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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 741165

DOUGLAS M. TOWLER

Appellant

V.

COMMONWEALTH OF VIRGINIA,
GRAYSON COUNTY DEPARTMENT OF
SOCIAL SERVICES AND JANICE F.
TOWLER

Appellee

APPENDIX

L. Harvey Neff, Jr., Counsel for Appellant
Paul X Bolt, Commonwealth's Attorney, Appellee
L. R. Campbell, Counsel for Janice F. Towler
J. Colin Campbell, Guardian Ad Litem

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G. H. Parent Co.
Ashland, Va. Form No. JC-6—Juvenile S[illegible]ons (Law of 1950) [illegible]venile Docket No.....

Commonwealth of Virginia,

To the Sheriff or Police or Probation Officer of the County of Grayson:

I COMMAND YOU, In the name of the Commonwealth of Virginia, that you summon Rosa Lee, Lanny ROSE, Douglas Marvin, Jr., Wanda Sue and Daniel Eugene, child or minor years of age, to appear before the Juvenile and Domestic Relations Court of Grayson County at Galax, Virginia on the 9th day of September, 19 74, at 1:30 o'clock P. M., and that you likewise summon Douglas Martin Towler--Father

Janice Towler - Mother

This summons supersedes the summons dated 9-1-74 for appearance on 9-23-74. The detention order dated 9-1-74 remains in effect.

to appear with the said child or minor at the place and time above stated each of them there and then to show cause why the said child or minor should not be dealt with according to the provisions of the Juvenile and Domestic Relations Court law of 1950.

And this you shall in no wise omit, and have then there this writ, with your return thereon.

Given under my hand, this 5th day of September, 19 74.

Janie P. Wells, Judge—Clerk.
Juvenile and Domestic Relations Court. *Associate Judge.*

G. W. Parent Co. Richmond, Va. Form No. JC-6—Juvenile Summ Law of 1950) Juve e Docket No.

Commonwealth of Virginia,

To the Sheriff or Police or Probation Officer of the County of Grayson:

I COMMAND YOU, In the name of the Commonwealth of Virginia, that you summon Rosa Lee Towler, uglas Marvin Towler, Jr. and Wanda Sue Towler ny Rose Towler, Daniel Euge Towler, xxxx

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GRAYSON, ON WEDNESDAY, THE 30th DAY OF OCTOBER, IN THE YEAR OF OUR LORD, ONE THOUSAND NINE HUNDRED AND SEVENTY-FOUR:

PRESENT: HONORABLE JACK M. MATTHEWS, JUDGE

VIRGINIA: IN THE CIRCUIT COURT OF GRAYSON COUNTY

IN RE: CUSTODY OF ROSA LEE TOWLER, LANNY ROSE TOWLER, DOUGLAS MARVIN TOWLER, JR., WANDA SUE TOWLER, and DANIEL EUGENE TOWLER

O R D E R

This day came the Grayson County Department of Social Services; Paul X Bolt, Commonwealth's Attorney for Grayson County, Virginia; Douglas M. Towler and L. H. Neff, Jr., counsel for Douglas M. Towler; Janice Faye Fields Towler and L. R. Campbell, counsel for Janice Faye Fields Towler; and J. COLIN Campbell, guardian ad litem for Rosa Lee Towler, Lanny Rose Towler, Douglas Marvin Towler, Jr., Wanda Sue Towler, and Daniel Eugene Towler.

It appearing to the Court that this matter was instituted in the Juvenile and Domestic Relations Court of Grayson County, Virginia, by Petition of Grasyon County Department of Social Services for temporary custody of the aforementioned children by the Grayson County Department of Social Services on the grounds that said children were without proper parental care and supervision as provided by Section 16.1-158 of the Code of Virginia, of 1950, as amended; and, upon said Petition a hearing was held in the Juvenile and Domestric Relations Court of Grayson County, Virginia, on the 9th day of September, 1974, at which time the custody of said children was committed to the Grayson County Department of Social Services, and an appeal was noted to this Court.

On the 11th day of September, 1974, L. H. Neff, Jr., who had heretofore represented Douglas M. Towler and Janice F. Towler, informed the Court that a conflict of interest had developed between the parties and moved the Court to withdraw as counsel for Janice F. Towler, which motion was granted, and the case was set for hearing on the 16th day of October, 1974. On the 11th day of September, 1974, Paul X Bolt, Commonwealth's Attorney for Grayson County, Virginia, moved the Court that the custody of the aforementioned children be placed in the Grayson County Department of Social Services for adoption. It further appearing that Janice F. Towler was without counsel and without funds to employ counsel on her behalf, the Court did on the 16th day of October, 1974, appoint L. R. Campbell, Attorney at Law, Independence, Virginia, as counsel for Janice F. Towler.

Whereupon, several witnesses were duly sworn and testified on behalf of the Grayson County Department of Social Services and witnesses were also duly sworn and testified on behalf of Douglas M. Towler.

Now, therefore, the Court having heard the evidence and being of the opinion that the welfare and best interest of the said children requires that the State should assume their guardianship, doth so adjudicate and doth Order that the said children be committed and doth hereby commit said children to the Grayson County Department of Social Services to be received, detained, managed and controlled in the manner prescribed by law.

It further appearing to the Court from proper studies heretofore made that it is for the children's best interest and that of the State that the said children be separated permanently from their parents, the Court doth so adjudicate

and said agent shall be free to make permanent plans for the adoption of Rosa Lee Towler, Lanny Rose Towler, Douglas Marvin Towler, Jr., Wanda Sue Towler, and Daniel Eugene Towler.

ENTER THIS ORDER, This _____ day of October, 1974.

/s/ JACK M. MATTHEWS
Judge

I ASK FOR THIS:

/s/ PAUL X BOLT
Paul X Bolt, Commonwealth Attorney
for Grayson County, Virginia

SEEN:

/s/ J. COLIN CAMPBELL
J. Colin Campbell, gal.

SEEN AND OBJECTED:TO:

/s/ L. H. NEFF, JR
L. H. Neff, Jr., Counsel for
Douglas M. Towler

/s/ L. R. CAMPBELL
L. R. Campbell, Counsel for
Janice F. Towler

A COPY, TESTE: J. PHIL BENNINGTON, CLERK

BY: Susan K. Haley, DEPUTY CLERK

VIRGINIA: IN THE CIRCUIT COURT OF GRAYSON COUNTY

GRAYSON COUNTY DEPARTMENT OF SOCIAL SERVICES PETITIONER

VS- HEARING ON PETITION FOR CUSTODY

DOUGLAS MARTIN TOWLER DEFENDANTS
JANICE TOWLER

BEFORE HONORABLE JACK M. MATTHEWS, JUDGE OF THE CIRCUIT COURT OF GRAYSON COUNTY AT INDEPENDENCE, VIRGINIA, ON OCTOBER 16, 1974:

APPEARANCES: PAUL X. BOLT, ATTORNEY FOR GRAYSON COUNTY DEPARTMENT OF SOCIAL SERVICES

DOUGLAS MARTIN TOWLER, in person and by L. H. NEFF, JR., His Attorney

JANICE TOWLER, in person and by LORNE R. CAMPBELL, Her Attorney

J. COLLIN CAMPBELL, GUARDIAN AD LITEM FOR INFANTS, ROSA LEE TOWLER, LANNY ROSE TOWLER, DOUGLAS MARTIN TOWLER, JR., WANDA SUE TOWLER, AND DANIEL EUGENE TOWLER

Reported by: Mrs. Cloatine H. Henley
P. O. Box 183
Hillsville, Virginia

I N D E X

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MR. BOLT: Before we start as I recall the last time the case was set we decided the petition would be for the Department of Social Services for adoption.

MR. NEFF: I don't have any recollection that the petition was for adoption.

MR. BOLT: The original petition did not say for adoption but when we were here for the so called Habeas Corpus we discussed that matter and said it would be for custody for the purpose of adoption.

MR. NEFF: I have no recollection.

THE COURT: It doesn't make much difference under the circumstances but that was my understanding.

MR. LORNE R. CAMPBELL: May I inquire of the Court, was Mrs. Towler present during this discussion.

THE COURT: I don't know.

MR. LORNE R. CAMPBELL: If Your Honor please, Mr. Neff did at that time represent Mrs. Towler and thereafter there developed a conflict of interests.

MR. NEFF: Mr. Campbell, the petition for writ of habeas corpus was filed after the first initial papers. After we had the hearing at that time in front of Judge Thomas on a Monday, at the date of that hearing it became apparent that the interest of Mr. Towler and Mrs. Towler was in conflict and after this court thing up here on a Wednesday she was not here as I remember.

MR. BOLT: She was not here but so far as the record at that time

you were her attorney.

MR. LORNE R. CAMPBELL: My interest is to have the record disclose the status of the case at my entry into it.

JAMES CROUSE

James Crouse, a legal and competent witness, after first being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- Please state your name and occupation?

A- James Crouse. I am a social worker.

Q- Back in the early part of 1974 were you employed by the Grayson County Department of Social Services?

A- Yes, sir.

Q- Did you have occasion to come in contact with Douglas Martin Towler and Janice Fields Towler?

A- Yes.

Q- What occasion did you come in contact with them?

A- Concern was raised in regard to problems that the family was having in raising their children. I went there on a protective service complaint.

Q- When did you first go to the Towler home?

A- Early May of 1974.

Q- Where was that home? What kind of home was it?

A- The home is in the Old Town section of Galax just inside the Grayson County line. The house is brick, has three bedrooms,

kitchen, living room and bath room, has a basement.

Q- From a structural standpoint and material standpoint was the home adequate?

A- I considered the housekeeping poor.

Q- I am talking about the physical building itself?

A- The building was in fair condition.

Q- Do you know how old a dwelling it is?

A- I do not. The house was in need of painting in the living room particularly.

Q- It was a fairly modern brick house?

A- Yes.

Q- What did you find in regard to the condition of the children and the condition of the housekeeping from a housekeeping standpoint?

A- From a housekeeping standpoint the home was unclean. There were cigarette ashes and butts scattered over the house, dust and dirt over most parts of the house, the smell urine as you opened the door, a general state of uncleanliness.

Q- How many and what were the ages of the children?

A- There were five children ranging in age from less than a year to seven.

Q- What was their condition in regard to cleanliness?

A- I did not observe all of the children. I did notice Douglas and Wanda Sue and their condition was unclean. Their clothing was dirty. Douglas had no underpants on, they were barefooted.

THE COURT: What time of the year was this?

A- May.

Q- On this occasion did you talk to Mr. and Mrs. Towler about this problem?

A- Mr. Towler was not present at that time. I did talk to Mrs. Towler.

Q- What was her attitude, etc. toward these conditions?

A- She stated in essence that she realized the house was dirty and the children were dirty. She stated the children played outside most of the time. The area around the house does have a lot of dirt. She complained that her husband was not helping her in proper care of the children and she had been unable to keep them clean. She stated on the week end prior to my visit she had had company. Her sister had been visiting with her. Her sister had several children and because of their presence and so many she had been unable to keep the home clean.

Q- Did you make return visits after this?

A- Yes.

Q- On how many occasions?

A- Between early May and late July I made a total of fifteen visits.

Q- What did these visits reflect in regard to any change in conditions of the home?

A- Shortly after making the first visit I made an attempt to get hold of Mr. Towler at his place of employment. I went to where he worked, he had left. I waited for forty five minutes to an hour and he did not return. Mr. Towler then called me sometime

later and expressed a concern and wanted us to get together and talk about the problem. I gave him the option of coming to my office or me coming to his home. He stated he would come here. We then discussed the problems in the home and those problems in regard to housekeeping standards, proper supervision for the children, and I had been told that the children were going and coming mostly as they pleased. We discussed the poor housekeeping standards and the problem of health because of the almost unsanitary conditions in the home, etc. Mrs. Towler discussed the problem Mr. Towler was not at home. He had two jobs. He had to work. Mrs. Towler complained her husband had not been furnishing enough money. Mr. Towler seemed concerned and said he would try to help by engaging Mrs. Towler's mother who lives across the street to clean up the house. To the best of my knowledge this was done to a great degree. On one of my visits thereafter the mother was helping her daughter with the washing of the clothes.

As time went on the situation begin to go back as it was. I was aware of this Jimmy Manuel situation and accusation was made that Mr. Manuel and Mrs. Towler were having an affair. When I approached Mrs. Towler and later Mr. Towler about this matter Mrs. Towler denied it and said he was only a friend. Mr. Towler stated the problem no longer existed. With the situation going on as it was before I petitioned the court for custody of the children.

Q- That was on June 11th?

A- Yes.

Q- Did the circumstances change after your petition for custody?

A- Between the time they were made aware of the petition it underwent a drastic change. The children were bathed. I observed them clean and observed the house clean. Because the family had seemed to be wanting to work to improve the situation the continuance was given by the Juvenile and Domestic Relations Court.

Q- Was it improved to the extent that you recommended that this matter be continued and not heard?

A- Yes.

Q- Did you go back after that?

A- Yes.

Q- How did you find it after you went back?

A- On return visits I found that the house was not as clean as it was during the two week period between the time they were made aware of the petition and the hearing date. The issue of Jimmy Manuel became an issue with me. He was often present when I made visits. On one occasion I knocked on the door, it was locked, I waited several minutes and Jimmy was there. When I confronted Mr. Manuel about this issue he became very angry and expressed his feeling that it was a bunch of nosey neighbors that were being very nosey. I cautioned her at that

time about the use of vulgarity in the presence of the children that were there.

Q- Did you ever see this youngest child, Daniel?

A- Only once.

Q- Where was he?

A- Across the road in the home of Mrs. Towler's mother. At that time he was clean and was lying upon the couch.

Q- You didn't see where he slept or stayed while he was at home?

A- No, sir.

CROSS EXAMINATION BY MR. NEFF:

Q- Mr. Crouse, in the first outset there you gave the house as a three bedroom brick?

A- Yes.

Q- And you said one bathroom?

A- That is the only bathroom I observed.

Q- You didn't go through the house far enough to observe that there are two bathrooms? Are there in fact two bathrooms there?

A- I am aware of only one.

Q- Is it safe to say if you missed the bathroom you didn't go through all the house?

A- There were doors closed as I went through.

Q- Did you observe the basement?

A- No.

Q- Did you observe in fact there was a washing machine there?

A- No.

Q- Did you observe the outside of the house?

A- Yes.

Q- What did you observe?

A- At the entrance of the driveway an abundance of trash, the yard is grass.

Q- What else did you observe?

A- I observed a brick home and--

Q- Did you observe a clothes line?

A- My recollection, no, sir, I don't remember seeing a clothes line.

Q- You don't deny that there is a clothes line about as far away as the window over there?

A- I don't remember seeing it.

Q- The day you went to see Mr. Towler you say he was at work?

A- Yes.

Q- Did you leave word for him to call?

A- I believe I did.

Q- How long was it until he got in touch with you?

A- I don't remember the length of time.

Q- Was it a short period of time?

A- Yes.

Q- You gave him an option of either coming back to the home or him coming to visit here in Independence at your office?

A- Yes.

Q- Was his wife present?

A- He came alone.

Q- At that time he was concerned about his children?

A- Yes.

Q- And at that time did he relate to you this Manuel problem or not?

A- I don't recall whether it was at that interview or at a date later on.

Q- Did he at that time assure you that he would try to get the housekeeping improved or not?

A- Yes.

Q- He mentioned the thing that we discussed a moment ago and he indicated that he was going to ask Mrs. Towler's mother who lives across the street?

A- Yes.

Q- And that was done?

A- Yes, for a short period of time.

Q- You visited fifteen times between--

A- Early May and late July.

Q- Did you visit during the working hours of the day?

A- The visits ranged from early in the morning to 4:30 or 5:00 in the afternoon.

Q- At the time you visited was Mr. Towler at work?

A- With the exception of one time.

Q- Did you ascertain whether he worked at one job regularly?

A- The first time I talked with him he was working two jobs.

Q- As I understood Mrs. Towler was saying there wasn't enough money to go around?

A- She was saying that her husband was not providing enough money for her.

Q- Did you at that time go over the budget with Mrs. Towler?

A- No.

Q- Did you ever go over the budget with Mr. Towler?

A- No, I did not.

Q- Did you ascertain how much income he had or how much was required, etc. for the home?

A- I believe on the first visit we talked about the amount of income that he had.

Q- Was it necessary in your opinion that he work two jobs to try to meet those needs?

A- The budget was tight. It would have been difficult for him to make it on one job.

Q- At the time you visited Mr. Towler did you tell him about the time you were there and the door was locked?

A- I told him that and he told me the problem was solved. Later I understood there was a fight.

Q- He poked him in the eye and told him to leave his wife alone?

A- That was my understanding.

Q- What was the next date that you were there?

A- I believe that was July 23rd.

Q- And was the case still under your control until the 26th of August?

A- I moved in early August to Newport News and went to work for another agency.

Q- Did you ever write a report for the Court?

A- Yes, sir, I did.

Q- For the 26th of August hearing?

A- Not for the 26th, no, sir.

Q- Other than the first report you never wrote one?

A- That's correct.

CROSS EXAMINATION BY MR. LORNE R. CAMPBELL:

Q- I notice in your report-- you are familiar with the report?

A- I am familiar with the report. This is the one that I prepared for the board.

Q- Did you or anyone to your knowledge discuss the general health of the children with Dr. Marinus?

A- I did not, it was done later.

Q- You don't know whether there was any followup on giving the children their shots, etc.?

A- No, sir.

JACKIE RECTOR

Mrs. Jackie Rector, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- Your name is Jackie Rector?

A- Yes, sir.

Q- Where do you live?

A- 206 Swanson Street, Galax.

Q- Where did you reside prior to moving to 206 Swanson Street?

A- Next door to the Towlers.

Q- What length of time did you live next door to the Towlers?

A- I imagine two years.

Q- And from a general standpoint did the conditions of the Towler house change for better or for worse over the two year period?

A- When they first moved there it was during the wintertime. I wasn't in the house very much. The house, the several times I was there it was very unclean. There was some windows in the storm door that were out. The children came barefooted on several occasions to my house in the snow to borrow cigarettes. I observed a little girl around two years old coming down the steep hill. She was coming down through there with her diaper down around her knees and it kept falling down and a boy came running up through there and said, "I think you are losing your diaper." The little girl--I cried because I felt sorry for her. There were kind of ditches in there. She fell in the one across the road and climbed out and went on in the house. I didn't see anybody pick her up. She lost her diaper on the porch.

Q- Have you observed the children eating from the garbage can?

A- Yes, they got a milk carton out of our garbage can and I had a dog and I had a bowl outside. I started putting his stuff in the cage because I didn't want them to eat out of that.

Q- When did you move away from there?

A- Between the first and the fifteenth of August of this year.

Q- Why did you move?

A- We didn't want to raise our children in the conditions. The children used language that we don't use and my little boy is four which is the age they are going to get out and play with other children.

Q- In the last several months there did you visit in the Towler home?

A- Yes, on one occasion I was with Mr. Wingate. I don't remember, I don't believe the house was clean, there had been drinking.

Q- Was there a lot of drinking going on over there during the time?

A- I would say there was a lot of drinking going on. From the beer cans.

Q- You saw the children almost every day?

A- Yes.

Q- What was their condition?

A- They weren't very clean. The little boy- he didn't have underwear on and the girls sometimes would have on dresses and they didn't have underwear on either and this wasn't very good to be around the children.

Q- This would be in the morning?

A- All times from in the morning until night.

Q- Did the children ever come in your home?

A- Yes, they came into my home when they first moved there and

there was a banana that laid on our kitchen table and turned brown and one of the little boys picked it up and I said, "You had better not eat that." I threw it out." They came in my home when I wasn't there.

MR. NEFF: Did you see that?

A- I really don't know, two came, Rose and the little girl next to her, Lanny, I am not sure. I believe two came in our home while we were gone and they took a rocking chair and a whole lot of toys. Sheriff Wingate came out to get the toys and one of the neighbors seen us and called and said, "You know they are carrying everything out of the house." We went back home and Sheriff Wingate was called and he came up and he went and talked to Towler and he went across to the Fields.

Q- The children just took toys they wanted to play with?

A- Yes, put them in the basement.

Q- Did the children appear to be hungry?

A- They would have peanut butter sandwiches.

Q- Did you ever see Jimmy Manuel there?

A- I am not really sure who Jimmy Manuel is but he has been there. I am not really sure I know him.

CROSS EXAMINATION BY MR. NEFF:

Q- Mrs. Rector, at the time of the visiting about the cigarettes was Mr. Towler home?

A- I don't know whether he was home or not. It was in the winter. It was several times.

Q- You don't know which parent or if the parent sent the child?

A- She just told me that her mother sent her after some cigarettes.

Q- The incident there you said the child was drinking milk out of the carton, was Mr. Towler there at the time?

A- I don't know.

Q- You observed some beer cans, did you ever see Mr. Towler bring any beer in?

A- I didn't watch them to see who brought it in.

Q- Isn't it a fact that you saw Mr. Towler leave for work early in the morning?

A- I didn't see him but I would say that he did go out to work early each morning.

Q- Did he come in late in the evening?

A- Yes, maybe ten o'clock.

Q- Was he ever present at any of these incidents?

A- I don't know.

Q- Did you ever discuss with him the actions of his children?

A- No, I had the feeling they didn't want me around.

Q- You didn't talk to him, you don't know?

A- I didn't talk to him very much.

Q- Were you raised in the city or in the country?

A- In the city.

Q- Isn't it a fact that you had an argument with Mrs. Towler?

A- Yes.

Q- Did you ever have any argument with Mr. Towler?

A- No.

CROSS EXAMINATION BY MR. LORNE R. CAMPBELL:

Q- Did I understand your testimony you were only in the home one time?

A- No, I was there three or four times, not very many.

Q- Who was present:

A- The first time I had a Stanley Party and there were three or four men and I would say they were drinking. I am not sure. There was beer cans there and then I was there maybe two or three more times.

Q- A Stanley Party, is that a drinking party?

A- No.

Q- What is it?

A- It is kind of like demonstrating things like cleaning products.

Q- Who had the party?

A- I was the demonstrator.

Q- She was the hostess and you were the demonstrator?

A- Yes.

Q- Was that the first time you had been there?

A- I may have been one time. I am not sure.

Q- Had you visited the home prior to giving the party?

A- I don't believe so. She had come to my house and I asked her about having the party and I thought maybe we could invite some friends and we could have a party, a decent party.

THELMA HALL

Thelma Hall, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- You are Mrs. Thelma Hall?

A- Yes.

Q- Where do you live?

A- Old Town.

Q- Where do you live in relation to the Towler home?

A- In front of it.

Q- How long have you lived there?

A- Almost three years.

Q- You have lived there longer than they have lived where they live?

A- Yes.

Q- Did you know the Towlers prior to the time they moved there?

A- No, sir.

Q- Do you have children?

A- Five.

Q- What ages are they?

A- From thirteen to two.

Q- And while they lived there over the period of the last six months have you had occasion to be in their home?

A- No, I never have.

Q- Have you had occasion to see the children?

A- Yes.

Q- Do they visit your home?

A- Yes.

Q- How were they in regard to their clothing and cleanliness?

A- They were dirty.

Q- How often would you see them?

A- Two or three or four times a week. I have children the ages of her girls.

Q- They would come to your house and visit?

A- Yes.

Q- They were dirty anytime you saw them?

A- I would say ninety percent of the time.

Q- Did they ever say they were hungry?

A- Yes.

Q- When would they visit?

A- Usually after school except on week ends. The two older ones went to school and usually they come and the smaller ones would follow.

Q- They come after school and how late would they stay?

A- Around nine o'clock in the summer time.

Q- Did anybody ever come looking for them?

A- I would tell them, "It is getting dark. Your mother will be worried." I would say, "My kids are going to have to go to bed."

Q- Do you know about the laundry over there? Did she have a clothes line out back?

A- Yes, sir.

Q- Was washing done regularly?

A- I really couldn't say. The clothes line was around back.

Q- Did you ever see Jimmy Manuel over there?

A- Quite often. More often than I did Mr. Towler. Mr. Manuel was there more than he was because he was working during the working hours.

Q- During the working hours Mr. Manuel was there?

A- Yes. I seen Mr. Towler,you know,in the afternoon around five o'clock and he would leave again. I found out he was working two jobs.

Q- Did you ever see anything out of Jimmy Manuel in regard to the children?

A- I did. I saw him put one of the small ones upon the roof of Mrs. Towler's mother's house. There was a small boy on the house. He climbed the ladder with the kid and put him on the roof.

Q- How old was this little boy?

A- He couldn't have been very old, maybe six or seven.

Q- How long did he stay on the roof?

A- Four or five minutes.

CROSS EXAMINATION BY MR. NEFF:

Q- Mrs. Hall, you testified in the preliminary at Galax?

A- Yes.

Q- I believe you testified at that time as far as you were concerned Mr. Towler had a good reputation?

A- Yes.

Q- And you had respect for the man the way he tried to work?

A- Yes, Sir.

REVEREND EUGENE BRINKLEY

Reverend Eugene Brinkley, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- You are Reverend Eugene Brinkley?

A- Yes.

Q- I believe you are pastor of the People's Church at Oldtown?

A- Yes.

Q- How long have you been pastor?

A- It was three years in May.

Q- In your work there as pastor of the church have you had occasion to visit in the Towler home?

A- Yes, in the last three homes that they have lived in.

Q- You have visited before they moved to Oldtown?

A- Yes.

Q- What were the home conditions during this whole period of time?

A- I would say this, I regret having to get involved in this case but under the circumstances I will. I became involved because of them being in the church.

Q- You weren't going to their home to check on cleanliness, I know that, but what were the conditions?

A- It wasn't too favorable. The children were neglected.

Q- This home out at Oldtown, was this the nicest home they had had?

A- Yes, the former manager of Kenny's was the only one that had lived there. This was a $25,000 home.

Q- You visited there up until this time, of course?

A- I visited before they moved there because Mr. Stuart came to our church and it changed rapidly.

Q- How did it change?

A- If you don't take care of a house it runs down.

Q- Did you observe the children?

A- Other than just being neglected I thought they were lively children. The concern I had, I had wanted to get them in church and that seemed to be kind of hard.

Q- And they were neglected for care and comfort and these things?

A- Just a general neglect of the children.

Q- Did you establish what time the father left and what time the father got home? Was he ever there when you visited the home?

A- Yes, I saw Doug when I was over visiting between Welco Service Station and Stone's Recapping.

Q- Out at the home at Oldtown was he there?

A- I have seen Doug there, I would see him some, like I was visiting Janice's daddy.

Q- Did they come to your church?

A- Yes, during the summer months, this is where I became involved in the case. Mrs. Towler and Jimmy Manuel came to our church

during the revival meeting and courted in the church. I saw it but the ushers told me about it. The next night I met Mr. Manuel, I might say one night he came out there and carried off a thirteen year old girl, came back and after the services he was there with a beer can between his legs. I reprimanded him and he sped off like a hell driver. Anyhow, that night he had a black eye. I told him I didn't think he ought to go in church. Janice came to get him and I told her the situation and later on Doug came that night. During this week they all got reconciled and made decisions. I told Doug I wouldn't permit Manuel to hang around the house. He said everything was ironed out. Then it begin to drift back into the same situation. They came on into church and I thought they were going to do real well then he begin to go back in the home.

MR. NEFF: Who?

A- Jimmy Manuel would park his car during this time, some of the period, Janice's daddy and mother lived across the road and they ran him off. He was staying with them and they ran him off and he would park his car and go in the back,and I have been down there visiting them he was there and this was since they made the decision.

Q- Did he ever tell you how he felt toward Mrs. Towler?

A- Yes, he said he loved her.

Q- They expressed this in church, actually courting in church?

A- Yes. I will make this statement. Jimmy's mother used to be a member of our church. She said Janice used to live close to him and they were seeing each other.

CROSS EXAMINATION BY MR. NEFF:

Q- I believe you testified in this matter before, is that correct?

A- Yes, sir.

Q- I believe you said at that time you had respect for Mr. Towler?

A- Yes.

Q- Does he work and try to provide the best he can?

A- Ever since I have known him he has worked.

Q- What kind of reputation has he had?

A- It seemed to be--other than the company, it was good.

Q- That was the company of his wife he lived with?

A- One of the inhabitants of the Fields home, I was up on the corner working on a cross and one of them came by and gave me the greasey finger, I wanted a relationship that you respected.

Q- Mr. Towler has never done anything?

A- No, Doug, ever since the case he has always been respectful.

Q- Since then as you have talked with him has he been as a father concerned about his children?

A- Yes.

Q- Isn't it a matter of fact he loved his wife and loved his children?

MR. BOLT: Calls for a conclusion.

Q- Isn't it a fact that the vows that you use in your marriage ceremony--

MR. BOLT: I don't see the purpose of that.

Q- Is it a fundamental fact that what God has joined together let no man but asunder?

A- In the same context of the scripture this is the only cause the Lord gave was for fornication.

Q- Since the matter has been tried in Galax and Mrs. Towler is no longer in the home have you made any further observation about Mr. Towler himself?

A- I felt like because of the hostile feelings some of the others had I wanted to steer clear other than see Doug and throw up my hand.

Q- Do you know anything at all against this man?

A- No, sir, only like the other Judge said, the matter of omission.

Q- When you observed him was he at home with his children?

A- No, I haven't.

Q- When you were there for spiritual counseling did you ever counsel them as to the cleanliness of the children?

A- No, I have experience of knowing that when people seem to get their lives right between them and God those things work out and I was hoping that it would in this case.

Q- When you had the revival all three of them come and Mr. Towler was there interested in the church and trying to get straightened out?

A- He just didn't follow it up. I talked to him about not being baptized, they haven't followed it up.

Q- Have you ever seen him drinking?

A- No, sir.

Q- Have you ever seen a criminal record?

A- No.

Q- Have you ever seen him do anything out of the way?

A- No, sir.

RE-DIRECT BY MR. BOLT:

Q- Isn't it a fact the things you haven't seen, you are not certain these things haven't happened, you just don't know?

A- Not to my knowledge.

Q- As far as his love for his children have you ever seen anything he has done to show any love or affection for his children?

A- No, I think maybe my wife went the last time. I believe they brought the children with them at least once I know to church. Seems like in my mind I can see them bringing them right after the decisions.

Q- During the two years they lived up there how many times outside the church have you seen Mr. Towler other than passing the road and talked to him?

A- I have not seen him in relation to his concern for his children.

Q- In regard to how he treated Mrs. Towler and whether he had extra-marital relations you don't know?

A- No.

RE-CROSS BY MR. NEFF:

Q- He doesn't have a reputation, does he, of doing that type thing?

A- No.

RE-DIRECT BY MR. BOLT:

Q- What do you base this reputation on?

A- Other than he is nice to me and works every day. I regret I had to get into this.

Q- Would it be correct to say there was a concern of the whole community as to what was going on in this home?

A- Yes.

MR. NEFF: I think that is improper.

Q- Do you know how long he was aware of this Jimmy Manuel problem?

A- The revival meeting we had was the middle part of June. I know he was aware then because that is when he gave him a black eye.

Q- That is when it sort of came to an end?

A- Yes, they all came to some sort of an agreement.

RHONDA ASHBURN BRINKLEY

Rhonda Ashburn Brinkley, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- State your maiden name, please?

A- Rhonda Ashburn.

Q- You are the wife of Reverend Brinkley?

A- Yes.

Q- Mrs. Brinkley, how long have you known the Towler family?

A- About a year and a half.

Q- That is since they have lived out in the Oldtown section?

A- Right.

Q- Have you had occasion to visit in the home?

A- Yes, approximately twenty times.

Q- Would you describe the conditions of the home, just begin a year and a half ago, over this period would you describe the conditions of the home and the children?

A- The home is generally unkept. I had occasion to just peep through the home a couple of times. The beds had no linens on the beds, no towels in the bathroom, the house was real unkept. The smaller children at home, the little boy usually didn't have on any underpants. I remember one time pulling his pants up. The little two or three year old usually just had a diaper and shirt on, they were barefooted. I never saw the baby up until recently.

Q- When did you have the first occasion to see the baby?

A- When I went there to pick up Mrs. Towler and the children to come to church with me.

Q- Where was the baby?

A- In the back room with a bassinet. In the bassinet with a blanket that goes on a full size bed draped over the bassinet, the baby was lying under the blanket.

Q- At that time did you notice the condition of the child's head?

A- Yes, not only the condition of the shape of the head. Baby's have cradle cap if their head is not washed. The head was real dirty.

Q- Would you tell the suitability of a bassinet as a place for it to be?

A- Yes, you may consider this--I have a baby sixteen months old. When my little girl was approximately two months old I took her out of the bassinet because at that time she was rolling over on her stomach, and therefore, this baby was around nine or ten months old. I would say it was a pretty careless place. Its head was touching the top and its feet the bottom and it should be in a baby bed.

Q- At that time could the baby sit alone?

A- No.

Q- Was this normal?

A- My little girl was walking at ten months and this baby couldn't even sit up.

Q- During the time of these twenty visits or so did the conditions change for better or worse?

A- One time I went to the home and I noticed the house was cleaner than it had been. She told me about Mr. Crouse coming to see her and the accusations he had made about taking her to court and all of that, and the house did look cleaner.

Q- What was your purpose for going, Mrs. Brinkley, to the home?

A- All the times or the last time?

A- The times you were there?

A- I went in order to try to get the family in the church. I was going in the place of my husband.

Q- Did the church ever give help or assistance?

A- I offered. The first few times she said she didn't have clothing for the children. I told her I would be responsible for seeing that they had shoes and clothing if she would get them ready I would bring them clothes and would bring her to church and take her back home. The times I told her this she told me she had ordered clothes from Sears. I figured by that she didn't need any help.

Q- Did you ever talk to Mr. Towler, was he ever present?

A- No.

Q- What time of the day did you visit?

A- In the early morning, afternoon. I have never been there late at night. I would say seven or seven-thirty was the latest.

Q- Any of the time was he there?

A- No.

Q- Tell what happened on the Sunday you were going to take them to church?

A- On Thursday of that week I went down to the Towler home to visit. The two older girls were in school. She was keeping another child at the time. I asked her if it was her baby. She said no, it was her sister's or sister-in-law's baby. I asked her if she would come to church with me on Sunday morning. She told me she was having company, Mr. Towler's mother or somebody. She said she would like to come Sunday night. I told her I would come around fifteen to seven and I again asked her if she had clothes. She said she did. She told me about the problems she and

Mr. Towler were having and she was going to leave and go to Albuquerque, New Mexico. I asked her what she would do with the children. She said she guessed she would take them with her. I said, "Well, if you will come on to church with me Sunday maybe we can straighten it out."

On Sunday I went down, drove up in the driveway. Mrs. Towler's sister-in-law was with me. We drove up in the driveway there. There was a man and two ladies sitting on the porch. I asked if she was home. They said no, she was at her mother's. We backed down toward her mother's and her brother was in the yard and I asked him to ask her to come out. I could see her in the house. Finally she came on out. I asked if she was going. I knew she wasn't. She wasn't dressed for church. I asked her why. She said, "I left Doug last night. I asked who the people were on the porch. She said one was Doug's sister and the other was Doug's girlfriend and the boy, I presume, was Doug's sister's boyfriend. She said, "I am going to leave tonight." I said, "What are you going to do about the children?" She pointed to the house and said,"There are plenty of people up there to take care of them. I said, "Is it alright if I take the children to church?" She said, "Yes." I said, "I will go on up there." She hollered up there and asked Doug's sister if she would help me get the children ready.

I went in and found the baby in the bassinet. The children were filthy. I couldn't find a baby bottle for the baby. There

were beer cans all around. I told Mrs. Fields we would just go home and I would get the baby one of my baby's bottles. We found dresses for the two little girls and the little boy, Douglas, didn't have any clothes. I sent one of the little girls down to ask the mother. She came back and said Mama said all the clothes were dirty. Finally I found one of the smaller little girl's pant suit and put it on him. We couldn't find any shoes. We put little girl's shoes on him. I had taken the clothes off the baby. There was a pillow case laying on the bed and I picked up a pillow case and wrapped the baby up and went to my house.

We told the people there that we were taking the children. They said they had to leave. I backed the car down to the Field's home. I said,"I am taking the children to church." She said, "O.K." I brought them up to my house. In the meantime the little three year old, Wanda Sue, had come up the hill and so I picked her up and stuck her in the car. When we got to my house we began trying to get them ready. The two little girls that went to school they had on shoes that were too small. Their feet were filthy. The worse condition of the children was the three year old, Wanda, was in diapers and where she had messed her diapers her bottom was real red. I said, "I will have to put her in the bath tub." I took the clothes off and threw them in the garbage can. I found a dress of my child and put on her. The little boy kept telling me he was hungry. I gave him a banana and a cookie. When I got them to church, we have cookies and kool-aid in the nursery and I gave them

cookies to eat. Then, since Mrs. Towler had told me she was going to leave that night and I knew what was going on between her and the nineteen year old boy, and I couldn't find Mr. Towler, I didn't want to take the children back down there. I had asked the people there if they were going to be there and they said no. The children were in such bad condition and I knew the Welfare had been going there. I decided to call them and let them know. I didn't know whether she knew they had separated or not. I felt like I needed to call and get her o. k. and tell her. I felt like I couldn't take them back down there. I felt so sorry for them. I wanted to take them all five with me if I could.

Q- These people that were going back, you said one was Doug's sister with her boyfriend, and the other was Doug's girlfriend?

A- They were sitting on the front porch and she said the other one next to Doug's sister was his girlfriend.

Q- Prior to that she told you about that difficulty and she was going to leave?

A- Yes, sir, she said that Doug had another woman and the woman had come to her house and told her she was going to take Doug away from her. Then she also said that this woman's husband had been to her house and told her he knew his wife was running around with Mr. Towler.

Q- What was the condition of the people sitting on the porch, were they sober?

A- As far as I know.

Q- You found beer cans in the kitchen?

A- Yes, the garbage can had split open and they were laying on the floor.

Q- Did you ever counsel with Mrs. Towler about this relationship with Mr. Manuel?

A- Yes, I had talked to both of them. On one occasion I was visiting in the home Mr. Manuel walks in the door without knocking. This was after they had been to our church that my husband testified to. I asked him what he should do about the situation; that he as a third party should bow out. I asked if he had any feeling toward Mrs. Towler. He said he loved her. I said, "Is it lust or love?" He said love. I said the best thing you can do is get out of the Fields home and make a new life for yourself and let them start over, too.

Q- Did Mrs. Towler ever tell you how she felt toward him?

A- No.

Q- Did you ever have occasion to counsel with Mr. Towler about this?

A- No, Mr. Towler was never around. I never had a chance to talk to him about anything.

CROSS EXAMINATION BY MR. NEFF:

Q- Mrs. Brinkley, as I understand you had been there over a year and a half period some twenty times. You were there to get people interested in joining the church, is that right?

A- Yes.

Q- And during this period of time from the time you first went until

the night of this occasion you have never talked to Mr. Towler about it?

A- No.

Q- Never counseled with hin in any way?

A- No.

Q- Isn't it a fact that you, up until the last night you never had seen anything wrong?

A- I didn't feel like it was proper for a woman to run around looking for a man. I thought that would be the job of my husband.

Q- You say when you first went there the home was dirty?

A- Yes.

Q- You say you offered to help Mrs. Towler clean up?

A- I offered to help her with the children.

Q- What did you mean by that?

A- I mean to get them proper clothes to come to church. I was trying to help her spiritually.

Q- How many times did she ever come in the church during this year and a half?

A- Around five times.

Q- Didn't that show you she really wasn't interested in going to your church?

A- As far as my talking with her she wasn't interested in going to any church.

Q- Did you ever take any clothes there?

A- No.

Q- And why not if you saw the conditions were bad?

A- Because Mrs. Towler told me she was going to get clothes for the children and I didn't want to come in and take over. I was only volunteering my help and she refused my help.

Q- You say you saw her on Thursday and asked her about bringing the children to church, what time of day or night?

A- Around three o'clock in the afternoon.

Q- Did you ask her at that time about clothes?

A- She said she had ordered some from Sears. She said she had gotten clothes for them and she had clothes.

Q- On the Manuel boy, you were aware of that?

A- Yes.

Q- You didn't see her anymore from Thursday until Sunday?

A- No.

Q- What time did you go there Sunday?

A- Around fifteen till seven.

Q- Around church time?

A-Yes, sure.

Q- And that is when the conversation came up about getting the divorce and going to Albuquerque?

A- Over at her mother's, not in her home.

Q- Did you ask what reason she wanted a divorce?

A- Yes.

Q- And that is when she told you her husband had another woman?

A- Yes, plus not being at home, not giving her any help, he was

always gone and never gave her enough money for clothes and then she told me about the woman.

Q- You have never seen Mr. Towler with a woman?

A- No.

Q- Didn't you ask her, isn't it true that you are going with Manuel?

A- At that time they were supposed to have dissolved their relationship, evidently they hadn't.

Q- Did you advise her to go ahead and go to Albuquerque, New Mixico?

A- No, I advised her to try to get with Doug and try to work this out in relation to the children being in the home, that if they didn't want to live for anything else they should live for their children.

Q- You saw her before you went to the house?

A- No, I went to the house first but I did not go in the house.

Q- You saw two ladies and one gentleman?

A- Yes.

Q- You saw the children?

A- Yes.

Q- You asked for Mrs. Towler or Mr. Towler?

A- Either one.

Q- And then you went across the street to see Janice?

A- Yes.

Q- And she informed you she had left her husband?

A- Right.

Q- You said she wasn't dressed to go to church?

A- She was barefooted and her hair wasn't combed.

Q- Tell the Court how she was dressed?

A- She was barefooted. Her hair wasn't combed. She had make-up under her eyes. She had on a skirt and a sleeveless top.

Q- Would she have been in such condition that she wouldn't have been admitted to your church?

A- No, she would have been admitted but she had been before with nice clothes.

Q- At the times you saw her was she dressed properly?

A- She never brought the children. My husband said he brought them one time but I am in charge of the nursery and I don't recall ever seeing them.

Q- You asked if you could get the children and take them to church?

A- Yes.

Q- Did you ask for Mr. Towler?

A- Yes.

Q- As a matter of fact they told you he was at work?

A- Yes.

Q- You made no effort to try to find him?

A- No.

Q- When you went in this lady helped you?

A- Mrs. Fields got the dresses out of the closet and I believe Linda did look for the little boy an outfit.

Q- How long was it, did you arrive in church in time for services?

A- I got to church in time for services but I was late getting to church.

Q- What time did you arrive at church?

A- Fifteen to eight.

Q- What time did you leave the Towler home?

A- About fifteen after seven.

Q- And it took you roughly thirty minutes to get them ready to go to church?

A- Yes.

Q- How many of the Towler children did you secure clothes for at the Towler home?

A- Three but the little boy had on his sister's clothes.

Q- You didn't take the smallest one?

A- Yes, I took the smallest one.

Q- Why were you taking a nine months old baby to church? Isn't it a fact you meant to take all the children, to go and remove them from that home?

A- No, just to take them to church.

Q- How long until you called Mrs. Brunty?

A- About an hour.

Q- You didn't reach her at that time?

A- No.

Q- What happened between the time you got the children to your house and the time you decided to call Mrs. Brunty?

A- While I was trying to get them ready for church I observed all five of them and the poor condition.

Q- Mrs. Fields, Mrs. Towler's sister in law, was there?

A- Yes.

Q- Did she volunteer to take the children and care for them?

A- I believe she did say she would like to take them home with her and take care of them.

Q- Why didn't you turn them over to her?

A- For one reason she works. She wasn't financially able.

Q- After you got to church Mrs. Brunty came down?

A- Yes, about 9:15.

Q- What time did you reach her by telephone?

A- About 8:30.

Q- After you got the children then did you see Mr. Towler that night?

A- No, sir.

Q- Make any effort to go back and try to tell him you were taking his children?

A- No.

Q- Did Mrs. Fields, her sister-in-law, did she make any effort to try to find Doug when she found out you were taking these children away?

A- Mrs. Brunty took them. I called her and said, "What do you think I should do?" She said, "Just wait until I get there." She took over from there on.

Q- Did his sister-in-law in your presence ever make any effort to get hold of Mr. Towler?

A- She did not at my house. She may at her own house.

Q- Mrs. Brinkley, in your testimony before, in the period of time

you have known Mrs. Towler have you found her during this time to be a truthful person?

A- No.

Q-Just relate to the Court some of the things she has told you?

A- She called one night, it was getting late, 9:00, and wanted to know if my husband was there. She said she would like to talk with me. She told me she was three months pregnant and she had been to see Dr. Marinus and Dr. Purdy and she had a lung condition and they had advised her she needed to have an abortion. She also told me when the last child was born they had to take nine bottles of fluid off of her lung. She told me she had talked with Mr. Towler and he had refused to sign papers for an abortion and the doctors told her she would risk her own life. Later my husband went there and talked with her. After this I talked with her back and forth. I never talked about this situation until the baby was born and she was fine.

Q- There wasn't anything to it?

A- No, because the baby was in fine health and so was she.

Q- Is it true that the only evidence you have heard or seen of Mr. Towler's other girlfriend came from her on this Sunday night?

A- Yes, sir.

SHERIFF RALPH WINGATE

Sheriff Ralph Wingate, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- You are Sheriff Ralph Wingate?

A- Yes.

Q- Have you had occasion to be in the Towler home?

A- Yes.

Q- How many occasions have you been there?

A- I expect I have been in the home at least five times.

Q- Over what period of time?

A- Last eight months.

Q- What occasion would you be out there?

A- The first time I went was when Mrs. Rector called in reference to the property being missing from her home. That is the first occasion.

Q- What occasions would you have to be there other times?

A- Related to about the same circumstances, complaints I would have on them.

Q- What was the condition of the Towler home when you were inside the house?

A- The first time I was there it was filthy and dirty.

Q- Did you see the children?

A- Yes.

Q- What was their condition?

A- They were dirty.

Q- What about the other occasions?

A- The first occasion it hadn't changed. The third occasion I was there with some member of the Welfare Department. The house appeared to have been cleaned up. It still wouldn't fit the cleanliness of other new homes that had been built in the development but it had been worked on and it had been cleaned up. Occasions after that I have gone back it was dirty.

Q- Were you out there on this Sunday night we have been talking about when Mrs. Brinkley took the children?

A- Yes.

Q- Was Mr. Towler home when you got there?

A- No.

Q- Are you acquainted with the Fields residence?

A- Yes.

Q- Do you know whether or not Mrs. Towler is living over there now?

A- My opinion, that is where I have been serving papers on her.

Q- What is the condition of both of these homes compared to the other homes?

A- I have talked to people that own those homes. They cost from $25,000 to $30,000, it is a new development. These two houses-with the rest of these new homes there is no way to compare them.

Q- In what way?

A- The Fields home and Towler home, they use the yards for car parts.

At one time I counted thirteen unlicensed vehicles down there parked in the street. I have taken papers down there. I have had complaint after complaint on them. I have taken what I thought would be people that would look into the matter but there has never been nothing done. I have read the neighbors contracts. I have told them, explained to them it couldn't be like that, somebody was going to do something about it.

Q- Was Mr. Towler ever home?

A- No, Mr. Towler was never there until when the Welfare Department investigation was made.

MR. NEFF: I didn't hear you.

A- At times I did see him but it was when they would be expecting me to serve papers.

CROSS EXAMINATION BY MR. NEFF:

Q- You said you had taken people there to look into the matter? Who did you take out there?

A- To start with we got to getting so many complaints from people who lived there trying to get warrants for these vehicles on Mr. Towler. The magistrate from Galax, Mr. Whitaker, people would come to him. He wanted to go see it. He went and looked at it. I reckon that is all I have ever taken.

Q- Did you ever take any health people out there?

A- No, that's all I have taken but I tried to get hold of someone from F.H.A.

Q- You don't say that it was because of some condition inside the house?

A- No, just what we seen outside.

Q- When is actually the first time you say you were in the house?

A- I didn't make no report.

Q- Have you ever had Mr. Towler in jail for any criminal offenses?

A- No.

Q- Have you ever had any complaints about any criminal activity in any way on his part?

A- No.

Q- Did you ever inquire as to where he was when you were there?

A- Always working.

Q- You are familiar with Grayson County?

A- Yes.

Q- You know the area up from Fries?

OBJECTION BY MR. BOLT: I object. I don't know what the area up from Fries has to do with it.

MR. NEFF: I don't know. The Commonwealth wanted to compare it with other homes in the vicinity.

THE COURT: I understood the house was adequate. I don't see that this is material.

MR. NEFF: In view of the Court's ruling all the evidence should be stricken.

THE COURT: Go ahead. I don't see the materiality of it. Restrict it to where they lived.

MR. NEFF: What area is the defense to be restricted to?

THE COURT: Restrict it to the immediate area where they live or have lived. I still don't understand the materiality of it.

MR. NEFF: They have gone into the housekeeping, the community standards of the houses in this area.

THE COURT: Go ahead.

Q- Do you know where the old colored schoolhouse is?

A- Yes.

Q- How does this house compare with some of those with larger families?

A- Turn off at Oldtown Schoolhouse and go across the hill, those are older homes, not as expensive.

THE COURT: I understood the physical part of the house is adequate, it is just the way it was kept. I think the first witness said the house was adequate. We are concerned with the housekeeping and the condition of the children. Go ahead and assume the house was adequate.

Q- Mr. Wingate, you were raised on a farm. Were the children about like where the children live on a farm, out playing in the barnyard and things like that?

A- I will say that they were worse than just country kids out playing.

Q- You didn't think it was so bad as to go to the health department and file a warrant?

A- I filed a complaint with the Welfare and suggested that they look into it.

Q- You didn't file any on the date that these children were taken did you?

A- No, I was unaware of that until I was called.

Q- Actually the biggest part of this come up from the fact some of these people were trying to sell houses and they weren't getting the amount of money out of them they thought they should? -45-

A- The first time I went there was one house right close to the Towler's. I was advised if things couldn't be straightened up it would be for sale, the next time it was for sale.

RE-DIRECT BY MR. BOLT:

Q- On this Sunday the matter had been in Court for three months, I assume the record shows, Mr. Neff had been representing her two or three months at that time?

A- Yes, sir.

Q- Mr. Neff had been representing them all the time?

A- Yes, sir.

MR. NEFF: How could he know, he wasn't there.

(Court recessed for lunch until 1:00 P.M. Testimony then resumed as follows:)

CAROL BRUNTY

Carol Brunty, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOLT:

Q- You are Carol Brunty?

A- Yes, sir.

Q- Mrs. Brunty, what is your official capacity with the Grayson County Social Services Agency?

A- Senior Social Worker in charge at the time.

Q- Were you serving in that capacity back in August and September of this year?

A- Yes, sir.

Q- When did you first become involved with this case?

A- The first time I visited was August 27th.

Q- Was that after Mr. Crouse was transferred?

A- Yes.

Q- What was your purpose?

A- The Court ordered that a report be made and if it was satisfactory the case would be dismissed, if not the case would be brought back to court.

Q- What did you find out?

A- When I got to the home the front door was open and there was no one in the room except an infant and a dog laying on top of the child licking its face. Mrs. Towler came into the room. The house was absolutely filthy. The baby on the couch was filthy. She didn't want to bring her out but we insisted on it. Two were in school but all three at home were dirty. Douglas, the four year old, was barefooted, no underclothes, his head had a crust on it. When we went to the back part of the house to observe the other children one was laying in a bassinet, David, his head touched one end and his feet the other. There was a crust on his face where his nose had run and it had dried, the floor was filthy where either children or dogs or both had used the floor for a bathroom. Clothes were strown everywhere. There were two items in one closet. The beds- there was just piles of stuff on them. The other child was in a crib. The child had on a diaper that had turned colors and was sticking to the

child. The dirtiest was the two year old, Wanda, its head was crust and had sores.

Q- Did you talk to Mrs. Towler at the time and advise her?

A- She said she thought her case in court on the 26th had been dismissed and I said no, the Judge had ordered another representative to make another report and definitely the situation was not satisfactory. She made up a lot of excuses. She said she had had company the night before. She seemed to be more interested in her situation than that of the children. She said her husband wouldn't give her money to buy clothes for the kids, wouldn't give her adequate money to buy cleaning supplies. She said the only reason she had a vacuum cleaner she bought it from a salesman. When I mentioned that he had a second job--

OBJECTION BY MR. NEFF: If the Court please, all this is hearsay as to him.

MR. BOLT: They are both parties to the action. It is admissible.

THE COURT: No, it wouldn't be.

A- Mrs. Towler stated that she was not aware that her husband had a second job. She stated he had always had plenty of money and could buy the things. I asked if she was having any relationship with Jimmy Manuel. She denied there was ever a relationship between the two. She was belligerent most of the time. I asked if she had the baby's head checked since it was so deformed. She said, "Yes, he was going to send it to a specialist." She said it happened at birth. Dr. Marinus said it did not happen at birth.

Q- Did you take the children to Dr. Marinus?

A- Yes.

Q- Were you present during the examination?

A- No, sir, there was a member of the department present, another member.

Q- Did you look into the income situation of the family?

A- Yes, we have a signed statement on food stamps giving their income and some bills, etc. Statement from Mr. Towler's employer that was signed and verified by the Towlers stated that--

MR. NEFF: Did Mr. Towler sign that?

A- I don't know. I did talk to Mr. Bullins.

MR. NEFF: Can you state positively that information you have came from Mr. Towler. Did you ever talk to him about it?

A- No, sir. It lists $325.00 from his job and from information given by the family $58.00 house payment; they paid $80.00 and got over $225.00 worth of stamps per month.

Q- Food stamps?

A- Yes, sir. They gave information on the food stamps they paid $100.00 a month on medical bills that they owed but when this was checked out this was found to be untrue.

MR. NEFF: When you keep saying they tell who gave you that information.

A- This information is on a food stamp application.

Q- Did you take it yourself?

A- No.

Q- Did Mr. Towler sign it?

A- No.

MR. NEFF: In fact if my man has made that statement I want to know it.

A- The only statement that I know that had anything to do with Mr. Towler his employer sent on his request. Mrs. Towler stated that she was not aware of this and if she needed cleaning supplies which were not covered by food stamps her husband would not allow these items.

Q- Did you ascertain whether or not these children had had their baby shots?

A- I asked Mrs. Towler if they had. She stated that they had up to the present as far as she knew. I asked who was her doctor. She stated Dr. Marinus was her doctor. I checked with Dr. Marinus and he had not given these shots. I checked with the Health Department. They had given measles and smallpox to Rosa Lee. That was the only child that had any shots. I checked several places and no doctor had any record of the children having had any shots.

Q- This was on the 27th of August when you visited the home?

A- The first visit, yes.

Q- When was the next time you were there?

A- On Thursday, the 29th.

Q- Two days later. What did you find on Thursday, the 29th?

A- I invited the Health Nurse from Galax to go with me. The front

room was much cleaner but the back rooms were still filthy as were the two younger children. Douglas was in the bath tub when we came in. Mrs. Towler again stated the children had all their shots by Dr. Marinus and again stated that Daniel Eugene that had the deformed head was under the doctor's care. She again denied that she had anything to do with Mr. Manuel. She never admitted that there was any problem and never said that she would do better. She said she tried to get her husband to allow her more money so the children would not have to go to school without coats. She never did say she would do anything to improve the situation.

Q- When did you next see the children?

A- I visited the school and talked with the school officials at Baywood on Friday, the 30th and I was called on Sunday night and went to the home of Mrs. Gene Brinkley on September 1st.

Q- These other visits were to enable you to make a report back to the Court?

A- On the 1st I saw Rosa Lee and Lannie at church and then later the Towlers at their home.

Q- When was this?

A- It was on Sunday night, September 1st.

Q- That is the night you got the children?

A- Yes.

Q- What did you find when you got there that night?

A- When I got to the Brinkley home and they related what had happened and I looked at the children and talked with them I

called Judge Thomas and related what I found and he stated I should use my own judgment if I thought the children needed to be removed. I stated I had tried to get hold of the clerk of court. He stated for me to do it at the first opportunity. I then went to the Towler home. Neither Mr. or Mrs. Towler was at their home. Someone did go and get Mrs. Towler and she was quite belligerent and I got three different stories as to the whereabouts of Mr. Towler. Mrs. Towler then left and went down to her father's home and there were numerous threats coming out from individuals I could not identify. We left and I placed the children in foster care and called the jail to have a deputy sent.

Q- There was no one there when you went the first time?

A- No.

Q- When you got back the second time they were both at home?

A- No, the second time would have been, I am guessing 10:30.

Q- At that time were they both there?

A- Yes, Mr. Towler had been reached by someone and he was there and also Mrs. Towler. I talked to them and tried to find out what they thought was to the best interest of the children. Neither one of them admitted to the fact that there was trouble with the children. Mrs. Towler was blaming Mr. Towler; Mr. Towler was blaming her. I told them I figured it was for the best interest for us to retain custody so something could be worked out so the children could be returned home.

Q- When you got there Mr. Towler's sister was not there?

A- No, there was a man in the yard who identified himself as Fields. I can't remember his first name.

CROSS EXAMINATION BY MR. NEFF:

Q- Mrs. Brunty, as I understood you have no personal knowledge of this case prior to the first visit on August 27th?

A- I had not been to the home or met the Towlers prior to that date.

Q- On that date you went and talked to Mrs. Towler?

A- Yes.

Q- And you didn't talk to Mr. Towler?

A- No.

Q- What instructions did you give Mrs. Towler upon your leaving?

A- I told her there was no excuse for her house being in the condition it was in or the children being so dirty. She stated the children had just been bathed the night before. I told her that was not true, the dirt I was talking about was a long term thing. I told her she needed to talk with her husband and see if they could not agree on what money they needed. I encouraged her to take the children, well, mainly Daniel to the doctor and see if there was some treatable reason for Daniel's head to be that way. I told her if she and Mr. Manuel were still seeing each other that this should be terminated because she was putting her interests before the children and under the circumstances she had better attend to the care of her children or she might not have them.

Q- You told her at that time if she didn't have enough funds you

would help her?

A- I told her she should talk to her husband, that if it could not be worked out we would help them with the budget.

Q- Did you examine the whole house at that time, go over the whole house?

A- Not every specific room.

Q- What rooms?

A- Three bedrooms, the kitchen and the living room.

Q- How many baths?

A- I just saw the one is all.

Q- Did you observe whether or not there were two baths?

A- No.

Q- Did you go in the basement?

A- No.

Q- Did you inquire whether or not there was a washing machine?

A- No.

Q- You did see a vacuum cleaner?

A- The second time.

Q- Did you go downstairs the second time?

A- No.

Q- Did you make any appointment for her to bring her husband?

A- No, sir; I said if she and her husband could not work out something to get in touch and we would help work out any matter.

Q- What prompted your visit on Thursday when you took Mrs. Coomes?

A- She has charge over the area.

Q- Did you take Mrs. Coomes with you?

A- Yes.

Q- Did she condemn the house when she was there in your presence?

A- No.

Q- Did she take any tests for bacteria or fungus?

A- No.

Q- Did she make a thorough inspection?

A- No, the plan first was to schedule the children to give physicals and shots at the health department.

Q- Was there any appointment made?

A- An appointment was made but there was no time for them to go before they were removed.

Q- On Thursday you say the front room had been cleaned up some?

A- Yes.

Q- And the child was in the bath tub?

A- Yes.

Q- And had you told her you would be back on Thursday?

A- I told her I would be back later in the week. I did not specify what time.

Q- Did you ask how many baths she had given the children the day before?

A- We asked if she had bathed the two younger ones the day before.

Q- What did she say?

A- She said she did.

Q- Isn't it a fact there were a considerable number of clothes there?

A- Most of them I observed were not actually clothing, just dirty diapers and a lot of what I guess was bed linens.

Q- If the bed linens had all been clean there would have been an adequate amount of bed linens there?

A- I couldn't tell you.

Q- The furnishings, what furnishings were in the living room, please?

A- Stereo, tape player, radio, TV, couch, end tables, lamps.

Q- After you go through the bathroom the kitchen would be the next, is that right?

A- Yes, I believe so.

Q- Explain what appliances, etc. you found in the kitchen?

A- Refrigerator, stove, cabinets, counter space, table.

Q- Dinette set?

A- Table and chairs.

Q- As you turn and go down the hall what furniture was in the first bedroom to the right?

A- I can't remember which bedroom was which. The bedroom where we found the children there was a bassinet which the infant, Daniel was in. There was a crib and there was a coat hanger

hung around the crib and the sharp end of the coat hanger was hung over the crib and could have hurt the child.

Q- The first bedroom, isn't it a fact there was a baby bed in that room?

A- Yes, I believe there was.

Q- In the back bedroom across the hall what was the furniture in that room?

A- One of the bedrooms had a bedroom suit, the chest of drawers and a dresser and a double bed.

Q- Double bed?

A- Yes.

Q- Mattress on it?

A- Yes, sir.

Q- On that day did you go to the basement?

A- No, sir.

Q- You said you checked one bath?

A- That is all I knew was there.

Q- Did you check whether or not there was hot water there?

A- Unless she heated the water that was in the bath tub there was, the bathroom facilities were all coated with a black scum.

Q- Do you know whether the water caused that?

A- No, sir, what I observed was dirt and filth. It was not anything that had been caused by water.

Q- You didn't talk to Mr. Towler on that day?

A- No, sir.

Q- Did you make an appointment to see him and his wife together on that date?

A- I told her I wanted to see her and her husband as soon as they could conveniently do so.

Q- Did you make any effort on Tuesday, Wednesday, Thursday or Friday to see Mr. Towler again?

A- No, sir.

Q- On Sunday after Mrs. Brinkley called you did take the children in custody, is that right?

A- Yes, sir.

Q- You were aware at that time there was no petition filed?

A- No, sir; there was a petition filed.

Q- No order?

A- There had been a petition filed back in June.

Q- But at that time you didn't file the petition until the 3rd of September in this case?

A- I informed the clerk of the court on the first day her office was open which was the 3rd and she later issued papers.

Q- Let's get back to Sunday night. After you left and you took the children, did you take them and put them in homes and return to the Towler home?

A- I went back to the church and asked the lady to go somewhere else because of the threats I heard.

Q- Around 10:30 at night you did see Mr. Towler?

A- Yes.

Q- And you informed him at that time you had taken his children?

A- Yes.

Q- What reason did you give at that time?

A- I stated it was obvious the children were not being cared for because of the gross negligence that I had observed and I felt until he and his wife could reconcile their problems and turn their minds toward the welfare of the children I felt that custody would have to remain with the Department of Social Services.

Q- You don't say any of these threats you heard came from Mr. Towler?

A- I was told he wasn't around.

Q- All the facts the children were removed and he had no opportunity to do anything further about his children that night, is that right?

A- He wasn't able to give me any reason why they should be returned home except he wanted them there. They bickered back and forth and I just left.

Q- You told them you would keep custody until they could get something worked out between them?

A- Yes.

Q- Did you ask the Court for custody until the children could get adequate care?

MR. BOLT: What difference does it make what she told them. When she told them and she left all of this is nonsense and not material to the case.

Q- You say you weren't able to ascertain whether the children had had all their shots between Tuesday and Thursday. Have the children had all their shots now?

A- No, sir, but they are getting them.

Q- If it was so important why haven't they had them all now?

A- You can't give them all at once. It takes eight to ten months to get all the baby shots.

Q- Even if they hadn't had them they wouldn't have time to get them between Tuesday and Sunday?

A- No, sir.

Q- Did you ascertain in your investigation who done the grocery buying in the Towler family?

A- My contacts with Mrs. Towler she stated she did some and from what she said her husband also did some, the rest would be hearsay.

Q- Did Mr. Towler relate to you that he had been working on a car?

A- He said that during the day he had been working on a car and then he had left to go with a friend to see another car and that was the reason he had been absent.

RE-DIRECT BY MR. BOLT:

Q- Had you taken the children as soon as you got to the Brinkley home, would there have been anybody there to have accepted the children if you had taken them home?

A- No.

Q- Have you observed these children since they have been in foster care? Are there noticeable differences in the children?

MR. NEFF: I object.

Q- When did you observe the children after they left home?

A- There was quite a change. I observed all the children on the 3rd. The little girls cried when I came because they thought they were going to have to go home. These would be the six and seven year olds. I observed all the children at the Baywood School because that was where they were enrolled and I talked with the principal and teachers. I did this daily over a week. This was a quote I made, "From unsmiling children to smiling children." I observed the oldest girls in their foster home and they would come in and out of the home frequently and their foster mother they called "Mama". The six year old said, "You know our Mama and Daddy are dead." That, plus, in school as far as grades, etc. there has been a tremendous difference. The children have not shown any sign of homesickness.

Douglas was taken to a speech therapist. The therapist said he had not been worked with. In a months time the boy is talking to where you can understand him. The nine months boy could not sit up, he could not roll over. We had him to a specialist who said there was no physical reason for this. In a month's time the child sits alone, rolls over and is putting some weight on his feet, responds with laughter and cries which he did neither when we got him. The child that has changed most is Wanda. All the children had a crust on their scalps. She developed sores on her head from the lack of washing which are improved. She has gained weight. She talks some. She showed a definite fear of men and now responds, although guarded, her response is much

better. The children in a months time have changed more than I have ever seen children change before.

RE-CROSS BY MR. NEFF:

Q- Mrs. Brunty, when you went back were you aware that the grandparents, the Fields, lived across from the Towlers?

A- Yes, sir.

Q- But you made no effort to see the grandparents?

A- Mrs. Fields said, "You are going to be sorry you did this. I am going to Roanoke and get someone." From then on all we got was profanity and threats.

Q- You didn't ascertain whether or not any of the ladies was a sister-in-law?

A- There was no relative at the church when I got there.

Q- Did you attempt to follow through how these food stamps were used and by whom?

A- I talked to Mr. Towler.

Q- Did you check with any individual person about how they were bought and how they were used? Have you ever ascertained individually how the stamps were used and by whom?

A- They were used I am sure.

Q- Let me put it another way, have you ascertained whether Mr. Towler used any of those stamps or not?

A- I did not talk to Mr. Towler about the food stamps.

MOTION BY MR. NEFF:

If the Court please, I would like to cite the case in 214 Va. 395, Page 397: "The correct rule of decision here is that laid down in Judd v. Van Horn, 81 SE 432, where we said:

"The general rule that the welfare or interest of the child is of paramount consideration in determining the question of custody has its most accepted application in the settlement of the rival claims of parents and is subject to the condition that a fit parent with a suitable home has a right to the custody of his child superior to the rights of others. Here the law presumes that the child's best interests will be served when in the custody of its parent. (citations omitted.)

"The burden of showing the existence of circumstances which would deprive the father of the right to custody of his son is upon the parties opposing this right. (citation omitted.) And such evidence of unfitness must be cogent and convincing. (citations omitted.)"

"In his letter opinion the chancellor found "that the preponderance of the evidence dictates that the best interests of the infant, Beth, lie in her remaining in the custody of Mr. and Mrs. Malcolm Buchanan." From this finding it appears that the chancellor failed to follow Judd, for the burden was upon Mrs. Wilkerson to show her husband's unfitness by clear and convincing evidence, a burden she failed to carry. As between awarding custody to a

parent or a third party, the evidence must also be clear and convincing that the welfare and best interests of the child will be served by awarding custody to someone other than the parent.

As we pointed out in 213 Va. 393, the rights of the parent may not be lightly severed but are to be respected if at all consonant with the best interest of the child.

It is only in those extreme cases, where the interest of the child demands it, that the rights of the parent may be disregarded, 204 Va. 712. Stated differently, in the absence of a showing of unfitness of the parent, special facts and circumstances must be shown constituting an extraordinary reason for taking a child from its parent, or parents."

As far as Mr. Towler is concerned there is no evidence that he is morally unfit. He has a good reputation, he works and tries to support his family. I submit that there is not enough evidence to remove the custody of these children from him.

THE COURT: I overrule your motion.

MR. NEFF: Except to the ruling of the Court.

DOUGLAS MARTIN TOWLER

Douglas Martin Towler, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEFF:

Q- State your name, please?

A- Douglas Martin Towler.

Q- How old are you, Mr. Towler?

A- Thirty.

Q- How much education do you have?

A- Fifth Grade.

Q- What kind of work do you follow?

A- Body work and mechanic work.

Q- Have you ever been charged with any felony?

A- No.

Q- Ever been in jail for any serious offense?

A- No.

Q- For the last five years have you ever been in jail for anything?

A- No.

Q- It is in evidence here that you own a house in Oldtown, how is that made?

A- To me and my wife.

Q- It is in evidence here that the Court had you up back in June because of something there in the home because the children weren't kept clean, is that right?

A- Yes.

Q- Tell the Judge what brought that about, please?

A- Well, just, I bought the house up there and I told my wife I wanted her to keep it real clean and real nice because I never had owned a home of my own. As time went by it went down hill little by little. I talked to her and tried to help her clean it up what time I did have. Then we got some of this stuff like the Welfare checking on us. I went in one evening and my wife told me the Welfare had been there that day and said they were going to take my children if I didn't quit working so much and stay home with them. I went to work the next day and the man I work for told me they had been there checking on my work. I told Mr. Crouse I wanted to meet with him. I asked him what was the problem and I told him I had to work two jobs to pay my bills. He said that didn't matter, he wasn't concerned about that, he was concerned about the cleanliness of the house and kids.

I went back and told my wife about it and tried to get it straightened out. Then it got better for awhile, then they summoned us to court and I thought we had it all straightened out then the time Mrs. Brunty come I found out it was going to be opened back up. They sent two women to check. The Health Department come out and said it was o. k., the house needed to be cleaned up a little more.

Q- Who made arrangements about getting the food stamps?

A- My wife did.

Q- Did you work for Mr. Bullins at that time?

A- Yes.

Q- What were you making?

A- $100.00 a week.

Q- You say you work a second job. What were you doing?

A- I have got a little body shop.

Q- Where is that?

A- Directly behind the Family Dollar Store.

Q- How many days a week did you work?

A- I worked all week at Mr. Bullins, then most of the time until 3:00 Saturday evening about all the time.

Q- Who looked about the provisions of the children?

A- My wife.

Q- Did you have a washing machine?

A- Yes.

Q- Clothesline out there?

A- Yes.

Q- How many bedrooms are in the house?

A- Two.

Q- And did you turn over money to your wife to buy things, a sufficient amount?

A- I gave her money when she needed it.

Q- Did you have credit at any stores?

A- Yes.

Q- What stores?

A- Sears and Midway Heights.

Q- You recognize the fact the children weren't as clean as they ought to be?

A- Yes.

Q- Did you ask your wife to do better?

A- I asked her to do better.

Q- What was the other problem in the marriage?

A- Jimmy Manuel.

Q- Tell the Court what you found out?

A- He was just a neighbor there for a long time and I would come in from work and he would be at the house. I talked to him and was friendly with him. Got so everytime I come home he was there. I asked him to leave. I said, "It don't look right unless I am here." I talked to my wife, she said he was just a friend.

Q- Where did he live during this period of time?

A- Across the street.

Q- With her people?

A- Yes. I told him to stay away. A few days went by and I got to hearing some things and somebody told me my wife had been going to church and went two or three nights and somebody told me they were meeting in church. One night I decided I would go to church and see if I saw them together. When I got there they weren't there. Mr. Brinkley told me to come in. I went in and at least fifteen or twenty minutes my wife came in.

I didn't see Manuel anywhere. We went on back home. She said she decided she was going to join the church and try to live right. In two weeks she was thinking about leaving me and going somewhere. I told her if she would leave him alone we could get everything straightened out to keep the Welfare off of me. I went ahead and was working. In the evening when I would come in I would come by Oldtown and right there is a phone booth. When I come by one evening I seen Manuel in the phone booth. I asked my wife did she get a call about ten minutes ago. I was going to church then. I told her, I said, "Janice, the best thing you should stay away from him." I told her, "You are going to have to leave him alone." She said, "Well, he is my friend, he will aways be my friend." I figured I was wasting my time so I went to church another time or two and then I found out he was coming to see her. Right after that I caught him following her around in the car and me and him got in a fight. She told me it was his fault following her around.

I thought it was all over then because Mrs. Fields told him he would have to find somewhere else to stay. He wasn't there for about two weeks. About two weeks later he moved back in. At six or seven o'clock she would be down there when I come in, three or four days out of the week she would be down there and the house was going down and I talked to her and tried to straighten it up. Finally it got so she told me she wasn't going to stay away from him. The night before they took my kids I come in on

Saturday evening and I don't know what we was fussing about. She went down to her mother's and spent the night Saturday night. My sister come up that night and I asked her that night, told her me and Janice was having trouble, I wanted her to stay and watch my kids.

Q- On Saturday night did your sister spend the night?

A- Yes.

Q- She is here?

A- Yes, I asked her, my sister, I told her I wanted her to stay and take care of the kids until I could get straightened out. My wife left that night and said she was going to leave and wasn't coming back and then I went and fixed this car and come back in the early evening to change clothes and take this car. I was using Mr. Bullins car who I worked for. I had to take it back and get my car and when I got back they said Mrs. Brinkley come and took the children to church and my sister had left. My mother-in-law said my sister said she was going home and get some clothes and come back.

Q- Your wife according to Mrs. Brinkley said this other girl was your girlfriend, is there anything to that?

A- No.

Q- Have you ever had any girlfriend?

A- No.

Q- When did you find that your children were taken away from you?

A- Me and my brother-in-law went to the phone booth and called my

sister to see if she was coming back. When I got back from the phone booth that is when they told me about the kids. I went up to the church and that is where I met Mrs. Brinkley and the sheriff.

Q- Did you tell them that night that your sister was coming back to take care of them?

A- Yes.

Q- During the entire time has there been a workable washing machine in your house?

A- Yes.

Q- What earnings do you have from your shop other than what you make from Mr. Bullins?

A- Sometimes I make pretty good and sometimes $100.00 a week and sometimes $150.00 and sometimes not that much.

Q- What payments did you have while you and your family were living together?

A- My house, two hospital bills, two doctors, insurance, life insurance and burial insurance, insurance on the house, couple of bank payments, vacuum cleaner, some money I owe a loan company where I borrowed to pay hospital bills.

Q- You owed Dr. Marinus a large bill?

A- Yes, $900.00.

Q- Did you ever discuss with your wife the fact the children had to have shots?

A- She told me she took them to the Health Clinic. She was all the

time taking them to Marinus and getting him to check them. I know she took Rose before she started to school to get shots, I thought she took the others.

Q- Who did the grocery buying at the house?

A- She did except sometimes if she run out I bought.

Q- Was there always groceries there at the house if your wife would use them?

A- We always had enough to make out with.

Q- Was it necessary for you to work two jobs to provide for your family?

A- That is about the only way I could make it. I owed one hospital about $300.00 and the other $400.00. The other day I paid it off, it was over $800.00. When she had this last baby I paid $200.00 and I owed Dr. Bolen, I paid him last week.

Q- Do you still owe Dr. Marinus?

A- Yes.

Q- Still owe the hospital?

A- Yes.

Q- How much is your house loan?

A- $16,000.00.

Q- Is all the furniture in the house paid for?

A- No.

Q- Have you got the vacuum cleaner paid for?

A- No.

Q- Do you owe Sears anything for clothes?

A- $100.00.

Q- How much is that payment?

A- $10.00 a month.

Q- Do you owe Twin County anything since you have got Waddell paid off?

A- Yes, $150.00.

Q- Did you ever go to the Welfare and ask for any help on these hospital bills?

A- I did one time when I worked at Radford. I had Blue-Cross and Blue-Shield, I was thinking maybe they paid some on one of them.

Q- The children went to school at Baywood?

A- Yes.

Q- Did you pay the amount of the cost for them to enter school at Baywood?

A- Yes.

Q- Do you recall how much that was?

A- $30.00 for books and lunch and insurance.

Q- Has your wife been back to the home since that Sunday night?

A- Just once to get some clothes and stuff like that.

Q- Did she leave Galax for awhile?

A- For about two weeks.

Q- Where did she go?

A- Went to stay with my sister-in-law and Virginia Nail brought her and stayed two weeks.

Q- If the Court saw fit to return your children to you who would look after them for you?

A- My sister said she would until I could find someone suitable.

Q- Have you been to the employment office in Galax to try to find somebody?

A- Yes.

Q- Have they found anybody yet for you?

A- No, they said they would check and would call me if they could find anybody.

Q- You can't sell your house as long as you and your wife are married you understand?

A- That's right.

Q- Would it be best for you and your family to move away from there and away from her people?

A- Yes.

Q- Are you willing to do anything that the Court would order for you and your children?

A- Anything that would get them back and see they are taken care of right.

Q- At the time this matter first come up you were advised by me that somewhere along the line you were going to have to make a choice between your wife and children?

A- Yes.

Q- And you made that choice?

A- Yes.

CROSS EXAMINATION BY MR. BOLT:

Q- Did Mr. Neff tell you the best thing to do was to blame it on your wife and take the children?

A- No, when the court was over and everything my wife got in the car with another lady and I got in my car and they was parked close to Neff's office and I asked her what was she going to do. She said, "I ain't going back with you."

Q- You and Mr. Neff decided that pretty well in Court?

A- No.

Q- Let's get back to the Sunday when your children were taken. When did you and your sister discuss the fact she was going back to Martinsville and get some clothes and come back?

A- Saturday night. She told me then.

Q- What time did you leave home on Sunday morning?

A- Ten or eleven o'clock.

Q- You didn't see your sister anymore after that?

A- I worked on that car and I charged the people $5.00 labor.

Q- What time did you get back home that night?

A- About a little after six, between six and seven.

Q- Your sister must have been there?

A- When they come and got the kids to take them to church that is when my sister left.

Q- That was fifteen to seven. How do you know when she left?

A- My mother-in-law told me.

Q- She left about the time they took the kids to church?

A- Yes.

Q- And you got there a few minutes after that?

A- Yes.

Q- You must have gotten there between 6:45 and 7:00. What did you say you did after that?

A- That may have been when I went and called my sister.

Q- Your mother-in-law said your sister had left to go back to Martinsville, they said she had taken the kids to church, you and your brother-in-law went to call your sister to see if she was coming back, how long does it take to get to Martinsville?

A- She had just got there when I called.

Q- She had just got to Martinsville when you called and she had just left?

A- I didn't go to the phone booth immediately.

Q- Do you know what time you made that call?

A- No.

Q- Whenever they brought the kids home and you weren't there that is when you were making that call, that gave you an excuse. Fact is you were out messing with cars like you had been all day?

A- No.

Q- It didn't happen that way, your going to the telephone to call your sister to see if she was coming back. She just had left. Let's be honest with everybody, it didn't happen that way?

A- When I come home I did go call and she had just got there.

Q- She must have left around 7:00. Mrs. Brinkley said it was fifteen to seven and you said your sister had just left and

your mother-in-law said they had just taken the children over to the church?

A- Yes.

Q- Did it take you from then until nine o'clock to go out there and call your sister?

A- No, I was there.

Q- Just like you have been the last two years, between eleven and seven? Did you spend any time at home with your wife and children?

A- Yes.

Q- What about your little boy? Do you spend anytime with him?

A- Yes.

Q- Could you look at his head?

A- I thought it was awful. I told my wife. She said the doctor said to leave him alone.

Q- All those things happened, you left everything to your wife?

A- I think a wife should take care of the kids.

Q- But your wife didn't?

A- A wife should.

Q- The odor of urine didn't matter, that didn't bother you?

A- Yes, it bothered me.

Q- What did you do?

A- Sometimes I worked until 3:00 in the morning on the house.

Q- How much money did you give your wife to buy the groceries?

A- I gave her money to buy food stamps.

Q- You gave her $80.00 a month to buy groceries?

A- And she got $228.00 worth of food stamps.

Q- What else did you spend per month?

A- $58.00 for the house payment.

Q- What else did you pay?

A- I paid the hospital $25.00, one $25.00 and one $50.00.

Q- Paid that every month? I am talking about every month?

A- I paid $25.00 to the hospital where I was suppose to pay $50.00.

Q- You are telling me you either paid $25.00 or $50.00 to the hospital, didn't miss any months?

A- I missed once in awhile.

Q- What else did you pay?

A- Insurance of $20.00 per month.

Q- Insurance on what?

A- Life insurance. I have three notes at the bank.

Q- How much are they?

A- $131.00; $129.00; $147.00.

Q- What were those notes for?

A- Motorcycle and the others for two cars.

Q- That was for you?

A- One of them wasn't.

Q- Do you have a family car?

A- Yes.

Q- You drove that to work and back to the body shop at night?

A- Yes.

Q- When did your wife get the groceries?

A- When I come in.

Q- The car you fixed that Sunday. Your wife had left and you could have stayed home with the children?

A- We needed the money.

Q- How much money did you say you made at the body shop at night?

A- Sometimes $100.00 a week.

Q- Was that regular?

A- I always made enough, sometimes $100.00, sometimes $150.00.

Q- The last time you said you didn't keep any records?

A- On a part time job I don't worry.

Q- You made $400.00 a month from your full time job?

A- Yes.

Q- You were on a regular salary?

A- Yes.

Q- As a salesman you made a little money on the side?

A- Yes.

Q- It wasn't a matter of you all being that short on money? You weren't in destitute circumstances were you?

A- No.

Q- You got $228.00 worth of food. You paid $80.00 for the food stamps, that would be $148.00 off the food stamps?

A- Yes.

Q- How much did you give your wife to buy things around the house other than $80.00 for food stamps?

A- I don't know. We had a phone in the house and she would call me and tell me to bring cereal or milk.

Q- You never went out and got anybody to help her clean up the house?

A- I asked her mother to help her and my mother come up sometimes and helped her.

Q- Lots of times you said before you wouldn't come home, you would just go on down to the body shop?

A- Yes.

Q- If you did come home you had supper and went back to work?

A- Yes.

Q- You just didn't spend anytime with your wife and family other than sleep and eat a little?

A- Sometimes, very little time.

Q- You didn't get concerned about the welfare of the children until the Welfare got concerned?

A- I was concerned.

Q- Mr. Crouse spoke to you about it?

A- He didn't tell me to quit working.

Q- Do you drink?

A- No, I use to drink a little once in awhile.

Q- Get out and run around at night?

A- No, if I do anything at night I work.

Q- Have you had any traffic citations since 1971?

A- I think I got one for improper tags.

Q- One for improper equipment over in Carroll County. Do you recall getting one for speeding over in Carroll County?

A- Yes.

Q- What about August 25, 1974 for driving drunk?

A- They got me for impaired driving.

Q- But you haven't drank anything for the past four or five years?

A- No, sir.

Q- What was the trial August 25, 1974?

A- Improper registeration.

Q- When did you get your driving drunk case over there?

A- It has been three or four years. I was working at Radford. I worked there about five years. It has been five or six years ago.

Q- You have been charged with driving drunk over there since August of 71?

A- I don't know when it was. I haven't drank anything to amount to anything since then.

Q- Take this week when your wife left and all this happened, she didn't leave until Saturday night?

A- Saturday night.

Q- It was past grocery buying time for the week-end when she left?

A- Yes.

Q- What groceries did you have in the house for the children to eat that week end?

A- I don't think we had anything much.

Q- So then on Saturday night, whether your wife left or not, you didn't have groceries? You didn't have milk for your baby?

A- I didn't know that.

Q- You didn't even have a bottle for your baby?

A- There was bottles there but couldn't nobody find them.

Q- When your sister left on Sunday night there was nothing in the house for the kids to eat?

A- I was going to the store.

Q- Is that the way you bought your groceries, buy enough for one or two meals?

A- No.

Q- You didn't take it upon yourself after your wife left you were the only one to be responsible for this?

A- I gave my sister money to go to the store and buy it.

Q- What did she buy?

A- She got some bacon and eggs.

Q- How much money did you give her?

A- I guess she just got bacon and eggs.

Q- Didn't get enough for supper and the cupboard was bare, is that a typical week end?

A- No, most of the time my wife bought groceries. I gave her money and I have got a charge account at Midway Heights. I can get it.

Q- You want the Court to give the children back to you, you will put them in the custody of your sister?

A- Yes.

Q- What is her name?

A- Linda Holland.

Q- Has she any children?

A- Yes.

Q- Who has custody of her children?

A- My mother.

Q- I think she gave custody to her mother?

A- Yes.

Q- For some reason she is not capable of taking care of her own children?

A- Her doctor told her she could go to work and now as soon as she goes to work she can have the kids back.

Q- You still go to the body shop?

A- Yes.

Q- Every night?

A- No.

Q- How many nights a week do you work?

A- Last week I worked two nights

Q- You had to buy that equipment to go into the body shop?

A- I worked it out.

Q- You haven't sold some of it?

A- I haven't sold anything yet.

Q- Dr. Marinus delivered most of your babies?

A- Yes.

Q- When they got sick you took them over to Dr. Marinus, you haven't paid him a penny?

A- I paid him some, hadn't paid him none lately.

Q- If he made the statement, "I have never refused to see the Towler children although they owe me over $900.00", it is not correct?

A- I have paid him some.

Q- If he made the statement that your little boy's head was in that shape because he had been permitted to lay in the same place over long periods of time, have you talked to Dr. Marinus?

A- No.

THE COURT: All the beer bottles, who drank the beer?

A- My wife.

Q- Who bought it and took it there?

A- I didn't buy it. I jumped on her for having it there.

LINDA HOLLAND

Linda Holland, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEFF:

Q- State your name and age, please?

A- Linda Holland, twenty-three.

Q- You are divorced, is that right?

A- Yes.

Q- You were granted a divorce from your husband?

A- Yes.

Q- During the time you had a nervous breakdown?

A- Yes.

Q- Were the children given to your mother?

A- I signed them over to her.

Q- How long has your divorce been final?

A- About five years.

Q- And have you been under treatment of a doctor for your nervous condition?

A- Yes.

Q- Who is your doctor?

A- Dr. AShby in Danville.

Q- What is your mental shape and health at this time?

A- I went to him yesterday. He said I could go to work and have finances for the kids and I could get them back.

Q- Are you living with your mother?

A- Yes.

Q- It is a fact your mother could come up and look after Doug's children but you think it is best you look after them if you are permitted to?

A- Yes.

Q- You are willing to come up here and do it?

A- Yes.

Q- You realize it is a great sacrifice?

A- Yes.

Q- Were you one of the three people there on Saturday night? Who was this other girl?

A- A girlfriend of mine. We have been friends for about ten years.

Q- Does she have a regular boyfriend?

A- Yes, she brought him to Galax, that was the reason we come.

Q- Has your brother ever dated that other woman that was there?

A- No.

Q- Did she go back to Martinsville?

A- Yes.

Q- Has she been back?

A- No.

Q- Did you hear the argument between your brother and his wife?

A- She wasn't there when I got there.

Q- Did she come later?

A- No, I went down and talked to her.

Q- Did she tell you she wasn't coming back?

A- Yes.

Q- Had you received any phone call from your brother to come?

A- No.

Q- Tell Judge Matthews what took place?

A- Before Doug left to go to work he gave me $15.00 to get groceries. I got eggs, bacon, milk, cereal for the kids. He

already had soup. I fixed that for the kids. I gave the kids a bath, too, and put them on some clean clothes. They went down to where their Mama was. I kept the baby up there. I got him up and put him in the chair and let him set up and I gave him baby food and milk and then Doug came and took a bath and changed clothes and this guy come and wanted him to go look at a car. He said he would be back in a little while. We got the kids out and was playing ball and that is when the preacher's wife and Sylvia come and got the kids.

Q- Sylvia, that is Mrs. Towler's sister-in-law?

A- Sylvia and them pulled up and asked where Doug was and where Janice was. She backed up and went down there. Then she came back up and asked me did I know where the clothes were for the kids. I looked in the closet and found two dresses and they fixed them up and put things on, then we talked and they left.

Q- Did they take all five of the children?

A- Yes, said they was going to take them to church and I was going to get some clothes and come back.

Q- Who did you tell this to?

A- Mrs. Brinkley, Mrs. Fields.

Q- What time did you leave?

A- A little after seven.

Q- What time did you get to Martinsville?

A- A little bit before 9:00.

Q- How long after you got to Martinsville until your brother called? Did your brother call?

A- Yes.

Q- Did you tell him you was returning?

A- I told him I would come back if he wanted me to. He said there wouldn't be any use, the Welfare had come and got the kids.

Q- You have heard his testimony and your testimony is different from his?

A- That is the best of my knowledge.

Q- Are you willing to stay and look after these children until such time as he can get somebody?

A- Yes.

Q- Do you think you are capable of looking after them?

A- Yes.

Q- Was your nervous condition brought on by the divorce?

A- Yes, I want to go back to work and get my kids back and I want to help Doug all I can to get his back.

CROSS EXAMINATION BY MR. BOLT:

Q- Do you know how your brother figured out the Welfare had his children?

A- Like I just said there was no need to come back. He said, "I will call you when I need you."

Q- You might be mistaken if he said the Welfare had come and got his kids?

A- He said he was going down to talk to Janice again, if he

needed me he would call me.

Q- You went out and got enough to feed the children during the day. What was in the house when you left?

A- Some loaf bread; he had a bag of potatoes, some macaroni dinners.

Q- Where were these things located?

A- In the freezer part of the refrigerator, some under the cabinet.

Q- You had your nervous breakdown in 1972?

A- Yes.

Q- When did you get your divorce?

A- April of 71.

Q- So it was about a year or so later. Was that breakdown caused by the divorce or because of men coming by and drinking that went on down there?

A- Both.

Q- You have had various illnesses over the past two years?

A- Yes.

Q- You have had kidney infections and nervous breakdowns so you have not been very well?

A- No.

Q- You have depended upon your mother to keep your children?

A- Yes.

Q- And actually haven't been able to keep your children?

A- No.

Q- You have been to the doctor and tried to get better? You requested that the psychiatrist examination be done and you have gone to Dr. B. R. AShby?

A- Yes.

Q- And you have been planning to go to Woodrow Wilson Rehabilitation Center?

A- No, he said it would be about six months before I could get in.

Q- You do still plan to go to Woodrow Wilson Rehabilitation Center to see if you can get some help for yourself?

A- Yes, sir.

ARTHUR H. BISHOP

Arthur H. Bishop, a legal and competent witness, after first being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEFF:

Q- State your name, please?

A- Arthur H. Bishop.

Q- Yesterday was the first time I saw you?

A- Yes.

Q- Where do you live?

A- Rt. 5, Oldtown.

Q- Where do you live in relation to the Towler house, you live in the house owned by Mrs. Rector?

A- Yes.

Q- The Towlers were not living together when you moved in?

A- Yes.

Q- How long did they live together after you moved in?

A- I am not quite sure. We moved between August 18th and 25th.

Q- Within about a week to ten days from the time the children were taken away?

A- Yes.

Q- During the time did you observe the Towler children out there playing?

A- They acted pretty normal for kids. Their appearance wasn't what I would have expected for mine.

Q- Did you ever visit in the home?

A- No.

Q- After the children and Mrs. Towler left did Mr. Towler continue to live there by himself?

A- Yes.

Q- Have you seen him coming and going?

A- Yes.

Q- Have you been in the home?

A- Yes.

Q- That was yesterday?

A- Yes.

Q- It is in evidence there were no clothes there. How many little dresses did you observe?

A- Of course, I didn't count them but the closets seemed to be ample.

Q- Was the house clean?

A- Yes.

Q- What denomination are you?

A- Pastor of the First Baptist Church.

Q- Would you express to Judge Matthews your feeling in regard to him having custody of his children?

A- I don't see anything contrary to it, however, I am not qualified.

Q- What about Mrs. Towler?

A- I am hesitant again to make an evaluation.

Q- Let me ask, from the observation you made there about the house, what was your observation of it in accordance with the other houses in this area or the areas you have been in?

A- I would say it was in better condition than some houses I have been in where they have the custody of their children.

CROSS EXAMINATION BY MR. BOLT:

Q- What occasion did you have to go there yesterday?

A- Yesterday I met Mr. Neff and he asked me.

Q- Mr. Neff asked you if you wouldn't look over it?

A- No, he asked me if I would come into Doug's house and talk about arranging for me to come here as a witness.

Q- You didn't go to Mr. Neff and volunteer your services? Mr. Neff came to you and asked you to come?

A- Yes, it was in a casual conversation. He happened to be there at the time I was leaving for work.

Q- Did he point out to you to look at it closely?

A- I don't know what his motives were. I did go with them and talk with them.

Q- You don't know whether you were looking at a model house or

how long it was cleaned up, you don't know what the condition was on the night these children left there?

A- This is very correct.

Q- As far as Mr. Towler he goes to work about seven o'clock in the morning and gets in around 10:00 or 11:00 in the night?

A- I believe this is generally the pattern.

Q- Have you seen him actually enough to judge one way or the other?

A- Possibly four or five times. I have come in the same time he has.

Q- You see him leave and see him come in and that has been your social contact?

A- Yes.

Mr. Neff renewed his motion and presented argument.

The Court awarded custody of the children to the Department of Social Services of Grayson County.

Mr. Neff excepted to the ruling of the Court.

STATE OF VIRGINIA, AT LARGE

I, Cloatine H. Henley, a notary public in and for the State of Virginia at Large, do certify that the foregoing testimony was taken by me on the 16th day of October, 1974 in the Circuit Court of Grayson County, Independence, Virginia, and that thereafter I have duly reduced the same to writing.

Given under my hand this 21st day of November, 1974.

My commission expires December 27, 1976.

Cloatine H. Henley
NOTARY PUBLIC