217 Va 195

SUPREME COURT OF VIRGINIA
RECEIVED
MAR 1 1976
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 751100

ALBERT B. BUTLER

Appellant

v.

HOPE O. BUTLER

Appellee

APPENDIX

John C. Lowe
F. Guthrie Gordon
Lowe and Gordon, Ltd.
1111 West Main Street
Charlottesville, Virginia 22903

Counsel for Appellant

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

TABLE OF CONTENTS

	Page
Bill for Divorce	A-B
Transcript	1-56, 70-96
Final Decree	97-100
Notice of Appeal and Assignments of Error	101-102

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

HOPE OKUNO BUTLER,

Complainant

v. BILL FOR DIVORCE

ALBERT B. BUTLER
Route 1, Box 11
Hidden Hills Subdivision
Earlysville, Virginia,

Respondent

To The Honorable David F. Berry, Judge of the Circuit Court of Albemarle County

The undersigned, by counsel, files this Bill for Divorce and alleges unto your Honor as follows:

1. The parties hereto are husband and wife, having been married in Mexico on September 3, 1966.

2. Both of the parties are over the age of 18 years; neither is a member of the Armed Forces of the United States; and both are of the white race.

3. Both of the parties are domiciled in and are bona fide residents of the County of Albemarle, State of Virginia, and have been so domiciled and such residents for more than six months preceding the institution of this suit.

4. There are two children of the marriage, Albert B. Butler Jr., age eight, and Heather D. Butler, age six.

5. The Respondent committed adultery with Laura Hobson at Apartment 77-D, Country Green Apartments, Old Lynchburg Road in Albemarle County, Virginia, between 11:30 P.M. on October 18, 1974 and 6:00 A.M. October 19, 1974.

6. Complainant is a fit and proper person to have custody of the infant children of the marriage and their welfare requires

A

that their custody be awarded to her. Respondent is not a fit and proper person to have custody of the infant children of the marriage.

WHEREFORE, Complainant prays that she be awarded a divorce a vinculo matrimonii on the ground of adultery; that she be awarded custody of the infant children of the marriage; that the Respondent be required to pay to her support for the infant children and alimony, pendente lite and permanently; and that Respondent be required to pay the costs of this suit including a reasonable attorney's fee to J. T. Camblos, Attorney for Complainant.

HOPE OKUNO BUTLER

By Counsel

J. T. Camblos
410 East Jefferson Street
Charlottesville, Virginia

Counsel for Complainant

B

February 7, 1975

COURT convened at 10:00 A.M.

COURT: Mr. Camblos, you are representing the plaintiff in this action?

CAMBLOS: Yes, Your Honor.

COURT: And Mr. Lowe the defendant?

LOWE: Yes, Your Honor.

COURT: Are both of you all ready to proceed?

LOWE: Yes sir, I understand from Mr. Camblos that if we have some proof problem on the ground for divorce and we have agreed to - I think the only real contest in this case - I think the marriage is over, is the allegation of support and we have agreed to go ahead and take all the evidence and have you make your decision on that and we will submit the grounds for divorce on deposition. . .

COURT: If you all want to do it that way or you can have - if it is not contested.. .

LOWE: It will save the Court some time I think.

COURT: Well you almost get into it anyway. If it's not disputed you may go ahead and present all the evidence for the divorce in this one hearing.

CAMBLOS: Well it is disputed Your Honor, the bill alleges adultery. . .

COURT: I see...

1 CAMBLOS: There is a detective who - we have his
2 report but he is not here. I have been working on this support
3 and I was thinking we were just coming here on the issue of
4 support but. . .
5 COURT: All right, then you all may present the
6 matter on the basis that the ground will be supplied by depositions
7 and the question of support. . .
8 LOWE: Yes sir. . .
9 CAMBLOS: Yes sir. . .
10 COURT: Is this the case of alimony or are there
11 children?
12 CAMBLOS: Alimony and.. .
13 LOWE: Child...
14 COURT: Alimony and child support.
15 LOWE: The only thing I know - I've worked with
16 Mr. Camblos and I know there is no problem on this is that we
17 will proceed with depositions - it won't go on forever and I'm
18 sure we can work that out pretty quickly with our respective
19 schedules and get the matter before the Court.
20 COURT: All right, it will be understood then
21 that whatever decision is made will be subject to the proof of
22 the charges contained in the bill for divorce and it will be
23 made a part of the decree at the time it is entered . . .
24 LOWE: Yes sir. .
25 CAMBLOS: Yes sir.

1 COURT: All right.

2 CAMBLOS: Your Honor, I would like to call the

3 respondant as an adverse witness.

4

5 ALBERT BUTLER, having been called as an adverse

6 witness was duly sworn and testified as follows:

7

8 DIRECT EXAMINATION

9 By: Mr. Camblos

10 Q You are Albert B. Butler?

11 A Yes sir.

12 Q And what is your profession please sir?

13 A I am a neuro-surgeon, Department of Neuro-

14 surgery at the University of Virginia Hospital.

15 Q You finished all of your training and you

16 are a specialist in the field of neuro-surgery at this time?

17 A Correct.

18 Q Doctor, in your employment at the University

19 what is your salary?

20 A From my latest check stub my gross salary is

21 $2,208.33 and the net after deductions is $1,390.98.

22 Q Doctor, what are those deductions?

23 A O.A.S.D.I is $129.19, Federal taxes withheld

24 $456.44, State Tax withheld $77.12, Blue Cross, Blue Shield $29.18,

25 and there are miscellaneous deductions that include a parking

1 fee of $10 per month with the remainder of it going to a retire-
2 ment fund T.I.A.A. type of retirement fund for University
3 professors.
4 LOWE: I don't think you gave the amount on
5 miscellaneous.
6 A Oh, a total of $125.42 under miscellaneous.
7 Q So there is $115 there that is a retirement
8 fund, a form of savings?
9 A Correct.
10 Q Now Doctor, how many exemptions do you claim
11 on your W-2?
12 A I have been claiming to the best of my
13 recollection a total of two exemptions.
14 Q Doctor, are you sure? Do you claim any?
15 A I was under the opinion that I had. I do not
16 accurately remember, no.
17 Q Aren't you scheduled to get a tax refund
18 in the neighborhood of $2500?
19 A I would know that if I had the - all the W-2
20 forms by now but I don't so I can't tell you.
21 Q What refund did you get last year?
22 A $1500.
23 Q Do you expect a raise at the University this
24 year?
25 LOWE: Your Honor, that would be irrelevant. The

1 standard is what the income and expenses are today. If there is
2 a change of circumstance later then the parties must come back
3 and make a presentation to the Court, particularily where this
4 would be specularly. It would be different if it were a -
5 something which would be pre-programmed or guaranteed but it
6 would be absolutely irrelevant at this time.
7 COURT: Which year are you referring to, '75?
8 CAMBLOS: This current year Your Honor.
9 COURT: Well if it's after July 1st I think the
10 objection is well taken. If there is one in the mill now I
11 will allow it. Now the question is whether this is a fiscal
12 year or a calendar year. We are now in the calendar year of
13 '75.....
14 CAMBLOS: Your Honor, my understanding is that
15 there is an expected raise. Now exactly when it takes effect
16 I don't know but I disagree with Mr. Lowe's position. There
17 are also currently debts, one of which will be paid up in just
18 a few months. I think the fact that that debt will be paid
19 and no longer be a drain on his income is irrelevant as to what
20 the Court is going to do here today.
21 COURT: Now the question Mr. Camblos would be
22 whether there is a raise already in the mill, whether there is
23 one already pre-programmed. Now if there is a possibility of
24 one I think it does go into the objection and should be sustained.
25 Now if there is a raise which has already been approved and is

merely awaiting the time for it to go into effect I think that is appropriate to be. . .

CAMBLOS: Doctor, isn't there a raise which has already been - already been told of and already been expected to come about in some. . .

A There is a raise but what it is is not known because it has been resubmitted to the State and we have not heard what it will be.

Q All right. I have no further questions of this witness Your Honor.

COURT: Any questions at this time Mr. Lowe?

LOWE: Judge in order to make it simplier here rather than do cross examination and make-I had rather just go ahead and examine him - no, we. . .

COURT: It's all right with me. . .

LOWE: . . .had better keep it in proper - I have no questions right now. Let Mr. Camblos take his case.

COURT: All right, you may reoffer Dr. Butler then in testimony after Mrs. Butler's testimony.

CAMBLOS: Mrs. Butler, will you take the stand please.

HOPE BUTLER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Camblos

Q State your name please?

A Hope Butler.

Q Where do you live?

A Lot 11, Box 11, Hidden Hills in Earlysville.

Q Do you and Dr. Butler own your home?

A Yes, we are buying it.

Q I have just handed you a list Mrs. Butler of various expenses and amounts, did you make up that list?

A Yes, I did.

Q Your Honor, I have put a copy on your desk and on Mr. Lowe's desk.. .

COURT: All right.

Q Mrs. Butler, what is your age please?

A 30.

Q How long have you been married?

A 8 and 1/2 years I guess.

Q And what children do you have Mrs. Butler?

A A boy and a girl, a boy 8 years old and a girl 7.

Q Where are they living now?

A With me in Earlysville.

Q Are they attending school?

A Yes.

1 Q Do you work Mrs. Butler?

2 A Essentially no. I do some substitute teaching

3 but only when they call me.

4 Q Do you have training for any kind of work?

5 A Well I was in the mist of nurse's training

6 when we were married. I never did graduate so essentially I

7 cannot work as an RN or LPN as yet.

8 Q Now let's refer to the list you made up. You

9 have there a house payment, is that a payment on a first mortgage

10 on your home?

11 A Yes.

12 Q How long ago did you buy the home Mrs. Butler?

13 A A year and a half - we bought it in August of

14 '73. . .

15 Q Well a year and a half ago approximately?

16 A Yes.

17 Q Do you remember what you paid for the home?

18 A $44,500 I believe.

19 Q Now you show a second mortgage payment?

20 A Yes.

21 Q Who is that paid to?

22 A First Virginia Bank, Monticello.

23 Q Do you know how long that has to run?

24 A 7 years I believe.

25 Q Now you show a car payment of $95.46, what car

1 is that?

2 A That's on the Datsun.

3 Q And who drives the Datsun?

4 A I do.

5 Q Is it in your name?

6 A Yes.

7 Q Does your husband have another car?

8 A Yes, he has a Porsche.

9 Q Now you have shown an item for food and gasoline,

10 how did you arrive at that figure?

11 A Well I just know usually - from the checks

12 also that this is what we need every month for food and gas and

13 usually it covers dry cleaning.

14 Q Did you go back into yor cancelled checks to

15 establish this as an average?

16 A Yes.

17 Q Do you have your checks with you?

18 A Yes, they are there on the desk.

19 Q Your Honor, these things are available. I don't

20 know whether the Court wants to go back and do the mathematics

21 or not but we do have them. . .

22 LOWE: We can leave that for cross if it is

23 necessary, I don't know that it will be. . .

24 COURT: All right, I think that will be more

25 appropriate. If Mr. Lowe desires to go into it in detail then

1 he may pursure that Mr. Camblos.

2 Q All right. Now you have shown an electricity

3 bill of $70, is this an average bill?

4 A Well that's based on what last month's was.

5 Last month was higher than that. Of course it goes up all the

6 time it seems like.

7 Q You say last month's was higher?

8 A Last month's was $75 I believe.

9 Q Do you heat with electricity?

10 A Yes.

11 Q Is your house air conditioned?

12 A Yes.

13 Q Is there any substantial difference between

14 your summer and winter bills?

15 A Well not really. If it were the same rate

16 I suppose it would be about the same.

17 Q It would go down somewhat in the spring and

18 fall when you are neither heating or air conditioning?

19 A Oh, somewhat.

20 Q You think this is a fair average?

21 A I think so.

22 Q You have $25 for a telephone? Does that include

23 long distance?

24 A Some long distance, that's under estimating

25 I must admit that.

1 Q You think this is under a true average?

2 A Yes.

3 Q Do you know what the bill was last month?

4 A Well a lot more, because of calling parents

5 and so forth.

6 Q How much more? If you don't know just say

7 so or give your best answer?

8 A I think around $40.

9 Q You think it was $40 last month?

10 A Yes.

11 Q Now you have furniture, a chair $10, what is

12 that Mrs. Butler?

13 A That's a chair we bought while we were in

14 Chesapeake and paying $10 a month on.

15 Q How long have you got to continue paying it?

16 A Maybe 10 more months, maybe less than that

17 now.

18 Q Now you have insurance $18, estimated, where

19 did you get that figure?

20 A That was just over the phone. He gave me

21 $225 per year.

22 Q Who gave you this figure?

23 A Allstate - Sears.

24 Q Do you now have both cars insured under your

25 husband's insurance?

1 A Yes.

2 Q And is that a lesser amount?

3 A Oh, yes, definitely.

4 Q Why is that so much less?

5 A Well because we took out the insurance in the

6 Navy and they were able to give it to us at a much more reasonable

7 rate and then we get a deduction for having two cars.

8 Q Assuming a divorce would you still be able

9 to keep that joint policy under the Navy?

10 A I don't think so.

11 Q Now you have shown health insurance, Mutual

12 of Omaha $15, estimated, where did you get that figure?

13 A From Mr. Maynard who I think is the representa-

14 tive in the Earheart building.

15 Q And what would that $15 cover? Would that be

16 just yourself or yourself and the children?

17 A Just myself.

18 Q Are the children now covered under a policy

19 of your husband's?

20 A Yes.

21 Q And they could remain under that policy even

22 after the divorce, is that correct?

23 A I presume so.

24 Q Now you show Master Card $60, what - how did

25 you arrive at that Mrs. Butler?

A Well I know our bill in December was over $700, closer to $800, plus we usually pay about $25 a month on it but we charge a lot more than we pay on it. We pay the balance off with the income tax return at the end of the year.

Q Well did you figure this out as a fair average?

A Yes.

Q And did you figure it from past records?

A Yes, the bills I have here.

Q Now you have Sears $15, clothes and household supplies, how did you arrive at that figure?

A From the bills that I have received from Sears this year.

Q And is this an average of those bills?

A Yes.

Q You have a children's book club of $2.50, what is that Mrs. Butler?

A Well that's just for the boy's - he gets a book every month.

Q And is it a constant charge of $2.50 per month?

A Yes.

Q Now you have miscellaneous and you have shown down below several items which are marked yearly, have you calculated those as accurately as you could?

A Yes sir.

1 Q From what did you calculate them?

2 A Well school lunches, the boy buys lunch every

3 day and so I only figured lunch for him and I make lunch for the

4 girl. The snack is hers. Well I figured the school lunch of

5 180 days which is required I believe at $.40 a day.

6 Q Well the State and County tags would be actual

7 figures, how about the dentist?

8 A Yes, I have the bills for that.

9 Q And is this the amount of dental work that

10 you had done for yourself and the children last year?

11 A I believe about $15 was for me and the rest

12 for the children.

13 Q What are YMCA lessons and membership? What is

14 that?

15 A Okay, we joined the YMCA this last summer

16 so we could go to the Hollymead Pool and then the lessons were

17 $15 for swimming, $15 for each child. . .

18 Q For each child?

19 A Yes.

20 Q Is this membership for the children or you

21 or. . .

22 A Family membership.

23 Q And you have hair dresser $40?

24 A Yes sir.

25 Q How often do you go to the hair dresser?

1 A Well I don't go that often, maybe four times
2 at the most every year.
3 Q And that figure divided by 12 is $30 mis-
4 cellaneous?
5 A Yes.
6 Q Now there are some things that come to mind
7 that you have not shown, do you have any doctor's bills outside
8 of Blue Cross?
9 A Well so far I guess we have been lucky, we
10 haven't had any. Blue Cross and Blue Shield pays for most of
11 the doctor bills.
12 Q Do you have any drug bills that are not included?
13 A Well none really big, maybe some little things
14 here and there.
15 Q Has your husband in the past supplied things
16 that most of us might have to buy in the way of medicine and
17 drugs?
18 A Yes.
19 Q To what extent have you bought clothes during
20 the last year or so Mrs. Butler?
21 A Well what I bought was on Master Charge, most
22 of it.
23 Q Have you bought many clothes?
24 A No.
25 Q Have your parents or your husband's parents

1 helped at all with clothing of the children?

2 A Yes, I would say the better part of the

3 children's clothes come from grandparents.

4 Q Is your husband living at home now?

5 A No.

6 Q Does he stay there at all now?

7 A No.

8 Q Does he come there?

9 A He comes to see the children maybe once a

10 week.

11 Q You have no figure here for household help,

12 do you have any help in your home?

13 A No.

14 Q You have no figure here for any kind of

15 entertainment or anything of that nature except perhaps the

16 YMCA membership, do you. . .

17 A Well usually if we do anything we squeeze it out

18 of the food budget.

19 Q Do you take the children for any kind of

20 entertainment that cost money?

21 A Well to movies occasionally and we do make

22 it to Barnaby's I guess a couple of times a month.

23 Q Make it to what?

24 A Barnaby's.

25 Q Things like birthdays and Christmas, are they

1 in here somewhere that doesn't show?

2 A Well I put some Christmas gifts on the Master

3 Charge this year and we did last year too, and I had a Christmas

4 club that I also took off the food budget this year - was $100

5 this year but that was like you know $2 a week.

6 Q Does anything here provide for birthday

7 expenses for the children?

8 A Well that comes out of food or, you know,

9 Master Charge.

10 Q Do you and/or the children do anything for

11 grandparents birthdays, Christmas or that kind of thing?

12 A Yes, birthdays and Christmas.

13 Q Is that in here?

14 A Mother's Day - well if it is, it is in Master

15 Charge. Sometimes you know we will have a little extra, if

16 we haven't got a dentist bill or something like that that we

17 can take it right out of the checkbook.

18 Q You said that you do some substitute teaching,

19 during January how much were you paid - did you teach every

20 chance you got during January?

21 A Yes sir.

22 Q How much did you make?

23 A Well that was only three times but I think

24 the end of the pay period of like the 15th so I only got $30.

25 Q On the 15th?

A Yes, the other time that I taught will go on next month's.

Q Had you at one point done some nursing work in Washington on weekends?

A Yes, it was as an Emergency Room technician.

Q Are you able to do that now?

A Well the reason you know they let me do it there was because it was the hospital I trained in. They knew what I could do and what I couldn't do so they hired me as a technician.

Q On these weekends when you worked in Washington in this capacity, how did you take care of the children?

A Well the grandparents took care of the children which is why I . . .

Q Where are the grandparents?

A The Butlers live in Tacoma Park, Maryland and my folks did at the time I was growing up more frequently.

Q Where do your folks live now?

A They live in Canada now.

COURT: Where?

A Oshawa, Ontario.

Q Witness with you Mr. Lowe.

CROSS EXAMINATION

By: Mr. Lowe

1 Q Mrs. Butler, I believe you had all but one
2 year of nurse's training, is that correct?
3 A Yes.
4 Q And I believe you have desire or perhaps even
5 plans to go back as soon as you can to finish?
6 A Yes. . .
7 Q To be a registered nurse?
8 A Yes.
9 Q And as far as being an emergency room technician
10 have you ever tried to find that you could work at the Martha
11 Jefferson Hospital or at the University of Virginia Hospital
12 Emergency Room as a technician?
13 A No.
14 Q So - would it be fair to say that an emergency
15 room technician earns on the order of $5 an hour or something
16 like that?
17 A I don't think around here they would.
18 Q But you don't know?
19 A Well they paid me $4 an hour in Washington
20 which is big city wages.
21 Q All right, do I understand on the substitute
22 teachers that teaching you get $15 a day?
23 A Yes.
24 Q Is that net after taxes and everything is
25 taken out?

1 A Right.

2 Q Do you know what your gross is?

3 A About $17.

4 Q Let me go down to some of these expenses. I

5 understand that the electricity which would be all of your

6 utilities right now run about $70 a month average over the years,

7 is that your testimony?

8 A Yes.

9 Q So that summer or winter - you may have some

10 peak one month but you are down - it averages $70?

11 A Yes.

12 Q And your telephone bill runs about $25 a

13 month?

14 A Yes.

15 Q And that your medical insurance would run

16 $15 a month?

17 A That is provided they would insure me, yes.

18 Q Is there any reason why you think they wouldn't?

19 A I don't see any.

20 Q Dental averages about $5 a month, $60 a year?

21 A Yes.

22 Q And your automobile insurance you have been

23 told would cost $18 for a month?

24 A Right.

25 Q What coverages does that call for? Is that

1 minimum coverage?

2 A Well I told them you know collision and

3 comprehensive, whatever it was we had now.

4 Q And you have only checked with one agent and

5 they told you. . .

6 A I checked with State Farm also.

7 Q And what did they say?

8 A They said they were not sure they would insure

9 me because I have had speeding tickets.

10 Q And your automobile license is $25 a year

11 according to your list?

12 A Yes.

13 Q And then you list school lunches at$72 which

14 is $6 a month if you average it over the year? Obviously they

15 don't go to school the whole year - but if you averaged it, it

16 would be $6 a month?

17 A Yes.

18 Q And $18 for snacks which would average over

19 the year about $1.50 a month?

20 A Yes.

21 Q And recreation, this YMCA, is $105, which

22 if you averaged over the month - over the year would be about

23 $9 a month, is that true?

24 A Yes.

25 Q And your hair dresser is $40, newspapers for

1 the year $40 and others including a book club for the children
2 is $32.50 a month - and I gather that anything you didn't
3 specifically mention is included in this $250 which includes
4 gas, dry cleaning, entertainment, some gifts perhaps or down
5 in the other category - that includes all other expenses you
6 would have from time to time?
7 A Miscellaneous expenses only includes what
8 is listed here. I would say Master Charge is another you know
9 miscellaneous. . .
10 Q Oh, I see, you mean the miscellaneous includes
11 this $360 down here - that is not an additional. .
12 A No. .
13 Q Okay, I got you that is not an additional -
14 that wasn't clear to me. So that basically the $250 a month
15 is a budget item that you use to pay for food, gasoline, for
16 dry cleaning, miscellaneous little things - you don't necessarily
17 break it down each month as to how much of that is for each
18 item?
19 A No, not usually.
20 Q Now you have given us all of your expenses
21 of which you are aware and which you are reasonably anticipating
22 right now - there are none others?
23 A No, as far as I know.
24 Q Right now Dr. Butler is paying the mortgage
25 payments is he not?

1 A Yes.

2 Q And so if he pays the mortgage payments

3 obviously that is not an expense that you have?

4 A Well, all right.

5 Q And on the car he has been paying the car

6 payment hasn't he?

7 A Yes.

8 Q So that depending on who pays the car payment

9 it is going to be the same for either one of you depending on

10 who you allocate to pay it? If Dr. Butler paid it, it wouldn't

11 be an expense for you and if you paid it, it wouldn't be an

12 expense for him?

13 CAMBLOS: We concede this Mr. Lowe.

14 Q The furniture is the same thing, the $10

15 a month, Dr. Butler has been paying that has he not?

16 A Yes.

17 Q All right, the same for Master Charge and

18 the Sears bill, he has been paying that?

19 A Right.

20 Q Now you are aware that there have been

21 significant educational expenses which are being paid each

22 month in the amount of - something in the order of $600 a month

23 are you not?

24 A I think that's too much, something like. . .

25 Q All right, we will get to that. I will present

1 direct evidence on that. And isn't it a fact that you recognize
2 the figure $1390.98 or something in that area as being the take
3 home pay that you all have been having?
4 A Yes.
5 Q And you recognize that $440.45 are the house
6 payments that you have been paying, those first and second
7 mortgages?
8 A Yes.
9 Q And then taking out the - well the - counting
10 the car payment and the debt payments and the automobile insurance
11 $620.75, does that ring true, is that in the ball park, somewhere
12 around $600?
13 A Including what now?
14 Q The car payment, the debt repayment and the automobile
15 insurance? --comes to about $600 a month doesn't it?
16 A Yes.
17 Q And so when you take all that out you all have
18 been living on about $330 a month haven't you and it's been
19 tight?
20 A Yes.
21 Q But you have been living on it and you have
22 been paying all of your family expenses out of it?
23 A Well essentially yes.
24 Q Now you have no reason to think your grand-
25 parents - these grandparents of the children are going to with-

1 draw their love and affection and whatever clothing they have
2 been giving them?
3 A Well they have been supporting us because
4 they want to see my husband do what he is doing or do what he
5 wants to do and so they have been willing to, you know. . .
6 Q Now you have some credit cards that are in
7 your joint names do you not?
8 A Yes.
9 Q I believe you said you have the two children
10 and yourself and there is no one else living in the home?
11 A Yes.
12 Q Just so the record is clear on that. I believe
13 that's all I have Your Honor.
14 COURT: How much is the total Master Charge debt
15 that is outstanding Mrs. Butler. .
16 LOWE: I was going to bring it up Your Honor
17 through Mr. Butler. .
18 COURT: All right, you may stand aside.
19 LOWE: Do you have any other witnesses?
20 CAMBLOS: No.
21 LOWE: All right, Dr. Butler, would you take the
22 stand.
23
24
25

1 ALBERT B.BUTLER, having been duly sworn, testi-
2 fied as follows:
3 DIRECT EXAMINATION
4 By: Mr. Lowe
5 Q Doctor, you have already testified about your
6 present pay status, I just want to clarify one thing, do you
7 have any guarantee that you are going to get any pay raise at
8 all?
9 A Not at the present time.
10 Q And if there is any pay raise, is it pure
11 speculation as to how much it will be and when it will come?
12 A At the present time the amount is speculative.
13 If it comes it will come as of 1 July of this year.
14 Q In other words in the new fiscal year?
15 A Correct.
16 Q Now have you reviewed your expenses that you
17 have and what you are paying now, have been paying and if so,
18 would you just tell the Court some of the items of expenses
19 that you have and try to explain a little bit some of the
20 underlying reasons for the expenses where appropriate?
21 A Okay. Well some are actual expenses and some
22 are expenses and some are anticipated expenses. . .
23 Q Right, let me clarify the situation, now where
24 are you living?
25 A In the staff - house staff quarters of the

1 University of Virginia. .

2 COURT: Doctor Butler I can't hear you. .

3 LOWE: You will have to speak a little louder.

4 A In the house staff quarters of the University

5 of Virginia.

6 Q And are you charged for those quarters?

7 A No.

8 Q They are right there in the hospital complex

9 are they not?

10 A Adjacent to the hospital, yes.

11 Q And have you been waiting until this is

12 settled out here to find out what your plans are going to be?

13 A Yes sir.

14 Q Have you investigated apartments that would

15 be suitable for you to live in?

16 A I have.

17 Q And what rental range have you found two

18 bedroom apartments to be in?

19 A I have looked at a total at this time of

20 five apartment complexes and the minimum for a two bedroom

21 apartment is $200.

22 Q You say two bedroom, obviously you only

23 occupy one bedroom, do you have professional books and other

24 matters which require you to have some sort of space to put

25 these, in a den or study?

1 A I do.

2 Q All right, now you say $200 a month, have

3 you investigated with these places as to what your utilities

4 will be or what all the utilities might run on an average month?

5 A The combined utilities would vary between

6 in these five different places $35 to $50 a month with a minimum

7 o f about $40 per month.

8 Q How about telephone, what expense have you

9 allocated to that in your budget?

10 A $15 per month.

11 Q And is that just a minimum city charge for

12 phones?

13 A That would be.

14 Q How about clothing? Do you have any clothing

15 needs from time to time?

16 A Well as an estimate that would run to approxi-

17 mately $200 a year with half of that being for a suit of clothing

18 and remainder for accessary items.

19 Q And how about laundry, do you do your own

20 laundry at this point?

21 A I have been at the present time, yes.

22 Q What expense do you have on there for that

23 item?

24 A Laundry itself is running about $5 per month

25 with dry cleaning an additional $10 per month.

1 Q All right, how about dental care, do you have
2 any figures on that?
3 A Current figures for a checkup with a minimum
4 of one to two fillings per year would be $30.
5 Q And it's about $2.50 per month over the year?
6 A A month, yes.
7 Q And would you tell the Court about your life
8 insurance? How much life insurance do you presently carry?
9 A At the present time I carry $85,000 full term
10 life insurance.
11 Q And how do you pay the premiums on that?
12 A I have been paying that by using the cash
13 value.
14 Q So you don't write a check each month on it
15 or you haven't been up to this point?
16 A I haven't been.
17 Q And is it your plan to start paying that insofar
18 as you are able on a cash basis?
19 A I would very much like to because using the
20 cash value does detract from the total value of the policy.
21 Q What is your understanding, your estimate
22 of the minimum that cost each year the way they are taking it
23 out now?
24 A The minimum is $600 to $700 per year.
25 Q And have you allocated $50 a month in your

1 budget you are talking about today?

2 A That I would very much like to do.

3 Q Using the lower figure of $600?

4 A Yes.

5 Q How about automobile insurance, what is the

6 status on that?

7 A At the present time I have a policy under the

8 U.S.A.A. - I obtained through the Navy and at the present time

9 with two cars it's approximately $150.00 per year.

10 Q And it would be somewhat less than that if

11 you only have one car?

12 A Correct.

13 Q And have you worked out what gasoline and

14 maintenance and other things on your car will run on an average

15 per month?

16 A At the present time with the car I have the

17 gasoline is a minimum of $5 per week and car maintenance in-

18 cluding periodic inspections would run $10 per month.

19 Q About $30 a month for your car total?

20 A Total.

21 Q And you have automobile license plates of course

22 the same as your wife does?

23 A Right.

24 Q What estimate have you made on food expenses

25 that will cost you each month?

1 A At the present time I am living on less than
2 $20 per week but I figure that $20 per week will be an adequate
3 amount.
4 Q So about a minimum of about $80 a month?
5 A Correct.'
6 Q And how about household supplies of various
7 sorts, shaving gear and that type of thing?
8 A I have figured it had $20 per month.
9 Q Now includes all matters, cleaning equipment
10 and everything else included in that?
11 A Yes.
12 Q Have you allocated anything for your own
13 entertainment or recreation each month?
14 A Well at the present time two movies a month
15 would come to $5 so I had estimated that as $5 per month.
16 Q How about newspapers?
17 A I buy the Post at $.15 per day and that comes
18 to approximately $5 per month.
19 Q How about gifts and other things that you would
20 be buying for the children and family members? Have you made
21 an estimate as to what that might run to?
22 A At about $100 per year.
23 Q So you would average $8 perhaps a month over
24 the year?
25 A Yes.

1 Q What have you discussed - have youthought about
2 a vacation - what a minimum vacation might be for you to take?
3 A Well/a vacation if I was able to take one I figure
4 the minimum would be $250 for the vacation.
5 Q Would that be flying somewhere or just driving
6 somewhere. . .
7 A Just driving locally, say to the beach.
8 Q Now would you tell the Judge what debt repayment
9 you have and will you give the amount of the payment and also the
10 balance due on the obligation?
11 A The first is to the Virginia National Bank
12 for the car loan on the Datsun. . .
13 Q That's your wife's car?
14 A My wife's car - currently $95.46, the remainder
15 of $2,577. . .
16 Q That's the balance?
17 A The balance. The Navy Hospital Credit Union
18 payment of $80.41 per month, remaining balance of $849. There
19 is a loan to the Naval Credit Union, payment of $113.84, remaining
20 balance of $451, payment to the Haynes Furniture Store of $10
21 per month, remaining balance of $78. We have been paying
22 approximately $25 a month to Sears with the remaining of $137,
23 to Master Charge - we had been paying in the range of $30 to
24 $50 per month, the current balance is $1,084 and the minimum
25 payment on that this month was $54. There is a loan to the

1 Chesapeake Conference which we have been paying $25 per month
2 which has - I partially paid the interest charges on this loan
3 and wanted to increase it to $50 a month in order to pay off
4 some of the principal. The remaining sum in that amount is
5 $5,760. . .
6 CAMBLOS: Excuse me,what was that figure?
7 A $5,760. A loan from the Potomac Conference
8 - that would be the same payment schedule as to the Chesapeake
9 conference and it's the same remaining balance.
10 Q Those are two separate loans however?
11 A Yes, two separate loans.
12 Q So it would be $50 payment and $5750 balance?
13 A Correct. Then a loan from the Continental
14 Bank of Chicago which is an American Medical Association Loan,
15 payments of $121.04, remaining balance of $8200.
16 Q All right, you described an estimate of $200
17 for an apartment, is that furnished or unfurnished?
18 A It's unfurnished.
19 Q And will you have any furniture other than
20 whatever you might be able to work out with your wife to furnish
21 that with?
22 A I do not, no.
23 Q So that if you had a furniture expense to
24 furnish your apartment it would be in addition to what we are
25 talking about?

1 A Correct.

2 Q And of course - I don't know if I asked you

3 but you have been paying the mortgage payments of $440.45?

4 A Yes sir.

5 Q Have you filed a 1974 tax return yet?

6 A I have not as yet.

7 Q Is it your desire to file a joint return in order

8 to effect a tax saving while you legally can do so?

9 A Yes.

10 Q Have you discussed this with your wife?

11 A We have discussed it in the past, yes.

12 Q And would it be your intent to take any refund on

13 that and apply it on some of these debts you have?

14 A It was our intent to use the proceeds from the

15 tax return to pay off whatever expenses we incurred in this

16 proceeding and the remainder to go to pay off whatever loans we

17 could with the remaining amount.

18 Q Is there anything else there that I haven't

19 asked you that you have on your list Dr. Butler?

20 A The only other thing is the automobile insurance

21 payments to U.S.A.A. . .

22 Q And that is included in your budget although

23 you have it separately there also?

24 A Yes.

25 Q Have you and your wife discussed whether you

1 would be able to keep this big house or not - just what to do
2 with that?
3 A Well it would be correct to say we have discussed
4 it - any conclusions we really haven't come up with any way that
5 it seems possible.
6 Q How old are your two children? Have you told
7 us?
8 A Yes, 8 and 7 years of age.
9 Q And are they both boys?
10 A No, the elder is a boy and the younger is
11 the girl.
12 Q That's all I have, witness with you.
13 COURT: Doctor Butler, if you didn't keep the
14 house have you figured what it might return to you net over
15 and above the mortgage? Do you have any idea what its value
16 is?
17 A Of the house at the present time?
18 COURT: Yes.
19 A In today's market I really do not know.
20 COURT: Do you think it would return as much as
21 you paid for it? When did you buy it?
22 A We bought it one and a half years ago.
23 COURT: And you paid $44,500 at the time?
24 A $44,500 yes. The total amount would bea little
25 bit more because of the second mortgage interest.

1 COURT: What size house is it?

2 A It is a three bedroom ranch style house with
3 a basement, half of which is finished which is kind of a den
4 play room, the other half unfinished on a two acre lot with
5 approximately one acre or a little bit more wooded. . .

6 LOWE: Judge, perhaps I can clarify - I think
7 for one thing it is not apparent - was the mortgage that you have
8 on the first and second more than the purchase price?

9 A Yes, because of the interest on the - the
10 added interest on the second mortgage would make it more than
11 the actual purchase price of $44,500.

12 LOWE: So taking off the real estate commission
13 and market factors, is it your view that you may very well lose
14 money on it?

15 A In today's market if the house had to be sold
16 now I am afraid that I would come up with less than what was
17 actually paid for it as far as paying back the mortgages are
18 concerned.

19 COURT: All right, Mr. Camblos you may cross
20 examine.

21

22 CROSS EXAMINATION

23 By: Mr. Camblos

24 Q Doctor, your attorney spoke of this being a
25 big house, it's just a normal three bedroom house isn't it?

1 A Well I don't know what constitutes a big house,
2 it's I say a medimum size house. I wouldn't call it small or
3 large.
4 Q It's no more than your wife - I mean your
5 wife and boy and girl need three bedrooms?
6 A I would assume so.
7 Q Do you have any idea what a three bedroom
8 apartment would cost?
9 A All I can tell you is what a two bedroom
10 apartment would cost.
11 Q Now Doctor you have another debt do you not
12 that you neglected to mention?
13 A No I do not.
14 Q Didn't you incur a debt of $650 and something
15 when you bought your girlfriend a queen size bed in December?
16 A I did not buy it for her.
17 Q Oh, you didn't? It was delivered to her
18 apartment wasn't it?
19 A That's correct.
20 Q And you signed the monthly payment, the note. . .
21 A Right. What I did was to assume because of her
22 lack of credit - I agreed to have it delivered in my name and
23 she is making the payments on it.
24 Q Do you deny any obligations on that?
25 A Well I have an obligation because I am co-signer

1 but I am not the one paying for it.

2 Q Did she sign it?

3 A Yes.

4 Q Where is her signature?

5 A Well unfortunately the copy that you obtained

6 somehow is an incorrect copy because the credit life insurance

7 area was just X'd out as not adequate so a new copy was sent

8 and she was also made to be co-signer.

9 Q That was $650 that you obligated yourself

10 for on that?

11 A If she didn't pay it but she is fully capable

12 of paying it.

13 Q Doctor, do you have any income outside of

14 your University salary?

15 A I am paid a straight salary by the University

16 and not allowed to work in any way outside of the University.

17 Q If you chose to go into private practice

18 Doctor you would make two or three times as much. . .

19 LOWE: Objection Your Honor, this is completely

20 speculative. There is no evidence that he would do this. He

21 is in academic medicine. He has testified what his salary is.

22 I mean I might be able to go out and write a novel and make

23 $100,000 a year but I am not doing it and he is not doing anything

24 but what he has testified to.

25 COURT: The question is what his qualifications are.

1 not what he might do Mr. Camblos. If you want to inquire into
2 his qualifications - as to what he might do with his qualifications
3 . . .
4 CAMBLOS: I believe Your Honor that under the
5 statute of cases it's his ability and not what he might be
6 earning.
7 COURT: It's his ability to engage in this or
8 other income producing activity. I am not sure what his
9 qualifications might be in that regard. I have heard some of
10 them but I - I was about to ask what his specialty is at the
11 hospital. I believe he said he was in neurosurgery.
12 Q You are a qualified neurosurgeon are you not?
13 A I am.
14 Q And you are qualified to practice neuro-
15 surgery?
16 A I am.
17 Q Perform operations in that field?
18 A Yes.
19 Q And as such you could make a great deal more
20 money than you are making if you chose to do so, could you not?
21 A I could.
22 Q Do you know or do you have an estimate as to
23 what neuro-surgeons in private practice do make?
24 LOWE: I would object Your Honor unless he has
25 got some basis on making it - not just a guess but has some

1 actual figures.

2 COURT: If he knows - now Doctor Butler does not

3 have to speculate, if he knows what the general income is in

4 this area of a private neurosurgery practice.

5 A In this area?

6 COURT: Yes sir.

7 A Well I know in other areas but I do not know

8 in this area. It would be speculation within the State of

9 Virginia.

10 COURT: Well how long have you lived in the

11 Charlottesville area?

12 A I started my residency here in 1966. In 1971

13 I went into the Navy as a practicing neuro-surgeon in Portsmouth,

14 Virginia and spent two years, then came back here on the staff

15 as a neuro-surgeon.

16 COURT: Well do you know what the normal range

17 of income for practicing neuro-surgeons in Portsmouth where

18 you worked?

19 A In Portsmouth the neuro-surgeons that I was

20 associated with there were in the Navy and they were paid a

21 salary by the Government.

22 COURT: All right, Mr. Camblos I think he has

23 covered it as far as he is able to go - as to his knowledge.

24 Q Well may I ask further questions along these

25 lines. . .

1 COURT: All right.

2 Q Doctor, wouldn't any qualified neuro-surgeon
3 in private practice make at least twice what you are making?

4 A Yes.

5 COURT: Let me inquire a little further on that
6 point Mr. Camblos. Doctor Butler I take it that you have
7 a particular interest in teaching as well as practicing?

8 A Yes sir.

9 COURT: That is a matter of being on the staff
10 and that prevents you from being engaged in private practice?

11 A That's correct. At the finish of my usual
12 residency, took an additional two years of specialized training
13 in research techniques which allowed me to have the position
14 I have now that comes under the general category of an academic
15 neuro-surgeon as opposed to a general practicing neuro-surgeon
16 in the community.

17 COURT: Do you teach in the University Medical
18 School?

19 A I teach in the University Medical School. I
20 teach mostly the residents in neurological surgery but I am also
21 allowed and I guess pay for by a smaller salary the privilege
22 of doing research in my particular field.

23 COURT: Now that does prepare you for a more
24 highly qualified specialty field if you should go into private
25 practice at some time in the future? Are you improving your

1 qualifications by doing this?

2 A In certain areas it would make me more

3 qualified by how I would be looked upon by a particular hospital

4 as far as privileges were concerned. I am sure it wouldn't

5 allow me to charge anymore for a particular operation just

6 because I happen to be an academic neuro-surgeon at one time

7 or the other.

8 COURT: Before your marriage breakup had you

9 and your wife discussed what your future plans would be and

10 was this choice a one that was arrived at on a long term plan

11 that you would stay in the teaching aspect of medicine?

12 A Yes sir, the plans I have had from the time

13 I began with my residency and especially when I was doing the

14 research years was that I would continue in my present capacity

15 under another neuro-surgeon learning more of my techniques,

16 publishing papers so that eventually my goal would be to have

17 a program of my own similar to the one here where I would be

18 the Chief of the service and would be engaged in training and

19 care of residents in neuro-surgery.

20 COURT: Your program as planned was directed

21 toward your being qualified to be Chief of Neuro-surgery at

22 some hospital I take it?

23 A Yes sir.

24 COURT: A teaching hospital?

25 A Yes sir.

1 COURT: And how far would you expect to have to
2 progress beyond this point before you reached the maximum
3 qualifications there?
4 A Well practically speaking people are not really
5 considered very strongly for chiefs of programs until they are
6 at least 40 years of age. It's just kind of a rule of thumb
7 that is sometimes broken but not usually the case.
8 COURT: Would you say then that your age would
9 be the main factor - that your training has reached a point
10 where you would be qualified?
11 A It would be a combination of three things.
12 It would be my age. It would be the number of papers that I
13 had published and the amount of experience I had had in a variety
14 of different clinical techniques.
15 COURT: And you are how old now?
16 A I am 36 sir.
17 COURT: So you are saying it would be at least
18 four years before you would reach your maximum potential? --in
19 that field if you stayed in it?
20 A Yes sir, that is what I had planned on.
21 COURT: All right, Mr. Camblos, go ahead, any
22 other questions?
23 Q I have no further questions Your Honor.
24 LOWE: Let me ask a couple of more.
25

1 REDIRECT EXAMINATION

2 By: Mr. Lowe

3 Q Doctor, are you at an appropriate and
4 comparable place in advancement and salary with other neuro-
5 surgeons of top quality of your age and educational background
6 right now who are in academic medicine?

7 A No sir, not by any means.

8 Q And are you advancing as rapidly as possible
9 given the Virginia Hospital, being a State Hospital and salary
10 restrictions and so forth that you have here?

11 A I don't think I quite understand.

12 Q Well you have not been held back because
13 of inability or lack of effort or anything of that nature? You
14 are progressing satisfactorily within your career pattern, are
15 you not?

16 A Yes, absolutely.

17 Q Your career pattern is not only a doctor who
18 does operations but also a teacher and a scientist who does
19 research isn't that correct?

20 A Yes.

21 Q And that distinguishes you from a man who is
22 in private neuro-surgical practice and would perhaps only do the
23 things which are big dollar value of operations, is that
24 correct?

25 A That's correct.

1 Q And is part of your compensation and part of
2 your career objective oriented on other than just mere dollars
3 and cents?
4 A Yes, it most definitely is.
5 Q And can you tell the Court what part of
6 your compensation if you care to would be other than just dollars
7 and cents?
8 A Well first of all it's the ability to have
9 more difficult cases that are frequently referred to us from
10 other neuro-surgeons, the ability to work with them, to try
11 and solve a particular problem, to teach residents to do the
12 same and thirdly to be able to do, to do research in the
13 particular field I have chosen, to be able to have the time to
14 have the equipment and be allowed to do pretty much as you
15 choose as far as research is concerned. These are the things
16 to me that make up for the monitary loss if you will.
17 Q And do you believe and hope that you are
18 advancing the cause of medical science in what you are doing?
19 A Absolutely.
20 Q And typically are doctors who do this type
21 of work paid less than those who are/doing very high priced
22 operations without advancing in specific technical knowledge
23 perhaps?
24 A Most definitely.
25 Q And since your residency you have had this in

1 mind as a career field?

2 A Yes it has been.

3 Q And have you discussed this with your chief

4 of neuro-surgery, Doctor Jane and others who are over you or

5 other colleagues and is it your intention to pursue this

6 pattern and become a department chief hopefully some day?

7 A Yes sir, we have talked about this from the

8 first year he came here as department chairman and chief of our

9 program and we talk about this very frequently as far as

10 particular things to do, particular plans toward this goal.

11 Q And isn't it true that a chief of neuro-surgery

12 in a hosptial probably earns twice what you do also?

13 A The usual hospital around the country that would

14 be the case.

15 Q So there is nothing unusual about what you

16 are doing? You are not shirking from earning more money or

17 anything, you are doing the best you can in your career field?

18 A In my career field, yes sir.

19 Q And given other neuro-surgeons of comparable

20 training and experience in Virginia State hospitals, let's say

21 including University of Virginia Hospital and MCV, are you

22 earning a comparable salary and doing comparable work?

23 A Doing comparable work. I am not making the

24 comparable salary.

25 Q Have you discussed this with your chief and

1 is he trying to get you a comparable salary?

2 A Yes, he is trying to do that. This is some-

3 thing that we are trying to work out as far as what the State

4 allows with the 10 percent cutback for this coming fiscal year.

5 Q So part of the problem is the economy with

6 you as well as everybody else?

7 A Certainly.

8 Q I believe that's all I have.

9 COURT: Doctor Butler, I gather from what you

10 and your wife have both said that a large part of the under-

11 writing of your losses and some of the educational expenses

12 have come from one or both sides of the family? Are they still

13 contributing toward the cost of your needs and your wife's at the

14 present time or have they been up to now?

15 A With the exceptions of the house payments and

16 the Master Charge, Sears, Haynes payments as well as the car loan

17 and the auto insurance the remainderof those loans, namely the

18 two Navy Credit Unions, the loans from the Chesapeake and

19 Potomac conferences as well as the A.M.A. Loan were all for my

20 medical education.

21 COURT: And how had you been meeting all of these

22 expenses before the marriage breakup? I gather that you had been

23 having a difficult time even with your family together, now that

24 it is separated it is even more difficult but how did you make

25 up the deficits before?

1 A Well as we have mentioned before after payments
2 were made we were left with a sum of a little over $300 per month
3 to. . .
4 COURT: To run the household on?
5 A To run the household.
6 COURT: Were you going in the hole deeper as you
7 went along or were you coming out?
8 A We had not had to make any additional loans
9 no.
10 COURT: Now how about your charges on the Master
11 Charge, had they been increasing or were they lessening?
12 A I guess I should restate that, yes they had
13 been in this particular area been increasing. We were hoping that
14 with the return from the Income Tax we could eliminate a large
15 part of the Master Charge.
16 COURT: Now what is the requirement as far as
17 the repayment of the Chesapeake & Potomac Conference loans and
18 the Continental Bank of Chicago, are you under a mandatory re-
19 payment schedule?
20 A Okay, as far as the Continental Bank of Chicago,
21 is concerned I am under a mandatory schedule, yes. As far at the
22 Chesapeake & Potomac Conference is concerned, these are both
23 church organizations that lent me money during my medical school
24 years. And what they have allowed me to do is to pay a certain
25 minimum which goes toward paying off at least the accured

1 interest. But as I said before I would like to start paying
2 off some of the principle rather than having the $11,000 hanging
3 over my head for a long period of time.
4 COURT: When did you finish Medical School and
5 what school did you attend?
6 A I attended Loma Linda University Medical
7 School in Los Angles, California and I finished in 1964.
8 COURT: Where did you take your residency?
9 A I - the following year I took an internship
10 in medicine at the Washington Sanatorium and Hospital. The
11 following year I took a year of straight surgery-internship
12 at George Washington University Medical School and then in 1966
13 I started my residency here at the University of Virginia.
14 COURT: You have been here since 1966?
15 A Yes sir, with the exception of two years in
16 the Navy.
17 COURT: Well now apparently the large part of
18 your debts then are carry over from your period of medical
19 school and internship and you have not been adding substantially
20 to your debts except your Master Charge in recent years then?
21 A Yes sir, that's correct - well in addition
22 the house payments.
23 COURT: And you have bought two automobiles
24 I take it?
25 A Well one automobile was given to me by my

1 parents, the car I have was given to me by my parents and the
2 Datsun we purchased in March.
3 COURT: Now I take it you wouldn't dispute the
4 fact that that is a necessity for your wife?
5 A Yes.
6 COURT: There is no indication she could improve
7 her situation by getting rid of that is it?
8 A No sir.
9 LOWE: We don't contend that Judge. . and I
10 might add what year Porsche are you driving?
11 A 1968.
12 COURT: All right, any other questions?
13 CAMBLOS: Yes, I have a matter that I overlooked.
14
15 RECROSS EXAMINATION
16 By: Mr. Camblos
17 Q Doctor, what--at your present pay scale - at
18 what time during the year do your social security deductions
19 from your pay cease?
20 A Okay as of last year they went for 9 months.
21 As of this coming year, there was an additional - there is an
22 additional $1,000 and some dollars of my salary which is subject
23 to social security taxes so I have anticipated they would be
24 in the range of 10 to 11 months of this coming year, very close
25 to the whole year.

1 Q That's if you do not get the raise you are
2 expecting?
3 LOWE: There is no testimony that he expected
4 a raise Judge, I would like to have that question rephrased.
5 COURT: That's understood that he had anticipated
6 one but it is not clear as to whether it will be coming. I
7 think that's true of everybody who works for the State.....I
8 understand fully what Mr. Butler is talking about because the
9 social security do take a maximum amount until you reach the
10 end of that figure and then they stop - the deductions that is.
11 And, of course, the budget is still in the hands of the General
12 Assembly. I don't know whether it has been reported out yet
13 or not. I take it that your operation is under the general
14 budget of the Commonwealth and until that comes out your
15 department wouldn't know either, is that correct?
16 A Yes sir, the Medical School is allocated a
17 certain sum and the Dean of the Medical School breaks it up
18 into percentages and our department has been allowed a certain
19 percent.
20 COURT: I see, all right Mr. Camblos.
21 Q Doctor, you say you have not prepared or filed
22 your 1974 tax return?
23 A Yes sir, I have not.
24 Q Didn't you in fact get a return last year in
25 the neighborhood - between $2,000 and $2500?

1 A I was under the impression that it was in the
2 neighborhood of $1500.
3 Q Your Honor, taking these debts - trying to take
4 the interest and whatnot - he must be paying - trying to figure
5 out a tax return for him - I have reached a figure that I think
6 he is going to get back. Now I would like the Court's permission
7 to find out just what it is going to be. It's a great deal more
8 than he is estimating. . .
9 LOWE: Now Judge. . .
10 CAMBLOS: At some future time - I think that
11 can be arrived at fairly easy. . .
12 LOWE: There are a couple of things - I think first
13 of all we ought to have a statement in open court as to whether
14 his wife is going to join in a joint return or not - that is
15 going to affect it very seriously and I think we ought to have
16 an official statement on that question.
17 CAMBLOS: If it is going to save money, she
18 certainly is. . .
19 LOWE: Mr. Camblos and I and the Court are all
20 familiar with wives who out of pure vindication would cut their
21 nose off to spite their face and frequently so in this regard
22 and. . .
23 COURT: I think I can put that to rest Mr. Lowe.
24 The Court will place Mrs. Butler on terms to require her to
25 join in the joint return. .

1 LOWE: That's fine - I think the return is going
2 to be applied against that Master Charge Account. I think that's
3 a joint obligation and it keeps going up and they are paying
4 18 percent interest on it or more.
5 CAMBLOS: Your Honor, the problem here is that
6 this Master Charge thing is being used twice. The net income
7 figure is held very much below what it might be in order to
8 have a sum to pay the Master Charge. .
9 COURT: I understand...
10 CAMBLOS: So you can't figure the Master Charge
11 as part of the budget unless you add to the income the amount
12 that he could have by using all of the deductions. . .
13 LOWE: I don't understand what we are saying as to
14 that. Dr. Butler is very clearly making the payment - I think
15 he said $54 a month on this and I don't understand how that
16 affects income, that's no income at all.
17 COURT: Well the question of course is how he is
18 going to be handling his exceptions under his current with-
19 holding and what his tax return will be for last year. Now the
20 tax return for last year may have some additional benefits if
21 Congress does what they are suppose to do or have indicated. Now
22 I suppose there again it's speculative as to what additional
23 refunds there may be.
24 LOWE: But Judge I would represent that Dr. Butler
25 when they get a refund certainly wants to apply it against

1 Master Charge which is carrying 18 percent interest and insofar
2 as it would reduce his monthly payment - I mean we would stipulate
3 if it reduces his monthly payment by $15 - would make an appropriate
4 adjustment on support. We are not trying to get away with any-
5 thing there.
6 COURT: Well if you got rid of the Master Charge
7 it would take $54 a month. Now you have Dr. Butler testifying,
8 let's leave this other for the final argument - if you want
9 to ask any questions that he can respond to, you may do that
10 at this time.
11 Q All right. I show you a check transaction
12 register and ask if that is not yours?
13 A For - okay, $2,250.22.
14 Q That was your refund on your taxes in 1974?
15 --May of '74?
16 A Correct, minus the amount that went to the
17 State of Virginia.
18 Q Well your refund from the Federal Government
19 was over $2200, was it not?
20 A Yes sir.
21 Q All right, thank you.
22 COURT: Who prepared your return last year
23 Doctor Butler?
24 A H & R Block.
25 COURT: Do you plan to get them to prepare it

1 this year?

2 LOWE: I expect we will probably work with him

3 on that Judge.

4 COURT: Now you say your W-2's have not all come

5 in? You could not file it now?

6 A My W-2 has come in and I have all the material

7 ready to file, just waiting to find out which way the....

8 COURT: I see, you are ready to file it?

9 A Yes sir.

10 COURT: Any other questions?

11 Q Yes, Your Honor, now the loan on which you

12 are paying $113 a month will be paid up in June of this year

13 will it not?

14 A I think so, yes.

15 COURT: Which is that, the Naval Credit. . .

16 A Federal Credit Union, yes sir.

17 Q And the one in which you are paying $80 a month

18 will be paid up in September or October of this year won't it?

19 LOWE: Did you say $80?

20 A The Navy Hospital Credit Union loan.

21 LOWE: 10 or 11 months more according to the

22 figures he gave - is $80.41 a month and it's $849 balance and,

23 of course, there is still interest running on those loans.

24 Q Will be paid in November then?

25 LOWE: 10 months from now isn't November.

1 COURT: You all can argue that later but if Dr.
2 Butler doesn't know, you may say so, but if you do know then
3 answer it the best you can Dr. Butler?
4 A I do not know exactly, no sir.
5 COURT: All right.
6 Q But it will be paid this year? Do you know
7 that?
8 A If it were 10 months it would be paid this
9 year. If it was longer than that it would be 1976.
10 Q I have no further questions Your Honor.
11 LOWE: No further questions unless the Court has
12 some.
13 COURT: All right, Doctor Butler you may stand
14 aside.
15 LOWE: We have no further evidence at this time
16 Your Honor.
17 COURT: Any rebuttal evidence Mr. Camblos?
18 CAMBLOS: No Your Honor.
19 LOWE: Judge may I make one thing that will assist
20 us in this I think and that is at this point Dr. Butler is making
21 some of these payments that Mrs. Butler is claiming and I
22 presume that it is satisfactory with Mrs. Butler that he continue
23 to make those payments as part of a quittance of the expenses
24 that she feels she might have and I think before we can adequately
25 argue we need to know that. I presume that Dr. Butler will

her costs for necessary expenses to a minimum. I think we have shown that Dr. Butler could have, if he chose to do so, at least a couple hundred dollars a month in his pay check. He said that he thought he was claiming two deductions. We have shown that last year contrary to his testimony which was $1500, he actually got back $2200 and some on his taxes. Your Honor will note I'm sure that in 1973 Dr. Butler was only paying this terrific interest during September, October, November and December. His house was purchased in August of 1973 so that even with the reduced interest, a great deal less interest than he has now, he was getting back $2200 plus on his taxes, if he took all of his deductions I dare say he could get back at least a couple hundred dollars more now. And I think that Mrs. Butler is the one that is entitled to this, not Dr. Butler. If Dr. Butler has to pinch and save and live in staff quarters at the hospital he brought it on himself, not Mrs. Butler.

COURT: Gentlemen, since there are several areas which I should address myself to in connection with the Court's findings and I will allow counsel to make some notes with regard to the specific dollar amounts and then with regard to some other aspects of the parties and their future rights and responsibilites to be incorporated in the decree, assuming that the grounds for divorce are substantially as counsel have indicated and will be proven when the divorce is awarded - of course these items and findings would be effective and otherwise they would not be and

would have to be treated I suppose as temporary allowance to the wife and children rather than any permanent award or what would otherwise be permanent in nature in the decree. And as counsel know what might be generally considered by the parties as a permanent award is not in any way an indication that it is permanent. It is really a finding of what the rights and responsibilities are in the light of present circumstances and that's the basis upon which the Court will deal with this case. First of all I think I should make some findings with regard to what has been proven to be the minimum requirements of both parties, in view of the testimony and disposable income. This makes a problem with regard to the final award. Leaving out certain debt repayments I have taken into account the minimum requirements of Dr. Butler, allowing $200 a month for an apartment, $40 for utilities, $15 for telephone, $20 for clothing, $15 for laundry and dry cleaning, $2.50 for medical and dental, $10 for auto insurance, $30 for auto upkeep and $80 for food - his minimum needs on those items alone come to $422.50. Now Mrs. Butler's minimum needs leaving out some of the items which may be very close to necessities $250 for food and gasoline, $70 for electric, $25 for phone, $18 for auto insurance, $30 for miscellaneous expenses which are itemized - school lunches, dentist bills and other incidentals to the family or to herself and the children, I come up with something in the neighborhood of $488 for her needs. Now I do have those summarized - that includes the $95

payment on the Datsun - that $488 but it does excludes certain items which are listed on her return or her summary such as the Master Charge and the Sears. . .

LOWE: Excuse me, Your Honor, you say that $488 does include the Datsun?

COURT: $488,46 would include the Datsun payment . . .

LOWE: Well Dr. Butler is going to pay that. . .

COURT: All right, but what I am doing is summarizing their minimum needs - it's evidence to the Court that both parties need an automobile. . .

LOWE: Right, sir.

COURT: So taking into account their minimum needs it seems to me that the Court is talking about $422 to Dr. Butler and $488 to Mrs. Butler and that's not taking into account the mortgage payments. Now if I add the $422.50 and the $488.46 - $910.96 a month from his net or present net pay, $1390 leaves $479 to pay the mortgage and other debts. So the Court doesn't have any room to deal with any surplus income. In fact it seems to me that the Court is required to pair off some of the minimum needs of both parties in order to deal with this realistically and that leaves a real problem which I don't undertake to minimize for either party. I think it is obvious that I should make some findings here with regard to the children and the wife and then work out some conditions under which payments

1 would be made and then possibly even postpone and to that extent
2 the Court makes these findings; that - assuming that the parties
3. stipulate and the evidence shows that the wife should have the
4 custody of the children which I find no reason to be otherwise,
5 the Court finds that there should be an award of $150 per
6 month child support to each child. And under the present
7 circumstances the Court feels that the evidence shows and the
8 decree should recite, the Court finds no reason to require the
9 husband to change his position or present specialty within the
10 medical profession, finds no present condition which would require
11 the wife to seek employment. But it appears that it would be
12 something that she will have to consider in the future but taking
13 their family circumstances as they existed when they separated
14 the wife was not working. There are two very young children in
15 her care and that the Court has to deal with this in the light
16 of the possibility that she might work rather than the probability
17 of it as of right now. But I will point out that that's open
18 to review and may require the wife to seek employment once this
19 period of adjustment has passed. To that extent then the Court
20 awards the wife the sum of $200 per month alimony. Now that would
21 make a total of $500 per month which the Court is going to have
22 something further to say about the manner of payment. Those two
23 figures will be in addition to the requirement that the wife and
24 children be allowed to occupy the present marital domicile and
25 that Dr. Butler continue to make the mortgage payments. Now

1 of course, this finding is not in any way conditioned upon the
2 wife paying off any of the pre-existing debts but would be
3 conditioned on her not adding to any of the debts. And the Court
4 may have to leave that to the parties to struggle with as best
5 they can for the time being. Now with regard to the manner of
6 payment it seems to me that the only practical way to handle this
7 would be to require the child support to be paid currently and
8 to allow within certain limits the accumulation of the alimony
9 which would be due the wife, to allow for the change in with-
10 holding and tax refund which might be affect the amount of
11 disposable income for Dr. Butler. Now he is obviously going to
12 be getting a tax refund somewhere in the next 60 days or there-
13 abouts and toward the end of the year his net disposable income
14 should be larger by virtue of a change in withholding, if not
15 salary increase which the Court is not taking into account, as
16 far as any salary increase. Now it seems to me that that's the
17 context of which the Court should deal with the alimony payments
18 to the wife. It will accrue of course and accumulate but the
19 question of payment is what I am dealing with in this regard.
20 It seems that a large portion of the tax refund would be applied
21 to existing debts and appropriately so if it would reduce the
22 interest load on Dr. Butler, the principle one being the Master
23 Charge account which would also reduce his monthly payment load.
24 Then he is rapidly paying out apparently this $113 per month on
25 Naval Hospital Credit Union - that may not be carrying a lot of

of interest. I think it would be appropriate for the Court to require a certain amount to be paid at the time of the tax refund toward the alimony. I will make it on this basis, the wife will be required under the terms of this decree to join in a joint return for the 1974 tax year and if appropriate for the 1975 tax year. I think that the effective date of this divorce will allow the parties to file a joint return for the year 1975. It will also allow a deduction by Dr. Butler for the amount of the alimony which is separated - might result in a tax advantage at least at the end of the year for an additional deduction. The Court will require then that out of the proceeds of the tax refund three months alimony will have to be paid to the wife, that is a total of $600.

LOWE: In other words to clarify Your Honor, the tax refund is going to go to Dr. Butler. . .

COURT: Oh, yes, it will be understood that the wife will be required to endorse that check jointly with Dr. Butler and I will attach these conditions as to how the proceeds are to be applied, at least in part - one of those would be the $600 to Mrs. Butler. And, of course, the distribution of it will be somewhat in his hands as to the application on the debts but he is still is going to be required to deal with his income to the extent that the wife's alimony is going to eventually result in a payment to her. It's a question of when. Now it seems to me in that regard the alimony to the wife as far as

1 Dr. Butler is concerned will be allowed to accrue and thereafter
2 he would pay $100 of it per month in addition to the child
3 support. . .
4 LOWE: Judge, you said thereafter, I am not sure
5 you told us what date. . .
6 COURT: After his tax refund. . .
7 LOWE: I see. . .
8 COURT: Once he gets his tax refund. Following
9 that periodically he will make at least $100 a month payment
10 on the alimony and the rest will be allowed to accrue and then
11 beginning with the month of September it would be expected that
12 he would then begin paying the $200 per month in addition to the
13 child support. Now then any alimony which has not been paid
14 would be taken from the 1975 tax refund and paid entirely to the
15 wife. I don't know whether you all are in a position to estimate
16 by the time you get the 1974 tax return filed what their tax
17 status will be but I suppose that's something will depend largely
18 on the amount of rebate that Congress will declare anyway. Now
19 what I have done in effect is made an award here which until the
20 circumstances of the parties change would be a current payment
21 to the wife for child support of $300 per month, and a payment
22 of $200 per month alimony in addition to the requirement that
23 the mortgage payments on the house be paid and that in addition
24 to that the real estate taxes be paid by Dr. Butler. As I calculate
25 it we have got the month of February, March and April which will

1 be paid out of the tax refund - May, June, July and August would
2 be paid to the extent of $100 a month so that there would be
3 approximately $400 of the alimony accured and carried forward.
4 I may have the number of months here - all right, that is as
5 I calculate it would be this - February, March and April are
6 to be paid and made current, at the time the tax refund is
7 received. May, June. .
8 LOWE: That would not be for the entire month
9 of February - we are partially through that already. . .
10 COURT: Well there may be a calculation there.
11 I am not sure when you all will have the depositions ready.
12 Certainly part of February will be involved - it may hit the
13 middle of the month. . .
14 LOWE: Yes sir.
15 COURT: But just counting that in round figures
16 February, March and April would be current, May, June, July and
17 August would be allowed to accumulate to the extent of $100
18 per month. But from September - counting September, October,
19 November and December, he would be expected to make those payments
20 and then when the 1975 tax refund is received he would catch up
21 the accumulated alimony payments. Thereafter, of course, he would
22 be expected to keep them current. Let's see if my figures are
23 right. His mortage payments come to approximately $440 per month,
24 that making approximately $940 a month then that he would be
25 obligated for to the wife or to the household of the wife and

1 children, leaving him under the present withholding setup about
2 $450. It's not far from one third to the husband and two thirds
3 to the wife and children counting the fact that he is furnishing
4 expenses for providing shelter. The Supreme Court has said
5 that the trial court should set forth the manner in which the
6 calculations are made, nothing has been said about the pro-
7 priations or how you resolve the deficiencies except that both
8 sides have to take some of it and certainly in this case if Dr.
9 Butler were in a position to pay more, the Court would require
10 him to pay more and I think that should be one of the observations
11 in findings. But I find that under his present setup the Court
12 could not require him in good conscience to pay more than the
13 amount being presently fixed.
14 CAMBLOS: May it please the Court. . .
15 COURT: Yes sir, Mr. Camblos. . .
16 CAMBLOS: May I inquire under the Court's ruling
17 I didn't understand who is to make the payment on her car.
18 COURT: I think I have counted that in. . .
19 LOWE: You said you had that in the $488 Judge. . .
20 COURT: . . the allowance to the wife, in the
21 $488 that I have. . .
22 CAMBLOS: May it please the Court - I don't mean
23 to argue further with the Court but after paying fixed expenses
24 for food, car maintenance, clothing, car - everything that a
25 family needs during the next three months Mrs. Butler is going to

1 have $62. Mrs. Butler and two children can't live on $62 Your
2 Honor.
3 COURT: Now what are you basing that calculation
4 on Mr. Camblos?
5 CAMBLOS: $95, $70, $25, $30 - comes Your Honor
6 to $238. Your Honor, has - during the next three months will
7 have $300 a month - $150 for each child, that leaves her $62.
8 COURT: All right, now we are talking about a
9 period here until we get the rax refund. . .
10 CAMBLOS: Your Honor, you can get awfully hungry
11 in three months.
12 COURT: All right, now that's something that should
13 be considered with regard to a difference in the payments between
14 now and the time the tax refund is received. All right, let's
15 look at that. We are dealing with financies here which have left
16 what I consider to be a deficiency up to the present time and
17 we are dealing with $330 a month for the whole family above their
18 actual expenses. So that. . .
19 CAMBLOS: Well Your Honor as has been shown in
20 testimony Your Honor is taking projected expense for Dr. Butler.
21 Now I maintain if Dr. Butler has to do less than he would like
22 to do in order to feed his family I think he has got to do it.
23 You have got at least $240 in here as projected expenses for
24 Dr. Butler, not present expenses, what he has talked about is
25 he going to start spending, not what he is now spending.

1 COURT: All right, for a period of three months
2 or whatever it takes to get his tax refund it's a question of how
3 the credit should be allowed or accumulation, if any of the
4 alimony payments. I am frank to say that this is a question of
5 juggling figures more than anything else.
6 LOWE: Judge I don't see how we are going to
7 do it without Mrs. Butler earning a little bit of money here.
8 I don't think it is unreasonable to ask her to earn some money.
9 She has been earning some money. Mr. Camblos forgets to say
10 that she earned $45 in January alone.
11 COURT: Well we are talking about a credit here
12 Mr. Lowe. It's not a question of how much the obligation is. I
13 have fixed that, but a question of how it is to be paid. Now
14 Mr. Camblos has raised the question about the next three months
15 or until the tax refund is received if that is a shorter period
16 than that. I think I should take that into account by making
17 a slight adjustment here in what's to be done with the tax refund.
18 It seems to me that the Court ought to require $100 to be made
19 on the alimony payment even while the tax return or tax refund
20 is being awaited - would be the appropriate way to take care of
21 that. It would allow for this car payment - it isn't going to
22 allow for either one of them any extra I realize that. All right,
23 the terms will be modified to this extent, that Doctor Butler
24 will pay $100 on the alimony in addition to the $300 child
25 support per month effective upon the entry of the decree and when

1 the tax refund is received then any accured amount that is not
2 paid on the alimony would be brought up current. And thereafter,
3 of course, the $100 per month would be paid as I have already
4 said. So that in effect he is himself going to be able to catch
5 up some of his own shortage if that is possible at the time he
6 receives his tax refund. Now the petitioner has asked for
7 allowance for attorney's fees in the bill for divorce and it seems
8 to me that the Court should make an award on that point to be
9 also paid out of the tax refund. Mr. Camblos I haven't had any
10 evidence on that point, I think I should just hear from counsel
11 in regard to that, but it's appropriate that the Court award you
12 that to be paid at the time the tax refund is received.
13 CAMBLOS: Your Honor, I don't know how you go
14 about trying to get paid for what you are entitled to in these
15 things. I have met with Mrs. Butler on numerous occasions. I have
16 met with and corresponded with a private investigator that her
17 family employed to help her in this matter. I have been here
18 today and I know will be back on several occasions. . .
19 COURT: On other occasions now when you come
20 back that can be taken up there but this would be for the present
21 hearing and the divorce itself. I think you have asked for
22 allowance for attorney's fees in your motion.
23 CAMBLOS: Yes sir. Your Honor, I think I ought
24 to be awarded at least $1,000 to be paid when Dr. Butler can pay
25 it. I dare say he is going to pay Mr. Lowe a good deal more than

1 And being mindful of the fact also that Mr. Camblos is not going
2 to be required to be paid anything until the tax refund is in
3 hand.
4 LOWE: Yes sir.
5 COURT: I am doing that out of consideration for
6 Dr. Butler's situation. Now. . .
7 LOWE: I do have some other matters that I would
8 want to ask of the Court. . .
9 COURT: Now back to the support arrangements, as I
10 have indicated I have only undertaken to fix the amounts but
11 the specific amounts as to how they are being paid I am ready
12 to reconsider with counsel if there is some reason that I have
13 overlooked something and it should be reconsidered, I haven't
14 closed the door. But as of now I have set $300 a month child
15 support and $200 a month alimony plus the payment of the two
16 mortgage payments and taxes at the end of the year on real estate.
17 LOWE: I would like to fill the record out a little
18 better Judge. . .
19 COURT: All right, sir.
20 LOWE: . . .as to specific findings. I have
21 on the debt payments the minimum payments which have been testi-
22 fied to and are uncontested at this point - if you want to follow
23 me on this Judge - I have $80.41. . .
24 COURT: I have got a list of it too. Well if you
25 want to start in the manner in which he gave it, he started with

1 Virginia National Bank. . .

2 LOWE: Well you have already allocated that to the

3 wife so. . .

4 COURT: All right.

5 LOWE: $80.41, then $113.84, $10 - Haynes Furniture,

6 then $25 for Sears, then $54 for Master Charge - he said the

7 minimum he had been paying all along is $25 a month on the next

8 two although we asked - he said he wanted to start paying $50 -

9 the minimum he said he could pay was $25 on each of those, and

10 then a fixed $121.04 - when I add those up I get $454.29 and I

11 would ask the Court for the record to make a specific finding

12 as to what the minimum payment on debt obligation is for Dr.

13 Butler at this time - if those figures are your finding of fact

14 then if you could just recite it for the record or if you have

15 a different figure perhaps it would be helpful for you to read

16 it.

17 COURT: Mr. Lowe I don't know that I can make

18 a finding as to what he shall pay. It is certainly acknowledged

19 that they have been proven to be existing debts. Now as to the

20 Court requiring him to pay any specific amount I have not done

21 this. . .

22 LOWE: No, I do not mean that Judge. His testimony

23 is that these are the minimum payments that he may make according

24 to the debt obligations. That's the only fact I was asking you

25 to make a finding on. There has been no evidence to the contrary

1 in these and if there is any, it just hasn't been presented.

2 COURT: I find from the evidence that these debts

3 are uncontradicted. Now even the outstanding principle balance

4 I have also listed which indicates that some of those have a

5 long ways to go and some of them don't.

6 LOWE: All right, sir.

7 COURT: But I make no finding that Dr. Butler shall

8 pay any particular amount. . .

9 LOWE: I understand that. . .

10 COURT: He has got to juggle his income the best

11 he can and try to get some of them to hold off possibly until

12 he can catch them up with his tax refund.

13 LOWE: Do I understand that you are also making

14 a specific finding of fact but right now Dr. Butler is unable

15 to pay $500 per month, given all his obligations and circumstances

16 . . .

17 COURT: Yes sir.

18 LOWE: And I gather. .

19 COURT: That is as to the wife and children. . .

20 LOWE: Pardon me sir?

21 COURT: That is as to the wife and children

22 as of now. . .

23 LOWE: Yes sir. And that he is unable to pay that

24 under the present circumstances given his income and expenses

25 and that you are requiring him to pay $400 to them now and to

1 accrue the $100 that he cannot pay at the present time until
2 tax refund and then until September of '75?
3 COURT: Yes sir, at $100 a month.
4 LOWE: All right, sir. And you did find - I think
5 you said this Judge but let me be clear that $422.50 was the
6 minimum requirements for Dr. Butler and $488 even - was that
7 your figure requirements for Mrs. Butler and the children?
8 COURT : Let's see. $488.46. . .
9 LOWE: All right, that's what I missed. And that
10 was the minimum for Mrs. Butler and the children.
11 COURT: Now the minimum that I calculated for Dr.
12 Butler would contemplate his being in an apartment where he has
13 testified that it would be a minimum of $200 a month.
14 LOWE: Yes sir. Now you are stating that the
15 proceeds of the tax refund would first go to pay the accrued
16 amount of alimony and I calculate that we have exactly three
17 quarters of February left - 28 days and this is the 7th so he
18 would have three quarters of support for February, plus March
19 and April and that would be paid - $275 in other words would
20 be paid out of the tas refund. . .
21 COURT: Whatever the date and the accumulated. . .
22 LOWE: Yes sir, I'm assuming that many months,
23 whatever it is. . .
24 COURT: Yes sir.
25 LOWE: And that in addition he is going to pay

the attorney's fees which at this time we have arbitrarily assigned as $450 subject to some greater information on. . . .

COURT: I didn't mean to indicate that he would pay the entire attorney's fees as of that time but I have said he would pay at least $450 on account. . .

LOWE: Yes sir. . .

COURT: Because the balance of it I will have to deal with in light of what the tax refund is and what other demands may be. I think I will have to hear you all further on that.

LOWE: The balance of the tax refund would be payable to Dr. Butler and that Mrs. Butler will join in joint tax returns. Now one other thing which we have not discussed Your Honor but you are imposing on Mrs. Butler to live on her own now on the money she is getting and we would like to ask that a condition of the support that Mrs. Butler return all credit cards to Dr. Butler so that there will be no further misunderstandings shall we say as to what might be charged and I think that's a reasonble request under the circumstances. Dr. Butler has certain obligations that they will look to him for on these accounts and will affect his credit and will affect. . .

COURT: How many credit cards are there Mr. Lowe?

LOWE: I am not sure which ones they are, certainly Master Charge and Sears that we know of.

COURT: Any objection to that Mr. Cambios?

1 CAMBLOS: Your Honor, I had not understood. . .

2 COURT: I think you have got a point there. The

3 Court would prohibit her from charging anything but that doesn't

4 necessarily handle the mechanical end of what to do with the

5 credit cards.

6 CAMBLOS: Well there is a figure of $60 of her

7 necessary expenses that the Court hasn't considered that was

8 in the charge card which Dr. Butler is now saying he has to pay

9 $25 on. .

10 COURT: It is understood that he will assume the

11 amount. . .

12 CAMBLOS: This amount got as low as it did because

13 he was paying $25 on that charge. . .

14 COURT: The question would be what to do with the

15 card, any reason why Mrs. Butler shouldn't return. .

16 CAMBLOS: Well if she is not to use it then he is

17 perfectly willing to have it Your Honor, but it seems to me if

18 she is not to use it, that it frees $25 that he is claiming for

19 debt. .

20 COURT: I am not sure about that. .

21 LOWE: I don't understand that. . .

22 COURT: That is already accumulated. . .

23 CAMBLOS: Well it is accumulating monthly and

24 he is paying monthly Your Honor. It is accumulating at the rate

25 - an average of $60 a month and he is paying monthly.

1 COURT: Well the decree will as I have indicated
2 - it doesn't have to go into the decree but it should be under-
3 stood that the wife will not charge anymore debts which will
4 accrue to the husband's account.
5 CAMBLOS: All right.
6 LOWE: We would like to go ahead and get the
7 credit cards if we could Judge because this will affect his
8 credit line too.
9 COURT: All right, the Court will require that the
10 joint credit cards be given. . .
11 CAMBLOS: We will give them to him right now
12 Judge. . .
13 COURT: Surrendered by the wife, that hereafter
14 she will deal with her own credit, if any.
15 LOWE: Judge, I would want to make some observations
16 it may be beyond the point of convincing the Court that this is
17 not workable. You have found that $454.29 of debts are the
18 minimum that are being paid and I think we must take the testimony
19 of Dr. Butler that that is what he has to pay, he is obligated
20 to pay that even though he may want to pay some more on some
21 of those. So if we take the $1390.98 and subtract the $454.29,
22 we end up with $936.69 left to work with. Then we take out
23 of that $440.45 for mortgage which has to be paid each month and
24 you end up with $476.24 left to work with. And you have awarded
25 and are expecting Dr. Butler immediately to start paying $400

to wife and children, that leaves Dr. Butler $76.24 to live on each month including food which he has already testified cost him $80 a month by itself, a place to live - the various other things which he has testified to and Judge you made a finding of fact or a finding of law that I would ask you to reconsider and that is Mrs. Butler under these circumstances does not have to work. Mrs. Butler is perfectly capable of working and I just don't think you can require Dr. Butler to live on $76 a month while his wife lives in the lap of luxury without having to work when she is capable - in fact earned $45 just in the month of January. I just don't think that is reasonable Judge.

COURT: I haven't found that she doesn't have to work in the future, I have found that as of now Mr. Lowe that the Court should not place on her the burden of making up the deficiency of what it takes for her family to come up with the basic needs either. I can't see that there is any. . .

LOWE: Well Judge it seems to me it's fair to ask her to make reasonable efforts to earn whatever she can. . .

COURT: Oh, yes. . .

LOWE: And to come back here periodically to review whatever she has made and to put in a continuing obligation that she make efforts to work and earn what she can. Dr. Butler will try and get her assistance in getting a job at the hospital in the Emergency Room where she can use her skills.

COURT: Well that the Court has left open now. . .

1 LOWE: All right, sir, thank you. . .

2 COURT: Now if counsel want to set a time and
3 have that considered, to review this, I have no objection but I
4 have left that open for the future. . .

5 LOWE: That's fine. . .

6 COURT: . . .and said to Mrs. Butler that she
7 should seek employment but I don't put any immediate burden on
8 her to make up the deficiency. . .

9 LOWE: I understand you are not making it an
10 obligation for her to make up the deficiency but I understand
11 you are saying that she has an obligation to attempt to secure
12 some employment as far as she is able to and that you will consider
13 it at that time am I not correct about that?

14 COURT: I think in taking the figures from her
15 standpoint I have already put her under that burden. She can't
16 possibly live on what I am awarding her. She has got to seek
17 employment, I think I have forced it on her in the amount of the
18 award. She is going to wind up in the hole too. If I could perform
19 magic here I could meet these figures for both sides but I can
20 find a deficiency on both sides if you take the individual re-
21 quirements that Mrs. Butler has as opposed to Dr. Butler and
22 I wind up with not enough money.

23 LOWE: The other point I would just like to make
24 Judge we would except to the ruling as to the total award for the
25 reason that you have made a finding of fact that Dr. Butler cannot

1 afford to pay a total of $500 now. I think if you find that
2 he can $400 and I understand emplicitely you are finding that,
3 then it seems to me that that should be the award until such
4 time as the circumstances change and he can pay more. I don't
5 think that the Supreme Court of Virginia in its cases or Virginia
6 statutory law allows the Court to award alimony that a man
7 cannot afford and just let it accrued in the future. I think
8 you must make your decision on what the circumstances are now
9 with leave for the parties to come back if they change or perhaps
10 set a hearing in the future when you anticipate they would change
11 to reconsider it and we would except tc so much of your ruling
12 as has indicated that additional $100 a month would accrue.
13 COURT: Well now I have undertaken to earmark it
14 for the purposes of convenience and tax implications to the
15 parties but in a sense I have undertaken to deal with the
16 minimum family requirements of Mrs. Butler while recognizing
17 that it leaves Dr. Butler in the hole too. I have said in effect
18 he has got to resolve the deficiency by taking it out of his
19 debt repayment and undertaking to deal with his creditors until
20 he can get his tax refund.
21 LOWE: Of course Judge Mrs. Butler has another
22 thing that the - has not been mentioned and perhaps conveniently
23 has not been mentioned and the Court hasn't struck on it in its
24 direct comments from the bench but Mrs. Butler can go out here
25 and find an apartment and I know very well - I think the Court

1 knows that there are three bedroom apartments available for
2 $250 and $270 which is a lot less than $440. If she does that
3 and they sell this house that will relieve some of this expense
4 and we would expect that Mrs. Butler under these circumstances
5 will just have to take on that obligation and we will assist
6 her in finding a more appropriate place than this and get that house
7 on the market because I don't think they can choose anything
8 else.

9 COURT: You all may want to reconsider this in
10 the light of the change that would occur once this divorce is
11 final and the parties have dealt with their property. It may
12 change the circumstances but as of now under the ruling of the
13 Guy case I have no right to require that that be done. . .

14 LOWE: That's right, I understand.

15 COURT: I will leave that to counsel.

16 LOWE: But I think you do have the right Judge
17 in considering what support to set as to whether the wife is
18 making reasonable efforts to minimize expenses. One of those
19 reasonable efforts would be to find a lesser expensive house. . .

20 COURT: Yes sir. . .

21 LOWE: Judge, could we set a date to come back
22 on the final decree, depositions and so forth - I am not even
23 going to seek to appear at depositions. . .

24 COURT: I will be glad to take that up informally
25 with you as soon as you all have the depositions and the decree

1 ready. .

2 LOWE: Could we set a date Judge. I know how

3 hard it is for everybody to get their dates. . .

4 COURT: All right. I am going to allow the

5 Court Reporter to leave because of an appointment and I will

6 just review the date with you all.

7 LOWE: That's fine Judge.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

HOPE OKUNO BUTLER,

Complainant

v. FINAL DECREE

ALBERT B. BUTLER,

Respondent

This cause came on this day to be heard on Complainant's Bill for Divorce and Respondent's Answer thereto. The parties appeared in person and by counsel. The Court had previously heard evidence on the matters in controversy in connection with a hearing for support pendente lite. Depositions taken on behalf of Complainant were received by the Court. And the matter was argued by counsel.

In consideration of all of which, independently of the admissions of the parties, the Court finds that the parties are husband and wife, having been married in Mexico on September 3, 1966; that both of the parties of over the age of 18 years; that neither is a member of the Armed Forces of the United States; that both are of the white race; that both of the parties are domiciled in and are bona fide residents of Albemarle County, Virginia, and have been so domiciled and such residents for more than six

months preceding the institution of this suit; that there are two children of the marriage, Albert B. Butler, V., age eight, and Heather Denise Butler, age seven; that Complainant is a fit and proper person to have custody of the children of the parties and that their welfare requires that their custody be awarded to her; and that Respondent committed adultery on October 18, 1974.

The Court further finds that theire is no present reason to require the Respondent to change his present employment and no present reason to require the Complainant to seek additional employment; that Respondent has present monthly needs over and above debt payments in the amount of $422.50; that Complainant has present monthly needs over and above debt payments, except the monthly payment due on her Datsun automobile, in the amount of $488.46; and that Respondent does not presently have sufficient funds available to make all the debt payments, to pay for the needs of Complainant and the children of the parties, and to provide for himself.

In consideration of all of which the Court does hereby ADJUDGE, ORDER and DECREE that Complainant be and she hereby is awareded a divorce a vinculo matrimonii on the ground of adultery.

The Court does hereby FURTHER ADJUDGE, ORDER and DECREE as follows:

1. Respondent shall pay to Complainant the sum of $150.00 per month as support for each child of the parties, and the sum

of $200.00 per month alimony, said payments to commence on the 14th day of February, 1975, except that $100.00 of said alimony payment shall be paid and $100.00 thereof shall accrue until such time as Respondent receives from the Federal Government an expected income tax refund.

2. Respondent shall have prepared as soon as may be after receipt of necessary W-2 forms, his 1975 joint income tax return. Respondent and Complainant shall each execute said income tax return, and it shall be filed, claiming the maximum allowable refund, promptly after execution.

3. Upon receipt of the aforementioned tax refund all unpaid and accrued alimony payments shall be made to Complainant and an attorney's fee in the amount of $450.00 shall be paid to attorney for Complainant.

4. Custody of the children of the parties shall remain with Complainant but Respondent shall have the right to visit with said children and have then visit with him at all reasonable times upon reasonable notice to Complainant.

5. Respondent shall pay to Complainant with the February payment required hereunder the sum of $121.00 in payment of the current electricity bill.

7. This decree is based on the premise that Respondent will make all payments on debts secured by deeds of trust on the home of the parties when due and will pay when due all real estate taxes thereon.

And this cause is stricken from the docket.

Enter:

J. David G. King
Judge

Dated: May 16, 1973

Requested by

J. T. Campbell
Attorney for Complainant

Seen and objected to:

John C. Rowe
Attorney for Respondent

A Copy Test:
Shirley J. Marshall
Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

HOPE AKUNO BUTLER

v.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

ALBERT B. BUTLER

TO: Mrs. Shelby Marshall
Clerk, Circuit Court of
Albemarle County
Court Square
Charlottesville, Virginia

Kindly take notice that the Respondent, Albert Butler, notes his appeal from the final decree of divorce entered against him on May 16, 1975 in the above styled action.

A transcript of trial proceedings has been prepared and has been lodged with the court.

ASSIGNMENTS OF ERROR

1. It was error for the court to rule that there was no present reason to require the Complainant to seek additional employment.

2. It was error for the court to award the amount of child support and alimony awarded against the Respondent, for the reason that the facts and circumstances of the parties did not justify that large an award.

3. It was error for the court to award alimony in excess of the amount which the court found the Respondent was able to pay, stating that $100 per month thereof would accrue until such time as the Respondent could afford to pay it.

ALBERT B. BUTLER

By Counsel

John C. Lowe, p.d.
Lowe and Gordon, Ltd.
1111 West Main Street
Charlottesville, Virginia 22903

LAW OFFICES

MAILING CERTIFICATE

I hereby certify that on the 9th day of June, 1975, I mailed a true copy of the foregoing notice of appeal and assignments of error to John T. Camblos, Esquire, Counsel for Complainant, 410 East Jefferson Street, Charlottesville, Virginia.

John C. Lowe

John C. Lowe