216 Va. 13

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 6 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740832

BETTY COCKERHAM ALLS,

Appellant

v.

DONALD EUGENE ALLS,

Appellee

APPENDIX

S. S. C. DRAKE
Attorney at Law
1803 Fidelity National Bank Building
P. O. Box 1052
Lynchburg, Virginia 24505

Counsel for Complainant - Appellant

WILLIAM ROSENBERGER, JR.
Attorney at Law
Fidelity National Bank Building
Lynchburg, Virginia 24504

Counsel for Respondant - Appellee

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I Henry E. Bennett, Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste:

September 5, 1974

Henry E. Bennett, Clerk

Henry E. Bennett

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

BETTY COCKERHAM ALLS, Complainant v. DONALD EUGENE ALLS, 108 Woodway Drive (Campbell County) Lynchburg, Virginia 24501 Respondent	AMENDED BILL OF COMPLAINT

Comes now your Complainant and for an Amended Bill of Complaint shows the Court the following matters: -

(1) The parties are over the age of eighteen (18) years; that they were married in Danville, Virginia on September 5, 1965, a copy of the marriage license has been filed in this suit heretofore and is hereby incorporated as Exhibit 1 for Complainant.

(2) Both parties are actual and bonafide residents of this State and have been for more than one (1) year next preceding the commencement of this proceeding; Campbell County, Virginia was the last place of cohabitation.

(3) That both parties are members of the caucasian race; neither is a member of the armed forces of the United States.

(4) That Respondent has been employed more or less regularly since the marriage and Complainant was employed from 1965 until approximately 1971, and that together they bought and paid a substantial sum for real property in Danville, Virginia. The parties sold their house, owned as tenants by the

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EYS AT LAW
RG. VIRGINIA

entireties in Danville, Virginia and with the proceeds purchased real property in Campbell County, taking title as tenants by the entireties. This latter parcel of land is described as 108 Woodway Drive, Keystone Forest Subdivision; the original amount of the lien of a deed of trust was $24,700.00.

(5) Before the parties moved from Danville to Campbell County they adopted a son who is now three (3) years old.

(6) On many and sundry occasions since moving to Lynchburg, Respondent has asked his wife for a divorce and more recently, until the parties separated in April, 1974, Respondent has insisted to his wife that she leave, telling her that the marriage was over, that he had no interest in her, causing her great humiliation, unhappiness and nervousness. The wife returned to work toward the end of 1973 and has been earning a small wage. The husband has refused to have sexual relations with the wife since approximately January, 1974 and before January, 1974, for two and one-half or three years would only consent to sexual relations once in three months or so. This has caused the wife to become ill and nervous and she is humiliated by his treatment.

On the evening of April 13, 1974, the husband again insisted that the wife leave the marital domicile and additionally, having been drinking alcohol, wanted to drive the wife's car. When the wife refused, he became physically abusive towards her, striking her. When the wife tried to call for police protection, the husband broke the telephone. The wife was in great fear for her life and felt that she was in great danger of being seriously injured. Police protection had to be obtained.

WHEREFORE, your Complainant prays that:

(1) The Court grant to her a decree of divorce from bed and board on the grounds of constructive desertion, or alternatively, on the ground of cruel treatment.

JESTER & JESTER
ATTORNEYS AT LAW
LYNCHBURG, VIRGINIA

(2) The Court enter a decree awarding the custody of their son to her, with reasonable visitation to her husband.

(3) The husband be ordered to pay appropriate child support for the maintenance of their son, through the Campbell County Juvenile and Domestic Relations Court. The husband be ordered to pay appropriate alimony to wife, commensurate with the difference in the earning ability of the parties and the manner in which they were accustomed to living.

(4) The husband be ordered to pay her suit money and costs expended, pendente lite child support, alimony and attorneys' fees.

(5) The husband be ordered to bear the costs of legal representation, aand attorneys' fees for his wife.

(6) The Court enter a non-molestation order to restrian the husband from harassing and abusing the wife.

(7) That the husband be joined as Respondent in this suit and be required to respond, but his oath is expressly waived.

BETTY COCKERHAM ALLS

By _____
Of Counsel

June 18, 1974

S. S. C. Drake, p.q.
Attorney at Law
1803 Fidelity Bank Building
Lynchburg, Virginia 24504

COMMONWEALTH OF VIRGINIA,
To-Wit: -
CITY OF LYNCHBURG,

I, _____, a Notary Public, in and for the City aforesaid, in the Commonwealth of Virginia, hereby certify that

ER & JESTER
RNEYS AT LAW
BURG, VIRGINIA

S. S. C. Drake, whose name is signed to the foregoing Amended Bill of Complaint, has personally appeared before me in my City aforesaid and made oath that the information set out in the Amended Bill of Complaint is true and correct to the best of her knowledge, information and belief.

My commission expires _____.

Given under my hand this the ___ day of June, 1974.

_____
Notary Public

ANSWER AND CROSS-BILL
TO
AMENDED
BILL OF COMPLAINT

The answer and cross-bill of Donald Eugene Alls to the Amended Bill of Complaint exhibited against him by Betty Cockerham Alls in the Circuit Court for the County of Campbell, Virginia.

The defendant, reserving to himself the benefit of all just exceptions to the aforesaid Amended Bill of Complaint, for answer to said Amended Bill of Complaint, or to so much thereof as he is advised that it is necessary and material to answer, says:

I

The defendant, Donald Eugene Alls, incorporates herein by reference the allegations contained in his Answer and Cross-Bill, heretofore filed herein, as and for his answer and Cross-Bill to the Amended Bill of Complaint filed against him by the complainant, Betty Cockerham Alls.

II

The defendant specifically denies each and all of the allegations contained in the Amended Bill of Complaint filed against him, except those specifically admitted in the aforesaid Answer and Cross-Bill.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

I, Wm. Rosenberger, Jr., attorney for the defendant, hereby certify that a copy of the foregoing Answer and Cross-Bill to the Amended Bill of Complaint was mailed to Susie Stuart Drake, Esq., P. O. Box 1052, Lynchburg, Virginia, attorney for the complainant, on this the 19th day of June, 1974.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
Lynchburg, Virginia 24505

OSENBERGER, JR.
LAW OFFICES
CHBURG, VIRGINIA

PLEA
TO
AMENDED
BILL OF COMPLAINT

The defendant, Donald Eugene Alls, by his attorney, comes and says that the Plea filed heretofore to the Bill of Complaint is incorporated herein by reference as and for the Plea to the Amended Bill of Complaint.

And this the said defendant is ready to verify. A reply by the complainant is expressly requested.

WHEREFORE, the defendant, Donald Eugene Alls, prays judgment whether this Court can or will take any further cognizance of this action against this defendant.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

I, Wm. Rosenberger, Jr., attorney for the defendant, hereby certify that a copy of the foregoing Plea to Amended Bill of Complaint was mailed to Susie Stuart Drake, Esq., P. O. Box 1052, Lynchburg, Virginia, attorney for the complainant, on this the 19th day of June, 1974.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

M. ROSENBERGER, JR.
LAW OFFICES
LYNCHBURG, VIRGINIA

BETTY COCKERHAM ALLS,	Complainant	
v.		PLEA
DONALD EUGENE ALLS,	Defendant	

The defendant, Donald Eugene Alls, by his attorney, comes and says that this Court ought not to have or take further cognizance of this suit of the complainant, Betty Cockerham Alls against the defendant, Donald Eugene Alls, because after the time that the complainant alleges that the defendant cruelly beat and knocked her down, so as to cause her to fear for her life and limb, the complainant voluntarily had sexual intercourse with the defendant and slept with him on April 16 and 17, 1974, and by her cohabitation with the defendant, complainant has condoned the alleged cruelty and constructive desertion, which actually never occurred, as the complainant has never feared for her life or limb because of any conduct of the defendant.

And this the said defendant is ready to verify. A reply by the complainant is expressly requested.

WHEREFORE, the defendant, Donald Eugene Alls, prays judgment whether this Court can or will take any further cognizance of this action against this defendant.

Wm. Rosenberger, Jr.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

I, Wm. Rosenberger, Jr., attorney for the defendant, hereby certify that a copy of the foregoing plea was mailed to Susie Stuart Drake, Esq., P. O. Box 1052, Lynchburg, Virginia, attorney for the complainant on this the 30th day of April, 1974.

Wm. Rosenberger, Jr.

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

ROSENBERGER, JR.
LAW OFFICES
NCHBURG, VIRGINIA

BETTY COCKERHAM ALLS,	Complainant	ANSWER AND CROSS-BILL
v.		
DONALD EUGENE ALLS,	Defendant	

The answer and cross-bill of Donald Eugene Alls to a bill of complaint exhibited against him by Betty Cockerham Alls, in the Circuit Court for the County of Campbell, Virginia.

The defendant, reserving to himself the benefit of all just exceptions to the aforesaid bill of complaint, for answer to said bill of complaint, or to so much thereof as he is advised that it is necessary and material to answer, says:

(1) The defendant admits the allegation as to the marriage of the parties;

(2) The defendant admits the allegation as to the name and age of their adopted child;

(3) The defendant admits the allegation as to the race of the parties;

(4) The defendant admits the allegation as to the domicile and residence of the parties;

(5) The defendant admits that he is not a member of the Armed Forces of the United States of America.

(6) The defendant denies that he is guilty of cruelty to the complainant or that she is in reasonable apprehension of bodily harm from him or that he is guilty of constructive desertion and abandonment of the complainant,

WM. ROSENBERGER, JR.
LAW OFFICES
LYNCHBURG, VIRGINIA

but on the contrary, the defendant alleges that the complainant voluntarily deserted and abandoned him on Friday, April 19, 1974, without just cause or reason;

(7) The defendant denies that the complainant is a suitable and proper person to have the care and custody of Donald Eugene Alls, Jr.

(8) The defendant specifically denies each and every allegation contained in the bill of complaint, except those specifically admitted herein;

For grounds of his cross-bill, the defendant alleges and charges as follows, to-wit:

(1) The defendant was lawfully married to the complainant as alleged in the bill of complaint;

(2) The complainant has failed and refused to live with the defendant on a number of occasions, because of her lack of interest in their home and their child and for that reason she willfully deserted and abandoned the defendant the last time on April 19, 1974 when she moved from the home at 106 Woodway Drive, Campbell County, Virginia, without just cause or excuse and they have not cohabited as man and wife from that time to this. The complainant has severed all marital ties and has refused to live with or be a wife to the defendant, as she apparently has no further interest in their marriage;

(3) By virtue of the acts of the complainant, in the respects aforesaid, she willfully deserted and abandoned the defendant on April 19, 1974, with the intent to live separate and apart from the defendant permanently and he has not cohabited with her as man and wife from that date to this;

(4) The defendant avers and charges that he is a suitable and proper person to have the care and custody of Donald Eugene Alls, Jr.;

(5) The parties to this proceeding are both members of the white race, over the age of 18 years and neither is a member of the Armed Forces of the United States;

(6) The defendant is domiciled in and is and has been an actual

ROSENBERGER, JR.
LAW OFFICES
YNCHBURG, VIRGINIA

bona fide resident of the State of Virginia for more than one year next preceding the commencement of this suit; that the complainant and the defendant last co-habited as man and wife in the County of Campbell, Virginia and that the complainant is now a resident of Yorktown, Virginia;

IN CONSIDERATION WHEREOF, the defendant prays:

(1) That the defendant be granted the care, custody and control of Donald Eugene Alls, Jr.;

(2) That the marital rights of the parties hereto in the property of each other be extinguished;

(3) That the defendant be granted a divorce a mensa et thoro and, at the proper time it may be merged into a divorce a vinculo matrimonii; and

(4) That the defendant will ever pray, etc.

Wm Rosenberger

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

I, Wm. Rosenberger, Jr., attorney for the defendant, hereby certify that a copy of the foregoing Answer and Cross-Bill was mailed to Susie Stuart Drake, Esq., P. O. Box 1052, Lynchburg, Virginia, attorney for the complainant, on this the 30th day of April, 1974.

Wm Rosenberger

Wm. Rosenberger, Jr., Attorney for Defendant
1904 Fidelity National Bank Building
P. O. Box 1328, Lynchburg, Virginia 24505

A-12

WM. ROSENBERGER, JR.
LAW OFFICES
LYNCHBURG, VIRGINIA

BETTY COCKERHAM ALLS, Complainant v. DONALD EUGENE ALLS, Defendant	DECREE

This cause, which has been regularly matured, set for hearing and docketed, came on to be heard on the bill of complaint, duly filed in the Clerk's Office of this Court, with a certified copy of the marriage license and certificate of marriage, marked "Complainant's Exhibit #1" thereto attached; the subpoena in chancery, duly served on the defendant, Donald Eugene Alls, in person; the plea and answer and cross-bill of the defendant, Donald Eugene Alls, duly filed in the Clerk's Office of this Court; the answer of the complainant to the defendant's cross-bill, duly filed in the Clerk's Office of this Court; the response of the complainant to the special plea, duly filed in the Clerk's Office of this Court; the motion of the complainant for pendente lite support and custody, duly filed in the Clerk's Office of this Court; the motion of the defendant to have the Court hear all of the evidence orally, duly filed in the Clerk's Office of this Court; the amended bill of complaint, duly filed by the complainant in the Clerk's Office of this Court, by leave of Court; the plea to amended bill of complaint, duly filed in the Clerk's Office of this Court; the answer and cross-bill of the defendant to the amended bill of complaint, duly filed in the Clerk's Office of this Court; the evidence duly heard by the Court, pursuant to notice duly served on the complainant, in person; and was argued by counsel;

UPON CONSIDERATION WHEREOF, it appearing from the evidence duly heard by the Court, ore tenus, according to law, in the presence of the

ENBERGER, JR.
W OFFICES
BURG, VIRGINIA

parties, in proper person, and by counsel, and independently of the admissions of the parties in the pleadings, or otherwise, the Court being of opinion doth decide that the complainant, Betty Cockerham Alls, and the defendant, Donald Eugene Alls, both members of the white race and over the age of 18 years, were lawfully married in the City of Danville, Virginia on September 5, 1965; that the complainant and the defendant are, and have been for more than one year next preceding the commencement of this suit, domiciled in and are actual bona fide residents of the State of Virginia, and that the complainant and the defendant last cohabited in the County of Campbell, Virginia; that the parties to this suit are not now, nor were they at the commencement of this suit, in the military service of the United States of America, as defined in Section 101 of the Soldiers' and Sailors' Civil Relief Act of 1940, or any amendment thereto; that the complainant willfully deserted and abandoned the defendant on April 19, 1974; that both the complainant and the defendant invoked the jurisdiction of this Court to determine the custody of Donald Eugene Alls, Jr., prior to April 26, 1974, when the complainant filed a motion in the District Juvenile and Domestic Relations Court of the County of York, for an order vesting the temporary care, custody and control of Donald Eugene Alls, Jr. in the complainant, pursuant to Section 31-15 of the Code of Virginia, and prior to the order, of the District Juvenile and Domestic Relations Court of the County of York, entered thereon, on May 8, 1974, which temporarily vested the custody of Donald Eugene Alls, Jr. in that Court, and that Court ordered that the child should not be removed beyond the jurisdiction of that Court, and that the temporary physical custody should remain in Betty Cockerham Alls; and it further appearing from the evidence, and the Court being of opinion doth decide that the custody of Donald Eugene Alls, Jr. should be awarded to his father, the defendant, for what is considered his best interests; that the bill of complaint and the amended bill of complaint filed herein by the complainant should be dismissed

and the prayer of the cross-bill and of the cross-bill to the amended bill of complaint should be granted, and it appearing in all respects proper so to do, the Court doth Adjudge, Order and Decree that the defendant, Donald Eugene Alls, be, and he hereby is, granted a divorce a mensa et thoro from the complainant, Betty Cockerham Alls, on the ground of desertion, however, the parties shall not marry other persons until after the entry of a decree granting a divorce a vinculo matrimonii; and the care, custody and control of Donald Eugene Alls, Jr. is awarded to the defendant, his father, with the right to the complainant to visit her child and have the child visit with her at reasonable times and places; and this Court having determined the custody of Donald Eugene Alls, Jr., it is further Adjudged, Ordered and Decreed that the order of the District Juvenile and Domestic Relations Court of the County of York, entered on May 8, 1974, be, and the same hereby is, declared to be null and void, as that Court does not have jurisdiction of the custody of Donald Eugene Alls, Jr., and this Decree shall supersede the aforesaid order of the District Juvenile and Domestic Relations Court of the County of York, and the Clerk of this Court shall send a certified copy of this Decree to the Clerk of the District Juvenile and Domestic Relations Court of the County of York.

It is further Adjudged, Ordered and Decreed that the defendant shall pay to S. S. C. Drake the sum of $250.00 on account of attorney fees for services rendered the complainant, and court costs of $31.50.

It is further Adjudged, Ordered and Decreed that this cause be, and the same hereby is, dismissed from the docket of this Court, with leave to either party to reinstate the same, after notice to the other party, or by certified mail to the last known address of that party, to merge the a mensa et thoro divorce into an a vinculo matrimonii divorce at the proper time.

SEEN:

Objected to
see Order

Of Counsel for the Complainant

Attorney for the Defendant

A-15

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

BETTY COCKERHAM ALLS, Complainant v. DONALD EUGENE ALLS, Respondent	NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Please take Notice, pursuant to Rule 5:6, of the Rules of the Supreme Court of Virginia, that Complainant appeals to the Supreme Court of Virginia from the final decree entered in this suit on July 1, 1974.

And further, Complainant makes the following assignments of error:

(1) That the Chancellor's decree, dismissing Complainant's Bill of Complaint fails to take cognizance of the evidence and in granting Defendant's prayer in his Bill of Complainant is exactly contrary to the established principles applied to matters of this character by the Virginia Supreme Court and the Chancellor's decree is in error and also contrary to the requirements of the Virginia Code.

(2) That the Chancellor was in error in granting custody of the adopted child of the parties to Defendant as the evidence shows the best interests of the child are that his care and custody be awarded to Complainant.

(3) That the Chancellor was in error in refusing to grant alimony unto Complainant as the evidence is clear that she is innocent of any wrongdoing.

(4) That the Chancellor was in error in ordering Defendant to pay only $250.00 attorney's fees and $31.25 Court costs , the sum being too little

considering the complexity of the evidence, the amount of preparation and the many appearances by Complainant's two counsel before the three Courts heretofore, the County Court of Campbell, several appearances before the Circuit Court of Campbell County and the Juvenile & Domestic Relations Court of York County and further that attorney's fees did not include payment to the Honorable Donald Taylor for any portion of his representation.

Respectfully,

BETTY COCKERHAM ALLS

By Counsel

Donald R. Taylor
Drawer DD
Williamsburg, Virginia 23185
Counsel for Complainant

S. S. C. Drake
P. O. Box 1052
Lynchburg, Virginia 24505
Counsel for Complainant

I, the undersigned, make oath that a true copy of the above was mailed to William Rosenberger, Jr., Esquire, Counsel for Donald E. Alls, this 26th day of July, 1974.

S. S. C. Drake

IN THE DISTRICT JUVENILE AND DOMESTIC RELATIONS

COURT OF THE COUNTY OF YORK

BETTY COCKERHAM ALLS — Complainant

vs.

DONALD EUGENE ALLS — Respondent

ORDER

On the 8th day of May, 1974, came the Complainant, in person, and by counsel, and moved the Court for an Order vesting the temporary care, custody and control of Donald Eugene Alls, Jr., in the Complainant and the Court informed counsel for the Complainant that the Respondent, by counsel, had moved for a continuance of this cause. The Court, upon consideration hereof, doth ORDER that this cause be continued and that the custody of the infant be temporarily vested in this Court and that said child shall not be removed beyond this jurisdiction without the strict order of this Court and said child shall remain in the temporary, physical custody of the Complainant, Betty Cockerham Alls.

And the Court doth reserve, etc.

ENTER THIS ____ DAY OF MAY, 1974.

Presiding Judge

VIRGINIA: IN THE CIRCUIT COURT OF LYNCHBURG.

BETTY COCKERHAM ALLS,

Complainant

v.

DONALD EUGENE ALLS,

Defendant.

Before: The Hon. Norman K. Moon, Judge.

June 28, 1974

APPEARANCES: MRS. SUSIE STUART DRAKE and JUDGE DONALD TAYLOR, Counsel for the Complainant.

WILLIAM ROSENBERGER, JR., Counsel for Defendant.

I N D E X :

Witnesses for Complainant	Examination Direct	Examination Cross
BETTY COCKERHAM ALLS	8 108	39
DEPUTY SHERIFF DANIEL HOGAN	81 84 85	83 85 86
MRS. GRACE LEE	88 106	99
Witnesses for Defendant		
MRS. JOSIE HARDER	108 122	118 123
DONALD EUGENE ALLS	124 149	140 151
Witness for the Complainant - Rebuttal		
MRS. GRACE LEE	152	153

1 MRS. DRAKE: I believe we have introduced Judge Taylor,
2 who is Mrs. Alls' counsel from Eastern Virginia and has been
3 advising with her and representing her in judicial proceed-
4 ings in Eastern Virginia.
5 We have a particularly unhappy domestic matter. The
6 parties first fell in love when they were married to other
7 parties. Mr. Alls left his first wife for complainant; com-
8 plainant left her first husband for Alls. Their marriage
9 was ill-starred from the beginning.
10 Alls' daughter lived with the parties but complainant
11 lost her first two children when she did not have enough to
12 feed and clothe them. They were raised by paternal grand-
13 parents. Mr. Alls promised complainant that he would assist
14 her but failed to do so.
15 After a number of years the parties adopted a child and
16 his custody, as well as the divorce, alimony, child support,
17 legal costs, expenses and fees.
18 At one time the parties were separated prior to April
19 13, 1974. This was in '73 that they were first separated.
20 They were reconciled. Shortly after the reconciliation the
21 evidence will indicate that Alls commenced pushing for com-
22 plainant to leave. She put him off until she was able to
23 get a job in Lynchburg, then later transfer. The evidence
24 will indicate defendant told his wife all he wanted was the
25 house, furniture and children. He just wanted to be rid of

her. He was too old to start over again and that is what the evidence will show, Your Honor.

MR. ROSENBERGER: If Your Honor please, the complainant, Mrs. Alls and the defendant, Mr. Alls, were separated and in March, 1973, she left the child with Mr. Alls and went to Roanoke where she worked. He took her back I believe in July, 1973. She, according to our evidence, voluntarily gave up her two children by her first marriage. This child was adopted for some reason. I think that the complainant thought she was unable to have children. Then I think he subsequently found that she was on the pill and in March, 1973, or about that time, - I am not sure; you have the first case here - they entered into a separation property agreement. That case was filed earlier and is still on the docket. You might refresh my memory.

THE COURT: Filed April 5, 1973, in the Circuit Court of Campbell County.

MR. ROSENBERGER: That is just remaining on the docket and then she came back now and while she first left, it is my understanding Mr. Alls had her Aunt Grace take care of this child for a while, then he found Mrs. Harder. Mrs. Harder remains with him as a housekeeper and baby sitter and Mrs. Harder is sort of like a mother to this child. It is my understanding he is three years of age. The parties discussed separation or divorce in December, 1973. I think it

1 was on Christmas or Christmas Eve. Mrs. Alls' problem has
2 been alcohol. Then on Saturday, April 13, is when this
3 problem started that resulted in her leaving the house, even
4 though she slept with this husband subsequently.
5 Saturday, April 13, both were at home and they had a
6 cook-out, I suppose you would call it, a steak outside; they
7 had some wine; they had something to drink. Mr. Alls was
8 going out in his car rather than the company car. Mrs. Alls
9 said it was her car; he had transferred that car to her in
10 March, 1973. So, the argument started about that. Subse-
11 quently he pushed her and she then went to call the police.
12 He pulled the phone aloose and then he reconsidered and
13 thought, "What a silly thing", so he reconnected it and he
14 called the police and said his wife wanted to talk to them.
15 So, they told her to come down and get the warrant, which
16 she did. Then they took him down and locked him up. That
17 was on Saturday, April 13, and on Sunday, April 14, he was
18 released; he came home. They slept together Sunday night;
19 Monday night; Tuesday night; Wednesday night. He will tell
20 you that they had intercourse Wednesday night or Thursday,
21 early Wednesday morning, between Tuesday night and Wednesday
22 night. Wednesday morning rather.
23 The Bill of Complaint was filed on Thursday. On Friday
24 I believe it was she told Mrs. Harder she was going to take
25 Donny to get his picture taken and got a couple of suits and

1 the first thing that Mr. Alls knew about it, she had taken
2 the child and gone. He checked at her place of employment
3 and found out that she had resigned and was no longer working
4 for Miller & Rhoads. The next thing he heard from I think
5 had to do with her furniture. She took a truck out there
6 and subsequently they were able to stop that. She did not
7 move the furniture out and then we got around into maybe,
8 the last of April, and you set the case down for hearing on
9 May 24. Counsel stated it didn't suit. I think Judge Taylor
10 couldn't come. He had not seen this child since April and
11 she had taken it down to her Aunt Gracie's and we wanted a
12 trial.

13 Well, they then agreed that Alls could come down and
14 get the child on Saturday and keep the child over Memorial
15 Day. He went down there Saturday morning, May 25. He
16 couldn't get the child because the aunt said the child was
17 in the custody of the Court. Meantime I had written Mr.
18 Taylor about a petition that had been filed down there in
19 the Court and asked him to put it off since it was pending
20 in Your Honor's Court. That had occurred April 29 and was
21 when Mrs. Drake had written me about this hearing. Then on
22 May 5 we wrote the Clerk and sent a Motion to continue that
23 hearing on the petition down in the J & D Court of York Count
24 on the ground the notice was not sufficient. On May 9 we got
25 a letter from Mr. Taylor, sending a copy of the Order which

granted the continuance, but stated that the custody of the infant be temporarily vested in the Court. The child shall not be removed beyond this jurisdiction without the strict order of the Court and that the child shall remain in the temporary physical custody of the complainant, Betty Cockerham Alls, so when Mr. Alls went out on this Saturday morning, May 25, to get the child, Mrs. Alls was working but the Aunt Grace wouldn't let him have the child, so then we started a series of calls and located Mrs. Drake and she said she had made arrangements for him to get the child at two o'clock. He went back from the police station, wherever he was waiting for Aunt Grace's call, and Aunt Grace wouldn't let him in and said the child was asleep. Then the next problem was when we got the call again and finally arranged for him to get the child around six o'clock. Subsequently we went down and Aunt Grace wouldn't hear to that and the net result was Mrs. Alls and Mr. Alls went to Judge Athey. He let him have the child for this particular weekend and we haven't seen the child since.

In addition we take the position that Mrs. Alls has drunk to the extent that it would be dangerous for her to have the child. It has been recognized by her aunt that she is living in one place and the child is in effect been taken from both parties and given to Aunt Grace. Aunt Grace keeps him in an apartment down there in the York County area, so

1 the sum and substance of our position is, number one, that
2 she has deserted Mr. Alls and she is not entitled to any
3 alimony. Number two, she is not a proper person to have the
4 custody of this child but there he is. That certainly her
5 Aunt Grace, with her age, should not be in effect given the
6 custody. We call your attention to this Order, even though
7 it is said she could have the physical custody of the child,
8 she didn't keep the physical custody of this child. That in
9 substance is our case. Of course we file a plea of condemna-
10 tion and cross-bill, asking for a divorce on the grounds of
11 desertion.
12
13
14 The witness, BETTY COCKERHAM ALLS, having first been
15 duly sworn, deposes, as follows:
16 DIRECT EXAMINATION
17 BY MRS. DRAKE:
18 Q What is your name and age, please ma'am?
19 A My name is Betty Alls. I am thirty-two.
20 Q What is your husband's name, please, ma'am.
21 A Donald Alls and he is forty-two.
22 Q When and where were you married to Mr. Alls?
23 A Well, we were married September 4, 1965, in Dan-
24 ville.
25 Q Has a certified copy of the marriage certificate

1 been filed in this proceeding?

2 A Yes, it has.

3 Q Are both you and your husband members of the white

4 race?

5 A Yes.

6 Q Are you members of the Armed Forces of the United

7 States?

8 A No.

9 Q Have both you and your husband been bona fide citi-

10 zens of the State of Virginia for more than one year next preceding

11 the commencement of this suit?

12 A Yes.

13 Q Was Campbell County the last place you and your

14 husband cohabitated?

15 A Yes.

16 Q Would you please tell the Judge the names and ages

17 of yours and your husband's children.

18 A Jeffrey is thirteen. Noel is eleven. Donna Kay is

19 eighteen and Donny is three.

20 Q Now, is Donna the daughter of Mr. Alls?

21 A Yes.

22 Q Jeffrey and Noel are your two children?

23 A They are my two children by my previous marriage.

24 Jeffrey is thirteen; Noel is eleven. Donna Kay is eighteen and

25 Donny is three.

1 Q Where did you and your husband live following your
2 marriage?
3 A We lived in Danville.
4 Q And how was that house listed?
5 A In both our names.
6 Q By whom were you and your husband employed in
7 Danville?
8 A By J. C. Penney and Don W. Kroger Company.
9 Q Approximately how much money did each of you earn?
10 A I think that year Don probably earned thirteen
11 thousand dollars and I possibly earned three thousand.
12 Q Would it have been the first year of your marriage?
13 A Yes, but I am not sure of the situation approxi-
14 mately.
15 Q Did each of you enjoy an increase in your salary?
16 A He did; mine was slight.
17 Q What year did you move to Lynchburg?
18 A 1972.
19 Q That is in Campbell County?
20 A Yes.
21 Q Approximately by whom was Mr. Alls employed at
22 that time?
23 A Kings.
24 Q What did he tell you his salary was at that time?
25 A I think it was possibly sixteen thousand.

1 Q Did he tell you when he got raises?
2 A Yes.
3 Q So, in 1973, would the approximate salary have
4 been --
5 A I believe we filed taxes on approximately eighteen
6 thousand.
7 Q Now, what sort of accounts, banking accounts did
8 you all have while you were married?
9 A We had regular checking and special checking.
10 Q Were those joint accounts?
11 A Yes.
12 Q Did each of you deposit your paychecks?
13 A Yes.
14 Q Did either of you have unearned income?
15 A No.
16 Q Now, was the Danville house sold before you moved
17 to Campbell County?
18 A Yes.
19 Q What did you do with the proceeds of the sale of
20 the house?
21 A Used that to invest into the house in Campbell
22 County.
23 Q And where was this house in Campbell County?
24 A 1088 Woodway Drive.
25 Q Keystone Forest?

1 A Yes.

2 Q What is the price you paid Keystone Forest for the

3 house?

4 A I believe it was -- I am sorry. Thirty thousand

5 and five hundred dollars.

6 Q How did you get the money to pay for that house?

7 A From the sale of the house in Danville.

8 Q Did you also execute a deed of trust and note or

9 some form of obligation?

10 A Yes.

11 Q Does it require periodic payments?

12 A Yes.

13 Q Do you know how much the deed of trust was originall

14 for approximately?

15 A Possibly in the twenty thousand dollars. I don't

16 know.

17 Q How did you furnish that house in Campbell County?

18 A With the furniture I had before we married; what

19 we had accumulated while we were married and we bought a few

20 things after we moved into the house.

21 Q Now, when you bought things after the marriage,

22 how were they paid for? Did you pay for them or your husband pay

23 for them?

24 A They were paid from the joint checking account.

25 Q Now, do you remember what you took into the

1 marriage, what pieces of furniture you took to the marriage?

2 A Yes. Bedroom suit. That is the guest bedroom. A

3 stereo; a table in our living room; some of the things we sold to

4 buy something to replace something a little nicer than we had.

5 Q Now, were there any other things you took into the

6 marriage that are still in the Campbell County house?

7 A Yes, kitchenware and things of that nature.

8 Q How about flat silver? Did you all buy flat silver?

9 A Nothing of real value.

10 Q Have you and your husband ever been separated prior

11 to April 13, 1974?

12 A Yes.

13 Q When was that approximately?

14 A March, 1973.

15 Q And how long did that separation continue?

16 A A period of about four months.

17 Q How did that separation come about?

18 A Why did I leave?

19 Q Unhuh.

20 A I was taking Valium and Sinequan. One is an anti-

21 depressant and the other is a tranquilizer. I was drinking. I

22 was very unhappy. I realized I did not want to spend the rest of

23 my life taking pills and drinking, so to get away from that situa-

24 tion I had to leave, which I did. This was due to the fact that

25 I stayed many, many days by myself; nights by myself, with a baby

1 and in a new town, in a new neighborhood.

2 Q Was your husband home some of the evenings or was

3 he out?

4 A Some of the evenings when he was home he would have

5 dinner and immediately go to the couch and go to sleep.

6 Q Was he working at night?

7 A Some.

8 Q By whom was he employed at that time?

9 A King's Market, Incorporated.

10 Q Now, when you left, who kept your child?

11 A My aunt had been staying with us a period of about

12 three weeks. She was in the house when I left and my sister came

13 the same day.

14 Q Now, where did they take the child?

15 A Back to my sister's home in Newport News.

16 Q How long did your youngest child stay with your

17 sister?

18 A Donny was there for a period of five weeks.

19 Q Now, later did your aunt come up and train this

20 new woman that they got, the older woman?

21 A Yes, she did.

22 Q Now, do you remember at that time signing a property

23 settlement at the time of the first separation, signing a property

24 settlemen agreement?

25 A I signed what I thought were divorce papers.

1 Q Oh, I see. Have you signed a copy of that property
2 settlement agreement?
3 A I think I got a copy of the divorce but not the
4 property settlement.
5 Q Where did you sign this property settlement?
6 A In Mr. Thompson's office.
7 Q What lawyer represented you and what lawyer your
8 husband?
9 A Mr. Thompson represented both of us.
10 Q Did you read the agreement?
11 A I am sure I did or glanced at it. I had had any
12 number of Valium that day and I couldn't swear to anything I did
13 that day.
14 Q Now, how did you and your husband become reconciled?
15 A Over the months I was down there on any number of
16 occasions he would call. One night in particular he called and
17 he said he didn't have much to live for any more; he had read
18 over his insurance policies and he wasn't sure whether they would
19 cover him if he did commit suicide. This is how I talked to him.
20 I was afraid he might do something of this nature so over a
21 period of the last two months I was there I had telephone conver-
22 sations with him like that. I have forgotten what night it was
23 but he called me and said he had to get away from the house and
24 the pressures of the job; could he just come down for a weekend.
25 He told me he had been under a doctor's care that week; I had

1 nothing to worry about. I mean it was just coming for the weekend,
2 just to get away from Lynchburg. I learned later he had informed
3 Mr. King he was coming down to bring me back home and I didn't
4 know until later that he had spoken to my aunt, asking her what
5 her thinking was of would I come back and live with him again. I
6 didn't know all of this but this is the way I did come back. He
7 told me the Monday that I closed up my apartment in Yorktown that
8 if I wasn't happy at home that he would see to it that I would
9 have another apartment; he had taken care of that in Yorktown and
10 had taken care of the initial moving expenses. He said he would
11 have a place for me to come back to as good or better than what
12 I was leaving, if we couldn't make it together again.
13 Q Why were you willing to come back?
14 A I came back mainly -- The main reason I came back
15 was Donny.
16 Q Tell the Judge about that.
17 A I never would have come back other than Donny. But
18 over the period of those months I did not take any pills. When I
19 stopped taking pills, I stopped taking them all at one time. I
20 never did take Valium or Sinequan again.
21 Q How about alcohol?
22 A Very minimal socially.
23 Q And then did you all also agree that you would
24 return to work? Had you quit working?
25 A When we adopted Donny, that was a requirement,

1 that I quit work, which I did do. Before we came back to Lynch-
2 burg, before I had even gone and taken care of the business of
3 closing my apartment, I had called the housekeeper to let her
4 know that I was coming back and the only way I would come back
5 was for her to stay on so I could work outside of the home.
6 Q Did you return to work outside the home after
7 yours and your husband's reconciliation?
8 A It took me several months to find a job. If the
9 job suited me, I didn't like it. It was either working on Satur-
10 days or maybe at nights or something like this, so he didn't
11 want me to do that, so eventually I did find a part time job.
12 Q And about how much money were you able to earn at
13 the part time job?
14 A I think I made about thirty-five dollars a week,
15 maybe forty.
16 Q Do you know how much you and your husband earned
17 in '73?
18 A '73?
19 Q That's right, including the period of time you were
20 working in Yorktown at Williamsburg.
21 A I believe we filed on about eighteen thousand
22 approximately.
23 Q How much of that would have been your earnings?
24 A It wouldn't have been much over two thousand
25 dollars at the most.

1 Q Now, were you working at the part time job in
2 Lynchburg at the beginning of 1974?
3 A Yes.
4 Q Would you please tell the Judge how yours and your
5 husband's relationship was, beginning in early 1974? You can
6 back up a little bit into 1973.
7 A It never was much better than it had been in the
8 previous year or two. As far as our sexual relations, we had
9 absolutely almost none, very, very rarely, about every three
10 months. On an average his temperament was most times arrogant or
11 ugly; so many things didn't suit him.
12 Q How did you feel about his withholding sexual
13 relations from you?
14 MR. ROSENBERGER: I object to that sort of question.
15 She said rarely did they have it.
16 THE COURT: You are leading the witness.
17 THE WITNESS: Let me put it this way. When I would ask
18 him he would say he was too tired or didn't feel like it; which
19 is very humiliating.
20 Q Did he tell you whether it was another woman
21 involved?
22 A I asked him and he said no.
23 Q Did he tell you that his doctor had given him any
24 advice?
25 A On one occasion he has prostate infection and he

1 told me when he came to Newport News to try to get me to come back
2 home he had been under a doctor's care and that at that time he
3 had not been able to do anything now to have relations.
4 Q Now, was your husband at home during the latter
5 part of 1973 and early part of '74?
6 A What do you mean?
7 Q Was he at home in the evenings? Was he there on
8 weekends? Did you and he go out together?
9 A We seldom went out over the past three or four
10 years. We didn't go out very often. When I first came back to
11 Lynchburg we went out fairly regularly, which again stopped.
12 Q Now, what did you notice about your husband's
13 relationship with the young boy?
14 A It got to be again as it was before; he had very
15 little time for him; took him very little on his own. He was
16 fairly demanding of the child, especially at meal time. He could
17 not tolerate a two and a half year old having a ruckus at the
18 table or showing a little bit if temperament or doing something
19 temperamental. At times he stormed from the table and slammed
20 the door and ruined the meal.
21 Q This was the husband or child that slammed the
22 door?
23 A It was the husband that slammed the door. He did
24 not eat quite well enough at the table.
25 Q What did your husband tell you about what he

1 believed in reference to the marriage relationship?

2 A He said that we didn't have a marriage any longer;
3 that he wanted a divorce. This was over a period of about three
4 months. He discussed divorce fairly often. I asked him if he
5 wanted a divorce that bad could he just wait a little longer; I
6 had just gone to work for Miller & Rhoads as personnel supervisor,
7 which was one of the best jobs I ever had. I wanted to get more
8 security in my job to be able to support myself and he said, "As
9 long as I didn't wait too long", was his answer to that.

10 Q Now, did your husband have any close friends?

11 A My husband, after we were in Lynchburg, did not
12 have many friends at all to my knowledge. He had one close friend,
13 a young man named Jimmy Garrett. He spent a good deal of time
14 with him.

15 Q Now, what happened on April 13, 1974?

16 A This was on a Saturday. To start out as a normal
17 Saturday, I can't quite remember. I believe I had gone to the
18 office to help hold a meeting that morning. I was there for
19 several hours, two I think, and I came home and I went to the
20 grocery store; bought the week's supply of groceries; came home
21 and it was time to start dinner; took Donny outside for a little
22 while. I had to correct him for disobeying. He went out of the
23 yard and I was afraid he had gone into the street. I brought him
24 in the house and spanked him, not hard -- I never spanked him very
25 hard -- but I did make him sit in his little rocking chair and

1 told him he had to sit there ten minutes for disobeying me. Don
2 just became enraged over that fact. Usually it was him that did
3 the spanking. This started everything that led up through the
4 night.
5 Q All right. Would you tell us about that, please,
6 ma'am?
7 A Mr. Rosenberger said we had cooked steaks on the
8 grill. We have done this ever since we have been married. We
9 always had wine. We have wine regardless of whether we are on
10 speaking terms or not. This was by no means a romantic dinner;
11 this was a dinner we have had all over the years. It was a cold
12 meal and no one enjoyed it. Everybody got there but from Don's
13 attitude, it was not a pleasant meal.
14 Later on that night he told me he was going to
15 take my car and go outside. I asked him where he was going. He
16 said it was on a Monday and he was going to take my car and go.
17 I told him I would rather he didn't. Anytime he would take the
18 car, anytime he would take our car, he would have a reason because
19 most of the time he drove the company car and any time that he
20 was going to do any drinking at all, he would not take the company
21 car. I was afraid he would go out and have a wreck and get
22 killed or hurt. I told him he was not going to take my car, so
23 he went out to the car and got the car keys. When he went to get
24 my car keys, I went and got the car keys, which I couldn't drive
25 his car. I guess, -- Well, I guess I could with a pillow. I had

1 every intention of driving it to the court house if need be, any-
2 way I needed to go or so when he found out that I had the keys to
3 his car and wouldn't give them to him, he was just enraged. In
4 fact, his whole attitude that day was not normal. He looked like
5 he was just deliberately trying to start some kind of an argument.
6 He was emphatic about the point he was going out of the house
7 that night regardless.

8 Q Were you concerned about his safety?

9 A Right, because I know when he wasn't driving the
10 company car he was going to be drinking, but he would not drink
11 and drive the company car.

12 Q And what happened after the non-exchange of keys?

13 A He kept threatening me of what he was going to do
14 to me if I didn't give him the keys.

15 Q What did that consist of? How did he threaten you?

16 A I can't quite remember the words he used. I would
17 have regretted it most severely if I didn't give them to him to
18 get away from him. I went in the bedroom and he was -- I didn't
19 know he was in there. He pushed me out. He did this twice. He
20 finally left and I went back in the bedroom and I laid across the
21 bed. He came in and he threatened me again for not giving him the
22 car keys. He said, "You are going to force me to do something to
23 you that really isn't going to be worth it." What I was thinking,
24 I didn't know whether he was going to kill me or feel like killing
25 me, going to jail or not.

1 Q Did he have any weapon that you saw?

2 A On the same Saturday, the afternoon, I went into
3 the kitchen, I didn't know he was in there and he was getting a
4 case cutter.

5 Q Explain to the Judge and Mr. Rosenberger what a
6 case cutter is.

7 A Something you just slit the sides of crates or
8 boxes open with and it is a metal piece. You pull the top back
9 and it is a straight edge razor blade on top of it.

10 Q Was the straight edge open when you saw it?

11 A It wasn't. When he got it out of the drawer, when
12 I walked into the kitchen, he pulled the thing back and he said,
13 "Wouldn't it be nice for me if I could use that and have people
14 think it was an accident?"

15 Q What else happened later that evening?

16 A Getting back to the episode of the car keys, when
17 I left the bedroom and him in there, getting away from him, I went
18 to the living room and sat on the sofa and was trying to watch
19 T.V. He of all things -- This really surprised me. He got
20 Donny and took his clothes off and put him in the bathroom to give
21 him a bath. This is very unusual. He seldom ever would give him
22 a bath and so he left Donny, after he got him in the water, came
23 in the living room and started again about the keys.

24 Q Was the child in the tub by himself?

25 A Yes.

1 Q Did you know he had left him in the tub?

2 A Absolutely. He was never in the tub by himself.

3 Q What happened after your husband left the child in

4 the tub and came back?

5 A He came into the living room again demanding the

6 car keys and I wouldn't give them to him. He picked me up off

7 the couch. He raised me up and sat me down in the floor and

8 started shaking me and wanting his keys. He was right up in my

9 face hollering at me, threatening me with what he was going to do

10 if I didn't give him the keys. I told him I wouldn't. He picked

11 me up and threw me from one side of our living room wall out to

12 the landing. I mean I just went sailing across the living room

13 floor. I hit the floor and I lay there a few minutes and it

14 didn't knock me out but it knocked the breath out of me, so I

15 stayed there a few minutes on the floor. I got up and went down

16 the steps to the den.

17 Q May I interrupt you? How much do you weigh?

18 A I weigh a hundred and fifteen.

19 Q How tall are you?

20 A Five-three.

21 Q How much does your husband weigh?

22 A The last I heard he weighed two hundred and forty.

23 Q Do you know how tall he is?

24 A He is six-one.

25 Q I am sorry. You went down toward the den, is that

1 right?

2 A When he was shaking me before he picked me up and
3 threw me across the room, I didn't know whether possibly his mind
4 could have snapped. His behavior the whole day had gone from
5 silly and giggling mood to a mean and sullen mood to silent mood,
6 all three things in one day. They switched back and forth. When
7 he started shaking me, I screamed for the housekeeper and her
8 bedroom is downstairs. She came immediately up the steps. Don
9 told her to get in the bathroom so she couldn't hear or see any-
10 thing and go in there and stay with Donny. Then after she went
11 in the bathroom, that is when we were standing in the middle of
12 the living room floor and that is when he picked me up and threw
13 me out this way. After I got up off the floor I went down to the
14 den and he came downstairs. I realized the Mrs. Harder was up-
15 stairs and the only person that could help me in the house. I
16 came back upstairs and I went to the kitchen and was going to use
17 the telephone in the kitchen to call the police. He came up
18 behind me and grabbed the phone and tore the cord off of the box
19 on the wall to where the telephone and cord were in two separate
20 pieces. He still wanted the keys. He wanted to get out of the
21 house. He said -- I told him absolutely no he was not going to
22 leave me there without some way of getting to the police depart-
23 ment or calling them. He said well, he would put the telephone
24 back on the wall. He did and it took him half an hour. He was
25 sitting at the kitchen table doing it all the time and he was

1 singing.

2 Q He was doing what?

3 A Singing.

4 Q Did you think he was intoxicated?

5 A He was not. He had had two glasses of wine for

6 dinner. To the best of my knowledge, maybe in the afternoon, he

7 had a beer and that is all he had.

8 Q What happened to your ears that night?

9 A When he picked me up and threw me on the floor, one

10 earring was yanked out of my ear when I hit the floor and someway

11 or another his arm came down on my ear and it didn't tear that

12 one completely out but it tore it so this one (indicating left),

13 tore the left one completely out.

14 Q Were your ears pierced when you were wearing the

15 pierced earrings that night?

16 A Yes.

17 Q Will you show the Judge your ears?

18 A It is this one that was torn completely out (show-

19 ing ear). I don't know whether they are affected or not but they

20 have given me considerable trouble.

21 Q Why have you not sought medical aid for it?

22 A I did not have the money.

23 Q Did your husband call the police for you?

24 A He laughed. He said I will call them for you and

25 he did. He dialed and the Sheriff's Department answered and he

1 handed me the telephone. He may have made a remark to whoever
2 answered the phone, I don't quite remember. I told whoever it was
3 that answered the phone what the problem was that I had and they
4 said they could not come.
5 MR. ROSENBERGER: Don't tell about what they said.
6 Q Did the Deputy come to your house that night?
7 A Yes.
8 Q And did you talk to the Deputy Sheriff?
9 A Yes, I did.
10 Q Did he come to your door?
11 A Yes, he did.
12 Q Now, did you go and sit in the Sheriff's car?
13 A Yes. Can I say he didn't come in the house.
14 MR. ROSENBERGER: What help did he give her?
15 THE COURT: What has this got to do with it? We don't
16 have to go blow by blow. Let her ask the questions.
17 Q Did you ultimately drive in one of your vehicles
18 to Rustburg that night?
19 A Yes, I did.
20 Q Did you follow a Sheriff's car?
21 A Yes, I did.
22 Q You did get a warrant?
23 A Yes.
24 Q When the assault and battery charge was heard in
25 Judge Singleton's court, did you have an opportunity to tell Judge

1 Singleton all the things you told this Judge today?

2 A Not all of them. He asked some of the questions

3 but not all of them.

4 Q Were you able to testify as to the case cutter and

5 your ears?

6 A No.

7 Q And did your husband spend the night in jail?

8 A Yes.

9 Q Now, after he returned on the following day on

10 Sunday, did you stay in the house with him from then to the

11 following Friday, did you not?

12 A Yes.

13 Q You said you stayed in the same house with him.

14 Were you in the same bed?

15 A The reason I stayed in the same house with him, I

16 had nowhere to go at that time. I was making plans to leave. I

17 wanted to wait until Friday to get the paycheck. What was your

18 other question?

19 Q Why did you sleep in the same bed with him?

20 A At different times during those days he was still

21 in this silly frame of mind and the mood - the frame of mind -

22 would switch from one to the other. I did not sleep in the other

23 bedroom because I didn't know what he might do while I was asleep,

24 so I asked him to sleep elsewhere.

25 Q Did you have sexual relations during that week?

1 A Absolutely not.

2 Q When was the last time you had sexual relations?

3 A It must have been maybe three to four months ago

4 before I left.

5 Q Now, when you left on Friday the eighteenth or

6 nineteenth, did you seek refuge at your aunt's house?

7 A Yes, I did. I had my aunt -- I called her and asked

8 her if she would ride the bus up that Friday morning and leave

9 early Friday morning and meet me at the bus station so that she

10 could drive back to York County with me, with Donny, which she

11 did do.

12 Q Did you think it was important for someone to be

13 with you and the little boy?

14 A Driving that far, I hadn't driven myself through

15 Richmond in a good while and I needed someone with me.

16 Q Since you have been in Eastern Virginia is your

17 son now in play school?

18 A Yes, he is.

19 Q And have you sought child support? Have you asked

20 the Court to grant you child support?

21 A Yes, I have.

22 Q What is your and your son's approximate expenses,

23 could you set them out for the Court?

24 A The rent is one hundred and fifty-five dollars a

25 month. The light bill is approximately twenty-five dollars a

1 month. The telephone is ten dollars. Donny's nursery school in
2 a month, four weeks, is eight dollars. Over the past several
3 months the gas runs me about eighty dollars a month. I have to
4 do considerable driving. The reason that is so high in that
5 area, you have to drive so far to get in there.
6 Q How about laundry, clothing?
7 A I don't have a washer and dryer. I have to use the
8 laundramat. I would say maybe twenty dollars a month for soap
9 powder and laundry service. Food. I can't say I haven't bought
10 any groceries. We eat with my aunt and haven't had any money to
11 buy groceries. The car insurance is on the average and I pay it
12 every six months. It is going to run me about ten dollars a
13 month. Donny has had two colds. I knew when he started to nursery
14 school, he would occasionally catch whatever is going around. I
15 think the doctors have been about ten dollars a trip to the
16 doctor's office. Medicine has been about twenty dollars and I
17 have lost two days from work when he was sick. I stayed with him.
18 This is all the expenses.
19 Q Did you suffer loss of salary when you moved with
20 Miller & Rhoads in Lynchburg to Newport News?
21 A Yes, I was personnel supervisor in Lynchburg.
22 When I transferred with Miller & Rhoades to the New Market store
23 in Newport News, that job was filled and I went to work in the
24 general office. I had to take a cut in salary.
25 Q What was the cut?

1 A It went from forty-eight hundred dollars starting
2 salary a year. I made two twenty-five an hour and I haven't
3 figured it out.
4 Q Were you working a forty-hour week at Miller &
5 Rhoads?
6 A No one as of the first of last month works a forty-
7 hour week; they work a thirty-five hour week.
8 Q Now, have you since gotten employment which I hope
9 will pay a little bit better?
10 A Yes, sir.
11 Q What is the hourly rate of that?
12 A Three dollars and seventy-six cents with Colonial
13 Change. I work in Williamsburg.
14 Q How many hours a week employment have you had?
15 A The move I have gotten is twenty-seven hours a
16 week.
17 Q Do you anticipate having more at Colonial?
18 A I have been promised possibly thirty-two to thirty-
19 five hours.
20 Q Did you make this change because you got more
21 money?
22 A Right.
23 Q Mrs. Alls, what is the nature of your work at
24 Colonial?
25 A I am cashier.

1 Q Is this as hard work or harder work as you had been
2 doing at Miller & Rhoads?
3 A It is physically hard work. You stand all day
4 checking groceries and you bag groceries. You clean up the
5 baskets and the carts and you keep everything in the front end
6 of the store straight. In the evenings you sweep the floor and
7 scrub the counters, the check-out lanes.
8 Q Mrs. Alls, why is your son sleeping at night at
9 your Aunt Grace's, and what is the other aunt?
10 A Mrs. McKee.
11 Q Why is he still staying there at night?
12 A The reason he is staying there is I think he was
13 in the custody of the County of York is why he started staying
14 there at night. When I first went down, and got my apartment, it
15 is two miles out of Yorktown. I could not take him at home with
16 me. We were at Miller & Rhoads in Newport News and I worked two
17 nights a week and Donny stayed thase two nights because by the
18 time I drove to Newport News from Yorktown, it was almost ten
19 o'clock when I went to work at Colonial and the openings he had
20 was the night shift, so I worked every night at least until
21 nine-fifteen or nine-thirty. Donny goes to bed about eight or
22 eight-thirty. If he has been in nursery school all day, he is
23 tired.
24 THE COURT: We will adjourn now and come back at three
25 o'clock.

1 (At 1:45 P.M. the Court was recessed for lunch until
2 3:00 P.M.)
3 (At 3:00 P.M. Court was reconvened)
4 (The witness takes the stand)
5 BY MRS. DRAKE:
6 Q Mrs. Alls, what are the hours of your son's play
7 school?
8 A He usually goes from eight-thirty to nine o'clock.
9 He is picked up between three and four and possibly at the latest
10 five.
11 Q All right. Do you think he enjoyed this?
12 A He absolutely does. I have a letter from the
13 director of the school that states that he does enjoy it.
14 Q Do you drop him off or pick him up when you are
15 not working?
16 A When I am not working.
17 Q Do you have breakfast with him and put him to bed
18 when it is available?
19 A Yes.
20 Q On Saturdays and Sundays do you have an opportunity
21 to spend that time with your son?
22 A Sundays we go to the beach most of the time.
23 Q How about Saturdays?
24 A Saturday he goes with me to the beauty shop in the
25 morning and I usually work Saturday from three to nine but he is

1 with me until time for me to go to work.

2 Q Now, does he seem to you to be contented about his

3 present situation?

4 A Very much so. He is extremely happy. He is

5 extremely busy. He goes to play school and he enjoys that.

6 Q Does he have playmates there?

7 A Yes.

8 Q Does he play outdoors?

9 A Yes, we go to the beach on my day off and on

10 Sunday for an extended period of time and then maybe during the

11 week we just go down for an hour or two and walk on the beach

12 with our bathing suits on, just things like this.

13 Q Do you believe you could provide morally and physi-

14 cally home for your youngest child if you had support money from

15 your husband?

16 A Definitely.

17 Q Have you been well yourself?

18 A Yes, I have.

19 Q Since the separation?

20 A Yes, I have.

21 Q Is your only physical problem with the infection

22 in your ears?

23 A I had a cold but other than that, that is all.

24 Q I think earlier you said something about pills and

25 alcohol. Are you taking tranquilizers and amphetamines now?

1 A No, I am not.

2 Q When did you stop doing that?

3 A It has been almost a year ago.

4 Q How about your drinking?

5 A Only socially, very little then.

6 Q Do you know how much take home you would have per

7 pay period now?

8 A I will have to work a thousand hours. I will be

9 eligible for the forty-hour work week I hope by fall, forty by

10 three dollars and seventy-six cents.

11 Q That would be in the fall?

12 A Or until I work a thousand hours.

13 Q All right. Do you remember what the total of your

14 expenses and your son's expenses would be assuming you were buying

15 food?

16 A Assuming I was buying and taking care of all of my

17 responsibilities?

18 Q Yes.

19 A It would run close to I think five hundred and

20 twenty dollars, I believe that is the way I figured this.

21 Q Is that per month?

22 A This is per month with nothing unforeseen happening,

23 like no car trouble.

24 Q Have you and your husband had any conversation

25 with reference to the child since the separation?

1 A We had one.

2 Q Would you tell the Judge about that, please, ma'am.

3 A This was in reference to the Saturday that Don

4 came down to get Donny. I didn't know he was coming. My people

5 didn't know he was coming. He is under the Order of the Court

6 to remain in York County and Don called me at work at approximately

7 two o'clock, asking could I come up there on Saturday. When I

8 worked at Miller & Rhoads and got my hair fixed on lunch hour, he

9 called while I was in the beauty shop. As soon as I got out from

10 under the dryer I went to work and I went in and talked with the

11 Deputy on duty there. He advised me not to let Don take Donny

12 out of York County without talking to Judge Athey. We found out

13 how to get to his house, the Judge's house, and we went there,

14 walking up to the Judge's house. So, coming back from the

15 Judge's house Don asked me why I had let Donny be put in the

16 custody of York County. I told him that I was afraid that he

17 would come down and get Donny and that was the first reason. The

18 second reason I was afraid if he kept doing that, he had threatened

19 to do that, and neither one of us would get him. I wanted him to

20 be in the County that I would have been in if that happened.

21 Q Now, after you talked to me that Saturday, which I

22 think was the twenty-fifth or twenty-sixth of May, did you under-

23 stand we had a misunderstanding preceding Thursday night on the

24 telephone?

25 A Don and I both realized that we discussed that that

1 Saturday and all he needed to come and see Donny again was just
2 Mr. Rosenberger and informing Judge Athey he was coming, so there
3 has been no reason why he couldn't see Donny at any time.
4 Q At the time the little boy was adopted you all
5 were living in Danville, is that correct?
6 A That is correct.
7 Q Was there any investigation of your home at that
8 point?
9 A Most definitely. I think any time you adopt a
10 child --
11 Q No objection with raising him at that time?
12 A No, ma'am.
13 Q Now, have you been under the same roof with your
14 husband this older woman he had as housekeeper with your son?
15 A Yes.
16 Q All right. Have you watched how she manages the
17 boy? Does she take him outdoors, have friends in to play with
18 him, drive him to school, that sort of thing?
19 A No, he did not go to nursery school until we moved
20 to Yorktown. She is not physically able to take him outside at
21 all. Maybe four, five or ten minutes if it is a cool day. She
22 cannot take the sun. She does not drive. What was the other
23 question? I am sorry.
24 Q Did you all think about fencing the yard?
25 A Yes.

1 Q How did you happen not to fence the yard?

2 A Don said we couldn't afford to fence in an area in

3 the yard.

4 Q Has your husband ever told you about any girls he

5 dated last summer?

6 A He told me about two.

7 Q Do you remember what he told you?

8 A The first one he told me about was a lady named

9 Esa Carroll. To my knowledge, they were the only two children

10 Donny had played with and I don't think it was very often.

11 Q Mrs. Carroll's children?

12 A Yes, I am going by what Don told me.

13 Q Did he tell you what his relationship was to the

14 Carroll woman?

15 A He said he thought he was in love with her or he

16 was in love with her.

17 Q How did this sit with you? How did you react to

18 that?

19 A We separated at the time. I didn't feel like I had

20 any say over that.

21 Q Has he told you anything about his continuing

22 relationship with Esa Carroll since?

23 A I know he has been in contact with her. He told

24 me that.

25 Q How about the other woman?

1 A I don't know what her name is. Her name is - first
2 name is Frances maybe but I have no idea what her name is. She
3 spent the night at the house one night.
4 Q Did your husband tell you this?
5 A Yes, the housekeeper did too.
6 Q Your witness.
7 CROSS-EXAMINATION
8 BY MR. ROSENBERGER:
9 Q When was that? I would like to get the time that
10 your husband said Frances spent the night there.
11 A I am not sure. Her name is Frances.
12 Q Whoever you call Frances.
13 A It must have been April, May, June or July.
14 Q When you were in Roanoke?
15 A When I wasn't there.
16 Q April, May, June or July, 1973?
17 A Yes, sir.
18 Q You have had intercourse since that knowledge,
19 haven't you?
20 A Yes, sir.
21 Q When you left Donald in 1973, in March, how long
22 had you been taking Valium?
23 A For a good while.
24 Q Six months, a year?
25 A I had been taking Valium I guess for several years

1 but not to the extent that I was taking it. I would say in '72
2 and '73.
3 Q Well, you said for several years. How much were
4 you taking say in 1972?
5 A Probably the prescribed four a day.
6 Q Four a day?
7 A Unhuh.
8 Q Was this under the prescription of the doctor?
9 A That is correct.
10 Q In 1972?
11 A Yes.
12 Q When you had moved to Lynchburg?
13 A '72, I believe.
14 Q What is the other drug you were taking?
15 A Sinequan.
16 Q What is that for?
17 A It is anti-depressant.
18 Q Who prescribed that?
19 A Dr. Milam.
20 Q Is he a psychiatrist in Danville?
21 A No, he is not a psychiatrist.
22 Q Is he a general practitioner?
23 A He is that.
24 Q Is he in Danville?
25 A Yes.

1 Q When did you all move to Danville? Was it in 1965?
2 A I think that was the year we were married. I went
3 there in 1964. I was there a year before we were married.
4 Q What were you doing in Danville?
5 A I worked for J. C. Penney Company and I was engaged
6 to Don.
7 Q Now, first you filed for a divorce as Betty Jean
8 Yates against Charles Jackson Yates in the City of Roanoke, didn't
9 you?
10 A That is correct.
11 Q And Mr. G. W. Read, Jr., of the Shenandoah Building
12 was your attorney then.
13 A That's correct.
14 Q And at that time you alleged that you were forced
15 to leave Mr. Yates because he beat you and in August, 1962, is
16 that correct?
17 A If your years are right.
18 Q If you look right here August 2, -- Take a look and
19 see if that isn't a Xerox copy. Look down at the bottom of the
20 page, the next page.
21 A Yes, that is true, August 2, 1962.
22 Q Now, you alleged in that case that he beat you and
23 he beat you in the back, various assaults and battery.
24 A This can be proved. It could be proved. It is
25 true.

1 Q You went back to him after that time, didn't you?

2 A Would you happen to know if this is the first?

3 There were two. I separated from him one time and the second time

4 I got the divorce. Would you know if this is the first right

5 offhand?

6 Q If you move the papers. You filed this one.

7 A Is this the one with Grace Lee? Yes, I see by

8 her aunt and best friend this is the first right here. I was not

9 twenty-one.

10 Q And you went back to him?

11 A Yes, sir.

12 Q And he alleged on January 25, 1964, that you

13 deserted him and took the children to Yorktown but then brought

14 them back to him on the twenty-ninth of March, 1964, isn't that

15 correct?

16 A It is correct if the dates are correct. I will

17 tell you.

18 Q Read it over.

19 A Just a minute. This is yes. The answer to your

20 question is yes.

21 Q Subsequently didn't he get a divorce from you and

22 didn't the Court, on April 8, 1965, approve that agreement that

23 you had with your husband, dated April of 1964, under which he

24 was given custody of the children? If you will look at that

25 decree.

1 A What was your question?

2 Q The question was the decree was entered April 8,
3 1965, wasn't it?

4 A Yes, sir.

5 Q If you will read down in the decree it refers to
6 the agreement of April 14, 1964, settling all questions of care
7 and custody of the children, alimony and property rights, and
8 the Court approved it and your husband was given the divorce,
9 wasn't he?

10 A Yes.

11 Q Unhuh. Now, since 1964, following that -- Well,
12 since April 8, 1965, you went back to Court to try to get visita-
13 tion rights with your children. That is a copy of the decree of
14 August, 1965, in which you were given the children from seven
15 o'clock on Wednesday or Thursday to four o'clock the next day,
16 right?

17 A That is what the Court ordered. The children
18 never were there.

19 Q You haven't visited your children since that time,
20 have you?

21 A Are you going to let me explain?

22 Q I am asking you have you visited your children
23 since 1965, more than once or twice a year.

24 A Not any and since the year Don and I got married,
25 a good eight years, not once.

1 Q Do you correspond with them at all?

2 A No, the only communication and the only way I have
3 known anything about those children is through my former mother-
4 in-law but this is for the children's sake. I think Don could
5 tell you that. Any time that I went to see those children, they
6 were treated rather badly by their stepmother, and if they were
7 I got to see them at all. I might take into consideration I did
8 not have funds available to have a strong counsel back me up on
9 this at my age.

10 Q Didn't you and Don go to Court in August of 1965
11 and you got that right to visit for one twenty-four hours?

12 A They were never there. If I did see them it was
13 presented as a hardship on the children.

14 Q I see.

15 A That is the only reason I don't see my children.

16 Q When did you adopt Donny? What year did you
17 adopt Donny?

18 A 1971.

19 Q In 1971. Actually there is no physical reason
20 why you couldn't have children, is there?

21 A You know you did make an error in your opening
22 statement. I did not take birth control pills until after Donny
23 was almost a year old. I took them for about a year.

24 Q Is there any physical reason why you can't have
25 children?

1 A No, I have had two but it takes two to have
2 children.
3 Q Unhuh. All right. Now, your taking of drugs have
4 anything to do with your sexual relationship with your husband?
5 MRS. DRAKE: I object to that. This is not a medical
6 man.
7 THE COURT: She has given the other reasons. He can
8 give them in his answer, yes or no.
9 Q Did the taking of drugs have anything to do with
10 your sexual relationship with your husband?
11 A I had no sexual relationship to amount to anything
12 with my husband. I can't see how it would have.
13 Q How about drinking alcohol?
14 A I can't see how that would either.
15 Q Now, when getting onto Danville from Roanoke, who
16 was the psychiatrist that you had over there?
17 A I don't remember his name. He is affiliated with
18 the hospital.
19 Q Dr. B. R. Arby, who was a psychiatrist that you
20 were under in Danville?
21 A Yes, sir.
22 Q For what years were you under his care?
23 A I was under his care approximately ten days.
24 Q You mean in the hospital ten days?
25 A I never saw him after that.

1 Q Did you leave without being released?

2 A Yes, I did.

3 Q Were you drinking a lot of alcohol then?

4 A I would say I was probably drinking too much

5 alcohol with the medication I was taking.

6 Q Who was looking out for Donny when you were

7 drinking too much alcohol and with this medication that you had?

8 A Unless I was in the hospital or I had strep throat

9 or was physically sick, not from pills, if you are trying to indi-

10 cate alcohol.

11 Q I am not trying to indicate anything.

12 A I took care of the child with very little help even

13 from his father.

14 Q Did you have any maid, anybody like that?

15 A Once in a while a colored girl on Saturday.

16 Q Did you have any trouble setting bed clothes on

17 fire in Danville?

18 A Oh, I smoke quite a good deal. I set a few things

19 on fire.

20 Q Was it when drinking?

21 A I have done it when I was and I have done it when

22 I was not.

23 Q Has it been necessary for your Aunt Grace to stay

24 up with you late at night because she is afraid you would start a

25 fire when you are drinking?

1 MRS. DRAKE: I object, Aunt Grace is here.

2 THE COURT: Answer the question.

3 THE WITNESS: The night you are referring to, Mr.

4 Rosenberger, was the night my aunt set up late, discussing marital

5 problems. I don't think it was because she was afraid I was

6 going to --

7 Q How many times have you set bed clothes afire?

8 A I don't know. I burnt holes --

9 Q Big holes?

10 A I don't know what you call big; a small hole is

11 too big a hole.

12 Q Have you also burned a sofa?

13 A Yes, I went to sleep reading on a sofa downstairs

14 and did set the arm of the sofa afire and it smouldered; it

15 smoked up the den and some of the house.

16 Q How old is your Aunt Grace by the way?

17 A I think she is near late sixties.

18 Q Does she have arthritis in the joints?

19 A In her hands, yes.

20 Q Does she have trouble walking too?

21 A Up and down steps, yes.

22 Q You assisted her coming into the court house this

23 afternoon.

24 A Yes, I did.

25 Q Actually the reason Donny is in school down there,

1 your Aunt Grace isn't physically able to take care of him, is she?
2 A No, that is not true. That sounded like you
3 answered your own question. Donny needs to be in nursery school;
4 he needed to be when he was two.
5 Q I didn't go into the question of what he needed.
6 I asked you the question if your aunt is able to take care of him.
7 A She most definitely has and can.
8 Q How long after you went down there that you took
9 him and she had to care for him at her apartment in Yorktown? You
10 put him in nursery school or she put him in nursery school?
11 A She put him in nursery school.
12 Q How long after you left Donald and went to work
13 down there that you delivered Donny to her?
14 A I didn't ever deliver Donny to Mrs. Liddy.
15 Q Donny stayed there and you were with your sister
16 when you first went there?
17 A Absolutely not.
18 Q How long did you actually stay at the apartment
19 when you first went there?
20 A The first day I went down there but I had no furni-
21 ture, nothing in the apartment, so we stayed with Grace.
22 Q How long?
23 A At least a week.
24 Q Did you say a week?
25 A Right. Donny went to nursery school I believe

1 almost the first week we were there.

2 Q And from after that first week did you either live

3 with your sister or did you live with your aunt?

4 A After I got a bed to go in my apartment, which I

5 got one from Mrs. Lee, I stayed at my apartment and Donny stayed

6 with me until the nights that I worked, until we went to Court

7 and Judge Athey said he should not be removed from York County.

8 Q Didn't the Judge give you control over your child?

9 A Yes, he did.

10 Q The child could stay with you, couldn't he?

11 A My apartment is two miles outside of York County

12 in the City of Newport News.

13 Q The Judge was restricting you from taking your own

14 child?

15 A No, he wasn't restricting me, sir, but I was

16 working. I transferred and went to work and after a week, after

17 I moved to Yorktown.

18 Q When did you stay with your sister?

19 A I have never stayed with her except occasionally

20 at night.

21 Q Did you spend some nights?

22 A Yes, I still do.

23 Q Where is her apartment?

24 A It is way down into Newport News on Logan Place.

25 Q Where is that?

1 A Well, it is about twenty-five minutes drive or
2 more from my house and about forty minutes from my aunt's house.
3 Q From your aunt's house at Yorktown?
4 A Right.
5 Q Your apartment now is where?
6 A Jefferson Avenue, about two miles from the York
7 County line.
8 Q How long have you been in this apartment?
9 A I told you I rented the apartment the day I moved
10 to Yorktown.
11 Q You moved down there on April 19?
12 A The nineteenth. I rented the apartment April 19.
13 Q You didn't tell Don where it was, did you?
14 A No, I didn't want him to know where Donny was.
15 Q Donny wasn't there, was he?
16 A He wasn't there when I was working or when he was
17 in nursery school, no.
18 Q Actually you don't have any place to stay with your
19 aunt. She doesn't have room for you, does she?
20 A She has recently acquired another bed. I could
21 sleep on a couch and I have done that.
22 Q When Mr. Alls has called down on Sundays, you
23 haven't been there except one time, have you?
24 A I have been down there several times when he has
25 called.

1 Q Now, did your counsel tell you that she and I
2 agreed rather than have this hearing on May 28 - I mean May 24 -
3 that Donald would come down and get his son for that weekend?
4 Didn't she tell you that?
5 A She said that she asked me would I agree to Don
6 visiting Donny every other weekend. I said yes, I would. I
7 evidently misunderstood her. It was nothing deliberate by no
8 means. If it had been deliberate I wouldn't have left work early
9 and gone to Judge Athey's house to get Don permission to take the
10 child up here. It was a misunderstanding.
11 Q The reason you went to Judge Athey's house, your
12 Aunt Grace wouldn't even let Don have Donny, would she?
13 A I didn't go there. Yes, I could have gone and
14 gotten Donny. She would not have physically stopped me. She is
15 trying to council and advise me while I am there.
16 Q She advised you, did she not?
17 A Not to let Don have him. Mrs. Drake advised me to
18 let him have him.
19 Q She had been there twice that day.
20 A I was doing what she said do, why I went to Judge
21 Athey's house.
22 Q Didn't Mrs. Drake tell you that I had called her
23 and that Donald was down there?
24 A Absolutely.
25 Q And you were supposed to get him at two o'clock?

1 A Absolutely. I did the best I could under the cir-
2 cumstances. I didn't have to do that much. I wanted him to be
3 with his father.
4 Q Now, is your apartment number twelve?
5 A Yes.
6 Q And is your apartment on the ground floor as you
7 walk in the entrance?
8 A Yes.
9 Q Your apartment is on the right as you walk in?
10 A Yes.
11 Q And has two double windows, the front, which are
12 in the living room --
13 A Just one big window, yes, I guess.
14 Q Unhuh. And then there is the kitchen on the front
15 too.
16 A Yes.
17 Q Then you have two bedrooms on the back.
18 A Yes.
19 Q Both of these more or less at ground level, the
20 front and the back.
21 A Yes.
22 Q And did you get off from work from the Colonial
23 Store around 9:15 or 9:30 on Friday night, June 21?
24 A I assume I did, yes.
25 Q Did you have a visitor Friday night around a quarter

of ten?

A I possibly did.

Q What do you mean by "possibly"?

A If you tell me who it was, I will tell you whether I did nor not.

Q How would you know by me telling you who it was?

THE COURT: Come on, tell us.

THE WITNESS: I do have friends.

Q Did you go out Friday night?

A I am sure I did.

Q Did you go out with a gentleman in a white Impala hardtop, four-door hardtop, white bottom, black top, Friday night?

A Yes.

Q He came into your apartment first and then went back?

A Before I did.

Q He came in after you had gotten there and then went out and got a carton of beer.

A Yes.

Q Then you all were in the apartment a short time and then you came out and got in the Impala Chevrolet with him.

A Possibly yes; I guess I did.

Q He kissed you before shutting the doors on the car.

A He possibly did.

1 Q Then you went down to the Parkway, Colonial Parkway,
2 and parked.
3 A Yes, we did.
4 Q And you got out of the car, walked up in the woods
5 for fifteen or twenty minutes.
6 A I don't think it was that long. It was kind of
7 cold that night and we took a walk.
8 Q Did you embrace up there?
9 A Right, in front of God and everybody; with car
10 lights coming both ways.
11 Q How long had you known this gentleman?
12 A I would say for a month.
13 Q And Sam Kendall, is that the gentleman's name?
14 A Correct.
15 Q He works for Tasty Foods?
16 A That is correct.
17 Q And you came back to the apartment, did you not?
18 A We did that.
19 Q And no one was in the apartment but you and he.
20 A Yes.
21 Q Then all of the lights were turned out.
22 A Absolutely not. We sat at the kitchen table.
23 Q Did you have the light on in the kitchen?
24 A We had a light on in the kitchen.
25 Q How long did he stay?

1 A There was a light on in the kitchen, either a light
2 close to the window or in the other part of the living room, and
3 probably the bathroom light.
4 Q So then on your recollection there were three
5 lights on.
6 A No, I said it was one of either of the lights in
7 the living room, either the light in the window or the light in
8 the other part of the living room. There were at least two lights
9 on and the bathroom light.
10 Q Where did you meet Mr. Kendall, at Colonial Stores?
11 A No.
12 Q Where did you meet him?
13 A In a night club.
14 Q On Saturday night or Friday night?
15 A I don't recall.
16 Q What night club?
17 A It's a place called the Gas House in Newport News.
18 Q Now, Mrs. Alls, when you left and went to work,
19 you said you couldn't stand it any more, actually Mr. Nick Novak
20 made the deposit on your apartment in Roanoke so you could get it.
21 A He absolutely did. I think I have the check stubs
22 to prove that.
23 Q Did you tell your husband Nick Novak made the
24 deposit so you could rent it.
25 A He asked me if Novak paid the deposit and I didn't

1 give him an answer.

2 Q You didn't?

3 A I have the check stubs.

4 Q Were you going with him at the time?

5 A I was not going with him; absolutely not. Absolutely

6 not.

7 Q Well, did you go out with him some after you came

8 back here?

9 A I saw the gentleman one time. It was the most

10 public place in Lynchburg, to tell him I was back with my husband

11 and I could not see him again.

12 Q So then what was the need that you couldn't see

13 him again if you hadn't been going with him?

14 A He was coming to Williamsburg the same weekend that

15 Donald came down and I came back to Lynchburg with him.

16 Q Why did you feel that you had to see him?

17 A I felt like I owed him an explanation for the week-

18 end. He was supposed to come down to start with.

19 Q Now, when you were working in Roanoke, were you

20 working for Kenrose Manufacturing Company?

21 A Yes.

22 Q What work did you do?

23 A I did piece work. If I told you I did pleating

24 with cardboard, would you know what I am talking about?

25 Q Spell it.

1 A From there I went to the pattern department where
2 you make patterns.
3 Q Did you cut them?
4 A You cut them.
5 Q I understand you spoke of the fact you had right
6 much Valium when you signed this agreement at Mr. Alford's, didn't
7 you? Didn't you drive your car from that meeting where you signed
8 the agreement to Roanoke?
9 A Yes, I did. May I elaborate on that? I had a very
10 terrific experience. It was raining that day and I don't know
11 whether anybody remembers that or not. Don possibly might have.
12 I ran into heavy rain when I got into Roanoke. It was I believe
13 on Friday night. I came in on the market area part of town and
14 I went to the hotel downtown at the hotel on Jefferson Avenue or
15 Jefferson Street. They were full. I got turned around in the
16 market area. I stopped the car and some man tried to get in my
17 car. I blew the horn for someone else to come and help me but
18 really I had no business driving that night.
19 Q You got to Roanoke all right. Now, you knew that
20 by that agreement you were giving custody of Donny to your husband.
21 A I knew that until I got off of the Valium and
22 Sinequan and the drinking that I could not go off on my own with
23 Donny; I had to get myself straight before I could take care of
24 Donny.
25 Q How long had you been on Sinequan and Valium?

1 MRS. DRAKE: She answered the question.

2 THE WITNESS: How long? How long have I been on Sine-
3 quan? I believe I was taking Sinequan shortly before we left
4 Danville but I was in such a depressed state of mind over the fact
5 that we had to leave Danville, leave my friends and home there.

6 Q What was the date?

7 A I don't know.

8 Q It was because of pressure of leaving friends in
9 Danville?

10 A Leaving friends in Danville and leaving the house
11 in Danville. I did not want to move to Lynchburg.

12 Q What about the Valium? How long had you been on
13 that?

14 MRS. DRAKE: You heard the answer to the question. I
15 object to it. The second question how long had she been on
16 Valium. The third question was how long you had been on
17 the Sinequan, which is the anti-depressant. She said about
18 six months.

19 THE COURT: Are they your answers?

20 THE WITNESS: Is that all right?

21 Q I didn't recall it. Now, you started to tell us
22 how you happened to go back to Don and I got the impression that
23 he was indicating to you, according to you, that he was going to
24 commit suicide and then he came down one weekend and got you.
25 Why did you go back to him?

1 A I think I told you the main reason I went back to
2 him was Donny.
3 Q Did he come down and get you?
4 A Yes, he did. He came down and he didn't tell me
5 that he had told Mr. King before he came down that he was coming
6 down to bring me home. I thought he was just coming down for the
7 weekend. He said he needed to get away. I had no intention of
8 coming back with him.
9 Q He just overwhelmed you and brought you back?
10 A No.
11 Q A spur of the moment?
12 A I had time to think about it in between there. As
13 I said, I missed my son.
14 Q Where were you working?
15 A Medical secretary in the emergency room at Williams-
16 burg.
17 Q How long did you work there?
18 A From the time I moved to Williamsburg until the
19 time I came back.
20 Q When was that?
21 A It was in the summer. It was probably June or July,
22 possibly part of May. I believe it was that.
23 Q Now, after you got back here in July, you and Don
24 went to Danville for a weekend, didn't you?
25 A Right after we --

1 Q I am not sure whether it was right after because I
2 can't nail it down. I got the impression it was in July. Did
3 there come a time you and Don went to Danville for a Saturday
4 night?
5 A Yes, I wanted -- O. K., Yes, we did go.
6 Q Visiting friends?
7 A The Morefields.
8 Q You got drunk over there?
9 A Are you telling me?
10 Q Did you get drunk over there?
11 A No, sir.
12 Q Did you know when you came back to Lynchburg? Did
13 you actually know?
14 A Would you like to have me tell what happened?
15 Q I asked you these questions. Did you know when
16 you came back to Lynchburg?
17 A I was asleep when we came back to Lynchburg. I was
18 not awake.
19 Q Did you sleep all the way back?
20 A I believe I did. I had a very bad experience that
21 morning.
22 Q Yeah. Now, when you returned to Lynchburg, Donald
23 and your aunt had arranged for Dr. Ashworth to get you into
24 Baptist Hospital, hadn't he?
25 A They had arranged for that before I left Danville.

1 I remember when I was laying across the bed that I could hear Don
2 talking to my Aunt Grace, trying to get her to make arrangements.
3 I asked Don to see if he could get me in the hospital so I could
4 get my mind straightened out and get some rest and decide what I
5 wanted to do.
6 Q Didn't you hear Don tell your aunt you were talking
7 out of your head? Did you realize that?
8 A I was telling Don -- I was tired. I needed some
9 rest and needed time to think as to whether we could make a go of
10 that marriage, because it was not working out even after that
11 short a period of time. I think at the most it could have been
12 three weeks after I came back.
13 Q Did your aunt join in the evidence to put you in
14 the psychiatric ward?
15 A I don't know. She knew it was -- I am not ashamed.
16 Q I am not saying anything.
17 A I felt like I needed to be in the hospital to be
18 taken care of.
19 Q What precipitated it? Was it the liquor you had
20 that weekend?
21 A I drank very little that Saturday night. Mr. Alls -
22 Don kind of got unruly that night. I think the Morefields were
23 here and I don't know what version they would tell. Don did drink
24 too much. He got angry in the restaurant we stopped in for break-
25 fast that morning. I drank some which I shouldn't have. That

upset me. I don't think it is a good idea. I have done it before and I didn't like it. I have not done it since.

Q You haven't had anything to drink since?

A Not at seven in the morning.

Q You came under the care of Dr. Richards then?

A Yes.

Q How long were you in the psychiatric ward at Virginia Baptist Hospital?

A Two weeks.

Q Did you have any liquor while in the hospital?

A Don and I went out to eat one night and we had a couple and maybe it was a pitcher of draft beer. If you make it specific, I could be wrong, but I don't think so, not in the hospital.

Q Now, getting to this business. Did you right out from July until December? Did you leave Don at all? Did you separate at any time?

A No.

Q In 1973?

A From July to December I may have gone to my sister's. I went to my sister's when my aunt was in the hospital.

Q How long did you stay? Was that in '73 or '74?

A '74.

Q Did you leave Don?

A I went one weekend. He hit me one weekend and he

1 was mad over something. I called my sister to come and get me.
2 They did. I stayed like maybe the Saturday night and they must
3 have come early in the early hours. I can't talk if you are
4 going to whisper. I am trying to remember.
5 Q My question was did you leave Don at any time
6 between July and December of '73?
7 A July and December?
8 A Unhuh.
9 A The only place I would have been was to Newport
10 News. I think I went for a week's vacation and spent the week.
11 Q Did you take Donny with you?
12 A Yes, I did.
13 Q You came back in July, 1973. It was on the condition
14 that the housekeeper would stay there so you could work?
15 A That is correct. You will take into consideration
16 I had stayed at that house from the time that we moved there until
17 the time I left, maybe going to the beauty shop once a week and
18 once in a while to the grocery store. Other than that we seldom
19 went to dinner. We did go to Christmas parties.
20 Q Were you with your son? Weren't you happy being
21 with Donny?
22 A I was happy being with Donny, very much so. But
23 I was like a prisoner in that house.
24 Q So after being away from him four months --
25 A I realized that people, if I went back and went to

1 work, things would change again and we would have a life of my own
2 and I would be with him also.
3 Q You would have somebody else raising him with you
4 working.
5 A I don't think I thought of it.
6 Q Were you thinking more about yourself?
7 A I was thinking about my mental self.
8 Q When did you get into the mental problem?
9 MRS. DRAKE: Let the witness finish her answer.
10 THE COURT: Were you going to say something else?
11 THE WITNESS: I think so. I lost it. From what you
12 said, I don't remember. Just let me finish. If I take a few
13 minutes longer, I am sorry. Let me get through one thing before
14 you give me another one.
15 Q I will do that. On the Saturday afternoon you said
16 you did cook some steaks out. Who cooked the steaks?
17 A Sir, all the year were were married and the two
18 before we have cooked steaks out and Mr. Alls cooks the steaks.
19 I don't know how to charcoal.
20 Q I will try to ask simple questions. If you will
21 answer my question. He was all right when he cooked the steaks;
22 he wasn't intoxicated?
23 A He was never intoxicated that day.
24 Q You all had dinner together I understood and you
25 say it was cold - the people or the dinner?

1 A I think I said the atmosphere. The house was cold.

2 Q All right. And after dinner when he said he was

3 going out, you asked him where and he told you the same place

4 that you went the night before, or words to that effect.

5 A Something to that effect.

6 Q You had been out the night before and when you

7 came in around eleven, he asked you where you had been, right?

8 A Yes, I told him I had been out.

9 Q That was his answer to you; he was going out.

10 A Yes.

11 Q Now, the company car he wanted you to understand,

12 he didn't want to drive the company car on pleasure on Saturday

13 night. He explained that to you.

14 A Which didn't make sense. All the months he had

15 been with the company, which was a period of a couple of years,

16 he never hesitated to drive the company car. I don't know why he

17 wanted my car except maybe to go out and get smashed. I was

18 afraid he would get hurt.

19 Q All because of your worry for him?

20 A Yes, a whole lot.

21 Q You think he would drink because he had the company

22 car?

23 THE COURT: Go ahead and answer the question.

24 THE WITNESS: Yes, he was. I would not, even with what

25 we are going through here today, want to see anybody go out and

1 smash up a car and maybe their bodies.

2 Q Were you taking drugs and drinking so that you had

3 the idea if he used one car instead of another that he would go

4 out and get smashed?

5 A I think I told you. I have not taken drugs for

6 over a year. Once in a great while in a situation I might take

7 a Valium. That is when I lived in Lynchburg. I don't do it now,

8 not even one. I think if I had one right now I might take it.

9 Q How much were you drinking -- You mean when you

10 get under any stress or strain you might go back to drugs?

11 A No, absolutely not. I have been under more stress

12 in the past four months than I have been at in the most of my

13 given point in my life. I have yet today to take a Valium and I

14 am proud of it.

15 Q Why do you make a point that you might take one?

16 A I didn't mean it. I wouldn't take one. I think

17 the reason I might sound hostile over it, I, after I told you I

18 haven't had one in a year, you are insinuating that I have or I

19 had been taking drugs the day that this happened, on the thir-

20 teenth of April.

21 Q How much did you have to drink?

22 A Very, very little.

23 Q On that Saturday?

24 A I had two glasses of wine and one mixed drink

25 after dinner and then I had coffee; that is all I had.

1 Q Didn't you buy two fifths of liquor that week?
2 A I possibly did but I think we were expecting --
3 Q Didn't you drink most of it?
4 A I don't think it was consumed. It may still be
5 there.
6 Q Don usually drank a beer if he had anything to
7 drink, didn't he?
8 A It just depended. He would have a mixed drink
9 just as quick as anyone else, it would depend on what he wanted.
10 Q The reason you thought he had gotten in an ugly
11 moody, he didn't like you spanking Donny?
12 A Actually I thought he had probably been after me
13 for a period of approximately three or four months at different
14 times for a divorce. Then he started out that afternoon with a
15 scene over me spanking Donny, most of the time he fussed because
16 I didn't correct the child enough. When he let something that
17 insignificant cause what it caused that day, I felt like it was
18 very planned and very premeditated. I knew he wanted the divorce.
19 I thought possibly he thought I would leave just like I did the
20 last year, which I did not do.
21 Q And on your direct examination you told us you
22 wanted him to give you a little bit more time?
23 A I asked him - begged him to give me a little more
24 time before he went for the divorce so I could stay with the
25 company in the job I was in and possibly make enough to support

1 myself. I told him I would agree to a divorce if he would wait
2 long enough for me to get with the company firmly enough so that
3 I knew that I could stay on with them, which they did let me stay.
4 They transferred me so I had a job when I left there.
5 Q If the husband wanted the divorce so bad, he would
6 say, "All right, you just take care of it." You didn't ask him
7 to take care of it. You wanted to wait until you could support
8 yourself. You didn't want him to take care of you with alimony,
9 did you?
10 A I don't think alimony went through my mind.
11 Q Now, didn't you write that memo at Christmastime
12 about the things you wanted? Weren't you the one planning on the
13 divorce?
14 A When we got in a discussion he asked what it would
15 take for me to leave the house.
16 Q When was that discussion?
17 A I have no idea. It was some time over the three
18 or four month period.
19 Q Around Christmas Eve?
20 A Sir, I will not commit myself as to when it was.
21 Q You have committed yourself to a lot of dates.
22 A I don't remember every conversation. That one I
23 don't know. It was in that period of time. He wanted to know
24 what it would take for me to get out of the house and would I
25 write it down and I did.

1 Q Actually on this Saturday night you say that your
2 husband had pushed you across the floor.
3 A I didn't say he pushed me.
4 Q Threw you across the floor?
5 A He picked me physically up off the floor a good
6 couple of feet and threw me.
7 Q All the way across the floor?
8 A And I hit the floor flat.
9 Q Though the husband had treated you like that, you
10 went into the bedroom where he was on two occasions after that.
11 A We slept in the same bed and I, until I left the
12 house for good --
13 Q So you weren't afraid of him?
14 A He had spent one night in jail. I was reasonably
15 certain he didn't want to spend another. I wasn't so sure and
16 I wasn't going in the other bedroom, not knowing what he was
17 going to do.
18 Q Let me ask you this question. Now, what I am
19 asking you is if you were afraid of him before you called the
20 officers why did you go back in the bedroom twice after he had
21 thrown you across the floor?
22 A That was before he threw me across the floor, not
23 afterwards.
24 Q After you were thrown across the floor rather than
25 giving him the keys so he could smash up, you still kept the keys?

1 A Yes, I did.

2 Q Because you were still looking out for the man who

3 had thrown you across the floor?

4 A I will tell you this. Something was not right with

5 Donald that day. He wasn't acting right mentally and anybody that

6 was singing and carrying on the way he did that day didn't have

7 any business driving a car. As I said, when he drove the Oldsmo-

8 bile, not the company car, he knew that he was going to go out

9 and drink and other than that, he would have driven the company

10 car.

11 Q The man handles you like that and you still thought

12 you had to protect him?

13 A Yes, I would.

14 Q Get him out of the house so he wouldn't hurt you?

15 A I wouldn't want to see anybody get hurt.

16 Q The other business was about the way he was carrying

17 on, singing and laughing, whatever he was doing. Did you think

18 he didn't know what he was doing that day?

19 A I didn't know what to think. I tried to reason

20 with him and he went in and I talked to him. I said, "Don, do

21 you realize that you could have killed me and spent the night in

22 jail, I mean spent the rest of your life in jail? What would have

23 happened to Donny?" I got a laugh from that.

24 Q Now, you weren't scared about him using the case

25 cutter on you.

1 A At that point I was.

2 Q Which point, before or after he threw you?

3 A This was in the early afternoon with the case

4 cutter, two or three times.

5 Q Still you went in the room with him twice.

6 A What do you mean, to sleep with him?

7 Q This very night.

8 A I went in to reason with him.

9 Q With a man you had doubt about whether he was

10 rational.

11 A Wanted to find out and try to get close enough

12 to look in his eye. I was asked when I went to Rustburg when I

13 was going to swear out the warrant, the lady asked if he could

14 be on some dope.

15 Q You didn't find any dope around, did you?

16 A I didn't look for any.

17 Q Mrs. Drake asked if he had a chance to tell the

18 Judge that he had pulled the earring all the way out of one ear

19 and partially out of another. Actually you didn't tell Mrs.

20 Harder he pulled the earrings.

21 A He found it on the floor when he came back from

22 jail.

23 Q All you told Mrs. Harder was you lost one of your

24 earrings, didn't you?

25 A I told her when I hit the floor the earring came

1 out of my ear. She helped me look for the earring and then she
2 asked me later on had I found it. I said Don found it and gave
3 it to me. It didn't rip the hole completely out of the ear; I
4 didn't make this up. There, you can see it.
5 Q You didn't tell the Judge anything about it down
6 there?
7 A No, sir, I didn't even think about it.
8 Q It wasn't that important, was it?
9 BY THE COURT:
10 Q Are you saying he ripped the earring out?
11 A He didn't get his hands on it and pull it out.
12 When I hit the floor I hit on my left side and when I hit the
13 carpet it could have snagged in the carpet and pulled. He didn't
14 deliberately pull the earrings out of my ears. This just happened
15 in the course, just like the scratches on my chest and the
16 bruises on my arm.
17 BY MR. ROSENBERGER:
18 Q And you are telling the Judge now you have an
19 infection?
20 A Sir, I am not a doctor.
21 Q Didn't you tell the Judge?
22 A I said there is possibly an infection in my ears.
23 If I had the money I would have been to the doctor several months
24 ago.
25 Q It has been going on since April.

1 A They have been draining and they are right now, for
2 a good while. When I get the money I plan to go to the doctor to
3 see about it.
4 Q Doesn't it kind of hurt your ears to put your
5 earrings on them or not?
6 A I put one pair in my ears and I left them overnight
7 and I had to take them out.
8 Q They infected your ears?
9 A I beg your pardon. My ears were beginning to get
10 infected and I took that pair off and since that day I have not
11 had a pair on my ears, which has been since I went to Richmond.
12 I had to have a pair of others and I put that pair in too and took
13 them out the next day. From that time until this I have not had
14 earrings in my ears.
15 Q Do you admit then some earrings infect your ears
16 and some do not?
17 A Some earrings I have tried before, two or three
18 times, and I cannot bear them.
19 Q All right. Then Don was home Sunday night and you
20 slept with him Sunday night because you wanted to be in bed with
21 him, right?
22 A Because I wanted to be in bed with him?
23 Q Sunday night, April 14.
24 A It was my bed and I was ordered out of my house.
25 I think I told you twice I wanted to be where I could see what he

1 was doing.

2 Q If you were going to sleep with him, how could you
3 see any more sleeping right at him than you could by going in the
4 other room and blocking the door and going to sleep?

5 A I don't know but you can look over your shoulder
6 and see what somebody is doing quicker than you can through the
7 wall. I don't mean to give you a smart answer. I think I slept
8 lightly those nights in bed with him.

9 Q Did you have another bed you could have gotten in?

10 A I had a bed I could have gotten in. I had two
11 couches I could have slept on.

12 Q Haven't you ever been frightened and pushed a bed
13 against the door and slept in there?

14 A No, sir.

15 Q Then on Monday night you slept with him too?

16 A I slept in the bed with him every night until I
17 left. I guess it was Monday night.

18 Q Now, on Wednesday morning, April 17, didn't you
19 have intercourse with him?

20 A Sir, I have told you at least five times that never
21 happened.

22 Q It didn't happen?

23 A It never happened.

24 Q You heard what he said about having one rubber left.

25 A I heard that.

1 Q And you told him to put his mouth where his money
2 was.
3 A He testified to that when we were in Court in
4 Pustburg. I then said it was not true. I am saying for at least
5 the fifth time now it is not true. I have begged that man to have
6 intercourse with me and didn't have any results so I know darned
7 good and well after I had him locked up I am not going with him
8 to sleep to do that.
9 Q Now, the times you all haven't had intercourse would
10 have been late at night when you were drinking, isn't that a fact?
11 A Sir, I asked him on Sunday morning, stone cold
12 sober. This is humiliating to me. It has been humiliating in our
13 marriage to live like that.
14 Q Did he say he was too tired and that was the explana-
15 tion that he gave you, that he was too tired?
16 A He was either too tired or didn't feel like it. I
17 don't remember every excuse I got.
18 Q He did have late hours working with King's, didn't
19 he?
20 A Yes, he did.
21 Q All right, now, you didn't tell him or Mrs. Harder
22 you were leaving, did you? You didn't tell Don when you were.
23 A When he had late hours at King's?
24 Q I am getting around now to trying to get away from
25 that, trying to get to April 19, when you left, and did you tell

1 your husband you were leaving?

2 A No, I didn't tell him I was.

3 Q Did you tell him you were resigning your job?

4 A I didn't resign the job; I was transferred.

5 Q When did you come back to try to get the furniture?

6 A The following Monday.

7 Q Did you tell him if he didn't let you have the

8 furniture you were going to tell his boss, Mr. King, that he had

9 been locked up for beating you?

10 A All right, I will have to go back a little bit.

11 Q Just answer that question. Didn't you tell him if

12 he didn't let you have the furniture you were going to report to

13 Mr. King that he had been locked up for beating you? Did you or

14 not?

15 A That is not what I will tell you about the way it

16 was.

17 Q Tell it the way it was.

18 A He told me before, I think sometime before, and I

19 didn't mean to say anything funny --

20 Q I don't see if you can't answer. Did you call Mr.

21 King?

22 A I asked Don if he would let me have some of the

23 furniture so I could move into the apartment. He said absolutely

24 not. I said, "Don, I am going to have to call Mr. King and talk

25 to him and see if he can reason with you", or something like this.

1 He said, "Fine. Mr. King knows all about it. Mr. King knows all
2 about me staying in jail. He knows everything." He said, "Go
3 ahead and call him", so I did. I believed Don when he said some-
4 thing that serious, that he had told Mr. King he had spent the
5 night in jail. When I talked to Mr. King I asked him where Don
6 was going to be Monday. I said, "Mr. King, you know that Don and
7 I are separated." He said, "Yes." I said, "Now, everything has
8 happened." He said, "No, Mrs. Alls, I don't know anything other
9 than you have separated." I said, "Mr. King, Don told me that he
10 told you that everything happened over the weekend" -- He said,
11 "Mrs. Alls, what did happen? I want you to tell me." I said,
12 "Don told me that he told you that he spent the night in jail for
13 assault." Mr. King did not know that but Don had told me at least
14 three times he had told Mr. King.
15 Q If Don had told you he had told Mr. King, why was
16 it necessary for you to be sure King knew?
17 A I asked Mr. King if he talked to Don to see if he
18 could talk Don into letting me have some of the furniture. He
19 said he didn't want to get involved. I said, "Mr. King, I have
20 got a truck coming up Monday and this is Sunday night. I am
21 staying at the Ramada Inn. Mrs. Lee and I have a truck coming to
22 get part of the furniture to take back to Newport News." I said,
23 "Could you see if possibly you could try to get Don out of town
24 Monday for a while so I can go over and get some furniture?"
25 Does that answer your question?

1 Q I picked the answer out of all this speech.

2 A I am sorry.

3 Q Now, when you left town, did you overdraw one or

4 two accounts? You all had joint accounts.

5 A Sir, I called the bank and I took half of what was

6 in regular and what was in special and then evidently he had gone

7 to the bank also, because I paid a hundred and fifty dollar check.

8 I picked up one hundred and fifty dollar check.

9 Q You paid Mrs. Drake a hundred and thirty-one dollars

10 and fifty cents?

11 A Yes.

12 Q Then you had two hundred dollars cash?

13 A Yes.

14 Q And then you paid Lawrence Moving and Transfer

15 three hundred and fifty dollars, didn't you?

16 A Yes.

17 Q How much is that all totaled up?

18 A Six eighty-one, fifty.

19 Q That overdrew an account for one hundred and fifty

20 dollars, didn't it?

21 A Well, I called the bank and got the balances and

22 I took half of each balance so if I owed it through -- He was

23 writing them too. I wasn't the only one who wrote checks.

24 Q That one is six hundred and fifty dollars. What

25 was the other one? Mrs. Alls, how much did you charge to him at

1 J. C. Penney?

2 A I don't know.

3 Q You mean to tell me you don't know?

4 A One was a hundred dollars for curtains and things

5 for my apartment.

6 Q When you were getting ready to leave that weekend

7 and the following Monday --

8 A While I was living in the house I never kept track

9 of what I charged.

10 Q How much did you charge to Penney's to furnish the

11 apartment in Newport News?

12 A After I left I think it was less than a hundred

13 dollars, because he had promised me that when I left him again he

14 would see to it that my apartment -- I had already bought things

15 once for my apartment and I bought the cheapest things I could

16 find.

17 Q From April 3 through April 20 you charged from

18 women's dresses and handicrafts books, stationery, cosmetics, one

19 hundred and sixty-six dollars and thirty cents.

20 A At Penney's.

21 Q No charges at Miller & Rhoads?

22 A He knew I was going to buy spring clothes. He told

23 me to.

24 Q This fellow who wanted to get rid of you?

25 A He didn't know that but, Mr. Rosenberger, I always

1 I had to work and had to have clothes to do it in. I didn't have
2 that many clothes.
3 Q What you were doing is getting ready to get started
4 with plenty of clothes.
5 A I knew what it was going to be like and not hardly
6 enough money to buy lunch when he was working, much less --
7 Q Was it you or your aunt who didn't want Don to
8 visit with Donny?
9 A My aunt. She paid the nursery school. She bought
10 our food and helped me with my bills, my gas and everything else,
11 plus everything she has done for Donny; paid his doctors, not the
12 doctors but bought the medicine and I paid one doctor's bill.
13 Q She didn't even want to let him in the house?
14 A Absolutely not. He had not even sent money for a
15 loaf of bread.
16 Q Because the child was taken from him under false
17 pretenses?
18 A I don't care under what pretenses he took him.
19 Q After taking him you turned him over to somebody
20 else?
21 A They are your words, not mine.
22 MRS. DRAKE: I object to counsel being objective.
23 THE COURT: He is asking the questions.
24 Q You haven't stayed there since the first week?
25 A I haven't stayed a night in that house. I do not

get off from work until 9:30. They go to bed about 9:30 and Donny goes to bed at 8:30.

Q You think it is proper to take the child from his father that loves him and turn that child over to somebody else?

A I didn't turn the child over to somebody else. I cannot be in two places at one time. I have to work and somebody has to take care of him. If I had money and had paid for a baby sitter, that was all right, but I didn't have money to do it.

MRS. DRAKE: We do have some further questions.

The witness stands aside temporarily.

The witness, DEPUTY SHERIFF DANIEL HOGAN, having first been duly sworn, deposes, as follows:

DIRECT EXAMINATION

BY MRS. DRAKE:

Q Mr. Hogan, what is your name and rank, please?

A Daniel Hogan, Deputy Sheriff, Campbell County.

Q On April 13, 1974, did you have occasion to go to 108 Woodway Drive, Keystone Forest, within the county?

A Yes.

Q Mr. Hogan, were you in the police car when you received the message?

A Yes, I was.

Q Approximately what time did you go there?

1 A I don't remember. Around ten or ten-thirty.
2 Q It was after dark, late afternoon?
3 A Yes, ma'am.
4 Q Did you go there more than once?
5 A That night?
6 Q Yes, sir.
7 A Yes, ma'am.
8 Q Would you please tell the Judge everything that
9 you saw and heard the defendant Alls say that evening; what the
10 character of your conversation was --
11 MR. ROSENBERGER: I think she has been leading the
12 witness.
13 THE COURT: Yes.
14 Q Tell who you first saw when you first got to the
15 residence.
16 A I saw Mrs. Alls.
17 Q Did she come out and talk to you in the car?
18 A Yes.
19 Q Did Mr. Alls speak to you?
20 A Yes.
21 Q What did he say to you?
22 A Something about talking to a psychiatrist.
23 Q What did Mr. Alls tell you he had done that
24 evening?
25 A At that time he didn't tell me anything.

1 Q Did he later tell you what he had done that evening?
2 A He told me when I read the warrant to him that she
3 didn't lie about it.
4 Q All right. What did you know about Mr. Alls on
5 your trip between 108 Woodway and the jail?
6 A Well, he didn't seem like he was mad or anything
7 at the time; kind of casual conversation really.
8 Q When you told him about getting bailed that night,
9 what did he say?
10 A I told him he could get somebody to bond him. He
11 said he didn't want to get bond, wanted to stay all night in jail.
12 Q Did he tell you why he did?
13 A No, ma'am.
14 Q How long have you been a Deputy Sheriff?
15 A About six months.
16 Q Have you carried a good many people to jail?
17 A Quite a few.
18 Q Was this unusual?
19 A I never heard it put that way but most people try
20 to make a telephone call and get somebody to get them out.
21 Q This man wanted to stay overnight? Did he tell
22 you what he thought of breakfast the next day?
23 A No, ma'am, I didn't see him the next day.
24 CROSS-EXAMINATION
25 BY MR. ROSENBERGER:

1 Q Mr. Hogan, when you read the warrant to him, he
2 said she did not lie. What did the warrant say?
3 A That he did commit assault and battery against his
4 wife.
5 Q And when he got down there didn't he offer to give
6 you a check or property bond to get out?
7 A No, sir.
8 Q Are you sure he didn't offer you --
9 A I am positive. The Justice of the Peace was there
10 at the time. He said, "I would like to see the lady who wrote
11 the warrant." I said, "She is right behind you. Do you want to
12 get somebody to bond you, sir? I will take you back." He said,
13 "I want to stay in jail."
14 Q He didn't say he would give a check?
15 A Not at the time.
16 Q Did he later offer to give the check to get out?
17 A Maybe later on that night. I left there at twelve
18 o'clock.
19 REDIRECT EXAMINATION
20 BY MRS. DRAKE:
21 Q My only question of the day is I wanted to ask this
22 one question. What was Mrs. Alls' condition when you arrived at
23 the home?
24 A She was very disturbed.
25 Q What was her physical appearance?

1 A Well, she was very upset. I told her I couldn't
2 take her to Rustburg. She said, "I can't go in the house; I'm
3 scared to go back in there." She was very upset.
4 Q That is the only question I wanted to ask.
5 RECROSS-EXAMINATION
6 BY MR. ROSENBERGER:
7 Q How did she go?
8 A She drove her own car.
9 Q Did you see her go in and get the key?
10 A Went in and got the glasses.
11 Q Did she follow behind you?
12 A She went 221, which is old 460, and at the time had
13 a call in Rustburg and I came back and said, "I can't take you".
14 She drove off to Rustburg.
15 Q You didn't follow her to Rustburg?
16 A She followed me. She followed the car.
17 Q Did she go back in the house and get the keys?
18 A I think she had the key with her.
19 Q Do you know if she went in the house or not?
20 A No, sir.
21 REDIRECT EXAMINATION
22 BY MRS. DRAKE:
23 Q Did you see Mrs. Alls in Rustburg?
24 A Yes, ma'am.
25 Q Did you ever have to take her to the emergency room?

1 A She complained about the back of her neck and I told
2 her she needed to go to the emergency room.
3 RECROSS-EXAMINATION
4 BY MR. ROSENBERGER:
5 Q She complained of the back of her neck?
6 A Bothering her.
7 Q She didn't complain about her ears, did she?
8 A I don't remember.
9 Q That is all.
10 The witness stands aside.
11 MRS. DRAKE: Judge Taylor is going to have to leave. I
12 wonder if now would be the time to set up some other time.
13 MR. ROSENBERGER: I don't like to defer until some
14 other time.
15 MRS. DRAKE: All four are here.
16 MR. ROSENBERGER: I would have an awful time getting to
17 a hearing in the case. I want to say to the Judge I don't
18 want to defer anything that has to do with the custody of
19 this child; that it can't leave your County and actually is
20 in custody of Mrs. Grace Lee, even though the Order says the
21 child is in the custody of its mother. We spent most of the
22 one day down there. We have been through this thing and
23 this child has been away from its father since April 19. We
24 have been through the permission business.
25 MRS. DRAKE: He can enter an Order specifying dates of

1 visitation and appropriate child support. We are willing
2 to forego attorneys' fees. The people, while they both have
3 an interest in this child, they do have a continuing rela-
4 tionship, and we have to establish times of visitation.
5 THE COURT: Can't we go on for a while now if Judge
6 Taylor has to leave?
7 MRS. DRAKE: It is not conceivable we could finish if we
8 went until very late tonight.
9 THE COURT: Don't talk too long about not finishing. We
10 might finish.
11 MRS. DRAKE: He can speak to this woman's need as to the
12 child support at this time because he has been working with
13 her. He can be more convincing that I can. I talked to Mrs.
14 Alls and have not seen her until this time when she came up.
15 MR. TAYLOR: The designated question she has a definite
16 financial need. I think the Court has her financial figures.
17 She has indicated what it is costing her. She has been
18 living entirely almost off her aunt since the separation of
19 the parties.
20 MRS. DRAKE: If the Court could establish visitation
21 and finish that, it would be a different cup of tea.
22 THE COURT: I am not going to establish visitation at
23 this minute. If I have to do that I will wait until the end
24 of the evidence when we stop and I will not decide that
25 right now. Now, if we have to stop then I will do something.

1 MR. TAYLOR: I have enjoyed being here.

2 (Mr. Taylor leaves the conference room)

3

4

5 The witness, MRS. GRACE LEE, having first been duly

6 sworn, on examination testified, as follows:

7 DIRECT EXAMINATION

8 BY MRS. DRAKE:

9 Q Mrs. Lee, what is your name, please?

10 A Grace Lee.

11 Q Mrs. Lee, what is your niece's name and is she

12 over the age of eighteen?

13 A Yes, she is.

14 Q What is your nephew-in-law's name? Is he over the

15 age of eighteen?

16 A Yes, Donald Alls.

17 Q Do you know where they were married and approximately

18 what year?

19 A They were married in Danville about nine or ten

20 years ago.

21 Q Are both Mr. and Mrs. Alls members of the white

22 race?

23 A Yes.

24 Q Do you know that neither of them is a member of

25 the armed forces of the United States?

1 A That's right.

2 Q Do you know they have both been actual bona fide
3 residents of this state for more than one year next preceding com-
4 mencement of this proceeding?

5 A Yes.

6 Q Do you know Campbell County was the last home and
7 place they cohabitated?

8 A Yes.

9 Q Do you know the names of the children of the
10 parties?

11 A You mean all of them? Jeffrey and Noel and Donna
12 Kay and Donny.

13 Q Have you visited Mr. and Mrs. Alls and they you
14 with some frequency during the marriage?

15 A I have been in their home several times, yes.

16 Q Most recently were you here in the spring a year
17 ago?

18 A Yes, I was.

19 Q At the time of the first separation?

20 A Yes, I was there.

21 Q Would you tell us what you observed from your point
22 of view as to what caused that separation? What did you think
23 caused that separation?

24 MR. ROSENBERGER: Don't think; give her your opinion.

25 THE COURT: You have got to ask questions of what she

1 observed or saw and her opinion of what caused it is not
2 admissible in evidence.
3 Q Mrs. Lee, how long before the separation did you
4 come up here?
5 A I think I was up here about two weeks, I think
6 about two weeks.
7 Q Were you and your niece and nephew-in-law in good
8 health at that time?
9 A Well, she was depressed because she was so lonely;
10 a young girl like she is and staying at home so much with the
11 child.
12 Q Now, was Mr. Alls at home most of the time in the
13 evening and on weekends?
14 A Well, sometimes he would come in early most of the
15 time and we had dinner around eight or eight-thirty, sometimes
16 nine.
17 Q Now, to skip forward a little. You were not with
18 them on the night of April 13 of this year?
19 A No, I was in Roanoke.
20 Q At the time of the first separation and during
21 those summer months could you tell us whether you ever saw Mrs.
22 Alls intoxicated?
23 A No, I did not.
24 Q Do you know whether she was taking drugs?
25 A No, I do not.

1 Q Have you ever seen her when you thought she was not
2 herself?
3 A Only when I thought she was taking the drugs up
4 here in her house.
5 Q When was that?
6 A That was before they separated the first time in
7 March. I believe it was March, 1973.
8 Q All right, ma'am. You knew your niece was taking
9 drugs at that time?
10 A She told me about it.
11 Q Now, since that time have you seen the same
12 behavior on the part of your niece or has it been changed?
13 A After she came to Yorktown last year she was
14 really doing wonderful and she was working. Her parents were
15 nice. She kept a nice little apartment. I thought she was just
16 doing wonderful about it all and they decided to go back together.
17 Q Were you with them when Mr. Alls and Mrs. Alls were
18 reconciled? Were you in Yorktown?
19 A Yes, I was.
20 Q Was Mr. Alls saying to Mrs. Alls -- What did he
21 say to her; what promises did he make?
22 A He told her if she wasn't happy; if they came back
23 and lived with him he would see that she was established back as
24 good as she was, as good as she was when she lived in Yorktown.
25 Q What did Mr. Alls tell you about what he thought

1 of Mrs. Alls as a mother to this youngest child?

2 A He told me Betty had been a wonderful mother to

3 Donny.

4 Q Do you remember when he told you this? Was it

5 last year or this year?

6 A It was last year.

7 Q Have you and Mr. Alls stayed together in the same

8 house with the little boy?

9 A Yes, I have.

10 Q When was that?

11 A When I returned Donny. I kept him five weeks down

12 there.

13 Q Was it 1973 you kept him?

14 A Yes.

15 Q When Mr. Alls and you and the housekeeper were

16 staying together and the little boy, did Mr. Alls ever take the

17 little boy out at night?

18 A Sunday night when we came back from down there he

19 dressed him and took him over to Mrs. Carroll's, I believe.

20 Q Is that where he told you? What did he dress him

21 in?

22 A I believe it was his pajamas; I'm not sure.

23 Q Do you know what time they left and came back?

24 A Left after we had dinner and got back I guess

25 around seven. I guess he came back about ten.

1 Q Do you remember Mr. Alls telling you anything about
2 some woman that had been staying there while Mrs. Alls was away?
3 A This woman that he knew. I don't know who it was
4 but they were in Lynchburg, in the motel, and tried to get the
5 motel and he called the housekeeper up there and asked her to
6 fix the guest room for her, this person. I don't remember the
7 name.
8 Q Do you remember any night when you were there that
9 Mr. Alls left in the middle of the night?
10 A I remember one night he was gone to bed and I was
11 surprised. Mrs. Harder asked if I saw the lights on the car.
12 MR. ROSENBERGER: If you want to tell that Harder told
13 you that, go ahead.
14 THE WITNESS: I heard the car go on out.
15 Q Where did Mr. Alls tell you he was going?
16 A Going to bed. He was tired.
17 Q Did he go to bed?
18 A I don't know.
19 Q By the way, Mrs. Lee, what is your age, please?
20 A I am sixty-five.
21 Q And are you Mrs. Alls' aunt?
22 A Yes.
23 Q Now, you were in the same vicinity with Mrs. Alls
24 following the termination of the first marriage. Did she have
25 her children with her then?

1 A Yes.

2 Q Do you know why she didn't keep the children?

3 A Because just like she does, I know she didn't have

4 enough to feed them on.

5 Q Did you see Mrs. Alls the morning the signed the

6 property settlement contract?

7 A She signed it in the afternoon. I was with her

8 all day.

9 Q What did you notice about her?

10 A She was very nervous; she couldn't sit still. She

11 walked the floor and she was highly emotional and under high

12 emotional strain.

13 Q Now, do you believe your niece has the moral and

14 physical capacity to make a home that is a good home for the

15 little boy?

16 MR. ROSENBERGER: I object to the opinion. She can

17 state all the facts.

18 THE COURT: Let her answer.

19 Q Have you seen Mrs. Alls with the little boy, here

20 and in Lynchburg?

21 A I think since she has been down there she has been

22 a wonderful mother to the child; when the child comes over she

23 washes his clothes; she puts them away; dresses him and if she is

24 off on Saturday and Sunday, which she is most of the time, she

25 takes care of the child and comes over and maybe has breakfast

1 with us. She comes over after breakfast and eats and takes the
2 child to school or I take him and she does my housework for me
3 or vice versa. She has proved herself to be very good I think.
4 Q You have seen the little boy here and since he
5 has been in play school. Have you noticed a difference in him?
6 A He just is a different child. He has opened his
7 eyes to a different world. Even my maid last week - she sees him
8 every Monday - she said she had never seen the child come out
9 like he has. He has gained weight and loves to play with children
10 when they take them out on the battlefield. He calls it the up
11 and down hill. As Don will tell you, he called up after he had
12 been to church and he was thrilled by the church. He went to
13 Sunday School and to church. He is living a different life. When
14 I go anywhere I take him if I have charge.
15 Q You take him to the bank?
16 A Yes, anywhere if I go out to dinner. If I go to
17 someone's home, I take him with me.
18 Q How is the little boy's deportment in your presence?
19 A Very nice.
20 Q Is he polite?
21 A Yes.
22 Q Is he talking well now?
23 A He is talking real good. He can tell you about
24 the chimes on the church. He thinks the doorbell chiming is
25 ringing on the church and will raise his hands for the doorbell

1 to ring.

2 Q Have you talked to Mr. Alls in the past when you

3 were here about building a fence for the little boy?

4 A I suggested to him that I thought it was a good

5 idea because Mrs. Harder just couldn't keep him under control,

6 because she wasn't able to move as fast as he could move.

7 Q Can you move as fast as he can move?

8 A I try to.

9 Q You think ahead of him?

10 A Yes.

11 Q You can anticipate what this child is going to do?

12 A He is very nice. I taught him to sit by me in

13 the car. I have taken two diapers and pinned them and put them

14 around his waist and my waist to protect him from going against

15 the dashboard. I taught him to sit by me while driving the car.

16 Q What would you think about your nephew-in-law

17 having custody of the child? Do you think he has the temperament

18 to care for a young child?

19 A Well, I think Don is away from home so much that

20 that would be hard and I don't think he would have as much patience

21 as Betty would have with the child, because she has shown very -

22 she has been very kind to him and it seems like he is thrilled to

23 death whenever she comes and takes him anywhere, any places with

24 him, and she dresses him just real nice.

25 Q Did you see the scratches and bruises on Mrs. Alls

1 after she got to your apartment?

2 A No.

3 Q You did not see those? Have you seen her ears?

4 A Yes, I have.

5 Q Would you tell the Judge what they look like?

6 THE COURT: I have seen her ears. You don't have to

7 go into that.

8 THE WITNESS: They need treatment.

9 Q Mrs. Lee, who has been providing food for the little

10 boy and Mrs. Alls?

11 A I have.

12 Q You have been? Are you a wealthy woman?

13 A I live on retirement checks.

14 Q You and your sister and brother-in-law have an

15 apartment together, is that correct?

16 A Yes.

17 Q And do you know why the little boy -- Could you

18 tell the Judge where the little boy sleeps at your apartment?

19 A Because he sleeps over there. They put him in the

20 custody of Yorktown and we only have two bedrooms and he has the

21 bedroom and we don't have an extra room. I sleep on the couch and

22 he has the bedroom.

23 Q Do you know whether it is Mrs. Alls' intention when

24 she gets the little boy to furnish and take him to her apartment?

25 A She told me time and time again she is.

1 Q If this Court enters an Order permitting her to take
2 the child from York County to her home outside York County, will
3 she take the child in your opinion?
4 A Yes.
5 Q Would you continue to be with him some of the time
6 and take him on these trips?
7 A Yes, when she is working I will help her.
8 Q How much money have you spent for the little boy's
9 play school so far?
10 A I spent twenty-five dollars. It is ten dollars
11 down. It takes twenty dollars a week for play school. It takes
12 ten dollars worth of gas a week. That is in effect if I am
13 going in my car. I don't know whether you can say ten dollars
14 a week or not for just the gas.
15 Q Now, the housekeeper you trained, -- You trained
16 the housekeeper, didn't you?
17 A I was there with her a week.
18 Q You have visited in the home since she has been
19 there?
20 A Yes.
21 Q Can she manage the child as well as you can?
22 A No, I think Mrs. Harder does not drive and she
23 can't get out and take the child like I can take him and then I
24 take him places and he just has a well rounded life, which he
25 hasn't had before.

CROSS-EXAMINATION

BY MR. ROSENBERGER:

Q Why hasn't he had a well rounded life when living with his mother?

A I say they didn't take him like she should have, either one of them.

Q You think you have managed his life better than his mother or father?

A I said she has done a wonderful job since she has been down there.

Q You visited in the house, living with the child, up here?

A I was up here only two or three days.

Q You have arthritis in your hands and feet and knees?

A I have in my hands.

Q Also in your feet, don't you?

A I can walk.

Q Do you have it in your knees?

A I have some, yes.

Q Actually you have difficulty using your hands to cut your nails, and Mrs. Harder does that for you?

A She cut my toenails for me one time. I can cook and do my clothes. I can get the groceries and clean my house.

Q Well, the reason you had to put the child in day school was you couldn't care for him?

1 A That is not the reason. It is because I thought
2 the child needed to be with other children.
3 Q I see. You couldn't get the child with other
4 children where you lived, could you?
5 A No, because it is a place that is kind of restricted
6 for children down there. It is for retired and business people
7 who live there.
8 Q Who is the sister that lives with you?
9 A The only one, Gladys May.
10 Q Is Betty's father your brother?
11 A Yes, he is.
12 Q Does he work?
13 A No, he doesn't.
14 Q Where does he live?
15 A He lives in Roanoke.
16 Q Has he had a problem with alcohol too?
17 MRS. DRAKE: We object to that.
18 THE COURT: What is the relevancy?
19 MR. ROSENBERGER: To show this is hereditary.
20 THE COURT: That would take a medical opinion.
21 Q Now, did you raise another child in the family?
22 A Yes, because she asked to come and live with me.
23 Q Whose child was that?
24 A Betty's sister.
25 Q That child doesn't live there any more?

1 A No, she is married and has a home of her own.

2 Q When did you start visiting with Donald and Betty?

3 Did you start right after they were married?

4 A I've been in the home for dinner two or three times

5 and visited in Danville overnight and visited them in Lynchburg.

6 Q Did she have trouble with alcohol in Danville?

7 A Not that I know of.

8 Q You don't know of her drinking too much in Danville?

9 A I didn't visit much in Danville. That was one

10 night I think. Donald was off from work and had pneumonia and he

11 came to the bus station and picked me up.

12 Q Then in March when Betty left Donald, had she been

13 drinking a lot at that time?

14 A No, she hadn't been drinking so much.

15 Q Taking a lot of dope?

16 A Taking the pills the doctor gave her. Dr. Milam

17 gave her the pills in Danville.

18 Q Had she been under any psychiatrist in Lynchburg?

19 A No, she hasn't.

20 Q Did you ride around with her the day she signed

21 the agreement?

22 A No, we were in the house that day.

23 Q Did you stay in the house after she had gone?

24 A Yes.

25 Q How long did you stay?

1 A Until the next morning.

2 Q Prior to that time did you ask Donald to take the

3 screens out of your bedroom?

4 A One night I told him I was going to bed and I told

5 him we should have one window we could get out at.

6 Q That is because you thought Betty would set the

7 place on fire?

8 A No, because Betty was on medication and I could

9 see the house on fire by dropping a cigarette.

10 Q On other occasions when Betty was drinking, you

11 had stayed up because you were afraid of going to sleep. Did you

12 stay up late at night when Betty was drinking because you were

13 afraid she would set the place on fire?

14 A No, that was not the reason we sat up. She was a

15 lonely person and one night called me up in North Carolina and

16 asked me to come by and see her.

17 Q Was she drinking on those occasions you would stay

18 up late?

19 A She would have the medication too.

20 Q Drinking and taking medication?

21 A The medication I believe was as much to blame as

22 anything.

23 Q Did she set the sofa on fire down at Yorktown or

24 down there separated from Don?

25 A No, she was drinking. I have had guests come in

1 my home and set my sofa on fire.

2 Q Did she also set a fire at home when you were

3 staying up here?

4 MRS. DRAKE: We object. It has been no evidence com-

5 plainant ever set fires.

6 MR. ROSENBERGER: We will offer evidence that she has.

7 THE COURT: He is asking the question and it won't be

8 any evidence if she doesn't answer the question or, if she

9 answers it.

10 THE WITNESS: I don't know anything about that.

11 THE COURT: Answer his question.

12 Q This thing of having the screen was why? Why did

13 you want the screen out?

14 A So if anything happened that we needed to get out.

15 I could not raise the window.

16 Q What would happen?

17 A If a fire started I was not -- If she ever sets a

18 fire; if she ever set the sofa on fire, I was not there.

19 Q You knew about the one in Yorktown.

20 A She told me about it. I don't know how it came

21 about.

22 Q Just how many times has Betty been to your house

23 since she has been down there in Yorktown this time?

24 A She has been there every day in the world.

25 Q She comes to your house every day?

1 A Yes, sir.

2 Q You are sure of that?

3 A I am pretty sure except one day she went out of

4 town and didn't come back that day.

5 Q On occasions that Don called to talk to Donny, has

6 he been able to reach her there?

7 A It has been several times.

8 Q Except on one occasion?

9 A It will be several times that she talked to him.

10 I talked to Don Friday a week ago and told him she would be home,

11 nine-thirty or quarter to ten.

12 Q When he came down May 24 to get this child, - May

13 25 I believe, on Saturday --

14 A I don't know. I don't remember.

15 Q She told you it was all right for him to get the

16 child, didn't she?

17 A The Judge in York County told me the child was

18 supposed to remain in York County at night and I was going accordin

19 to what the Judge told me.

20 Q You wouldn't let the mother or father have the

21 child.

22 A I don't know anything about him coming in.

23 Q After he got down there you wouldn't let him in?

24 A I wouldn't let him.

25 Q Even though the mother said to let him in?

1 A I thought he was supposed to remain like he was
2 told to be in York County.
3 Q Who employed Judge Taylor?
4 A I did.
5 Q You did?
6 A I know him and have known him for several years.
7 He has been my lawyer. I want to see Betty get a fair deal this
8 time and she certainly didn't get it the last time.
9 Q When Don came home late, when you were here in
10 March, 1973, that is when he was working at King's, wasn't it?
11 A Yes.
12 Q He did have some late hours, didn't he?
13 A He had many of them.
14 Q But you haven't seen anything wrong with Mrs.
15 Harder's care of Donny, have you?
16 A I just think she is too old to care for a child
17 because she can't get out with him like I can.
18 Q Does Donny love her?
19 A I guess he does. If you have been around a person
20 and that is all you have seen for two years, you might love them
21 too.
22 Q He is the one who wanted to see her.
23 A He calls her -- The funniest thing every time his
24 daddy or Mrs. Harder calls, he hardly ever mentions his daddy, only
25 when he calls on the telephone.

1 Q He is only three years old.

2 A Yes, he is a smart boy.

3 REDIRECT EXAMINATION

4 BY MRS. DRAKE:

5 Q As to the incident of the screen, that was actually

6 when Mrs. Alls was in Roanoke, was it not?

7 A No, that is when she was there.

8 BY THE COURT:

9 Q How did the Court in York County ever get juris-

10 diction over this case?

11 MRS. DRAKE: 31-15 says: "Where there is a necessity

12 for judicial order and a court not of record can enter an

13 order granting custody." I never heard of it when Mr.

14 Taylor told me he was going under the short statute.

15 BY THE COURT:

16 Q The only thing was to keep the father from having

17 the child, that was the purpose?

18 A Then he could not or Betty could not snatch the

19 child and take him somewhere.

20 Q The only person that snatched the child was this

21 girl here. She had taken the child.

22 A Neither one could do it.

23 Q One has gotten control and is trying to cut the

24 child out of control of the other. Is that the way it was going

25 on?

1 MRS. DRAKE: The reason for filing this was trying to
2 set up informal relationship for the custody, visitation and
3 child support. The petition was for child support primarily.
4 MR. ROSENBERGER: I would like to file as "Defendant's
5 Exhibit 1", a copy of the Motion and we have evidence it was
6 served on Friday, May 3, at eight o'clock and comes on to
7 be heard on Tuesday or Wednesday, May 8, and we filed this
8 Motion, which I would like to show that the custody had
9 already been put in issue in this Court. We said that the
10 notice was insufficient and that this Court has jurisdiction
11 and also would like to file a copy of the Order entered by
12 the Court, which granted the continuance but vested the
13 custody temporarily in this Court. That is the York Juvenile
14 and Domestic Relations Court. They said the child should
15 not be removed from the jurisdiction without the strict Order
16 of the Court and gave the physical custody to the wife. We
17 would like to file that as well as the correspondence that
18 was in connection with it. We would like to file these as
19 "Defendant's Exhibit 3".
20 THE COURT: Go ahead.
21 MRS. DRAKE: I think that is sufficient.
22 The witness stands aside.
23
24 The witness, MRS. BETTY COCKERHAM ALLS, having previously
25 been sworn, on being recalled testified, as follows:

1 DIRECT EXAMINATION

2 BY THE COURT:

3 Q You had the apartment when you came to Yorktown?

4 A The day I went down I got it.

5 Q Did you move into it?

6 A It had to be furnished but I didn't have any

7 furniture.

8 The witness stands aside.

9 THE COMPLAINANT RESTS

10

11

12

13 The witness, MRS. JOSIE HARDER, having first been duly

14 sworn, on examination testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ROSENBERGER:

17 Q State your name.

18 A Mrs. Harder.

19 Q Mrs. Josie Harder? Mrs. Harder, how long have you

20 known Betty and Donald Alls?

21 A I went there to take care of the house and the baby

22 the sixteenth of April, 1973, and I have been there one year and

23 three days when she taken the baby this time and left.

24 Q Now, do you have any physical infirmity that would

25 prevent you from taking care of a three year old child?

1 A I absolutely do not

2 Q Did you get along with Mrs. Alls all right?

3 A I did.

4 Q Who had control of Donny when Mrs. Alls was living

5 there?

6 A I did because she said that was a term; she would

7 come back if I would stay and take full charge of the baby, and I

8 taken that baby up and dressed and fed him his breakfast every

9 morning; taken care of his chair; set it at the side of mine at

10 meal tables every meal.

11 Q Are you able to keep up with him? How old are you?

12 A I am seventy years old presently and able to keep

13 up with him.

14 Q Do you ever get him out of doors?

15 A I take him outside every evening. When the sun is

16 too hot, in the nineties, I don't take him out. He is very fair

17 skinned.

18 Q Does the sun affect you?

19 A Yes, it does. It gives me a headache when it is

20 real hot and I don't take him out either; he is too fair skinned

21 for ninety degree sunshine.

22 Q During the time you have lived there with Mrs. Alls,

23 would you tell us what or how much she drank, how she drank?

24 A Yes, Mrs. Alls did drink right bad, I will say two

25 quarts of whiskey a week.

1 Q You would say she drank two quarts or two fifths?
2 A I don't know. It was the long necked bottle. I
3 don't know what it was.
4 Q Did you drink either?
5 A No, sir.
6 Q You don't drink?
7 A No, sir.
8 Q Did Mrs. Alls take any medicines of any kind that
9 you know of?
10 A Well, I would see her take pills of some kind but
11 what they was, I don't know.
12 Q Now, you were not employed until after she had
13 left and went away?
14 A That's right. She had gone out and she wasn't at
15 home when I answered the ad in the paper. I called Mr. Alls and
16 he hired me to take care of the baby.
17 Q When Mrs. Lee came back from Yorktown with the
18 child, did you and Mrs. Lee get along all right?
19 A We certainly did. She said she would stay a few
20 days until the baby got quiet and acquainted with me and I with
21 him, his eating habits, things like that. I don't remember exactly
22 but maybe it was a week that she stayed after I went there. We
23 got along just fine together.
24 Q The father, Donald Alls, is he interested in the
25 child at all?

1 child at all?

2 A If there is anything on the face of the earth that

3 Mr. Alls loves, it is that baby.

4 Q How does he show it?

5 A He shows it in every way that a father could show

6 it. He wants to correct him and he puts him to bed every night.

7 He hears his prayers. He does most of the bathing of that baby.

8 Anything that I ever told him that I wanted or needed for that

9 baby, I got right now.

10 Q How did Mr. and Mrs. Alls get along together, that

11 is between the two of them?

12 A Well, after I would get supper over every night,

13 my room was downstairs and I would go down there. Most every

14 night the baby was down there with me until time for him to go to

15 bed because I would go downstairs and he would go too because we

16 just loved each other and we enjoyed being together.

17 Q You want the child back with Mr. Alls?

18 A Yes, sir, I certainly do. I would love to have him.

19 Q Now, were you there when Mrs. Alls went to the

20 hospital?

21 A Yes, I was.

22 Q In July of 1973?

23 A Yes.

24 Q Did you see her in the hospital any?

25 A No, I didn't go visit in the hospital. I didn't

1 care about making a visit up there.

2 Q After she came home how did you get along?

3 A Got along all right.

4 Q You had no trouble?

5 A No trouble whatever because I told her if she

6 wanted me to take care of the baby, do the housework, I would do

7 it my way and I wanted to do it; didn't want to do it with anybody

8 breathing down my neck. I feel like I did a good job and didn't

9 hear any complaints from Mr. Alls and he was the one paying me.

10 Q Did you notice anything about the altercation that

11 took place on April 13, I believe it was, when the telephone -

12 when Mr. Alls pulled the telephone out? Do you remember that?

13 A Well, I was downstairs. I was on the telephone

14 down there talking and I told you I worked at Miller Home. I

15 talked to the people out there, the cook and them. I was on the

16 phone talking to the cook that night and Mrs. Alls screamed for

17 me. I told Mrs. Powell I didn't know what was wrong but I have

18 got to go. I went up to the top of the steps and she hollered

19 for me and she said, "Call the police. Call the police." I said,

20 "Good God, where is Donny?" That is the very words I said. I

21 didn't call no police. I didn't bother. All I heard them say, I

22 heard Mr. Alls tell her she could not have them keys and she

23 could not drive the company car. The car at that time belonged

24 to Mr. King.

25 Q Did you know about him pulling the cord out of the

1 telephone?

2 A I saw the receiver laying on the cabinet but for
3 the life of me I wouldn't say who put it down there. I didn't
4 see.

5 Q When he came back the next day, do you know where
6 she slept Sunday, Monday, Tuesday?

7 A She slept with him as far as I know.

8 Q Did Mrs. Alls show any fear of Mr. Alls?

9 A None whatever. I don't know why she should have
10 ever been afraid of him.

11 Q That was something about her earring?

12 A I heard her say she lost part of her earring and
13 found it in the ashtray. She said Don must have picked it up and
14 put it in the ashtray outside but didn't know anything about it.

15 Q Did she complain of any problem with her ears?

16 A None that I heard.

17 Q Did she show you any bruises or any scratches?

18 A No, sir.

19 Q All right. Now, on this Friday, or Thursday,
20 April 18, Friday, April 19, did she make any comment to you where
21 she was going to take Donny?

22 A Yes, she did. She said she was taking him to have
23 his picture made to give his daddy for Father's Day. He had on
24 one little new outfit and I had bought that for him. She asked
25 for another one, a little red checked one, and she really liked

1 it and she said, "I want to have one picture made with him standing
2 up full length and I would like to have the other made in this
3 suit." I said, "Well, if you are going to do that, take these
4 little oxfords to show his feet with oxfords on." She said, "All
5 right." So, she took them. I haven't saw the picture yet.
6 Q What was the next time -- Who called Mr. Alls?
7 A I did.
8 Q What time did you call him?
9 A As well as I can remember it upset me so after I
10 had the baby's lunch fixed, waiting for her to bring him back, I
11 said it was somewhere between quarter after twelve and twelve-
12 thirty when I called Mr. Alls.
13 Q Had you checked to find out where she was?
14 A I had called Miller & Rhoads and the lady down
15 there says, and I asked, "Can I talk to Mrs. Alls?", and I says,
16 "If she is going to bring the baby home in time for his lunch".
17 She said, "Mrs. Alls isn't working today. She came in early and
18 got her check and said she had some business to attend to."
19 MRS. DRAKE: Ask her to finish it.
20 THE COURT: What is it going to prove?
21 BY MRS. DRAKE (interposing):
22 Q Were you told to pick up her check?
23 A I called Mr. Alls and told him and then he started
24 calling around. She had done and overdrawed all the checking
25 accounts.

BY MR. ROSENBERGER:

Q Don't go into this. When she came in about the furniture the following week, did she bring Donny?

A No.

Q Have you seen Donny since?

A Yes, we got him for his birthday. We had him a little while.

Q Did you go down with Mr. Alls to get him?

A Yes, sir.

Q What time did you get down to get him?

A Well, I believe we got down there somewhere around noon that day.

Q Were you able to get him?

A No, not then.

Q When did you finally get him?

A At five o'clock.

Q Then did you bring him back to Lynchburg?

A Yes, sir, we stopped at the restaurant and fed him supper and then brought him home.

Q Tell whether he was happy to be with you and his father?

A He certainly was happy and sat in my lap. I loved him and he would stand with his daddy and sit in my lap and talk to us all the way home. We got home and he went up the steps and grabbed his little animals that were setting in the house like he

1 left them.

2 Q What is the condition? Was he clean and neat?

3 A No, he was not clean.

4 Q What was the trouble?

5 A He didn't have on clean clothes.

6 Q Why did you say he wasn't clean?

7 A Because his hands and feet was dirty. His toenails

8 was out long and dirty and I trimmed and cleaned them and his ears

9 was sore up on top.

10 Q All right. Then did you go when you took him back

11 down there?

12 A Yes, we took him back.

13 Q Now, did you go with Mr. Alls down to Betty's

14 apartment last Friday night?

15 A I certainly did.

16 Q Did you see her come out of the apartment?

17 A I certainly did.

18 Q Do you know about what time it was?

19 A Twenty-five minutes after ten when her and the

20 gentleman came out.

21 Q Where did they go?

22 A Up on the Parkway.

23 Q Did you see them get in that car?

24 A Yes, sir.

25 Q Did you see anything happen then?

1 A Yes, sir, I saw them take a good long kiss before
2 he closed the car door and the overhead light went out.
3 Q Where did they go to in the Parkway?
4 A They went in the Parkway.
5 Q Could you see them on the Parkway after they
6 parked?
7 A No, I could see the car. This man was between
8 where we was parked and them. They did get out and walk down the
9 road behind the car we were sitting in and when the cars would
10 come around, the light would shine on them. We could see them in
11 plain view standing down the road.
12 Q What were they doing?
13 A She was just hugged up, lovey-dovey.
14 Q Then did you follow them to the apartment?
15 A Yes, sir.
16 Q When you got back to the apartment tell us what
17 happened.
18 A Well, we got back to the apartment; they went in
19 and turned the lights out, and when the lights came back on about
20 twelve, about a minute, and went out again, the next time they
21 came back on this gentleman came out. He didn't have his tie on.
22 He got in his car and drove off about five minutes after twelve
23 and when he drove off we headed for home.
24 Q Which lights went off?
25 A Well, it was the three windows at the front of the

1 apartment. You could see the light at the top of the Venetian
2 blinds.
3 Q Well, what lights went off?
4 A The ones in her apartment.
5 Q Did you just stay in the front?
6 A Yes, we did. After a while we drove around to the
7 back and it wasn't any lights on around to the back either. So
8 as for that baby, I love him dearly.
9 Q You plan to stay on with Mr. Alls?
10 A Yes.
11 CROSS-EXAMINATION
12 BY MRS. DRAKE:
13 Q Mrs. Harder, what is it, Harder or Woodard?
14 A It is Woodard on my Social Security.
15 Q You are Mrs. Woodard?
16 A I go by the name of Mrs. Harder. My Social Security
17 is the only thing Woodard is on. I lived with the man and got
18 tired of him and chased him off. I took my own name back. That
19 is just the size of that.
20 Q Yes, ma'am. You didn't have any children by that
21 man?
22 A Lord, no.
23 Q Is this the first time you have ever been a
24 detective?
25 A Yes, and you know I kind of like it. I believe I

1 will get me a job.

2 Q You used the expression "long neck bottles".

3 A I said long neck bottles. I don't know whether

4 they were quarts or fifths. I do not buy it.

5 Q You are not a drinking lady?

6 A No, ma'am, I use snuff but I don't drink.

7 Q Now, when you came upstairs on the night of the

8 thirteenth of April, what was it you said?

9 A I said, "Oh, God, where is Donny?"

10 Q Yes, ma'am.

11 A I wasn't calling no police; wasn't getting in no

12 family rows.

13 Q Do you remember Mrs. Alls standing in the bathroom?

14 A I don't remember either one telling me that. I

15 heard him and went to see about him.

16 Q Actually Mrs. Alls paid you?

17 A Yes, until the last week when she left. After she

18 came back home and went to work, until she came home, Mr. Alls

19 paid me. She went to work over at the flower shop.

20 Q You said you had no physical infirmities. The sun

21 made your head hurt you, didn't it? You didn't take the little

22 boy in the sun?

23 A I don't think anybody wants to take a child that

24 fair in a ninety-degree temperature.

25 Q Did you take him out in the snow last winter?

1 A No.

2 Q He doesn't play out of doors?

3 A Yes, he does right smart when it is suitable for

4 him to play. I take him across the street. I have a neighbor

5 with two little girls and they have got a big fenced in back yard.

6 Q So they look after him when he is over there.

7 A No, they don't look after him; I am right with

8 him.

9 Q When you picked him up his hands and feet were

10 dirty?

11 A I didn't see no sun tan.

12 Q Did he look pretty pink cheeked to you now?

13 A No, he doesn't.

14 Q Do you know how much he gained in weight and has

15 come out?

16 A Yes, I did. I put him on the scales and I noticed

17 he had lost two pounds.

18 Q You said his hands and feet were dirty. Had he

19 been playing that day?

20 A I don't know.

21 Q You kept him clean; you didn't let him play in the

22 dirt.

23 A I let him play. I would wash him when I would

24 take him in the house.

25 Q He didn't dig holes in the ground when you had him?

1 A Wasn't anywhere for him to dig a hole.

2 Q It wasn't a yard?

3 A A yard and all the grass and he had his toys and

4 things out to play there and in the driveway.

5 Q Is this a busy street they live on?

6 A Where?

7 Q Woodway Drive?

8 A No, it is not such a busy street. I wouldn't let

9 a three year old out by himself if it was busy or not, no way.

10 Q You came from the Miller Home. Is seventy the

11 retirement age for Miller Home?

12 A I don't know. They haven't told me that.

13 Q Could you go back to the Miller Home?

14 A I reckon I could if I wanted to but them sassy

15 girls out there, what they talk about, I don't want to go back

16 out there because I already planned on leaving before I went to

17 take care of Donny.

18 Q Taking care of Donny and making your home with Mr.

19 Alls is really your family at the present time?

20 A Yes. I just felt like they was my family.

21 Q When Mrs. Alls came home in the afternoon and was

22 there in the mornings, you and the little boy, did she take him

23 outdoors or do you remember that?

24 A Well, no, she didn't take him out every morning.

25 After they went to work, before she went to work, she would take

him out somewhere for a while. We kept him out of her room until she got up at nine o'clock.

Q All right. You used to come upstairs in the late evening and make coffee, I believe.

A No, I didn't make no coffee. I made my coffee around five every morning.

Q But this is your home now, isn't it?

A Yes, that is why I would like to feel it is.

Q That is all.

REDIRECT EXAMINATION

BY MR. ROSENBERGER:

Q About your family, do you have any children?

A Just eight.

Q Where do some of them live?

A Well, I have two girls that live here in Lynchburg; one girl at Appomattox; two girls and a son in Richmond; a son in Ohio and a daughter in Tuscon, Arizona.

Q The fact that you want to be with Donny as a necessit is a matter of choice; you love him?

A Well, I will tell you what I want to do. I want to be able to work and take care of myself. I feel like if I am there I can be making a little money for my own self and be taking care of him too. I don't want to live with any of my children until I have to. If I am able to work to take care of myself, that is what I want to do.

1 Q What is your interest in Donny?

2 A I think he is a mighty sweet little boy. I love
3 him and love to take care of him.

4 Q Had you bought some of his clothes?

5 A I certainly have.

6 Q When you got him on this visit had anybody bought
7 him anything?

8 A Yes, sir, we had to stop at Charlottesville and
9 get things for him because they didn't give us anything to put
10 on him but one pair of under pants and long pants and long sleeve
11 shirt.

12 Q And you bought things for him?

13 BY THE COURT:

14 Q Are there other children living in the home of Mr.
15 Alls other than the child we are speaking of?

16 A No, indeed, doesn't anybody live there in the
17 home but just him and Donny and me and Mrs. Alls, when she was
18 there. That is all.

19 MR. ROSENBERGER: His other child is married and lives
20 in Roanoke.

21 RECROSS-EXAMINATION

22 BY MRS. DRAKE:

23 Q Mrs. Harder, do you remember telling me that I had
24 been to your house on the morning of the nineteenth?

25 A Yes, because that was what was told to me. I had

1 never met you. I didn't know anything about you.

2 Q You told Mr. Alls you were at that house that

3 morning?

4 A That was what was told. I didn't know any better.

5 I hadn't met you.

6 Q Why don't you want to live with the children?

7 A Oh, for goodness sakes. I think that is a foolish

8 question. Would you want to sit down in the house with some of

9 your children if you were able to work and take care of yourself?

10 I don't think so. I don't think I want to visit the children.

11 They come to visit me and this thing of living in the house with

12 them, no, not as long as I can take care of myself.

13 The witness stands aside.

14

15

16 The witness, DONALD EUGENE ALLS, having first been duly

17 sworn, on examination testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROSENBERGER:

20 Q Mr. Alls, I want you to listen to my questions and

21 then I want you to answer. Where did you meet Betty? When?

22 A When she came to work for me as a cashier at

23 Kroger's in Roanoke, Virginia, in 1963, I believe it was.

24 Q When did you all start going together?

25 A Later on that year.

1 Q She was still married to Yates?

2 A Yes.

3 Q Then after he got the divorce from her, had you

4 gotten a divorce at that time?

5 A No, sir, not then. Mine was final after hers was.

6 Q Then where were you all living when you were

7 married?

8 A She had an apartment in Danville and I had a room

9 in a private home.

10 Q Why were you in Danville?

11 A The company transferred me at my request.

12 Q Were you with Colonial Stores?

13 A No, sir, with Kroger.

14 Q How long did you stay with Kroger?

15 A Twenty-five years.

16 Q Then when you were living first before you married

17 Betty, did she have any problem with alcohol?

18 A I wouldn't say a problem. I know she had consumed

19 alcohol before and had told me about the night that her father-in-

20 law was buried; they went down to Papa Joe's and she got I guess

21 you would say drunk off of beer, too much beer.

22 Q And in Danville did she develop any more of a

23 problem with alcohol?

24 A It slowly developed in Danville.

25 MRS. DRAKE: Ask this witness what the problem was.

1 THE COURT: He wouldn't know whether it was a problem.

2 THE WITNESS: It got to the point when before we left

3 Danville she was drinking in the mornings and I know she called

4 someone and talked to them. She was in the hospital once under a

5 psychiatrist's care and checked herself out without his permission.

6 Q When did she start with drugs?

7 A Dr. Milam prescribed any kind of drugs you could

8 ask him for.

9 Q Was this alcohol or drug use after or before she

10 knew you were coming to Lynchburg?

11 A It was before.

12 Q How did you happen to come to Lynchburg?

13 A I had left Kroger in Danville and went to work for

14 King's and opened up a new store there, then I got a promotion to

15 a Store Supervisor and Director of Grocery Operations. This

16 required moving to the main office here in Lynchburg.

17 Q After you got to Lynchburg can you tell us the

18 first time Betty left, was this March, 1973?

19 A No, sir, she left in October, 1972, shortly after

20 we came here. I was off a weekend and I got aggravated with a

21 lawm mower and pushed it over the bank. That is the excuse she

22 gave me for running to her aunt's that weekend. She called me -

23 that was Friday - and she said she would stay the weekend.

24 Q Did you have Donny at that time?

25 A Yes, sir, I went and got my mother and she came

1 down and stayed.

2 Q Where does your mother live?

3 A In Roanoke.

4 Q Then getting around to 1973, did Betty know what

5 she was signing when she was giving up Donny?

6 MRS. DRAKE: This witness wouldn't be competent to

7 answer that.

8 THE WITNESS: She read it. Mr. Thompson asked her to

9 read it and she read it and signed it in his office. She left

10 Lynchburg in the car to go to Roanoke.

11 Q Did you know whether she had enough money to get an

12 apartment?

13 A When she left? Yes, sir, she specified the amount

14 she wanted. I made a trip to Danville and drew the savings out

15 and she requested seven hundred dollars in cashier's check and

16 three hundred dollars in cash and she left Lynchburg with a thousand

17 dollars broken down as it was when she received it.

18 Q Whose name was the house in at that time?

19 A Both.

20 Q Was any conveyance of the house made from one to

21 the other?

22 A I think in the papers she signed it and gave me -

23 She waived the right of survivorship. She was giving me everything

24 in the house, custody of Donny and everything. All she wanted was

25 a thousand dollars, her car and personal belongings and would get

1 out.

2 MR. ROSENBERGER: We would like to have that incorporated

3 in the evidence and it is attached to the first suit.

4 Q All right. In 1973, while she was in Roanoke, did

5 she tell you who gave her any money for a deposit on the apart-

6 ment?

7 A She didn't tell me then. After we went back toge-

8 ther we talked about the ficticious man she went with who was I

9 think supposed to be a big wheel with the railroad. She later on

10 told me really he didn't exist; it was Nick Novak she had met at

11 the American Bar. I have talked to him since then and he told me

12 she practically picked him up.

13 THE COURT: Don't tell what anybody like Nick Novak

14 told you.

15 MRS. DRAKE: He said he met him since then and we

16 object.

17 Q Don't tell what Nick said. How did you happen to

18 get her and bring her back?

19 A Well, I was unhappy and I felt like we should try

20 it again.

21 Q Did you get her back by playing on her sympathy,

22 telling her you were going to kill yourself?

23 A No, sir.

24 Q After you got her back then tell what happened

25 with that Danville trip in July, shortly after she had come back,

1 whenever it was.

2 A Well, it was a Saturday we were going up to visit
3 some friends, Y. K. and Irene Morefield, to go to the dance at the
4 Moose Lodge. Mrs. Lee was visiting. She came in that morning.
5 I don't think we knew she was coming but maybe Betty did, I didn't.

6 Q You did go to Danville?

7 A We went to Danville. She had two or three drinks
8 before she left the house and drank all the time we were there.
9 By the time we got to the dance, she was too high to even dance.
10 I got her to drink black coffee and we did dance and had a normal
11 night; stopped at a restaurant and had breakfast on the way home.
12 When I got up the next morning, she was up, was drinking, and I
13 don't think she went to bed all night. She got in bed and drank
14 all day long and kept on and was almost hysterical; wanted me to
15 do something. I kept calling back and forth for Mrs. Lee to get
16 in touch with Ashworth and get her put in the hospital. I got
17 her in the car and she never knew when she left Danville; didn't
18 know until we got to Lynchburg. Her aunt got in the car. All
19 she talked about was the apartment in Yorktown.

20 Q How long did she stay in the hospital?

21 A I think a couple of weeks.

22 Q She was telling us you hadn't given her any sexual
23 activity. What was the problem?

24 A Well, I wouldn't say I didn't give her sexual
25 activity; we did have it. It may have been limited and there

1 were reasons for it to begin with. She had to be drinking to want
2 sexual activity. After she would get to drinking it would take
3 all night to satisfy her. I would have to get up the next morning
4 to work and she would tell me to lock the door so she could stay
5 in the bed until nine or ten o'clock.
6 Q What time did you go to work?
7 A I would get up at seven and leave the house before
8 eight.
9 Q What about the paper, these items, things she
10 wanted? Just tell the Judge what it was.
11 A This is a paper she gave me Christmas Eve this
12 past year and told me that it what it would take before she would
13 ever leave that house.
14 Q Were you trying to get her to leave?
15 A No, sir.
16 Q What was it you all were discussing?
17 A We were not getting along.
18 Q Well, I will file that as an exhibit and I think
19 it will be number five. The separation property settlement will
20 be number four.
21
22 (The papers were received in evidence and marked for identification as "Defendant's Exhibits Nos. 4 and 5".)
23
24 Q All right. When the April 13 episode happened,
25 what started that argument that day?

A I really can't pin it down to any particular thing other than I got home that afternoon. I had been at the store getting groceries. I put my car in the driveway.

Q When did you first fall out, before or after you ate steak and had some wine?

A I think the first thing that caused it was at the supper table something was said about taking Donny to Roanoke for Easter. My sister-in-law sent new clothes for Donny and I said, "He is going to wear it to Roanoke." I think that was the beginning of the whole argument.

Q Did you drink anything that day?

A I think I drank two beers and a couple of glasses of wine.

Q Were you going out after supper?

A I asked her for the keys to her car. Really it was just more or less to aggravate her because the night before she had come in after I did from work and I asked her where she had been. She said she had just been out. I thought I would get even with her and when she asked, "Where are you going", I said, "Out, the same place you were last night." I went to the car and got the keys and she got the keys to the company car. She wasn't allowed to drive it.

Q Did you pick her up and throw her across the floor and tell her what you would do to her?

A I tried to take the keys to the car away when we

1 scuffled and during the course of the scuffle I shoved her and she
2 went down to the floor. She was not picked up off the floor.
3 Q Well, now, did it hurt her any?
4 A Not to my knowledge.
5 Q She did call Mrs. Harder?
6 A Hollered for her to come upstairs.
7 Q What did she say about calling the police?
8 A Said she was going to call the police. I said,
9 "Not on this telephone you will not." I jerked the wire off the
10 wall.
11 Q What did you do?
12 A Set down in a chair and laid the telephone out and
13 took the cover off and put it back together.
14 Q Who called the police?
15 A I dialed the number and said, "Here, here they are.
16 You can talk to them."
17 Q Subsequently you went down on the warrant. What
18 did you tell the man, that you didn't want any bail or what
19 happened?
20 A No, sir, I had checks on two different checking
21 accounts. I asked them if they would take my check and they said
22 no. I said, "Well, can't I sign a property bond?" She said,
23 "Not personally." I said, "I have got two checking accounts and
24 own property in Campbell County. I can't get out of jail? Some-
25 body else has to get me out." I said, "Somebody else didn't

1 put me in here and I am not calling anybody. I will spend the
2 night." I called a friend the next morning and got him to come
3 over and put up bond. I walked outside the court room and wrote
4 him a check. I don't see what the difference was.
5 Q Now, then, that Sunday when you got home, did your
6 wife seem frightened of you?
7 A No.
8 Q Did she run and leave the house when you came?
9 A She wasn't very talkative. She dressed Donny
10 while I shaved and took a bath. I called my mother and told her
11 I was going to be late; Donny and I were coming for Easter Sunday.
12 Q She did not go to your mother's?
13 A No.
14 Q You came back and spent the night together then?
15 A Yes, sir.
16 Q Did you have any problem on Monday?
17 A I think she told me she was going to get a lawyer.
18 She told me -- I don't remember what the days were. I was going
19 out of town on Wednesday morning to Staunton and we went to bed
20 after midnight.
21 Q On Wednesday morning or Tuesday night?
22 A Tuesday night after midnight -- Make it Wednesday
23 morning which consequently wound up the same day. She signed the
24 initial papers suing me for divorce and so I said to her, I said,
25 "Betty, I know I have got one more rubber. Do you want to use it

1 before you leave?" She said, "Put your money where your mouth
2 is." We had a very normal sexual relation.
3 Q Now, did she tell you she was going to take the
4 baby and go to Yorktown before she did it?
5 A No.
6 Q What was the first notice?
7 A Mrs. Harder called me at work somewhere around noon
8 time. That is when she started checking and found out where he
9 was.
10 Q Did you find out how much money she had gotten?
11 A I didn't find it out until Monday.
12 Q Other than the charges to Miller & Rhoads, did she
13 charge anywhere else?
14 A Miller & Rhoads and J. C. Penney, a hundred and
15 some dollars at Penney's on Saturday. That was sometime Saturday
16 after she left Friday.
17 Q Getting on to the business about the furniture,
18 what did she tell you she was going to do if she didn't get it?
19 A Call Mr. King and tell him everything.
20 Q Did you tell her he already knew?
21 A Yes, sir.
22 Q Then what did she do?
23 A I guess she called him.
24 Q What happened to you and the job with King's?
25 A Well, on Monday she showed up to move the furniture.

1 We went through that ordeal so on Tuesday morning I went in and I
2 told Mr. King I would like to talk to him; said, "Mr. King, under
3 the circumstances, with everything that is taking place, Betty
4 called you, didn't she?" He said, "Yes." I said, "Well, I should
5 have told you about spending the night in jail." He said, "Yes,
6 I wish you had." He said, "I heard about it last Thursday in
7 the store." I said, "Who did you hear it from?" He said, "Some
8 employees." I said, "If you feel like what has happened is
9 interfering with my job, maybe I should resign." He looked at
10 me. He said, "I guess it would be best under the circumstances."
11 Before I left there that same day he paid me off with two weeks
12 vacation pay and I was gone.
13 Q Did you find out she had told him also?
14 A I heard she did call. He said she called him. We
15 did not discuss the conversation.
16 Q How much was your annual salary at that time?
17 A Three hundred and fifty dollars a week.
18 Q What was it a year?
19 A I think I made seventeen thousand dollars or some-
20 thing last year. I had just gotten a raise the first of the year.
21 Three hundred and fifty dollars a week.
22 Q Did you try to get back with him afterwards?
23 A I tried to talk with him and ask him to meet me
24 and talk to me about the situation but he would not.
25 Q How long were you out of work?

1 A Over a month.

2 Q Then where did you go?

3 A To Thomas Foods Company, which makes Janet's Salad

4 Products.

5 Q What is the weekly pay there?

6 A I am on monthly salary.

7 Q How much is it a month?

8 A Twelve hundred dollars a month.

9 Q So that is about what you were making?

10 A Oh, no, sir, that is only fourteen thousand four

11 hundred dollars a year.

12 Q All right. Now, when I told you we arranged with

13 Mrs. Drake for you to see the child, did you go there?

14 A Yes, left at six o'clock.

15 Q What time did you get there?

16 A Shortly after ten.

17 Q Did you go to Mrs. Lee's apartment?

18 A Yes, sir.

19 Q What was the response when you asked for the child?

20 A She said she didn't know anything about it. She

21 said I couldn't take Donny; he was in the custody of the County

22 of York. I said, "Didn't Betty tell you I was coming?" She said,

23 "I didn't know anything about it."

24 Q I went through the business about you trying to

25 get him. Then did they tell you that you could get the child at

1 two o'clock? Did you go back at two?

2 A He was in bed asleep and I still couldn't have him.

3 Q You still couldn't have him?

4 A No.

5 Q What is the next thing?

6 A I went back to the court house and called you all

7 back, I believe.

8 Q When did you next meet Betty?

9 A Then I called Betty. She came to the court house

10 and we found out where the Judge lived and went over there. He

11 chewed us both out royally. He said he would let Donny leave that

12 time but the lawyers up here were getting so -- He was not going

13 to reverse a ruling of the Court any more.

14 Q When you saw Mrs. Lee, who did she say had charge

15 of the baby?

16 A He said he was in the custody of the County of York;

17 she was not going to let him leave without Judge Athey's permission.

18 Q About what time was it when you finally got the

19 child?

20 A Around five o'clock.

21 Q Then you brought the child on and then took the

22 child back?

23 A Yes, sir, had a birthday party on Sunday for him.

24 Q May and 24 and 25 was the birthday?

25 A The twenty-sixth was the birthday party.

1 Q Then you took him back?

2 A On Monday, which was Memorial Day and a holiday.

3 I was off then.

4 Q Now, have you made arrangements -- Will you make

5 arrangements for you to have the custody of this boy?

6 A Yes, sir.

7 Q Do you want the custody of this boy?

8 A I want to keep him right in the home he has provided

9 for him. She took him away from there. I have Mrs. Harder who

10 can take care of him and has taken care of him for over a year

11 very adequately.

12 Q Did you go with Mrs. Harder down there last Friday

13 night and see what she has seen?

14 A Yes, sir, I drove the car.

15 Q Did Betty try to get you on Saturday morning?

16 A She called me direct for some reason or other.

17 That is the first time she has done it since she left. I refused

18 to accept the call. I didn't feel like if it wasn't an emergency

19 call, she would have specified so, but I didn't hear her voice.

20 Q You heard what Mrs. Harder said about the man and

21 the lights going out.

22 A We observed it together, sitting in the car

23 directly across the parking lot from her apartment, with a van

24 between us on the Parkway.

25 Q What happened when they went back from the Parkway?

1 A They went in the house together just as we were
2 pulling in, walking through the door, going in through it together.
3 We could see the light at the - above the blinds. I had binoculars
4 in the car and the lights went out and then came back on.
5 Q Were the lights out just in the front of the
6 apartment?
7 A No, sir, I drove to the back and kids were in the
8 swimming pool that late. I remarked that the lights went out at
9 the rear of the apartment too.
10 Q Then how long was it after that that the man left?
11 A About twenty-five minutes.
12 Q Did you see him in the car?
13 A He came out and he turned left on 143rd going back
14 towards Newport News. I came out and I turned right and I went
15 up 143 and picked up 164 as it runs out. Right after I got back
16 on it, on the side of Williamsburg going to Richmond, a car came
17 around and pulled in front of me and it was the same car. I
18 don't know whether he had seen me and was following me or what
19 but he kept on going. I kept the speed limit and he went on out
20 of sight.
21 Q By checking licenses that is the way you got the
22 name of the man you gave me?
23 A Yes, sir.
24 Q When Betty left you in 1973, did she have any
25 other friend that you have not mentioned?

1 A Not to my knowledge.

2 Q Down in Yorktown?

3 A After she got down there she was very infatuated

4 with Don McDaniel, who was a Chief with the Coast Guard I think.

5 She started to go practically all the time --

6 MRS. DRAKE: I object to that without a foundation

7 being laid.

8 THE COURT: Unless you know it.

9 THE WITNESS: I don't mean that they were together

10 at nights but she always told me about going to the Club when he

11 was running the Club and staying there until they closed the Club

12 up. He would come back and her Aunt Grace told me about going

13 down.

14 Q Don't tell what your Aunt Grace said. You may

15 examine.

16 CROSS-EXAMINATION

17 BY MRS. DRAKE:

18 Q What is the name of the girl you couldn't get the

19 motel for and brought home?

20 A I think it is irrelevant.

21 MR. ROSENBERGER: Answer the question.

22 THE WITNESS: Janet Turner.

23 Q What is her address?

24 A I have no idea other than she lives outside of

25 Danville.

1 Q Where does Esa Carroll live, off Coolwell Road?
2 A Out in Madison Heights.
3 Q What is her address?
4 A I don't know.
5 Q You deny you have been to her house?
6 A No, ma'am.
7 Q You have taken the children there?
8 A Certainly I did.
9 Q In his night clothes.
10 A Yes, ma'am. He slept in the play pen until I got
11 ready to go home.
12 Q Now, do you remember a number of years ago when
13 Mrs. Alls first had her marriage terminated and you promised to
14 assist her in getting custody of her two children?
15 A Yes, ma'am, I do.
16 Q And you thought enough of Mrs. Alls as a mother
17 to bring your daughter from your first marriage home to live
18 with you?
19 A Yes.
20 Q You and Mrs. Alls raised the children together?
21 A No, ma'am, she was only with me one half of one
22 school semester. She was only with me from mid term to the end
23 of the year in June. That was definitely not raising her.
24 Q Why is not her mother raising her?
25 A She is married. I do think she needs to live --

1 Q Why was her mother not raising her at the time?

2 A Because she was missing too many days in school and

3 insisted that she attend school regularly.

4 Q Didn't you tell Mrs. Alls it was because it was you

5 had driven the first wife to drink?

6 A She didn't drink.

7 Q What caused her mental breakdown?

8 A I don't really know.

9 Q That came at the time of your --

10 A She supposedly attempted suicide.

11 THE COURT: I thought in the opening statement the two

12 of them fell in love while they were still married.

13 MRS. DRAKE: That's right, they did. This is his first

14 wife. He drove her to suicide.

15 THE COURT: That is highly irregular. Don't make

16 statements like that, particularly after your opening state-

17 ment.

18 MRS. DRAKE: This is consistent with my opening state-

19 ment.

20 THE COURT: It is not evidence. I don't want state-

21 ments like that made about people.

22 Q Now, did you take Mrs. Harder with you when you

23 went to be reconciled with your wife in the summer of 1973?

24 A No, ma'am.

25 Q You did not. Now, did you ever start spending more

1 time at home in the early months of 1974, this spring?

2 A Did I start?

3 Q After you no longer had a key to the office at

4 King's.

5 A I never did have a key to the office at King's; I

6 had a key to the back office.

7 Q Then did a time come when you no longer had the

8 key?

9 A They moved our office and my desk into the main

10 office. I did not have a key, right. This had no bearing on

11 any time I spent at home.

12 Q When was that approximately?

13 A I am really not sure.

14 Q So you were not actually working in your office on

15 the nights you were out.

16 A Working in the stores. I had the responsibility

17 of nine stores, complete supervision.

18 Q Getting eighteen thousand three hundred dollars?

19 A That would be exactly right if that was the way

20 it multiplied out.

21 Q Now, you have heard Mrs. Alls' testimony and Mrs.

22 Lee's testimony in reference to your expectations of the child's

23 behavior. When you had the child visiting you in May, how was

24 his behavior?

25 A There was not too great a change in it. He was a

1 three year old and that is all he was now.

2 Q Did he misbehave at the dinner table then too?

3 A No more than he had or no more less either. He

4 behaved like a normal three year old; sometimes he wanted to eat

5 and sometimes he wouldn't; sometimes he would mess up and some-

6 times he wouldn't.

7 Q Is he fairly fair skinned?

8 A Yes, I would say so.

9 Q Now, this time you are telling me that Mrs. Alls

10 told you about drinking beer at Papa Joe's, how long was that?

11 A I don't know.

12 Q She was married and had I think -- She had one

13 child because they had been separated and it was the day that her

14 father-in-law was buried, the night of the day her father-in-law

15 was buried. When she went to Roanoke last spring, 1973, she

16 rented her own apartment, is that correct?

17 A The first apartment she had on Elm Avenue and

18 that is the first I knew she had.

19 Q When she went down?

20 A She moved into another apartment before she went

21 to Eastern Virginia.

22 Q Her parents live in Roanoke?

23 A Yes, ma'am, they are on Elm Avenue and she moved

24 in an apartment directly behind their house.

25 Q You wanted a divorce, didn't you?

A Ma'am?

Q This divorce.

A Not necessarily.

Q You filed for a divorce once before, didn't you?

A Yes, ma'am, when she asked me and said that she wanted out.

Q Why did she tell you she wanted out?

A She wasn't happy. She didn't like staying at home and being a mother and a wife. She wanted to go out all the time at night.

Q You were not agreeable to that.

A I felt like it occasionally, yes.

Q Do you remember something about why you were agreeable to signing that property settlement agreement?

A Why was I agreeable? Why wouldn't I have been?

Q You were ready to get rid of your wife too, weren't you?

A In the shape she stayed in, yes, ma'am.

Q Did you have some trouble with Pepsi Cola and King's that time?

A I really don't recall. I don't know what you are getting at.

Q Are you being less --

THE COURT: Tell what you are talking about.

THE WITNESS: Are you talking about her writing notes?

1 Q You remember having told Mrs. Lee if you didn't
2 agree to your wife's request for cash, if you did not agree to let
3 her take this time to get herself together, that you were afraid
4 she would tell the prosecuting attorney in Appomattox about your
5 deal with Pepsi Cola for King's? Remember?
6 A No.
7 Q You have no memory of that?
8 A I don't know what you are talking about. Appo-
9 mattox County.
10 Q You wanted your son and that is what precipitated
11 this beating of your wife?
12 A I didn't beat my wife.
13 THE COURT: It is no evidence he beat his wife. The
14 case was dismissed.
15 Q Do you remember if you were happy to be locked up?
16 A No, ma'am, I tried to get them to take my check.
17 I tried to get them to let me sign a property bond and they would
18 not. I said if my property wasn't good enough, I would spend the
19 night in jail.
20 Q Did you call Jimmy Garrett?
21 A Yes, ma'am.
22 Q What did he tell you?
23 A He didn't believe I was over there.
24 Q Now, you wanted the keys to Mrs. Alls' car to go
25 out the night of the thirteenth.

1 A Yes, ma'am, that was the first car out of the
2 driveway. Mine was in front of it in the driveway. I got home
3 that afternoon before she did.
4 Q Your car was on the street?
5 A No, ma'am, I said the first one in the driveway
6 was hers - was mine and mine was blocked. She had a fobia she
7 didn't want her car blocked in the driveway. Normally I park on
8 the street but I got home first that Saturday and parked in the
9 driveway. I parked there first so I asked for the keys to the car.
10 She told me not to take it.
11 Q Now, you understood from Mrs. Lee and you had seen
12 the Order from Judge Athey in the Court in York County that the
13 child was to remain in the custody of the Court and he was to stay
14 in York County.
15 A Yes.
16 Q Were you aware of that?
17 A Yes, ma'am.
18 Q How long have you known this person that you saw
19 with Mrs. Alls last Friday night?
20 A I don't know the person.
21 Q This person you may or may not have seen?
22 A This person I did see. I do not know him.
23 Q You identified and gave his name to the lawyer
24 simply by the license number, is that correct?
25 A Yes.

1 Q So you saw a car with this license number, is that
2 right?
3 A Yes, sir.
4 Q Have you been in Mrs. Alls' apartment in Yorktown?
5 A No, ma'am.
6 Q You don't know what lights are where and what the
7 arrangement is?
8 A Other than what I could see at the other apartments.
9 They had the windows and blinds open and I could visualize.
10 Q Now, where the lights and lamps are in the apart-
11 ment?
12 A Definitely not. I have not been in.
13 Q You don't know which ones went out in which rooms?
14 A Obviously the door entering the hall of the
15 apartment, into the apartment, and entering into the living room.
16 Q Not the kitchen?
17 A I wouldn't think so. The kitchen was around on
18 the other side.
19 Q Were you peeking in the windows?
20 A No, ma'am, I was not out of my car. I deny that
21 absolutely. I was not peeking and did not peek in the window.
22 Q Did you tell your wife where you wanted to go on
23 the night of the thirteenth of April, Saturday night?
24 A Yes, ma'am, I told her I wanted to go out, the
25 same place she was the night before.

REDIRECT EXAMINATION

BY MR. ROSENBERGER:

Q Was it any difference in the dress of the man when he came out of the apartment after the lights went out and he went home when he left?

A When I first saw him going in he had on a white shirt and a tie. When he left he didn't have the tie on.

Q Had you checked in any of the other apartments to see the arrangements?

A Not actually in when other than what I could see in the apartments. They didn't have all the blinds down and they were completely closed in her apartment. All the blinds were completely closed. They were maybe open like that, raised part way (measuring).

Q As far as her apartment was concerned, were the blinds just closed on the front or closed in the back as well?

A They were all closed.

Q Front and back?

A Yes, sir.

Q Tell what these articles are.

A Two fifths of Virginia Gentleman. These two were purchased on the same date. One is still full and the other one is empty. I finished that off after she left. It was down to about here (measuring). I am not sure of the date but a week prior to her leaving and then there is a bedspread and a blanket

1 that a hole was burned in completely through the blanket.

2 MRS. DRAKE: This is irrelevant. I hate for Mrs. Alls

3 to go through with it.

4 THE WITNESS: It is a bedspread being used at the

5 present time on the bed that we shared together.

6 Q What else did she burn?

7 A An arm off the couch in the basement. It had to

8 be repaired.

9 Q I overlooked asking you about the lady who wanted

10 you to take the screen out, Mrs. Lee. I asked her about it and

11 she said she had some other reason than drinking and did she

12 explain anything to you about it?

13 A Only she was afraid it might be a fire and she

14 knew she couldn't open the screen hook. I unhooked them for her.

15 Q Does she have any trouble with doorknobs, using

16 her hands?

17 A Yes, sir, I don't mean it disrespectfully but

18 obviously she does.

19 Q How long has she had the arthritic problem?

20 A It has gotten definitely worse in the last few

21 years. It has grown and been a gradual process. She retired

22 because of it.

23 Q Where was she working?

24 A For the Government Weapons Station in Yorktown,

25 the Naval Station.

1 Q Is she as active as Mrs. Harder?

2 A No, she is handicapped unfortunately.

3 RECROSS-EXAMINATION

4 BY MRS. DRAKE:

5 Q Does Mrs. Harder drive?

6 A No, ma'am.

7 Q She gets headaches in the sun?

8 A If she stays out in extreme temperatures, she gets

9 headaches.

10 Q Did you ever see her with the little boy playing

11 in the snow last winter?

12 A In the snow? No, ma'am. He wasn't but two years

13 old.

14 Q You don't smoke, do you?

15 A No, ma'am.

16 Q That is all.

17 The witness stands aside.

18

19

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1 The witness, MRS. GRACE LEE, having previously been
2 sworn, on examination deposes, as follows:
3 DIRECT EXAMINATION
4 BY MRS. DRAKE:
5 Q You have been sworn. Did you talk to Mr. Alls
6 following his incarceration in the Rustburg jail?
7 A Yes, I did, on Sunday afternoon. My other niece
8 and I met him.
9 Q What did he tell you about how he felt about it?
10 A He seemed to be laughing and happy about it. He
11 didn't care.
12 Q Now, at the time of the first separation why
13 didn't he tell you he was agreeable to -- What did he tell you about
14 the arrangement with Pepsi-Cola?
15 A Betty told him if she didn't get this money she
16 would report it to Pepsi-Cola, a deal between he and Mr. King.
17 Donald was scared to death something would come out of it, out of
18 the deal, so he went and got the thousand dollars and gave it to
19 Betty. Then he went down and had the divorce drawn up that day .
20 The Lutheran minister advised him against it. I said, Don, I
21 wouldn't do it either; it is too hasty." He went ahead and did
22 it, so Betty left home that night and the lawyer, whoever it was,
23 drew up the divorce and told her she should not go to Roanoke
24 that night; she was too nervous to drive. He let her go ahead
25 any way. Just a few weeks after that when I went back up with

1 Donny he was so concerned about Mrs. Carroll going to North Caro-
2 line and seeing her husband in jail down in Wilmington. He said
3 he wouldn't sleep until he knew the old car she had driven to
4 North Carolina -- if he was concerned so much for her --
5 THE COURT: Now you said something about his concern.
6 If he was so concerned then you will be stating an opinion.
7 THE WITNESS: He was not concerned enough about Betty to
8 see that she got to Roanoke that night.
9 THE COURT: That is an opinion too.
10 Q When your nephew-in-law was talking to you, did he
11 evidence any concern about his wife's health and her safety?
12 A No.
13 Q Mrs. Lee, you do have arthritis; we established
14 that.
15 A Yes.
16 Q It is a handicap to you. It doesn't keep you from
17 getting around?
18 A I do almost anything anybody else can do.
19 Q A lot more. You have had one operation on one hand.
20 Did you tell me you were going to have another on the other one?
21 A I had it on this one (indicating).
22 Q You can use that one?
23 A Yes.
24 CROSS-EXAMINATION
25 BY MR. ROSENBERGER:

1 Q You have difficulty turning the doorknob like you
2 did this one?
3 A I have it at home but I can get in the car and
4 drive it.
5 Q The reason Mr. Alls gave Betty a thousand dollars
6 and the property settlement and custody agreement was because he
7 was afraid of what Betty would tell on him?
8 A About he and Mr. King on the Pepsi-Cola deal.
9 Q She got it by threatening him?
10 A He was afraid she would tell him.
11 MRS. DRAKE: He didn't tell whether he knew it
12 was illegal or anything.
13 THE WITNESS: No. Witness stands aside.
14 MR. ROSENBERGER: That is all I have.
15 THE COURT: Do you have any more evidence?
16 MRS. DRAKE: If it please the Court, I think we have
17 established all the jurisdictional --
18 THE COURT: The only thing I am concerned about are the
19 merits.
20 MRS. DRAKE: It appears, Your Honor, from shortly after
21 the reconciliation last fall until April, 1974, Mr. Alls
22 was determined and said to Mrs. Alls, "I want to get rid of
23 you. All I want is the house, the furniture and the child.
24 I am too old to start over again." It was planned in his
25 mind and she could not prevent it; he would get rid of her.

1 The Court has seen the culmination of what happened, the re-
2 sult of it in her ears. The Court heard the unhappy situation
3 to which Mrs. Alls and the little boy have been put into as
4 a result of Mr. Alls trying to get rid of Mrs. Alls this time.
5 She would not give in this time. She got herself off drugs
6 and alcohol this time. She was going to make a new home for
7 herself and son. She does look to Mr. Alls for assistance
8 and support. It was at his instigation she left, his insis-
9 tence. They discussed this from December onward and she pleaded
10 with him to give her more time to get established in her job
11 so she could support herself. To that extent she is in a
12 commendable situation. When she found she had to take a cut
13 in salary, unable to live, and she is seeking other employ-
14 ment in Eastern Virginia.
15 Now she has been thrown on the charity of her family
16 down there. Mrs. Lee has been paying for the child's nursery
17 school; has been feeding him; has been paying for the child's
18 medicine, and there is no doubt this was a planned scheme of
19 Mr. Alls to get rid of Mrs. Alls and have the whole family
20 set up.
21 As to the care of the little boy, you hear he is a
22 happy child; maybe had dirty hands and feet but I think this
23 Court may have a little boy like that to dig in the ground
24 and had dirty hands and feet.
25 These people in Eastern Virginia are giving him a happy

time. He is having a really good time with the children; goes to church and Sunday School; he is a happy child now, not being kept in the house with an old lady who gets headaches when she goes in the sun.

We ask the Court to grant an a mensa et thoro for Mrs. Alls and grant her custody, alimony, attorney's fees and costs.

MR. ROSENGERGER: If Your Honor please, I address myself first to the question of divorce because I think that has a lot to do with the custody thing too. It is perfectly obvious to me from the evidence that Mrs. Alls has been difficult to live with. She admits she is a weak type character who lets depression, the cause of necessity, move her to drink too much and to take too much dope. The reason was she didn't want to leave Danville and come to Lynchburg. The evidence is uncontradicted she was put in a psychiatric ward in Danville because of drinking and doping. The evidence is further that she had two small children and she said she hadn't been to see them. I just can't understand anybody who would voluntarily give up two children without continuing to make an effort to see those children. I recite these things, as distasteful as they may be, to show her background and to show her desire to be rid of things. She can't take pressure and we don't know when she will give way again.

1 We have shown members of her own family are afraid she
2 might burn the house and have to take the screens out so you
3 can get out. Everybody, of course, is afraid of fire. You
4 might have it any time.
5 Now to address myself to this April time. I don't see that
6 he made any effort to get rid of her. They had an argument.
7 He did push her, which was wrong but it doesn't amount to
8 cruelty. She really didn't show any fright. She said she
9 was afraid. Then she called the Police and then he called
10 the Police. She got the warrant, not because she was afraid
11 of him, but she got the warrant because she was angry with
12 him; she couldn't understand his attitude during the day.
13 This business about him wanting to get rid of her, when
14 she made all of these plans to get away and to get this money
15 out of the bank, specifically when he came home on Sunday and
16 she said she had no place to go at that time. She had
17 counsel and she was planning to leave and this Saturday night
18 gave her at least -- She was in the process of doing it.
19 She didn't ask the Judge to keep this dangerous man away from
20 her.
21 Now I say she has counsel. She wrote this check; she
22 filed this Bill of Complaint. This man she is afraid of, she
23 sleeps with Sunday night, Monday night, Tuesday night, Wesnes-
24 day night and Thursday night but, because she didn't want to
25 to to sleep in another room, wants to keep an eye on him,

1 sleeping in the same bed with him. All he's got to do is
2 turn over and choke her; she is going to be asleep. She
3 didn't make any effort to lock herself in the room and pro-
4 tect herself from him. It is inconceivable to me you have
5 got any case for cruelty. If you did, I don't think it is
6 any question about this. This gentleman said they had inter-
7 course. I don't think he would have made it up, these words,
8 if they didn't, the way he expressed it. She could have
9 said to Mrs. Harder, "I can't stand it any more. He is mis-
10 treating me. I am going to take my child and I am going."
11 Instead of that she gives all the reasons about taking his
12 picture. She goes down there and her aunt joins in this
13 thing. She had made every effort: filing the motion. She
14 had left here. She had put the custody and put the alimony,
15 put everything in issue right in the Court and goes to York-
16 town. Mrs. Lee gets involved. They file a motion and we get
17 a copy of it. We ask that it be continued. It is but the
18 Court, Ex Parte, puts the custody in the Court in the sense
19 it should not leave that county and custody is with her.
20 We delay this thing from May and here it is the end of June.
21 with a direct understanding with counsel we could see this
22 child and spend most of the day trying to arrange to see the
23 child.
24 Now there is absolutely no reason for taking that child
25 away from this man and removing him down there. She has no

1 ground for divorce. She has deserted him. She shows no
2 interest in the marriage. One thing more, we didn't file
3 an amended Bill of Complaint and ask for a divorce on the
4 grounds of adultery which we could have done. We didn't
5 want the delay. We merely showed a meeting down there last
6 Friday night to show the character, to show the lack of
7 attention she has paid to this child she has taken down to
8 Yorktown and given to somebody else in effect. She admits
9 she doesn't get there often, with the hours she works she
10 cant; she lives 25 minutes away from the child, who is with
11 an aunt who has a disability with her hands, difficult even
12 opening the door. It is understandable she would need the
13 screens taken off. She drives. I can see the difficulty
14 she would have in driving. I say there is absolutely no reason
15 for you to take this child away from the man. He is entitled
16 to the divorce. There is no cruelty. If there was, it was
17 condoned, not merely by the single act of adultery but
18 sleeping with him in the same bed; staying in the same house;
19 not asking for the protection of the law; not asking her law-
20 yer to get the protection of the law.
21 MRS. DRAKE: One error which would be apparent. Mrs.
22 Alls didn't come to my office until the 15th of April,
23 Monday.
24 MR. ROSENBERGER: She didn't ask you nor did she ask the
25 people in Campbell County to keep that vicious fellow away

from her; he got in bed with her by her own admission.

MRS. DRAKE: This Court does not smoke and neither does defense counsel and they are not aware of the number of fire hazards of those who are so. We are talking about the divorce, Your Honor. It was not solely the cruelty or the earrings; it is the threats, "I wish I could use this on you so it would look like an accident", nor the threats in the bedroom, "If I could do it and it would be an accident", whatever it was. She said this is the reason he didn't kill her in the subsequent week; it wasn't worth the time to be in the penitentiary. He felt this way. Mrs. Alls, on the other hand, was concerned about him; didn't want him killed that night; thought he was going out to drink. This is the balance of the two characters. He would like to be rid of her, whatever way. The first time he paid to get rid of her. He was afraid she was going to let the authorities know some deal he had with his employer. Be that as it may, this was a planned move on Mr. Alls' part, beginning the latter part of '73 or early part of '74, to get her out of the house. He was completely set up. He had his girlfriends, being accustomed to letting the child go to sleep at the girlfriend's house. He says that.

Now the alternative to having the child in playschool with his little friends, going to the bank, to the grocery store, calling with his mother, going to the beach with his

1 mother and aunt, who is more or less a patron saint of
2 the family. It appears the child is living as normal a
3 life as a child from a broken home can. This little
4 boy's face got dirty; his fingernails; he is going to
5 the beach, in playschool, having a normal life for a
6 three-year old child. Whether this lady was kissing a
7 man, the Court will remember I think a Giles County
8 case - Montgomery County --
9 THE COURT: I don't want that.
10 MRS. DRAKE: That is not really relevant. I think
11 this Court was well apprised of Mr. Rosenberger thought if
12 he could get a vinculo decree on the grounds of adultery,
13 he would have typed out something on Saturday morning and
14 got it into Court rather than go a mensa.
15 This woman is entitled to a divorce. This is a
16 logically planned scheme to get rid of this lady --
17 THE COURT: I don't see any evidence of any
18 planned scheme. He was for all intents and purposes
19 rid of her. He went down and got her back. He had
20 everything the way he wanted it then.
21 MRS. DRAKE: This was 1973.
22 THE COURT: I don't think looking back that far you
23 find any scheme. The question you get is whether or
24 not there was cruelty sufficient to justify divorce.
25 I don't think the evidence is strong enough on that

1 point. There is no evidence of any persistent brutal beat-
2 ings of this woman; only substantial evidence as to one
3 evening in which they were struggling over the car keys. I
4 don't think even if everything she said is true, I seriously
5 question whether or not that is sufficient and I find that it
6 is not. Having heard all of the evidence, I don't think it is
7 sufficient to justify a divorce, so dismiss the Bill of
8 Complaint insofar as request for a divorce. On the other hand
9 she surreptitiously left the house, obviously with the intent
10 to desert the husband. I think she granted the husband a means
11 of divorce on the grounds of the wife's desertion. The real
12 problem comes with the custody of the child. I think under
13 the evidence there is no evidence that either parent is an
14 unfit person to have the custody of the child. It is a
15 question which one can do the best by the child; provide the
16 child with a stable home. At this point in time I say the
17 only home that is stable as between the two persons is the
18 father's. The mother has not yet established a home; she
19 has never under the evidence had a home separate and apart
20 from the husband, where she has demonstrated she could pro-
21 vide a stable situation for the child. So, as of this time,
22 I am going to grant the custody of the child to the father.
23 The mother is to have liberal visitation rights with the
24 child. We will see what the future brings. So far as attor-
25 ney's fees are concerned, I order that the husband pay the

1 wife's counsel an additional $250.00 in fees because I think
2 she is entitled to legal services up to the time of this
3 divorce. I think she is not in circumstances to pay for it.
4 Mr. Taylor was hired by the wife's aunt. I am not consider-
5 ing his services insofar as attorneys' fees are concerned.
6 MRS. DRAKE: Would the Court enter a supersedeas order
7 for a period of thirty days?
8 THE COURT: For what purpose? I have heard the evidence.
9 You have had the child down there. You should have litigated
10 the question. I am not deciding what happened down there.
11 Well, I won't say what I feel about the other circumstances,
12 what went on before today. You have had the child two
13 months.
14 MRS. DRAKE: I object to all the Court's Ruling.
15 THE COURT: The father has got a right to see the child.
16 MRS. DRAKE: The reason we ask this Court to enter an
17 Order of visitation and child support, we asked Judge Goad
18 to do it also.
19 THE COURT: This Court can't decide cases without having
20 heard the evidence. I will not enter a supersedeas order
21 for thirty days. I would like to have the order presented
22 to me at 2:15 or on Monday. Understand the order will be
23 up here. That will be the last day I will be here.
24
25

The foregoing oral testimony and other incidents of trial were reported and transcribed by the undersigned Court Reporter, who was first duly sworn according to law.

Ella J. Boyer
Court Reporter.