimony in the case at
4 all. I would ask counsel to defer submitting a decree until
5 such time as the depositions have been finalized. At that
6 time I want you to be able to represent to the Court that
7 all arrears have been paid or arrangements made for them
8 and that if you need time on that and will give me a note I
9 will accept that as permissible.
10 I believe that under the law, this
11 being a total money figure, that this is a deductible item
12 for the doctor.
13 I want counsel to show me what is
14 being done and then in the future I would suggest to counsel
15 that you work out an arrangement where the payments are made
16 on a monthly basis and make the payee on the check such that
17 it is negotiable with a minimum of difficulty for all parties
18 concerned.
19 On the question of attorneys' fees I
20 hold that in abeyance until I have seen the delay supporting
21 the charge and have had a chance to study the record and see
22 how much of it was brought about needlessly as opposed to
23 what was legitimately incurred.
24 The plaintiff's motion to suppress the

1 deposition of the corroborative witness is sustained and an
2 additional corroborative deposition will have to be taken.
3 The motion to suppress the doctor's testimony has been cured
4 by his appearing in open court and giving ore tenus testimony
5 that was responsive to all the questions that he previously
6 refused to answer.
7 I believe that disposes of all the
8 motions pending before the Court.
9 MR. WARREN: If your honor please, has
10 the Court found that she is not entitled to alimony on
11 default or it is zero?
12 THE COURT: The alimony is zero. She
13 is not entitled to alimony. There was never any dependency
14 for support on the doctor. She has worked most of the
15 married life and is capable of supporting herself and I see
16 no need for it.
17 MR. WARREN: I think there are two
18 separate questions. One, the amount she is entitled to, the
19 Court set at zero. The amount she is entitled to on the
20 matter of the separation, because of the fault of the parties.
21 I take it this is an absolute requirement of the law and I
22 would like for the record for the Court to say --
23 THE COURT: I will defer making a ruling
24 on the fault, if you like, because I have not read the

1 original deposition.

2 MR. VENABLE: The point he is making

3 is would it be like one dollar a year? Are you making any

4 provision?

5 THE COURT: The award will be zero.

6 MRS. HALL: Will you reserve for her

7 to request alimony in the future, for instance, should she

8 become disabled and unable to work at all?

9 THE COURT: That is always a reserved

10 right.

11 MR. VENABLE: It is not.

12 THE COURT: If the file establishes the

13 question of fault, I think it is.

14 MRS. HALL: We would ask that be --

15 THE COURT: That is not before me. My

16 order will speak as of the circumstances now. Now, if I

17 ascertain that the fault of the separation was the defendant's

18 but that I find she has no dependency upon him for alimony

19 and therefore gets zero, that ends anything I can do with

20 the case. Now, what the law is ten years down the road --

21 MRS. HALL: We would ask specifically

22 if you make that finding, Your Honor, that you reserve to

23 her the right of alimony in the decree.

24 THE COURT: I don't know whether I have

1 any authority to do that or not. I see no circumstances here
2 that would justify it even if I had the authority.
3 MR. VENABLE: Thank you, sir.
4 MR. WARREN: The plaintiff would like
5 to respectfully except and object to the award of zero
6 alimony to the plaintiff for the reasons previously stated
7 in the record.
8 (Hearing concluded)
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8 I hereby certify that the within is a true
9 and correct transcript of the shorthand notes taken by me
10 at the time and place stated in the caption.
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12 Tamra K. Johnson
13 Tamra K. Johnson,
Court Reporter
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V I R G I N I A :

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO — Complainant

v.

ANGELO VINCENT GAGLIANO — Defendant
229 North Laburnum Avenue
Richmond, Virginia

STIPULATION IN ACCORDANCE WITH
§ 20-109 OF THE 1950 CODE OF VIRGINIA

THIS AGREEMENT, is made this 19th day of June, 1971, by and between Anna Jean Gagliano, hereinafter referred to as the "wife" and Angelo Vincent Gagliano, hereinafter referred to as the "husband."

WHEREAS, the parties hereto are husband and wife; and WHEREAS, marital difficulties have arisen between the parties and the parties are now separated with no possible chance of reconciliation; and WHEREAS, divorce proceedings are now pending in the Law and Equity Court of the City of Richmond; and WHEREAS, the parties desire to settle all of the financial matters existing between themselves;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

1. The parties agree that the care and custody of the child born of this marriage is to be with the wife, with the right of reasonable visitation at all times to the husband.

2. The husband agrees to pay to the wife the sum of Two Hundred and Fifty and no/100 ($250.00) Dollars per month as support money for the support, maintenance, and education for said child.

3. The husband agrees to pay all the expenses of a college and graduate education for the infant child of the parties.

4. The husband agrees to pay to Hall & Hall, Attorneys

for the wife, within 30 days hereof, the sum of $250.00, plus fifty dollars ($50.00) costs, for professional services rendered to the wife.

5. The parties agree that the family automobile shall be sold forthwith and the proceeds divided equally between husband and wife.

6. The wife agrees to accept the provisions herein in full discharge of the husband's duty to maintain and support her.

7. The parties agree to execute any and all documents, instruments, deeds, titles, or other papers which may be necessary to effectuate the terms of this agreement.

8. The parties agree that this Stipulation is to be submitted to the Law and Equity Court of the City of Richmond, Virginia, for confirmation, ratification, and approval, and that the terms of same will be made a part of any decree the Court may herein enter.

WITNESS the following signatures and seals:

Anna Jean Gagliano (SEAL)
Anna Jean Gagliano

Angelo Vincent Gagliano (SEAL)
Angelo Vincent Gagliano

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, Catherine Wenrich a Notary Public in and for the City of Richmond, State of Virginia, do certify that Angelo Vincent Gagliano, whose name is signed to the writing above, bearing date on the 19th day of June, 1971, has acknowledged the same before me in my City and State aforesaid.

19th day of June, 1971.

STATE OF VIRGINIA
COUNTY/CITY OF RICHMOND, to-wit:

I, STEWART W. ELLIOTT, a Notary Public in and for the County/City of RICHMOND, State of VIRGINIA, do certify that Anna Jean Gagliano, whose name is signed to the writing above, bearing date on the 19th day of June, 1971, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 9th day of August, 1971.

Stewart W. Elliott
Notary Public

My Commission expires:

1-31-75