216 Va. 382
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 23 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750326

DAVID CAPPS, SR.,

Appellant

v.

PATRICIA DIANE SEAWELL CAPPS,

Appellee

APPENDIX

HOWARD I. LEGUM
FINE, FINE, LEGUM & FINE
720 LAW BUILDING
NORFOLK, VIRGINIA 23510

Attorney for Appellant

TABLE OF CONTENTS

	Page
Bill of Complaint	1
Final divorce decree	3
Assignments of Error	5
Temporary support order of 1/30/74	8
Motion for temporary support, etc.	10
Answer and Cross-Bill	11
Testimony of David Capps, Sr.	13
Testimony of Thomas F. Capps	36
Testimony of Eddie D. Capps	40
Testimony of Patricia Capps	45
Testimony of Ruby I. Seawell	66
Testimony of Deborah G. Frazier	79
Testimony of Connie Cheshire	82

BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Your Complainant, David Capps, respectfully represents as follows:

FIRST: That on the 9th day of October, 1969, the said David Capps and Patricia S. Capps, were married in Roanoke Rapids, North Carolina, as will appear from a copy of the marriage certificate to be filed in this cause; and

SECOND: That the Complainant is domiciled in and is and has been an actual bona fide resident of the State of Virginia for more than one (1) year next preceding the commencement of this suit, presently residing in the Cit y of Newport News, Virginia; and

THIRD: That the Respondent is presently residing in the City of Newport News, Virginia; and

FOURTH: That the Complainant and the Respondent last cohabited as husband and wife at 1189 Tyler Avenue, Newport News, Virginia, on or about the 23rd day of October, 1973; and

FIFTH: That there were two (2) children born of this marriage, viz: Serena Lee Capps, four (4) years of age, and David Capps, Jr., two (2) years of age; and

SIXTH: That the parties are members of the Caucasion race; and

SEVENTH: That the Complainant is twenty-four (24) years of age; and

EIGHTH: That the Respondent is twenty-three (23) years of age; and

NINTH: That the Respondent is not a member of the Armed Forces of the United States of America; and

TENTH: That on or about the 23rd day of October, 1973, the respondent deserted the complainant without reasonable cause or justification, and the parties have lived separate and apart without cohabitation since that time.

UPON CONSIDERATION WHEREOF, and forasmuch as your Complainan is remediless in the premises save in a court of equity, wherein such matters are alone cognizable and relievable, your Complainant prays that Patricia S. Capps, be made a party respondent to this Bill of Complaint and required to answer the same fully and truthfully, but not under oath, answer under oath being expressly waived; that proper process issue; that a divorce a mensa et thoro be decreed your Complainant on the ground of desertion, if sustained by your Complainant's evidence, and when one (1) year has elapsed from the date of separation, and no reconciliation having taken place, that a divorce from the holy bonds of matrimony, an a vinculo matrimonii decree, be granted your Complainant; and that your Complainant may have all other, further, and general relief in the premises as the nature of his cause may require, or to equity shall seem meet.

David Capps Sr.
DAVID CAPPS

ELLENSON, FOX AND WITTAN, p.q.
Attorneys at Law
First and Merchants National Bank Building
2600 Washington Avenue, Suite 410
Post Office Box 410
Newport News, Virginia 23607

By: _____
Counsel

FINAL DECREE

This cause, which has been regularly matured, docketed and set for hearing, came on this day to be heard upon the Bill of Complaint and exhibits filed therewith; upon proof of proper and legal service of process upon the Defendant; upon the Answer and Cross-Bill of the Defendant, upon the Plaintiff's Answer to the Cross-Bill; upon the depositions of witnesses on behalf of the Plaintiff and the Defendant regularly taken after proper and legal notice to the Defendant and filed in accordance with law; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court finds from the evidence, independently of the admissions of the parties in the pleadings or otherwise, the following facts: that the parties are both members of the White race, over the age of 18 years; that they were lawfully married in Roanoke Rapids, North Carolina on October 9, 1969; that there is one child born of this marriage, namely: David Capps, Jr. and one child of your Defendant adopted by your Plaintiff, namely: Serena Lee Capps; that the parties are and have been actual bona fide residents and domiciliaries of the State of Virginia for more than one year next preceding the commencement of this suit; that the Plaintiff and the Defendant last cohabited as husband and wife in the City of Newport News, Virginia; that the charge of cruelty and reasonable apprehension of bodily harm of the Defendant by the Plaintiff on October 23, 1973 as alleged in the Cross-Bill of Complaint has been fully proven by the evidence and that the Defendant is entitled to the relief prayed for, and the Court doth dismiss the Bill of Complaint of the Plaintiff.

The Court doth ADJUDGE, ORDER and DECREE that the Defendant, Patricia Diane Seawell Capps be, and she is hereby, absolutely divorced from the Plaintiff, David Capps, Sr. from the bond of matrimony on the aforesaid grounds of cruelty on October 23, 1973 from which date the parties have

lived separate and apart without cohabitation or interruption and that the bond of matrimony created by the marriage between these parties on October 9, 1969 be, and the same is hereby, dissolved.

It is ADJUDGED and ORDERED that the provisions regarding custody and support of Serena Lee Capps and David Capps, Jr., infant children of the parties, contained in the decree entered in this cause on January 30, 1974 are continued in full force and effect with the further ORDER of the Court that the Plaintiff is to pay in addition to your Defendant all Social Security monies which as dependents your Defendant and the parties' infant children are entitled.

It is further ORDERED that the provisions regarding visitation of the infant children contained in the decree entered in this cause on October 21, 1974 are continued in full force and effect.

It is further ORDERED that the questions of alimony payable to your Defendant is reserved.

And nothing further remaining to be done herein, it is ORDERED that this cause be stricken from the docket and placed among the ended causes.

ENTER: 12 / 4 / 74

JUDGE

I Ask For This:

Tonita M. Warren, p.d.

TONITA M. WARREN, ESQUIRE
Newport News Legal Aid Society
2901 West Avenue, Suite 202
Newport News, Virginia 23607

Seen and Objected To:

_____, p.q.

HOWARD L. LEGUM, ESQUIRE
Fine, Fine, Legum & Fine
Law Building
147 Granby Street
Norfolk, Virginia 23510

ASSIGNMENTS OF ERROR

1. The Court erred in entering the Final Divorce Decree of December 4, 1974.

2. The Court erred in ruling that the Bill of Complaint of plaintiff should be dismissed.

3. The Court erred in ruling that the defendant had proven cruelty and reasonable apprehension of bodily harm of her by the plaintiff.

4. The Court erred in ruling that the defendant was not guilty of desertion as of October 23, 1973, as alleged in the Bill of Complaint.

5. The Court erred in ruling that defendant was not guilty of adultery as alleged in the Amendment to the Bill of Complaint.

6. The Court erred in awarding custody of the child adopted of the marriage and the child born of the marriage to the defendant.

7. The Court erred in ordering that the provisions regarding custody and support of the children adopted and born of the marriage, contained in the decree entered in the cause on June 30, January

1974, are continued in full force and effect. The Court erred in ordering that the plaintiff shall pay to the defendant in addition all Social Security monies which as dependents the defendant and said children are entitled.

8. The Court erred in ordering that the question of alimony payable to the defendant is reserved.

9. The Court erred in failing to place the children in a foster home.

10. The Court erred in relying upon the report of the Department of Social Services of the City of Newport News, Virginia, dated October 29, 1974, which report is hearsay.

11. The Court erred in failing to hold that the defendant's allegations of cruelty were not corroborated.

12. The Court erred in failing to hold that the evidence corroborated that the defendant deserted the plaintiff.

13. The Court erred in failing to hold that the evidence showed that the defendant had committed adultery after she left the plaintiff on or about October 23, 1973.

14. The Court erred in failing to give weight to the defendant taking the Fifth Amendment to the question whether she had committed adultery subsequent to leaving the plaintiff.

15. The Court erred in failing to award a final divorce to the plaintiff, either on the ground of desertion or adultery or both.

16. The Court erred in failing to rule that the defendant is not entitled to alimony.

DAVID CAPPS, SR.

BY: _____
Of Counsel

HOWARD I. LEGUM, p.q.
Fine, Fine, Legum & Fine
720 Law Building
Norfolk, Virginia 23510

I certify a copy was mailed this day of December, 1974 to Ms. Tonita M. Warren, p.d.

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

DAVID CAPPS, SR.,

Plaintiff

v. IN CHANCERY NO. 448-G

PATRICIA DIANE SEAWELL CAPPS,

Defendant

AMENDED ASSIGNMENT OF ERROR

Complainant herewith files amended Assignment of Error Number 7 which incorrectly listed therein the decree was entered on June 30, 1974, whereas it was entered January 30, 1974.

Said amended assignment of error number 7 reads as follows:

The Court erred in ordering that the provisions regarding custody and support of the children adopted and born of the marriage, contained in the decree entered in the cause on January 30, 1974, are continued in full force and effect. The Court erred in ordering that the plaintiff shall pay to the defendant in addition all Social Security monies which as dependents the defendant and said children are entitled.

DAVID CAPPS, SR.

By: _____
Of Counsel

HOWARD I. LEGUM, p.q.
Fine, Fine, Legum & Fine
720 Law Building
147 Granby Street
Norfolk, Virginia 23510

I certify a copy was mailed this day of December, 1974 to Mrs. Tonita M. Warren, pld.

_____

ORDER

448-G

This day came the Defendant, in person and by counsel, pursuant to notice duly served upon the Plaintiff, the Plaintiff appearing in person and by counsel, upon the Defendant's motion that the Plaintiff pay temporary support for the maintenance of the parties' infant children and for her support during the pendency of this suit; and upon Defendant's motion that she be awarded sole custody of the minor children of the parties hereto and upon Defendant's motion that provision be made for a residence for herself and the infant children during the pendency of this suit or until further order of this Court; upon evidence heard ore tenus before the Court in support of said motions; and was argued by Counsel.

And it appearing to the Court from the evidence heard ore tenus and upon the law in such cases made and provided that Defendant is entitled to the relief prayed for and upon consideration whereof, the Court doth ADJUDGE, ORDER and DECREE that the Plaintiff pay the sum of $161.00 a month to the Defendant for the maintenance of the Defendant and the parties' two children, payable through the Juvenile and Domestic Relations Court of the City of Newport News, Virginia, beginning February 4, 1974; and payable on the first Monday of each Month thereafter during the pendency of the suit or until further order of the Court herein; and it is further ORDERED that the temporary custody of said children is placed with the Defendant but leave is granted to the Plaintiff to see and visit with the children at reasonable intervals only during the hours of 1:00 p.m. to 4:00 p.m.

Further, the Plaintiff is to continue to make the mortgage payment in the amount of $157.34 when due each month on the parties' residence at 1189 Tyler Avenue, Newport News, Virginia.

It is further ORDERED that the Plaintiff move from the residence of the parties described as 1189 Tyler Avenue, Newport News, Virginia, on or before February 1, 1974, and that the Defendant is granted leave to occupy these premises with the two infant children of the parties without interference from the Plaintiff until further order of this Court.

And this cause is continued.

ENTER: / /

JUDGE

I request the entry of this Decree.

Tonita M Warren

Tonita M. Warren, Counsel for the Defendant

I have seen this Decree.

Louis Ellenson, Counsel for the Plaintiff

NOTICE OF MOTION

TO: David Capps, Sr.
1189 Tyler Avenue
Newport News, Virginia

PLEASE TAKE NOTICE that on the 25th day of January, 1974 at 9:00 a.m., or as soon thereafter as I may be heard at the Courtroom of the above Court, I, Defendant herein, shall move the Court to enter an Order to compel you to pay me reasonable money for the support and maintenance of our two infant children as well as myself; to award temporary custody of our two infant children to me; to compel you to move from the marital abode known as 1189 Tyler Avenue, Newport News, Virginia or to provide me with comparable housing in order that myself and our two infant children may have suitable lodging pending adjudication of property rights in 1189 Tyler Avenue, a suit pending presently in the Circuit Court for the City of Newport News; to enjoin and restrain you from in any way interferring with me; and to pay me through my counsel of record and for use a reasonable fee for services hereabout in accordance of this proceeding, including attorney's fee in order for me to carry on and prosecute this suit.

Respectfully,

PATRICIA DIANE SEAWELL CAPPS
By Counsel

Tonita M Warren, p.q.
TONITA M. WARREN, ESQUIRE
Newport News Legal Aid Society
2901 West Avenue, Suite 202
Newport News, Virginia 23607

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Motion was mailed, postage fully prepaid, to Louis Ellenson, Esquire, First & Merchants National Bank Building, 2600 Washington Avenue, Suite 410, Newport News, Virginia 23607, counsel of record for the Plaintiff, this 22 day of January, 1974.

Tonita M Warren
TONITA M. WARREN, ESQUIRE

ANSWER TO BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF AFORESAID COURT:

Comes now your Defendant, Patricia Diane Seawell Capps, and for her Answer to the Bill of Complaint exhibited against her, states as follows:

1. That the Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of the Bill of Complaint.

2. That the Defendant admits there was one child born of the marriage, David Capps, Jr., born May 23, 1971, and further states that there was one child adopted by your Plaintiff, Serena Lee Capps, adopted by your Plaintiff on or about December 1969.

3. That the Defendant denies each and every allegation set forth in Paragraph 10 of the Bill of Complaint and calls for strict proof thereof.

CROSS-BILL

Your Defendant, Patricia Diane Seawell Capps, for her Cross-Bill, respectfully represents unto the Court the following facts:

(a) That the Defendant adopts Paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of the Bill of Complaint as part of this Cross-Bill;

(b) That the Defendant adopts Paragraph 5 of the Bill of Complaint with the following corrections: that there was one child born of the marriage, David Capps, Jr., born May 23, 1971; and there was one child adopted by the Defendant i.e. Serena Lee Capps, age 4 years, adopted by the Defendant on December 1969.

(c) That on or about the 23rd day of October, 1973, the Plaintiff assaulted and beat your Defendant so as to cause her to seek a warrant in the

Juvenile and Domestic Relations Court of the City of Newport News, which case is presently pending against your Plaintiff and so as to place her in such fear of her own safety that she was forced to flee the premises of the parties and to establish a separate residence for herself and her two children with her parents and, since that date, the separation of the parties has continued without interruption or cohabitation.

(d) That your Defendant is the mother of the aforesaid infant children and is a fit and proper person to have custody and care of same.

WHEREFORE, your Defendant asks that the Bill of Complaint exhibited against her be dismissed; that she be granted a divorce a mensa et thoro on the grounds of cruelty and reasonable apprehension of bodily harm; that she be awarded sole care, custody and control of the infant children of the marriage; that the Plaintiff be required to pay a reasonable sum for the support, maintenance and education of the infant children of the marriage; that the Plaintiff be ordered to pay all court costs incurred in this cause and attorney's fees and that your Defendant have such other and more complete relief as the nature of her case may merit or equity deem meet.

Respectfully,

PATRICIA DIANE SEAWELL CAPPS
By Counsel

Tonita M Warren

Tonita M. Warren, Esquire
Newport News Legal Aid Society
2901 West Avenue, Suite 202
Newport News, Virginia 23607

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer to Bill of Complaint and Cross-Bill was mailed, postage fully prepaid, to Louis Ellenson, Esquire, First & Merchants National Bank Building, 2600 Washington Avenue, Suite 410, Newport News, Virginia, 23607, counsel of record for the Plaintiff, this 17th day of December, 1973.

Tonita M. Warren
Tonita M. Warren, Esquire

(For the record, it was noted that during the testimony of David Capps, Sr., Dr. Michael Golemba, a psychologist, was also present.)

MR. DAVID CAPPS, SR., called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEGUM:

Q Your name is David Capps?

A Yes, sir.

Q Mr. Capps, when and where did you marry your wife, Patricia Seawell Capps?

A October 9, 1969, in Roanoke Rapids, North Carolina.

Q Are you and she both of the white race?

A Yes.

Q How many children were adopted of your marriage and how many children were born of your marriage?

A One was adopted and one was born to

1 the marriage.
2 Q Give the name of the child that was
3 born to the marriage.
4 A David Capps, Jr.
5 Q Age?
6 A Three.
7 Q The name of the child adopted?
8 A Serena Lee Capps.
9 Q Age?
10 A Five. Will be five the 23rd.
11 Q Both children are living at the
12 present time with your wife?
13 A I would assume. I don't know. I
14 haven't seen the children.
15 Q Are you and your wife now living
16 together?
17 A No, sir.
18 Q In what city and state did you last
19 live together?
20 A Newport News, Virginia.
21 Q At what address?
22 A 1189 Tyler Avenue.
23 Q Is that the address where your wife
24 and children are presently residing?
25 A I don't know. I would assume so.

1 Q As far as you know?
2 A Yes, sir.
3 Q That is the address that Judge
4 Garnett's temporary support order directed you to move out
5 of, and your wife to move in, is that correct?
6 A Yes, sir.
7 Q How long have you lived in the
8 state of Virginia?
9 A All my life.
10 Q Do you consider Virginia your
11 permanent home?
12 A Yes, sir.
13 Q When did the separation take place
14 between you and your wife?
15 A I think October 22nd, 19 -- last
16 year.
17 Q '73?
18 A Yes.
19 Q On that date who left?
20 A My wife.
21 Q Where did she go to live?
22 A I think she went to Chantilly
23 Apartments, I don't know.
24 Q What city is that?
25 A Newport News.

1 Q Have you lived separate and apart
2 from her continuously without interruption and without
3 cohabitation since that date?
4 A It was the 29th -- well, the following
5 Saturday she came back, I went and got her, and we stayed
6 together approximately three hours, and she left again.
7 Q She left again?
8 A Yes, sir.
9 Q And do you know where she went to live?
10 A I assume she went back to Chantilly
11 Apartments.
12 Q Have you lived with her after she
13 came back for that one-week period?
14 A No, sir. She didn't come back for
15 a one-week period, about three hours.
16 Q Have you lived with her since she
17 returned for that three-hour period?
18 A No, sir.
19 Q Is there any possibility or probability
20 of a reconciliation at this time between you and your wife?
21 A No, sir.
22 Q Did you give your wife any cause or
23 justification for her leaving you?
24 A No, sir.
25 Q Now, referring to on or about

October 22nd, 1973, when she left you, would you tell us, please, what occurred on that occasion?

A There was an argument and she made a statement that I wasn't half the man Gary was.

Q Gary who?

A I don't know his last name. I caught her out with him one time a year or two ago. She was coming from a dance.

Q You have seen him in the company of your wife?

A Well, they were in a crowd.

Q All right.

A And she used him.

Q What occurred after she told you that you were not half the man that Gary was?

A I hit her.

Q And you hit her how many times?

A One time.

Q And did she leave shortly after you hit her?

A Well, I tried to hug her and apologize to her.

Q Then what happened?

A She left.

Q Did she take her clothes with her?

1 A No, sir. Just the clothes she had on.
2 Q Did she take the children with her?
3 A Yes, sir.
4 Q You said approximately a week later
5 she came back?
6 A The following Saturday she came back.
7 I went and got her.
8 Q And she was with you three hours?
9 A Yes, approximately three hours.
10 Q What was the purpose of her coming back
11 those three hours?
12 A I don't have any idea.
13 Q Did she come at your request?
14 A Yes, sir.
15 Q What was your purpose in asking her
16 to come back?
17 A A reconciliation.
18 Q Did you ask her to come back to
19 live with you?
20 A Yes, sir.
21 Q What did she say?
22 A No.
23 Q Did she give any reason for it?
24 A No, she -- no need to live together
25 if you don't love anybody.

Q She told you she didn't love you?

A Yes. -- And hadn't.

1
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10 Q Now, for the purpose of the record,
11 Mr. Capps, did you serve overseas?
12 A Yes, sir.
13 Q In what branch of service?
14 A Marine Corps.
15 Q Where did you serve?
16 A Vietnam.
17 Q What year would it have been?
18 A '67 and '68.
19 Q What happened to you over there?
20 A Sniper shot me.
21 Q What part of your body?
22 A Through the head.
23 Q And as a result of the sniper shooting
24 you, what had to be done to your head?
25 A I had to have cranial-plastery.

1 REPORTER: "Plastery"--
2 is that the right word?
3 A Yes.
4 Q What did that entail?
5 A I had a skull defect and they had to
6 put a plate in my head.
7 Q You still have the plate in your head?
8 A Yes, sir.
9 Q What else happened to you over there
10 besides your head injury?
11 A Well, it left me paralyzed on my
12 left side.
13 Q And as a result of your paralysis,
14 do you have difficulty walking?
15 A Yes, sir.
16 Q What do you have to assist you in
17 walking?
18 A A brace.
19 Q How far does that brace extend?
20 A This brace extends right below my
21 knee, but I have another that I am supposed to wear
22 that comes all the way up to my hip, because my hip is
23 out of joint.
24 Q Now, I notice your left arm is in
25 a sling?

1 A Yes, sir.
2 Q What is wrong with your left arm?
3 A It is paralyzed also.
4 Q The left arm is paralyzed?
5 A Yes, sir.
6 Q I notice you have a cane -- you use
7 that for walking?
8 A Yes, sir, when I walk a lot, a
9 distance.
10 Q Are you able to work?
11 A No, sir.
12 Q What sort of pension do you receive
13 as a result of your wounds?
14 A A hundred percent.
15 Q One hundred percent disability?
16 A Yes, sir.
17 Q What do you receive a month?
18 A $745.
19 Q Now, you are under court order to
20 pay the mortgage payment on the home?
21 A Yes, sir.
22 Q How much is that a month?
23 A $157.31.
24 Q You are also under court order to
25 pay so much a month to the support of your wife and the two

1 children, is that right?

2 A Yes, sir.

3 Q How much is that at the present?

4 A $161.

5 Q Do you have difficulty making those

6 payments out of what you are receiving?

7 A Yes, sir.

8 Q How much do you pay rent?

9 A A hundred dollars a month.

10 Q Are you able to fix any meals for

11 yourself?

12 A No, sir.

13 Q Do you have to eat out?

14 A Yes, sir.

15 Q How much, approximately, does it

16 run you a month for food for yourself?

17 A I don't know.

18 Q You don't have any idea?

19 A No, sir.

20 Q Where do you eat most of your meals?

21 A Restaurants.

22 Q The Court would want to have some

23 idea, what does it cost you for a meal when you eat out?

24 A Two dollars -- a dollar and a half,

25 two dollars.

1 Q Do you eat all of your meals out?
2 A Yes, sir.
3 Q How much does breakfast cost you?
4 A About a dollar and a half, two
5 dollars.
6 Q How about lunch?
7 A A dollar and a half, two dollars.
8 Q So it runs you from four-fifty to
9 six dollars a day for food?
10 A Somewhere in the neighborhood of
11 that, yes, sir.
12 Q In addition to your rent and food
13 and mortgage payments and what you are paying your wife,
14 do you have any life insurance?
15 A Yes, sir.
16 Q With whom do you have it?
17 A John Hancock.
18 Q How many policies do you have?
19 A Two.
20 Q How much do each policy run a month?
21 A I don't know exactly what they run
22 each month.
23 Q Give us approximately -- do you
24 pay it by the year or what?
25 A I pay it by the year.

1 Q How much does it run you a year?
2 A One policy runs $157 and some odd
3 cents; and another policy runs me $161, or $162, I think.
4 Plus I have automobile insurance I have to pay by the year.
5 Q Are you able to drive a car?
6 A Yes, sir.
7 Q Is your car paid for?
8 A Yes, sir.
9 Q What kind of car do you drive?
10 A A '69 Mustang.
11 Q What is your gasoline -- what does
12 it run you on an average for a week?
13 A I am sorry, I don't know.
14 Q How often do you fill up the tank?
15 A Every couple of days.
16 Q Every couple of days?
17 A Yes, sir.
18 Q How many gallons does your thank
19 hold?
20 A About 18 or 19.
21 Q You use regular? -- About 55¢, 56¢
22 a gallon?
23 A Yes, sir.
24 Q Now, after the hearing for temporary
25 support in the latter part of January of this year, did you

1 have a nervous breakdown?

2 A Yes, sir.

3 Q How soon thereafter -- after the

4 hearing -- did that occur?

5 A The next day.

6 Q Where were you hospitalized?

7 A Riverside Hospital and Bayberry

8 Psychiatric Hospital.

9 Q How long were you at Riverside and

10 how long were you at Bayberry?

11 A I stayed at Riverside eighteen or

12 nineteen hours.

13 Q How about Bayberry? How long were

14 you there?

15 A Approximately three months, I think.

16 Q You have with you your psychologist,

17 is that right?

18 A Yes, sir.

19 Q You have him here because you want --

20 for security reasons, is that right?

21 A Yes, sir.

22 Q What precipitated your being

23 hospitalized for this nervous breakdown?

24 A The fact that everything that I had

25 was taken away from me.

1 Q By that you mean what?
2 A - - Financially and my children.
3 Q How about your home?
4 A And my home.
5 Q Does the government pay all of your
6 psychiatric expenses?
7 A No, sir.
8 Q What part of it does the government
9 pay and what part do you pay?
10 A 75% -- the Government pays 75%.
11 Q And you pay 25%?
12 A Yes, sir.
13 Q Is that what is called Champus?
14 A Yes, sir.
15 Q Now, do you know approximately how
16 much you owe your - - what is the name of the firm that
17 treat you?
18 A Bayberry Psychiatric Hospital.
19 Q Do you know how much you owe it
20 at this time of your own expense?
21 A Fourteen or fifteen hundred dollars,
22 in that neighborhood, something like that.
23 Q Have you established any sort of
24 payment schedule with this Bayberry Hospital?
25 A Not as of yet, no, sir.

1 Q Now, do you owe the Riverside
2 Hospital?
3 A Yes, sir.
4 Q How much do you owe them?
5 A Around $360, I think.
6 Q Have you arranged any payment
7 schedule with them?
8 A No, sir.
9 Q Do you owe any department stores?
10 A Sears & Roebuck.
11 Q How much do you owe them?
12 A Approximately $115 or $120.
13 Q Have you arranged any payment
14 schedule with them?
15 A Yes, sir, I pay them $10.75 a month.
16 Q Now, has your wife been taking the
17 children to any particular doctor or doctors, or clinics?
18 MRS. WARREN: I object to
19 this, he doesn't have any personal knowledge
20 of this.
21 A I received a bill.
22 BY MR. LEGUM:
23 Q From what place has your wife been
24 taking them?
25 A The Children's Clinic.

1 Q Have the bills been sent to you?
2 A Yes, sir.
3 Q Do you know approximately how much
4 is owing the Children's Clinic?
5 A $60 or $70, plus some dentistry
6 bills -- or a dentist bill.
7 Q Mr. Capps, while you were living with
8 your wife, had she ever assaulted you requiring treatment
9 by a hospital?
10 A Yes, sir.
11 Q How many times?
12 A Three.
13 Q Would you give each occurrence,
14 and where you received treatment, and what occurred?
15 A I was hospitalized in Waynesboro. . .
16 Q Waynesboro, Virginia?
17 A Yes, sir, and they X-rayed my hand.
18 Q What occurred?
19 A My wife threw me across the room.
20 Q Were you in the same physical
21 condition that you are today?
22 A Yes, sir.
23 Q Do you know why she threw you across
24 the room?
25 A We were arguing.

1 Q Was anything broken in your hand?
2 A No, sir.
3 Q That was one. How about the other
4 two occasions?
5 A She grabbed my foot one time when I
6 was on the bed and twisted my toe around, and I was - - I
7 had to have that X-rayed at Veterans Hospital.
8 Q At Kecoughtan?
9 A Yes, sir.
10 Q Was anything broken then?
11 A No, sir.
12 Q And why did she twist your toe?
13 A We were arguing.
14 Q What was the third occasion?
15 A When we were living in Newport News
16 also.
17 Q Where did you go for treatment?
18 A McDonald Army Hospital.
19 Q Where is that?
20 A Fort Eustis.
21 Q What occurred there?
22 A She pushed me -- off my balance.
23 Q What part of your body was injured?
24 A My hand again.
25 Q What was the nature of the injury

1 to your hand?

2 A It was sprained.

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6 Q Now, the court order gave your wife
7 possession of the home on Tyler Avenue commencing
8 February 1, 1974. Did your wife actually move into the
9 home on February 1, 1974?
10 A I don't have direct knowledge that
11 she did, but I understand that she didn't.
12 Q Do you know how long she was . . .
13 MRS. WARREN: I object, if
14 he didn't have personal knowledge.
15 MR. LEGUM: Over her
16 objection, go ahead and answer it.
17 A Three weeks. She broke the locks
18 off of the door.
19 Q Broke the locks off the door?
20 A Or took the locks off the door and
21 left the doors open -- or left the locks off.
22 Q Mr. Capps, have you observed the
23 home where your wife and children reside on Tyler Avenue
24 recently?
25 A No, sir.

1
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3 Q Have you ever separated before?
4 A Yes.
5 Q Would you tell me when you separated
6 before?
7 A When my pension run out, when we
8 first got married, after I adopted her child.
9 Q What date was that?
10 A A few months after I adopted her
11 child.
12 Q Can you give me the year?
13 A '69 and '70.
14 Q Is that the only times you all
15 have been separated?
16 A No, ma'am.
17 Q What other times?
18 A Through all of '70, and all of '71,
19 we were separated on and off.
20 Q On and off?
21 A Yes.
22 Q Can you tell me the exact dates?
23 A No, I didn't keep a running list, no,
24 ma'am.
25 Q Is that the last time you separated?

1 A No.
2 Q Tell me the last time.
3 A In October, I think, of '72.
4 Q And got back together again?
5 A Yes.
6 Q When?
7 A What date did we get back together?
8 Q Yes?
9 A I don't know what date.
10 Q How long did you remain separated,
11 approximately?
12 A A few days.
13 Q And after October of '72, were you
14 separated after that?
15 A Were we separated after that?
16 Q Yes?
17 A Yes.
18 Q When was that?
19 A I don't recall what month.
20 Q What year?
21 A '73.
22 Q Did you get back together again?
23 A Yes.
24 Q Would you tell me approximately when
25 you got back together again?

1 A Well, our separations usually just
2 lasted a few days.
3 Q So they really weren't major
4 separations?
5 A No.
6 Q When you say you were separated on
7 and off in '70 and '71, was that just a few days?
8 A Yes.
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1 MR. THOMAS FREDERICK CAPPS,
2 called as a witness on behalf of the
3 Complainant, being first duly sworn,
4 testified as follows:
5
6 DIRECT EXAMINATION
7
8 BY MR. LEGUM:
9 Q State your full name, please.
10 A Thomas Frederick Capps.
11 Q What is your address?
12 A 6071 Jefferson Avenue.
13 Q Where are you employed?
14 A Newport News shipyard.
15 Q How old are you?
16 A Thirty.
17 Q Have you ever lived in the home of
18 David Capps, your brother, and Patricia Capps, on Tyler
19 Avenue, city of Newport News?
20 A Yes, I have.
21 Q What year?
22 A In '73.
23 Q What month?
24 A February.
25 Q How long did you stay there?

A Just about thirty days.

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14 Q During the month that you lived there
15 in February of '73, how did your brother treat his wife?
16 A The same way he does now -- love.
17 Q Did you see any evidence of mis-
18 treatment by your brother towards his wife in that month
19 you were there?
20 A Actuall mistreatment, no. I have seen
21 arguments, but actual mistreatment, no.
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15 Q Now, was there a lot of tension in the
16 home while you were there, living there for that month?
17 A I would say no more than any other
18 home.
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23 DIRECT EXAMINATION
24 BY MR. LEGUM:
25 Q State your name and address, please.

1 A Eddie D. Capps, 18 Greenwood Road.
2 Q Newport News, Virginia?
3 A Newport News, Virginia.
4 Q What is the address on Tyler Avenue
5 of your son's home where his wife and children are residing?
6 A 1189 Tyler Avenue.
7 Q How far is that from your home?
8 A Well, it is a long block.
9 Q Is it within walking distance?
10 A Oh, yes.
11 Q And you are what relation to David
12 Capps?
13 A David's father.
14 Q And Mr. Capps, do you know Patricia
15 Capps, your daughter-in-law?
16 A Yes, I do.
17 Q Now, how long has your son maintained
18 his home in Virginia?
19 A Well, on Tyler Avenue, I would say
20 about two years.
21 Q I am talking about the state of
22 Virginia.
23 A Well, he has been a permanent
24 resident of Virginia.
25 Q Lived here all his life?

1 A Lived here all his life except for
2 service.
3 Q Does he consider Virginia his
4 permanent home?
5 A Yes.
6 Q Are he and his wife both of the
7 white race?
8 A Yes, they are.
9 Q How many children were born of their
10 marriage?
11 A One.
12 Q How many children were adopted of
13 their marriage?
14 A One.
15 Q With whom are the children presently
16 residing?
17 A With Patricia Capps.
18 Q This is David's wife?
19 A David's wife.
20 Q In what state did they last live
21 together?
22 A In Virginia.
23 Q What city in Virginia?
24 A Newport News.
25 Q What address?

1 A 1189 Tyler Avenue.
2 Q Are they now living together?
3 A No, sir.
4 Q When did this separation take place
5 between your son and his wife?
6 A October 29 of last year.
7 Q '73?
8 A '73, yes.
9 Q On that date, who left?
10 A I was working in the shipyard --
11 could I elaborate on it?
12 Q I want to know, did your son leave,
13 or did his wife leave?
14 A That is what I have to explain. I
15 couldn't say. I got the message she was gone.
16 Q All right, she was gone. And has she
17 lived with your son since October 29, 1973?
18 A No, sir.
19 Q How long did your son continue to
20 live on Tyler Avenue?
21 A He was continuing to live there until
22 January the - - specific dates, now, I don't. . .
23 Q Sometime in January of 1974?
24 A That is right. I would say the
25 25th -- around the 25th.

1 Q Under what circumstances did your
2 son leave the Tyler Avenue home?
3 A He left in an ambulance.
4 Q Did the court order him to get out
5 by February first?
6 A Yes, sir. -- On a Friday, and on a
7 Saturday, I carried him to Riverside Hospital.
8 Q Mr. Capps, did you visit your son
9 while he and his wife were living together on Tyler Avenue?
10 A Quite a few times.
11 Q Did you see any evidence of
12 mistreatment of his wife by your son? -- While they
13 were living together?
14 A No, no.
15 Q And from what you observed, did he
16 give his wife any cause or justification for her leaving
17 him?
18 A Not to my knowledge.
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1 MRS. PATRICIA CAPPS, called as a
2 witness on her own behalf, being first
3 duly sworn, testified as follows:
4
5 DIRECT EXAMINATION
6
7 BY MRS. WARREN:
8 Q Would you please state your full
9 name.
10 A Patricia Diane Capps.
11 Q Are you the Defendant in the suit
12 presently pending in the Circuit Court of the City of
13 Newport News, Virginia, for divorce?
14 A Yes.
15 Q Where do you presently reside?
16 A 1189 Tyler Avenue.
17 Q Is that in the city of Newport News?
18 A Yes.
19 Q Are you married to David Capps?
20 A Yes.
21 Q When were you married?
22 A October 29, 1969.
23 Q October 9th or 29th?
24 A October 9th -- the 9th.
25 Q And where were you married?

A Halifax County, Roanoke Rapids.

Q North Carolina?

A Right, North Carolina.

Q Have you been a resident of the state of Virginia for a period exceeding one year?

A Yes.

Q Do you consider Virginia to be your home?

A Yes.

Q And where are you living now?

A At the present time?

Q In what state?

A Newport News, Virginia.

1 members of the white race?

2 A Yes.

3 Q Both over 21?

4 A Yes.

5 Q Neither one of you are a member of

6 the armed forces, is that correct?

7 A What do you mean?

8 Q Are either one of you a member of the

9 Air Force -- Navy -- Army?

10 A No, he is medically retired from

11 the Marines.

12 Q How many children did you have born

13 of the marriage?

14 A One.

15 Q His name?

16 A David Capps, Jr.

17 Q And you have another child and she

18 was adopted, is that correct?

19 A Yes.

20 Q When did you and your husband

21 separate?

22 A October 23rd.

23 Q For what reason?

24 A You want me to explain the whole

25 situation?

1 Q Yes.

2 A Well, I called the Child Protective
3 Service to have them come and help keep the marriage
4 together. He came over -- Mr. Donalds and Mr. Lassenter
5 came by . . .

6 Q Who were they from?

7 A Child Protective Service. And they
8 were going to talk to David and myself, and see if we can't
9 work things out; and David told me he didn't want those
10 S.O.B.'s around here, so he took off. He stayed gone for
11 a while, and he came back; and Mr. Donalds and Mr.
12 Lassenter hadn't come; and right after David drove up,
13 Mr. Donalds and Mr. Lassenter drove up and parked behind
14 him, and he couldn't move.

15 He said he didn't want to be there
16 when they were there. So they tried to explain to David
17 why they were there -- you know, instead of taking the
18 children away from us, they tried to explain to him that
19 they were there to help the marriage, to keep the family
20 together. He wouldn't listen. He just sat there. Didn't
21 say a word.

22 So, I guess a week or two later,
23 they -- I called them and I believe it was Mr. Donalds
24 and Mrs. Brinkley came, and he told me he didn't want those
25 S.O.B.'s around there. And he sat there, and I started

1 talking -- well, Mrs. Brinkley asked me which one of us
2 was going to start. I had started talking, and David
3 stood up, and he said, "Well, she will draw you a pretty
4 good picture," and he walked out. He wouldn't sit still
5 long enough for them, or myself, to explain why they were
6 there.
7 So me and David got in a big argument
8 after Mrs. Brinkley left. Well, he had left, and right as
9 she was leaving, he drove up; and we got in a big argument,
10 and I told him this was why him and his mom couldn't get
11 along was because of his temper, and he hauled off and hit
12 me. So I walked around Serena's bedroom, and he grabbed
13 me around the neck and started choking me in the bend of
14 his arm. I don't know how I got loose. But I got loose
15 and I walked through the kitchen, back in the living room,
16 and he told me, he said, "You and your bastard get out
17 of here." So I got my shoes, my pocketbook, and the two
18 children, and I walked out.
19 Q What date was that?
20 A The 23rd, I believe.
21 Q Of what?
22 A October.
23 Q What year?
24 A '73.
25 Q And since that date, have you and

1 your husband lived together?

2 A No.

3 Q Have you seen your husband since

4 that date?

5 A I have seen him.

6 Q Have you established a separate

7 residence from him since that date?

8 A Yes, we have lived separate.

9 Q You have not spent the night with

10 him in the same house since that date?

11 A No.

12 Q Did you go back to the house at any

13 time after that date?

14 A I went back, I believe it was on the

15 Saturday, to try to talk things, see if we could work

16 things out. We talked, and I believe Preacher Hamilton

17 was over, and I told him I wasn't a punching bag, I wasn't a

18 curse-box, and I am not no nigger maid. So we talked, and

19 I got some of the children's clothes and a couple of things

20 for myself. And that was it. I asked him if he would give

21 me some money for some milk, you know, little stuff for

22 food . . .

23 Q Where did you go to live after you

24 left that house?

25 A What address?

1 Q Yes?
2 A 5510-A, Apartment 1-A, Marshall
3 Avenue.
4 Q Who lived there?
5 A My parents.
6 Q How long did you live with your
7 parents?
8 A From October until March 2nd.
9 Q On March 2nd, what did you do?
10 A Moved back in my house.
11 Q Have you been living in the house
12 since March 2nd, continuously?
13 A Yes.
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Q Mrs. Capps, how long did you and your husband stay married?

1 A Four years.

2 Q Can you briefly describe this

3 marriage?

4 A Oh, he has got a temper -- well, we

5 both have a temper, but he - - he can't have a boss and

6 it is bad, and we stayed in a lot of arguments. . . .

7 Q Was it marked by repeated separations?

8 A Yes.

9 Q And what would cause the separations?

10 A I don't know, he would get mad

11 because he couldn't get a little, and one thing led to

12 another, and we separated. The only time that we, I guess,

13 ever separated for him not getting a little is when we

14 lived in Waynesboro, and ever since we moved our refrigerator

15 up there, the little grate across the bottom keeps falling

16 off; and it fell off one morning, and David was in a bad

17 mood that morning, and he told me he wanted me to pack my

18 junk and get out, so I packed my stuff and me and the kids

19 went back.

20 Q Did you ever hit him in Waynesboro?

21 A Yes, I have.

22 Q Did you throw him across the room?

23 A I wouldn't say I throwed him across

24 the room, I pushed him and he lost his balance.

25 Q What caused you to do that?

1 A We were in an argument -- he was
2 throwing lamps at me, threw a table at me.
3 Q Did you push him again in Newport
4 News?
5 A I have.
6 Q And why did you do that?
7 A We were in an argument. I don't
8 know what it was over -- and -- his parents had the kids,
9 and he kept telling me I wasn't going to get my kids back
10 until we made up; and I laid down on D.J.'s bed, and I
11 was really hurting, I was crying, and he come up and laid
12 down beside me. He said, "Let's make up, and we will go
13 get the kids." And I told him I didn't like the way he
14 was using my kids and I told him if he didn't get away
15 from me, I was going to haul off and hit him, and he didn't
16 get away, so I pushed him off the bed. He hurt his left
17 hand. And I walked to my bedroom, no, then I walked to
18 the bathroom, and he followed me there. Then I walked to
19 my bedroom, and I told him, if he didn't stay away from
20 he I was going to hurt him, but bad. He kept nagging, and
21 cussing, and ripping, and raring; and I knocked my hot
22 curlers off the dresser, and told him to get away from it --
23 he wouldn't. So I pushed him real hard and he fell and
24 hurt his right hand. Anyhow, that day he hurt both hands,
25 and I ended up taking him to Fort Eustis, to McDonald

1 Hospital at Fort Eustis to get them X-rayed.
2 Q The most recent separation, did
3 you do anything to cause him to hit you?
4 A Only when he didn't get a little.
5 Q All right. Did David ever
6 threaten to kill himself?
7 A Recently? So I heard, yes. So I
8 heard.
9 Q Did he ever threaten to kill himself
10 in front of you?
11 A Gosh - - since we have been
12 separated?
13 Q No?
14 A Since we have been married? --
15 Years ago.
16 Q Is David on medication?
17 A Yes, he is.
18 Q How does this affect him?
19 A It makes him sleepy -- but you let
20 a friend come over and he is wide awake. Me and his kids
21 aren't interested to keep him awake, but let one of his
22 friends come over, or his brother, to go to Virginia
23 Beach to have a ball, and he is wide awake.
24 Q Did you ever threaten David with
25 other men?
A No.

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11 Q I take it although the Court gave you
12 possession of the home on Tyler Avenue as of February first,
13 you waited until March 3rd to move in, is that right?
14 A Yes.
15 Q What reason did you give for delay
16 in going to the home?
17 A What reason? All right. First, the
18 well pump was stolen. Then I went to check on the house
19 to see if David was moved out. -- I didn't have no keys.
20 Mr. Ellenson, David's second lawyer, was supposed to give
21 me the keys, and he hadn't, so I went to check on the house,
22 my back door was busted open. I had a chain lock on it
23 and they had busted the lock.
24 Q You didn't do that yourself?
25 A I didn't do it.

1 Q And that is the reason, because
2 the back door was busted and well pump was broken, you
3 didn't go back?
4 A The well pump was stolen -- yes,
5 I was scared to move in that house by myself -- but I had
6 to have a place to stay.
7 Q Where were you staying for that
8 month?
9 A I stayed with Mom.
10 Q You were staying with her before
11 this divorce suit was filed, weren't you?
12 A Yes, and I stayed with Connie a week
13 while my Mom was watching Connie's kids while Connie was
14 working. -- My oldest brother got pneumonia and she had
15 to stay and take care of him, and I told her I would watch
16 the kids for that one week.
17 Q Did you ever tell your husband that
18 the well pump was stolen?
19 A No, I don't think so.
20 Q What decided you to go there on
21 March 3rd?
22 A March 3rd?
23 Q That is what you testified today . . .
24 A I moved back in March 2nd.
25 Q Excuse me, March 2nd?

1 A Connie was going to move in with me --
2 her and her husband had decided they would split up and try
3 to work their marriage out.
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6 Q Your husband is a crippled, isn't he?
7 A Yes.
8 Q And while you were living together,
9 you had to put the braces on his legs?
10 A No.
11 Q Doesn't he wear two braces on his
12 legs?
13 A He is supposed to wear a long-leg
14 brace on account of his hip pops out of joint.
15 Q And he is unable to put the long
16 leg brace on by himself, wasn't he?
17 A Right.
18 Q You had to help him?
19 A Right.
20 Q In addition his left arm is paralyzed,
21 is it not?
22 A It is.
23 Q And he has this plate in his head?
24 A He does.
25 Q Now, you mention a number of times

1 that the arguments between you and him -- was, the way you
2 expressed it, because he did not get a little, is that
3 right?
4 A Yes.
5 Q By that you mean you refused him
6 sexual relations when he wanted it, is that right?
7 A Yes.
8 Q In fact you demanded he pay you money
9 before you would submit to sex relations, isn't that true?
10 A No. -- Has he told you that?
11 Q I am asking you questions, Mrs.
12 Capps. You answer the question.
13 A I have never requested money so I
14 will go to bed with him.
15 Q But you did on numerous occasions,
16 as you have testified, denied him sex relations when he
17 requested?
18 A I did. But that was my hangup, not
19 his.
20 Q Now, Mrs. Capps, I believe you and
21 David, your husband, went to three separate marriage
22 counselors, is that right?
23 A Yes, sir.
24 Q One was Peninsula Family Service, a
25 lady by the name of Ann Marchino, on West Avenue, is

1 that right?

2 A Yes.

3 Q Your husband -- it was your husband's

4 idea to go to this Peninsula Family Service, rather than

5 yours, was it not?

6 A Well, we talked about it.

7 Q All right. Then you went to the

8 Veterans Administration Hospital, a woman by the name of

9 Mrs. Noble, sometime shortly before November of '72, is

10 that right?

11 A Yes.

12 Q And you stopped going to Mrs. Noble,

13 is that right?

14 A Yes.

15 Q What reason was it that you stopped

16 going?

17 A - - Let's see - - I can't think of

18 the reason we stopped going.

19 Q Now, the third marriage counselor

20 was a lady from the Juvenile and Domestic Relations Court,

21 Joyce Olivis -- O-L-I-V-I-S?

22 A Yes.

23 Q In '73. And I ask you, did you not

24 refuse to go to this lady for marriage counselling?

25 A I refused to go.

1 Q Why did you refuse?
2 A Because the only thing David has done
3 is made the same old promises, and he has showed me too many
4 times what his promises is.
5 Q What was his promises he failed to
6 keep?
7 A Of change.
8 Q Change in what way?
9 A As far as his temper.
10 Q Well, what objection did you have to
11 going to a marriage counselor to try to iron out the
12 differences?
13 A Well . . .
14 Q Answer my question please.
15 A Excuse me?
16 Q What objection did you have to going
17 to this lady to try to iron out your marital difficulties?
18 A I just told you.
19 Q You just said he did not live up to
20 his promises.
21 A He has made the same - - Why should I
22 be the one to try to work the marriage out when he doesn't
23 really try. I tried to change my sex life, and there is
24 just not sex in me. -- Why should just one person work on
25 a marriage, and another not?

1 Q Did you, shortly before you left him
2 in October of '73, threaten your husband that you were going
3 to take him for everything he has got, that he was a cripple,
4 that you had this sex problem -- did you tell him that?
5 A I didn't say I would take him for
6 everything he has got.
7 Q What did you say?
8 A I told him that half of everything we
9 owned together belongs to me.
10 Q You had an argument with him shortly
11 before you left the last time, and that is when you made the
12 statement?
13 A No, this statement was when we were
14 seeing Mrs. Oliver.
15 Q That was in October of '73, wasn't it?
16 A We were already separated.
17 Q This was after you left the home?
18 A Yes. If I am not mistaken, it was
19 the Saturday I went to pick the clothes up.
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6 Q On the occasion that Pastor Hamilton
7 -- I believe he is from Riverside Baptist Church -- came
8 by your home, as you testified, did not Pastor Hamilton
9 tell you that your husband wanted you to stay, and told you
10 that the Lord could put love in your heart, and you replied
11 that the Lord could not put love in your heart because you
12 had no love for David? Did you tell him that?
13 A I told him I didn't love David.
14 Q Did the minister say substantially
15 what I asked you, the question?
16 A I guess, if he said he did.
17 Q Has your husband been to Fisherville,
18 Virginia, for rehabilitation while you were living together?
19 A Yes.
20 Q And when you left him in October of
21 '73, he was taking an accounting course at Thomas Nelson
22 Community College, is that correct?
23 A Yes.
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11 Q Each time you left your husband, did
12 he attempt to try to get you to come back, reconcile?
13 A Yes.
14 Q This last time you left, he also
15 attempted to get you to come back, did he not?
16 A Yes.
17 Q And you did come back for a short
18 period of time, about a week later, for three hours as
19 he testified?
20 A Yes.
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BY MRS. WARREN:

Q Please state your full name.

1 A Ruby Ivy Seawell.

2 Q Your address?

3 A 5510-A, Apartment 1-A, Marshall

4 Avenue, Newport News, Virginia.

5 Q Are you aware we are taking depositions

6 in this divorce suit now pending in the Circuit Court for the

7 city of Newport News?

8 A Yes.

9 Q How old are you?

10 A Forty-eight.

11 Q And are you related to the Defendant,

12 Mrs. Capps, in this suit?

13 A Yes.

14 Q What is your relationship?

15 A Mother.

16 Q And do you know David Capps?

17 A Yes.

18 Q Are both of these parties over twenty-

19 one?

20 A Yes.

21 Q Are both of these parties members of

22 the white race?

23 A Yes.

24 Q Is either one of the parties a member

25 of the armed forces now?

1 A No.
2 Q Were any children born of this marriage?
3 A Yes.
4 Q What are their names -- his name?
5 A David Capps, Jr.
6 Q Approximate age?
7 A Three.
8 Q Was there another child in the home?
9 A Yes.
10 Q And her name?
11 A Serena Lee Capps.
12 Q And her relationship to Mr. Capps?
13 A Step-daughter.
14 Q Now were these parties married?
15 A Yes.
16 Q Can you tell us the date?
17 A October 29 - -
18 Q Was it October 9, 1969?
19 A Yes.
20 Q Were they married in Roanoke Rapids,
21 North Carolina?
22 A As far as I know, yes.
23 Q Has Mrs. Capps lived in the state of
24 Virginia for more than one year?
25 A Yes.

1 Q Where is she presently residing?
2 A 1189 Tyler Avenue, Newport News.
3 Q How long has Mrs. Capps resided in
4 Newport News?
5 A All her life, just about, except for
6 a short time in Waynesboro.
7 Q Have you had occasion to see and visit
8 in her home during that time?
9 A Yes.
10 Q How often have you visited in her home?
11 A What do you mean? Now, or before?
12 Q Has it changed since the separation?
13 A Oh, yes, I visit real often now.
14 Q Did you visit before the separation?
15 A Not too often.
16 Q Why not?
17 A Because of -- David, mostly.
18 Q When did the parties separate?
19 A October 23rd.
20 Q Of what year?
21 A 1973 -- last year.
22 Q Can you tell us what you know of the
23 separation?
24 MR. LEGUM: Now, I would
25 object unless it is of her own observation,

1 and not what somebody has told her.

2 MRS. WARREN: All right.

3 A Pat came to me on October 23rd, that

4 night, her father picked her up at my mother's house and

5 brought her to the house. She was hurting. She was crying.

6 She had a big knot behind her ear. She said that David . . .

7 MR. LEGUM: I object to what

8 she said, that would be hearsay.

9 A So my husband and I took her to

10 Langley. They X-Rayed that. They said . . .

11 MR. LEGUM: I object to

12 what they said, that would be hearsay.

13 A All right.

14 Q What else did you observe?

15 A Then we brought her back home, and she

16 went to bed, with the children.

17 Q Were the children with her at all

18 times?

19 A Yes.

20 Q Did she live with you since that

21 date?

22 A Yes, she did.

23 Q How long did she stay with you?

24 A She stayed with me until -- let me

25 think now -- she was out of my home one weekend out of the

1 whole time -- I took her back to her house and she got a
2 girlfriend to stay with her that weekend. Then she came back
3 to my house and stayed until she went back to her home when
4 Connie moved in with her, which was the second of March,
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12 Q Have you visited in the home when
13 David Capps was living in the home?
14 A Yes.
15 Q What did you observe at those times?
16 A Most of the times he just was asleep.
17 Q When he wasn't asleep, what did you
18 observe?
19 A Well, I didn't go that often because
20 the times I tried to visit Pat and the children -- my husband
21 and I both -- it was continually, "Pat, get me this," and
22 "Pat, get me that," you couldn't relax and really enjoy
23 an hour of just sitting and talking. -- And if I called her
24 on the phone, in the background, he was watching her, so
25 I didn't bother talking by phone until he wasn't at home.

1 Q Did you ever observe Mr. and Mrs.
2 Capps fighting?
3 A No, they never fought in front of me.
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24 Q Did you ever observe Mr. Capps in
25 his own home?

1 A Well, like I say, very few times.
2 Q And what did you observe at those
3 times?
4 A Well, he was just busy talking to my
5 husband about fishing, they were working on the fishing
6 poles, Pat and I were talking over a cup of coffee in the
7 kitchen, while they were working on fishing poles to go
8 fishing the next morning.
9 Q Did your daughter ever discuss with
10 you her efforts at reconciliation with her husband?
11 MR. LEGUM: I object
12 to that, that would be hearsay.
13 A Yes, she did.
14 Q Did she separate from her husband
15 on several occasions?
16 A Yes.
17 Q Did she go back with him?
18 A Yes.
19 Q Were you present during any of this
20 time?
21 A No. She didn't bring them home.
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Q Do you think it is possible that these two parties might be able to reconcile?

A Pardon?

Q Do you think it possible these two parties might be able to reconcile?

A I don't think so, but I wouldn't interfere, either way.

Q Have you been aware of the marital problems in this home?

A Yes.

Q How have you been aware of them?

A My daughter.

MR. LEGUM: I am going to object to any conversation.

Q Have you seen any of the problems?

A Well, a couple of the small arguments. David would get mad, he would always take it home. He would say, "Get the children, let's go," if he would get mad about anything, such as, if -- one night Pat and I went up to the store to get a loaf of bread, and if we was gone longer than he thought we ought to, he would get mad over that, and grab them up and take them home -- they had

1 planned to stay for supper. But nothing, you know -- no
2 fighting, actual fighting, except when he took her over to
3 the house to get clothes, after the separation, then they
4 came back to the house, and that is when he told Mrs.
5 Brinkley -- he told Mrs. Brinkley that he couldn't . . .
6 MR. LEGUM: I am going
7 to object unless she was present.
8 Q You were present at this time,
9 weren't you?
10 A That he told Mrs. Brinkley? -- And
11 Mrs. Brinkley met him there, and she said it was best he
12 brought a friend with him at the time -- and the only
13 argument there is they were arguing there in my living
14 room, the children were around my legs and they were getting
15 upset, so I told the two of them -- they were arguing over
16 the house and car keys, and she had brought some clothes
17 over for the children, little undershirts, you know, heavy
18 clothes, it was getting cold weather -- and they were
19 arguing over the keys, started a big argument there, using
20 foul language, and I told both of them, I said, "Get on
21 outside the door, right now." I said, "You have been out
22 three hours to try to settle this thing, you are not settling
23 it here with an argument."
24 So he started to take the bag of
25 clothes, and I said, "No, David, put them down."

1 So he said, "I will go downtown and
2 get a warrant to get them out of here."
3 I didn't argue with him, I said, "Well,
4 I'll just call my husband and let him handle it," and that
5 is what I did.
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22 BY MRS. WARREN:
23 Q State your full name, please.
24 A Deborah Gail Frazier.
25 Q Where do you live?

A 5510 Marshall Avenue, Apartment A-1-B, Newport News.

Q Do you know Patricia Diane Seawell Capps?

A Yes, I do.

Q How do you have occasion to know her?

A When her and her husband separated, she stayed for a while with her mother and father next door.

Q Did you get to know her during that time?

A Yes, ma'am.

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11 Q Did you ever meet David Capps?
12 A Once or twice.
13 Q Can you tell us about that?
14 A Well, I really don't know too much
15 about him, we only spoke.
16 Q What did you speak about?
17 A Like when he was -- when they were
18 together, they would go fishing, and come in and see him
19 out there, and he would speak -- and he would call my house
20 to talk to Pat.
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BY MRS. WARREN:

Q State your name, please.

A Connie Cheshire.

Q Mrs. Cheshire, are you aware that

1 Q Do you know Mr. Capps?

2 A Briefly, not very well.

3 Q You have never had occasion to

4 observe Mr. and Mrs. Capps together?

5 A I was in their home one time.

6 Q What did you observe?

7 A I don't know, he wasn't around long

8 enough, he never -- you know, he just left.

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