CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
DEC 3 1976
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760430

RANDOLPH TAYLOR BROWN

v.

COMMONWEALTH OF VIRGINIA, ex rel
KATHY JOAN CUSTIS

APPENDIX

R. BRUCE LONG
J. Edgar Pointer, Jr.
Gloucester, Virginia 23061

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

INDEX TO APPENDIX

Petition Filed in Juvenile Court 1

Order of Juvenile Court 3

Transcript 5

Order of Circuit Court 60

Assignments of Error 62

Letters 64

COMMONWEALTH OF VIRGINIA:
In the Juvenile and Domestic Relations Court of the County of Gloucester
THE COMMONWEALTH OF VIRGINIA, at the rel, of

Kathy Joan Custis	Route 2, Box 65 Hayes, Virginia	Complainant
vs.		
Randolph Taylor Brown	Bena, Virginia	Defendant

To the Honorable Herbert I. L. Feild, Judge of said Court:

Your petitioner, Kathy Joan Custis, respectfully represents:

****

2. That on or about the _____ day of _____, 19____, the said defendant did, without just cause, desert and willfully neglect and refuse and fail to provide for the support and maintenance of his said wife,

****

and the following female children under the age of seventeen years, to-wit:
Kimberly Joan Brown, Born July 11, 1974

****

3. That Your Honor has jurisdiction in the premises Sec. 20-61, Va. Code, 1950, as amended in 1954 by reason of the fact:

****

b. That such child or children are now living in Gloucester in necessitous condition and have remained therein in such condition with the knowledge and acquiescence of said defendant; or

c. That the defendant is now, and may be found, living in Gloucester.

4. The facts and circumstances of the case are as follows:
the complainant wishes the father of the child, to be held responsible for the medical bills and expenses of the child, Kimberly Joan Brown.

WHEREFORE, Your petitioner prays that proper process may issue; that the Court may make all proper and necessary inquiries into the matters herein set forth and enter such judgment or orders in the premises as to the Court may seem meet; and your petitioner will ever pray, etc.

/s/ Kathy Joan Custis

Route 2, Box 65
Hayes, Virginia 23072

COMMONWEALTH OF VIRGINIA, to-wit:

This day personally appeared before me, Cheryl L. Grimes, Clerk, Clerk of the Court - a Notary Public - in and for the County and State aforesaid, the above-named petitioner who, upon being duly sworn makes oath that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand this 31st day of July, 1975.

/s/ Cheryl L. Grimes
Clerk of the Court

Docket Number: G 400 D

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
FOR THE COUNTY OF GLOUCESTER

In Re: Commonwealth ex. rel.
Kathy Joan Custis

v. Randolph Taylor Brown

O R D E R

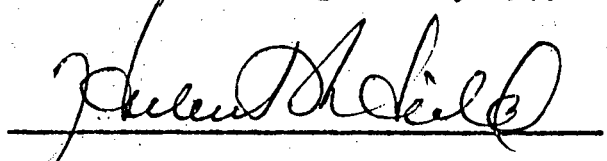
This day came Kathy Joan Custis on a peition charging non-support under Section 20-61 of the Code of Virginia, 1950, as amended, and came also Randolph Taylor Brown.

Upon hearing the evidence the Court finds the defendent guilty of the charge and hereby orders him to pay through this Court for the support of his dependents shown on the petition, the amount of $25.00 per week, the payments due on Friday of each week, commenaing August 29, 1975, and continuing until further order of this Court, of which $20.00 is to apply to current support and $5.00 is to apply to the balance due on the original amount of $868.75, for medical expenses.

ENTER THIS: August 20, 1975.

Herbert I. L. Feild, Judge

APPEAL NOTED: August 20, 1975.



Herbert I. L. Feild, Judge

1 position is, of course, that these matters
2 have always been taken care of -- I shouldn't
3 say always, but it has been my understanding
4 that where counsel has been retained, or
5 even appointed, it was unnecessary for the
6 Commonwealth to appear, particularly when
7 counsel is more than adequate for the case.
8 However, I can see the technical problem.
9 COURT: Yes, sir, I think
10 it is your duty, and even though you may not
11 do anything but just, say, be present.
12 MR. MORRIS: All right, sir.
13 Would the Court allow me to speak with Mr.
14 Hicks at this time.
15 COURT: Yes, sir.
16 (At this time Mr.
17 Morris and Mr. Hicks conferred.)
18 MR. MORRIS: I am ready to
19 proceed, your Honor.
20 COURT: All right.
21 Mr. Long?
22 MR. LONG: Thank you, your
23 Honor. Again I apologize . . .
24 COURT: That is all right.
Statement by Mr. Long
25 MR. LONG: The second matter

I would like to attend to would be to read into the record a stipulation of fact that Mr. Hicks and I have agreed to. With your permission, I will read that into the record.

COURT: You may, Mr. Long.

MR. LONG: Virginia, in the Circuit Court of Gloucester County. The parties hereto, by counsel, do agree and stipulate to the following facts:

(1) Cathy Joan Bonniville was married to Allen Bruce Custis on August 24, 1968, in Gloucester County, Virginia.

(2) Cathy Joan Bonniville Custis was married to Randolph Taylor Brown on December 29, 1972, in Pasquotank County, North Carolina.

(3) Cathy Joan Bonniville Custis was granted a divorce from the bond of matrimony from Allen Bruce Custis by decree of the Circuit Court of Gloucester County, on September 4, 1973, which decree is recorded in the Clerk's Office of said Court in Chancery Order Book 20, page 252.

1 "So stipulated this 5th day
2 of January, 1976."
3 That was agreed to and
4 stipulated by Mr. Hicks and myself.
5 COURT: Thank you,
6 Mr. Long.
7 MR. LONG: Your Honor,
8 inasmuch as those facts are stipulated,
9 I would ask, or move, pursuant to 8-264
10 of the Code of Virginia, that the Court
11 take judicial notice of Section 20-43
12 of the Code of Virginia, and its operation
13 on this set of facts; that is, that the
14 marriage of Cathy Joan Bonniville and
15 Randolph Taylor Brown on December 29, 1972,
16 was absolutely void, as provided by
17 Section 20-43 of the Code. I am asking
18 the Court to take judicial notice of that
19 code section.
20 COURT: Thank you.
21 MR. HICKS: I don't think
22 you can take judicial notice of that code
23 section. I think that is a matter of law,
24 that is proper for argument.
25 MR. LONG: Your Honor,

1 Section 8-264 of the Code provides that
2 the Court shall, upon request, take
3 judicial notice of the statute.
4 COURT: The Court is
5 supposed to take judicial notice of all
6 legal statutes of the state.
7 ~~All right,~~
8 ~~the first witness, gentlemen.~~
9
10 ~~MRS. CATHY CUSTIS, called as a~~
11 ~~witness on behalf of the Commonwealth,~~
12 ~~being first duly sworn, testified as~~
13 ~~follows:~~
14
15 DIRECT EXAMINATION
16 Kathy Joan Custis
17 BY MR. HICKS:
18 Q Please tell the Court your name.
19 A Cathy Custis.
20 Q Your age?
21 A Twenty-six.
22 Q And where do you live?
23 A Route 2, Box 65, Hayes, Virginia.
24 Q Are you the person who was married
25 to Randolph Brown in December of 1972 in North Carolina?

1 A Yes, sir.
2 Q And is it true that at that time you
3 had not gotten your final divorce from Mr. Custis?
4 A Yes, sir.
5 Q Did you and Randolph Brown live
6 together after that marriage?
7 A Yes, sir.
8 Q And where did you live?
9 A We lived with his aunt for three
10 weeks. Then we moved to Chesapeake for a couple of weeks.
11 Then I moved back to my parents.
12 Q Now, from July of 1973 until August
13 of 1974, were you staying with your parents?
14 A Yes, sir.
15 Q Where is that home located?
16 A Hayes, Virginia.
17 Q Whereabouts in Hayes?
18 A Jenkins Neck.
19 Q Was a child born to you in July of
20 1974?
21 A Yes, sir.
22 Q What date and what was the name and
23 sex of the child?
24 A Kimberly Joan Brown, girl, July 11,
25 1974.

1 Q Mrs. Custis, from July of 1973
2 until July of 1974, did you have sexual relations with any
3 man?
4 MR. LONG: I object to
5 that question, your Honor; and I object
6 to it for several reasons, if the Court
7 will permit me to go through my analysis
8 here.
9 Section 20-43 of the Code
10 says that a bigamous marriage is
11 absolutely void; and I submit to the
12 Court that the use of the term, "absolutely,"
13 in that statute is for emphasis. Why else
14 would it be there?
15 Ballentine's Law Dictionary. . .
16 COURT: The Court doesn't
17 deny that, Mr. Long.
18 MR. LONG: No, sir, but
19 I would like to have these matters in the
20 record.
21 COURT: I will allow
22 you to put them.
23 MR. LONG: Ballentine's
24 Law Dictionary, page 1348, defines void
25 as: "Constituting a nullity. Binding on

1 neither party, and not subject to
2 ratification."
3 And the same dictionary,
4 page 1349, defines a void marriage as:
5 "A marriage absolutely prohibited by
6 law and not subject to ratification.
7 A marriage which is expressly declared
8 a nullity ab initio by statute.
9 I submit, your Honor, that
10 since we have a marriage here that is
11 void, and not voidable, and I draw
12 that distinction to the attention of the
13 Court, that it isn't a void marriage --
14 it is the same as if the parties were
15 never married. Which means that before
16 the Commonwealth can go forward in this
17 case, it has to prove paternity; and
18 in order to prove paternity, it has got
19 to prove it under the elements of 20-61.1
20 of the Code. And I submit to the Court
21 that evidence of sexual relations between
22 the parties is not part of that code
23 section; and consequently is not relevant
24 and should not be admissible.
25 COURT: The Court would

1 sustain the objection on the basis that
2 the question is a leading question.
3 However, it is relevant under Title 61.1
4 as to who is the father of the child;
5 as Judge Feild has shown in his order in
6 accordance with that section, "Upon hearing
7 the evidence, the Court finds the Defendant
8 guilty of the charge." And before the
9 Defendant can be found guilty, you have
10 to prove that he is the agent.
11 MR. LONG: I am sorry,
12 your Honor, you lost me then. I am not
13 sure exactly what you are referring to.
14 COURT: Title 20-61.1,
15 or the third provision there: "Or, if it
16 be shown by other evidence beyond a reasonable
17 doubt that he is the father of the child,
18 then he should be responsible for the
19 support of the child." That is the third
20 part of that section, whereas the parties,
21 we have presumed, are not married to begin
22 with. So if the marriage is void at the
23 beginning, then we step into the third
24 alternative there.
25 MR. LONG: That is correct,

1 your Honor, but it says. . .
2 COURT: That is the
3 one under which we are here today.
4 MR. LONG: If I may, if
5 the Court will read down to the next
6 paragraph, it goes on to say: "Such other
7 evidence that the man should be responsible
8 for the support of the child shall be
9 limited to the following evidence." It
10 does not say it may, it says it shall.
11 It is mandatory, not directory.
12 COURT: Well, what. . .
13 MR. LONG: The point I
14 am making here, your Honor, in a paternity
15 proceeding, which is what this boils down
16 to, the evidence of sexual relations
17 between the parties is not relevant and
18 not admissible. I think the statute is
19 very clear on that point. Very clear, indeed.
20 COURT: Mr. Hicks,
21 reword your question, please.
22
23 BY MR. HICKS:
24 Q Mrs. Custis, from July of 1973, until
25 July, 1974, did you have sexual intercourse with any man,

1 or men?

2 MR. LONG: Objection

3 for the same reason.

4 COURT: Ask her with

5 whom.

6 MR. HICKS: I am asking

7 if she had any, and then, if so, with

8 whom.

9 MR. LONG: I object for

10 the same reason. It is not relevant.

11

12 BY MR. HICKS:

13 Q Did you have sex relations, inter-

14 course with any man, or men, from July, 1973, until July, 1974?

15 MR. LONG: Your Honor, is

16 the Court overruling my objection on that

17 point?

18 COURT: I am overruling

19 part and sustaining part. If she answers

20 the question that she hasn't had any,

21 aren't we through here today?

22 MR. LONG: Your Honor, I

23 don't think that that question should even

24 be before the Court in the first place;

25 and that is the substance of my objection.

1 I would ask that the Court rule on it.
2 COURT: Well, how is
3 she going to prove that this man is the
4 father of the child?
5 MR. LONG: By complying
6 with sub-paragraphs 1, 2, 3, and 4, of
7 20-61.1 of the Code.
8 COURT: Well, how is
9 that, Mr. Long?
10 MR. LONG: That is the
11 only way that she can prove it.
12 COURT: How is that?
13 MR. LONG: That they
14 cohabited openly during all ten months.
15 There is nothing there about sexual
16 relations, your Honor. Cohabiting
17 means living together, as I understand
18 it. Or that Mr. Brown. . .
19 COURT: You mean before
20 you can prove a man is the father of a
21 child, he has to live with the wife other
22 than one single act?
23 MR. LONG: Yes, sir. That
24 is what the statute says. I can't understand
25 the Court's reluctance to apply the statute

as it is clearly written.

COURT: You mean if they just had one act and the man is the father, though they had not lived together as man and wife, he wouldn't be responsible for the support of the child?

MR. LONG: That is what the statute says. I think there is a very clear-cut legislative purpose behind this act; otherwise every woman in the world who gets herself pregnant wants to come into court and pin that pregnancy on some man. So she goes to court, to Juvenile Court, and files a petition. And if we were to allow in evidence of sexual relations with the Defendant or any other person, it would put an impossible burden on the Defendant. He has got to go out and find every other man with which this petitioner has had relations, over an indefinite period of time.

COURT: Reword the question and ask with whom she has cohabited, if anyone.

BY MR. HICKS:

Q Mrs. Custis, for a period of ten months prior to the birth of your child, did you cohabit with any man?

A No, sir, because I didn't see Randy. I saw him when I was four months pregnant, was the last time. - - - Well, part - - you are talking about July '73. . .

Q Until July, '74?

A No one until Randy, until January of '74 when I stopped seeing him.

Q As I understand, from July, '73, until January, '74, you did cohabit with a man?

A Yes, sir, Randy Brown.

MR. LONG: Your Honor, I am not sure she even understands . . .

A I do understand the question.

MR. LONG: The meaning of the word, "cohabit." That means to live together as husband and wife under the same roof.

COURT: All right, Mr. Hicks, would you qualify that, also.

A We didn't live together, sir, but we were seeing each other.

Q Would you explain? Tell the Court what

1 relationship you had with Randy Brown?

2 A We had sexual relations, but we were

3 not living as man and wife.

4 MR. LONG: That is not. . .

5 COURT: All right, Mr.

6 Hicks, ask her what she did during those

7 months.

8

9 BY MR. HICKS:

10 Q What did you do during the months of

11 July of 1973 until January of 1974 with Mr. Randy Brown?

12 A Well, from July, '73, until January

13 of '74, that is when we stopped seeing each other, we saw

14 each other practically every day, and we did have sexual

15 relations.

16 MR. LONG: I object, and

17 ask the Court to strike, "And we did have

18 sexual relations." It is not relevant,

19 again, your Honor, under this code section.

20 COURT: Well, the word,

21 "Cohabit," is a broad term, and could include

22 that. She said she saw him every day. What

23 did she do, where did they go, and what-

24 have-you.

25 Q Tell the Court exactly what you and

1 Mr. Brown did, what you did, and where you went, and where
2 you would see each other.
3 A We would go to the movies, but most
4 of the time, we went to his mother's house, and we just
5 watched T.V. and junk -- nothing important.
6 Q Were you with any other man during
7 this period of time?
8 A No, I wasn't.
9 Q When you were with him, how long a
10 period of time would you stay with him?
11 A Well, if he wasn't working, some
12 days, from about 8:30 or 9:00 in the morning, until 12:00
13 at night. If he was working, from 5:00 in the evening until
14 12:00 at night. Sometimes earlier, sometimes later.
15 ~~Q Did Mr. Brown -- what was Mr. Brown's~~
16 ~~occupation at this time?~~
17 ~~A He was in the Navy.~~
18 Q Did Mr. Brown, in January of 1974,
19 write you any letters?
20 A Yes, sir.
21 Q I hand you, and ask you if these are
22 letters you received from him?
23 A Yes, sir, they are.
24 Q Would you show them to Mr. Long,
25 please.

1 (At this time, letters
2 were handed to Mr. Long and
3 were perused by Mr. Long and
4 the Defendant.)
5 MR. HICKS: Your Honor,
6 we would offer these in evidence.
7 MR. LONG: I object.
8 There is nothing in those letters that
9 I can see that is relevant under this
10 code section.
11 COURT: What are the
12 letters.
13 MR. HICKS: These are the
14 letters we offer just to show the esteem
15 and the relation in which Mr. Brown held
16 this lady at this time. This was in
17 January, 1974.
18 MR. LONG: Your Honor,
19 nowhere in the code section, and I submit
20 we have to follow that code section, does
21 it say anything about esteem that one party
22 feels for the other. That is all mighty
23 well and proper, but it is not admissible
24 evidence under the code section. 20-61.1
25 is a very clear-cut evidentiary procedure

1 outlined in that code section, and I
2 submit the Court must follow that. It
3 has no choice.
4 COURT: What do you
5 mean, Mr. Long, that the Court can't
6 consider any evidence to be brought forward
7 bearing on this? That section says, "The
8 Court shall believe beyond a reasonable
9 doubt ..." then it says, "Such other evidence
10 in addition thereto." There is the sentence
11 prior to Number One, "Such other evidence
12 that a man should be responsible for the
13 support. . . "
14 MR. LONG: But in the very
15 next sentence, it says: "Such other
16 evidence shall be limited to evidence of
17 the following: 1, 2, 3, 4 . . . ."
18 COURT: That's evidence
19 in addition -- it says, "Such other evidence
20 shall be limited. . ." But that doesn't
21 restrict the first paragraph as to what the
22 Court has got to find. This doesn't preclude
23 circumstantial evidence coming in under
24 our constitution. Doesn't the Commonwealth
25 have a right to bring forth cases under

1 circumstantial evidence. In fact seventy-
2 five percent of our cases are circumstantial.
3 MR. LONG: I submit to the
4 Court that if the Court feels that way, that
5 it take the case under advisement, and
6 ask for briefs on this matter; because I
7 am confident that the legal scholars will
8 show the Court to its satisfaction that
9 such other evidence as is used in that
10 second paragraph, is the same as such other
11 evidence in the previous paragraph. It
12 means that the other evidence that is
13 admissible in court beyond an admission
14 in court, under oath, is and shall be
15 limited to the evidence contained in
16 Paragraphs 1, 2, 3, and 4, of that code
17 section.
18 COURT: Or, "If it
19 be shown by other evidence beyond reasonable
20 doubt."
21 MR. LONG: That is right,
22 your Honor, the evidence in Paragraphs 1,
23 2, 3, and 4, would have to be brought to
24 bear before the court, and would have to be
25 evidence -- would have to be shown beyond a

1 reasonable doubt in order for the Court
2 to conclude that the man was the father
3 of the child.
4 COURT: These were
5 letters written by the accused, himself?
6 MR. HICKS: Yes, your
7 Honor.
8 COURT: The Court will
9 allow them in.
10 MR. LONG: The Court will
11 note my exception.
12 MR. HICKS: They would be
13 Commonwealth's Exhibits 1 and 2.
14 (At this time, the letters
15 were marked by the Clerk and
16 accepted into evidence as
17 Commonwealth's Exhibits 1 and 2.)
18
19 BY MR. HICKS:
20 Q Mrs. Custis, in these letters, a
21 person by the name of Gary is referred to. Who is that?
22 A My son.
23 Q Is this by Mr. Custis?
24 A Yes, sir.
25 Q Now, after receiving these letters --

where was Mr. Brown stationed when he. . .

A South Carolina.

Q And after receiving these letters, did you see Mr. Brown again before your child was born?

A No, sir.

Q When you returned from the hospital after the child was born, did you receive a telephone call from Mr. Brown?

A Yes, sir.

Q When was this?

A Three days after, the 14th through the 15th of July. He called my mother and said. . .

Q The 15th of July?

A Yes, sir, or either the 14th.

Q The 14th or 15th?

A Yes, sir. It was on a Sunday. He called and my mother answered the phone. . .

Q Don't say what anyone else told you, just say what actually Mr. Brown said to you.

A He wanted to speak to me. He wanted to apologize for the way he acted.

Q Just tell what Mr. Brown told you.

A That is what I am telling. He wanted to know how our baby was doing.

Q He wanted to know what?

1 A How our baby was doing. And it
2 surprised me, because he wasn't. . .
3 MR. LONG: I object,
4 your Honor. I would like some specification
5 as to whether or not he used the terminology,
6 "our baby."
7 A He did.
8 MR. HICKS: No further
9 questions. Your witness, Mr. Long.
10 COURT: Thank you, Mr.
11 Hicks. Mr. Long.
12
13 CROSS-EXAMINATION
14 Kathy Joan Custis
15 BY MR. LONG:
16 Q Mrs. Custis -- is it Miss Bonniville?
17 Is that what you go by now?
18 A I do not. I am Mrs. Custis because
19 of my son.
20 Q Mrs. Custis, isn't it a matter of
21 fact that you and Randy lived in the trailer together for
22 less than one month after you were married?
23 A That is right.
24 Q Isn't it true that after February of
25 1973, that you and Randy never, at any time, lived together

1 under the same roof as husband and wife?

2 A I guess not.

3 Q Isn't it also true that during the

4 period of time that you and Randy were dating, that you

5 never stayed out all night together? Is that true, or

6 is that not true?

7 A I lived with my parents, I did not

8 stay with him all night, but we were -- we weren't legally

9 married.

10 Q That is all I wanted to know, did

11 you -- whether or not you and Randy stayed together all

12 night.

13 A What was the date again?

14 Q During the period of time you were

15 dating, from approximately May of '73 until November. . .

16 A We started dating in November of '72,

17 sir.

18 Q I am talking about after he returned

19 from his trip to the Mediterranean, or wherever it was,

20 after you had . . .

21 A You are correct, we did not live

22 together under the same roof.

23 Q You did not live together as husband

24 and wife and did not stay out all night together?

25 A No, I did not.

1 Q In fact, after each and every one
2 of those dates, he returned you to your parents' home,
3 did he not?
4 A Yes, sir.
5 Q Mrs. Custis, do you understand the
6 meaning of the word, "cohabitation"?
7 A I think I do now.
8 Q Let me, with Mr. Hick's concurrence,
9 read to you from Ballentine's Law Dictionary. -- If Mr.
10 Hicks has no objections.
11 MR. HICKS: Your Honor,
12 there are several definitions of the
13 word, cohabit; and in the Commonwealth
14 of Virginia, it is to have sexual
15 intercourse illegally. That is the
16 definition from the Commonwealth of
17 Virginia; and I don't think that a lay
18 person should be called upon . . .
19 MR. LONG: I will not
20 read from Ballentine's Law Dictionary.
21 I will simply ask Mrs. Custis again,
22 and I will go by the wording of the statute --
23 BY MR. LONG:
24 Q Did you and Randy live together as
25 husband and wife, under the same roof, for all ten months

1 immediately prior to the time this child was born? A
2 simple yes, or . . .
3 A We had sexual intercourse, but we did
4 not live together all night.
5 MR. LONG: I ask that
6 the Court strike, "We had sexual inter-
7 course." That is not responsive to the
8 question, nor is it relevant. I asked for
9 a simple yes, or no, answer to the question.
10 COURT: Ask if she
11 knows what cohabit means in the light of
12 the statute law of Virginia.
13 Q Do you understand to cohabit, as
14 generally accepted, means to live together as husband and
15 wife?
16 A We did not then, the answer is, no.
17 Q Isn't it a fact that Randy never
18 gave consent to any physician, or any other person, excluding
19 yourself, who is charged with the responsibility of securing
20 information for the preparation of a birth record, that his
21 name be used as the father of this child?
22 A I obtained from my lawyer, information
23 of what to do.
24 Q Randy never gave - - to your knowledge,
25 Randy never consented to having his name used as the father,

1 did he?

2 A He hasn't done anything.

3 Q To either you, or the doctor, or

4 anyone else?

5 A No, he did not.

6 Q And to the best of your knowledge,

7 he has never allowed by general course of conduct, the

8 common use of his surname by the child, has he?

9 A No, he has not.

10 Q To the best of your knowledge, has he

11 ever claimed this child as his child on any statement, tax

12 return, or other document filed and signed with any local,

13 state or federal government, or any agency thereof?

14 A I don't know that because I don't

15 see him.

16 Q Isn't it true that as far as you

17 know, he has not?

18 A As far as I know, he could have done

19 anything.

20 Q You have no knowledge?

21 A How can I answer that truthfully,

22 because I don't know what he does.

23 Q You have no knowledge of him doing

24 that?

25 A I have no knowledge of him doing it,

1 although he could have.

2 ~~MR. LONG: I have no~~

3 ~~further questions, your Honor.~~

4 ~~COURT: Any further~~

5 ~~questions?~~

6 ~~MR. HICKS: No.~~

7 ~~COURT: You may step~~

8 ~~aside.~~

9

10

11 ~~MRS. EMMA BONNIVILLE, called as~~

12 ~~a witness on behalf of the Commonwealth,~~

13 ~~being first duly sworn, testified as~~

14 ~~follows:~~

15

16 DIRECT EXAMINATION

17 Emma Bonniville

18 BY MR. HICKS:

19 Q Please tell the Court your name

20 and where you live.

21 A Emma Bonniville, Route 2, Box 65,

22 Hayes.

23 Q What relation are you to Cathy

24 Bonniville Custis, the Complainant in this case?

25 A Sister-in-law.

1 ~~Q In what way is that sister-in-law?~~
2 ~~A I married her oldest brother.~~
3 Q And Mrs. Bonniville, where do you
4 live in relationship to where Cathy Custis's parents live?
5 A Almost in the same yard.
6 Q How far are the houses apart?
7 A About a hundred-foot, if it is that
8 much.
9 Q Not over a hundred feet?
10 A No.
11 Q Do you know Randolph Taylor Brown?
12 A Yes.
13 Q I ask you, during the period of
14 ten months prior to July 11th of 1974, where did you live?
15 A Same address.
16 Q During that period of time where did
17 Cathy Bonniville Custis live?
18 A With her mother where she has been
19 living -- where she is living.
20 Q How often during that period of time
21 would you see Cathy Bonniville Custis?
22 A Every day.
23 Q How often during that period did you
24 see Randolph Taylor Brown?
25 A Well, he used to come down and get her

1 just about every day, in the morning sometime, and sometime
2 in the afternoon.
3 Q Did you ever see anyone else come to
4 get Cathy?
5 A Like who? What do you mean?
6 Q Any other man during that period?
7 A No.
8 Q Did she have a car of her own during
9 that time?
10 A No. I don't think she hardly left
11 the house, unless, you know, she went with Randy or one of us.
12 Q By one of us, who do you mean?
13 A One of the family.
14 Q One of her. . .
15 A Yes, me or her father, or somebody,
16 you know.
17 Q Were you in the home on the Sunday
18 two or three days after the child was born? Did you visit
19 in the home during that period of time?
20 A Oh, yes. I carried her to the hospital
21 the day the baby was born. I visited her at the hospital.
22 And I was home when she came from the hospital, at her
23 mother's.
24 Q Did she receive any telephone calls
25 while you were present?

A Yes. I am not sure who answered the phone, her mother, I think. I am not sure. Anyway, I know she said, "I don't want to talk to him." And so the phone rang again, and she answered it, and she said . . .

Q You can't say what she said. Do you know who she was speaking to?

A As far as I know, it was Randolph. By the conversation. -- I could tell you what I heard her say.

MR. HICKS: No, you can't tell that. -- Your witness, Mr. Long.

COURT: Thank you, Mr. Hicks. Mr. Long.

CROSS-EXAMINATION

Emma Bonniville

BY MR. LONG:

Q I am sorry, I didn't get your full name. What was it?

A Emma Lee Bonniville.

Q And what was your address?

A Route 2, Box 65, Hayes, Virginia.

Q And you are Mrs. Cathy Custis's sister-in-law?

A That is right.

1 Q During this ten-month period that
2 Mr. Hicks has just been referring to prior to the time
3 the child in this case was born, I believe you testified
4 that Cathy lived with her mother, is that not correct?
5 A That is right.
6 Q So would it be fair to say that
7 she did not cohabit openly with Mr. Brown during all ten
8 months immediately prior to the time the child was born?
9 Now, cohabit, I mean, live together as husband and wife.
10 Do you understand my question?
11 A They were living together as husband
12 and wife, yes.
13 Q They were living together as husband
14 and wife?
15 A Yes, they had a trailer somewhere.
16 Q You are confusing our time sequence
17 here. I am talking about the ten months immediately prior
18 to the time the child was born.
19 A No, I don't think so.
20 Q In other words, during that time
21 period . . .
22 A I know he was coming to see her.
23 Q During that time period, Cathy was
24 living with her parents, and he was living with his parents,
25 isn't that correct?

1 A I know she was with hers. Now, where
2 he was, I don't know.
3 Q You said that during this time period
4 you didn't see any other men come to visit Cathy, is that
5 correct?
6 A No.
7 Q How many hours a day did you watch
8 Cathy's house, or would it have been possible for somebody
9 to come there and you not have seen them?
10 A I think it is possible, but not
11 probable.
12 Q Do you work?
13 A No.
14 Q You are at the home all day long?
15 A The majority of the time.
16 Q You said that Cathy did not own an
17 automobile. Isn't it a fact that whenever she would go out,
18 she would use her father's automobile?
19 A If she needed it, yes. Like go to
20 the store. I have seen her wouldn't even leave to go to
21 the store to get a loaf of bread, for fear that Randy would
22 call. Now, whether it was fear -- I don't think fear would
23 be it, she would want to be there.
24 Q Please, that is not responsive to
25 the question. -- Mrs. Bonniville, do you know whether or

1 not Randy has ever given permission to any physician, or any
2 other person charged with securing information for medical
3 records at hospitals, that he be listed as the father of
4 this child? Do you know that? Whether or not he has ever
5 done that?
6 A No, I don't know that.
7 Q Do you know whether or not by a general
8 course of conduct in the community, he has allowed this child
9 to use his surname, that is, his last name?
10 A Yes, I think so. I think she does go
11 by Brown. -- Yes, in fact, her name is . . .
12 Q I am not talking about what her name
13 is on the birth certificate; I am not talking about what
14 Mrs. Custis may have chosen to put on the birth certificate,
15 I am saying do you know that Randy personally allowed this
16 child in the community to use his last name? That he ever
17 consented to that or agreed to that?
18 A Not to my knowledge, no.
19 Q Do you know whether or not Randy has
20 ever claimed this child on any tax statement or any tax
21 return filed with any federal, state, or local office?
22 A No, I know nothing about Randy's
23 personal life.
24 Q How do you personally feel about
25 Randy? Do you have any bad feelings towards him?

1 A Well, I can't say I have bad feelings
2 towards him, but I don't like his conduct in this matter.
3 Q You don't have much use for him, I
4 guess, do you? - - But you certainly have fond feelings for
5 your sister-in-law, don't you?
6 A Certainly.
7 MR. LONG: I have no
8 further questions.
9
10 REDIRECT EXAMINATION
11 Emma Bonniville
12 BY MR. HICKS:
13 Q Mrs. Bonniville, you said that they
14 did live together in a trailer at one time?
15 A Yes.
16 Q And that was prior to her coming
17 back to live with her mother?
18 A That is right.
19 MR. HICKS: No further
20 questions.
21
22 RECROSS-EXAMINATION
23 Emma Bonniville
24 BY MR. LONG:
25 Q But that was back in December of 1972,

was it not, and January of 1973?

A 1973? - -

Q So it was over a year before this time period we are talking about?

A Well, he was going with Cathy just about two years ago.

Q Two years before that?

A No, two years ago they were still going together. This is 1976. I know they were going together in '74.

~~MR. LONG: Thank you.~~

COURT: You may ~~step aside.~~

~~MRS. LINDA BONNIVILLE, called as a witness on behalf of the Commonwealth, being first duly sworn, testified as follows:~~

DIRECT EXAMINATION

Linda Bonniville

BY MR. HICKS:

Q Please tell the Court your name and where you live.

1 A My name is Linda Bonniville, and I
2 live at Route 2, Hayes.
3 Q And Mrs. Bonniville, are you related
4 by blood or marriage to the complaining witness here, Cathy
5 Bonniville Custis?
6 A Yes, sir, I am her sister-in-law.
7 ~~Q In what way?~~
8 ~~A Well, my husband is her brother.~~
9 Q Where do you live in regard to the
10 parents of your husband and Cathy?
11 A About three miles from their home.
12 Q During the period of ten months
13 prior to July 11, 1974, where did you live in relationship
14 to Mr. and Mrs. Bonniville, Sr.?
15 A The same place
16 Q And during that period of time, did
17 you visit in the home of Mr. and Mrs. Bonniville, Sr.,
18 your husband's parents and also Cathy's parents?
19 A Yes, sir, real often.
20 Q How often would you say?
21 A Oh, I guess about five days out of
22 the week.
23 Q And where was Cathy Bonniville living
24 at that time?
25 A She was living with her mother and

father.

Q Do you know Randolph Taylor Brown?

A Yes, sir.

Q How long have you known him?

A I guess - - well, personally, since, I guess, a couple of years ago. It is now a couple of years.

Q During that period of ten months prior to July 11, 1974, did you see Randolph Taylor Brown?

A Yes, sir.

Q And where and when would you see him?

A Well, most every day that I would go there, sometime in the day. . .

Q When you would go where?

A When I would go down to my mother-in-law's house.

Q You would see him?

A I would see him, or he had been there.

Q Where did you see him?

A At the home.

Q Who was he with?

A With Cathy.

Q During that period of time did you ever see Cathy with any other man?

A No, sir.

Q Would he and Cathy leave together,

1 go off together?

2 A Yes, sir.

3 Q And how often would you estimate a

4 week that you would see Mr. Brown?

5 A Oh, I guess I would see him about

6 three times a week there. Maybe more. But I would be sure

7 to say three, I know.

8 ~~MR. HICKS: Your witness.~~

9 COURT: Thank you, Mr.

10 ~~Hicks. Mr. Long.~~

11

12 CROSS-EXAMINATION

13 Linda Bonniville

14 BY MR. LONG:

15 Q Mrs. Bonniville, do you understand

16 what the word, cohabit, means? That means live together as

17 husband and wife. You understand that?

18 A Yes, sir.

19 Q Do you know whether or not, during

20 all ten months prior to the time this child was born,

21 Randy and Mrs. Custis lived together as husband and wife;

22 that is, that they cohabited together? Did they, in fact,

23 cohabit together, live together as husband and wife, for

24 all ten months prior to the time the baby was born? -- I

25 don't mean date, or see each other, I mean did they live

1 together as husband and wife?

2 A You mean for a full ten months?

3 Q Yes?

4 A I don't know. I know he stayed there,

5 but I don't know if . . .

6 Q What do you mean he stayed there?

7 You mean, visited there?

8 A You mean, not at her mother and

9 father's house?

10 Q Did they live together as husband

11 and wife anywhere to the best of your knowledge?

12 A Yes, I didn't go to the trailer, but

13 I understood they had a trailer.

14 Q You are confusing our time period.

15 I am talking about the ten months immediately prior to the

16 time the baby was born. I am not talking about the time

17 they were first married?

18 A Oh, no.

19 Q For the ten months prior to the time

20 the baby was born, did they live together as husband and wife?

21 A No, not in the same house.

22 Q That is what I mean. Do you know

23 whether or not Randy has given consent to a physician or

24 any other person charged with the responsibility of securing

25 birth record information, has he ever given such person

1 consent to have his name used on the birth certificate? Now,
2 I am not talking about Mrs. Custis, I am talking about the
3 doctor or anyone else charged with the preparation of birth
4 records at the hospital?
5 A Not that I know of.
6 Q Do you know whether or not he has
7 allowed by a general course of conduct in the community the
8 common use of his surname, or last name, by the child?
9 A I don't know that either.
10 Q Do you know whether or not he has
11 ever claimed this child as his child on any statement or
12 tax return with the state government, local government, or
13 federal government or any agency?
14 A I wouldn't know that either.
15 Q Now, during this ten months -- back
16 to this ten-month period prior to the time the child was
17 born, the same period Mr. Hicks was talking about, isn't
18 it true that whenever Randy and Cathy would go out on a
19 date, that he would always bring her home the same night
20 as far as you know? You have no knowledge of their ever
21 staying out all night together, do you?
22 A No, not that I know of.
23 Q So their procedure was no different
24 from any other people who would be dating, they would go off
25 on a date and come back? -- I mean, there was nothing particularly

different about that from anybody else, was there?

A No, I wouldn't say so.

Q Do you know Randy personally?

A Yes, we went to school together. I didn't know him then, but he was in high school with me, but I didn't know him until he started dating Cathy.

Q Do you like him, or dislike him, or how do you feel about him?

A Well, I just - - I am a Christian and I am supposed to love everybody, so I just go ahead and love everybody. I don't like him, I don't hate him, or anything.

Q You certainly have fond feelings for your sister-in-law, Cathy?

A Yes, I do.

MR. LONG: Thank you, very much.

MR. HICKS: That is the Commonwealth's evidence.

COURT: Thank you, Mr. Hicks.

MR. LONG: I move to strike the Commonwealth's evidence. They haven't come anywhere near Section 20-61.1 of the Code. The evidence here, by stipulation

1 and by testimony, has been clearly that
2 this was a bigamous marriage. Consequently
3 it is void under the statute, and void
4 means absolutely void ab initio, as if
5 it never existed; which, as far as I can
6 determine, means the same as if the parties
7 were never married. They, certainly,
8 according to the records of this Commonwealth,
9 were never married. And if they are not
10 married, then the only way the paternity
11 can be proved is under 20-61.1. And I
12 have gone over this with each of the witnesses,
13 all four of the elements, and their
14 responses, one right after the other, have
15 been "No." Commonwealth, or Cathy, have
16 come nowhere near proving a case under the
17 statute, haven't even reached a mere
18 preponderance of the evidence, much less
19 beyond a reasonable doubt, which is what
20 the statute requires.
21 And for that reason, I would
22 ask that the Commonwealth's evidence be
23 stricken. It simply does not prove a case.
24 COURT: Thank you, Mr.
25 Long. Mr. Hicks?

1 MR. HICKS: Your Honor,
2 Virginia is one of those states which, by
3 statute, provided that a child born of a
4 void marriage is deemed to be legitimate;
5 and this has been reaffirmed by our
6 Supreme Court in the case of Henderson v.
7 Henderson, 187 Va. 121, which said that
8 even though the marriage was void, it did
9 not do away with the legitimacy of the
10 child, and the obligations of the father
11 to support the child. That is the law of
12 this Commonwealth and that law has not been
13 changed. I would be the first to admit
14 that if there had not been a marriage
15 ceremony, even though it turns out to be
16 a void marriage ceremony between these
17 parties, it would be a different circum-
18 stance here. But there was a marriage
19 ceremony, it has been stipulated there was
20 a marriage with a license, and all; and even
21 though that marriage was void, the issue
22 born of that marriage is deemed under the
23 law to be legitimate, and there is an
24 obligation on the father to support it.
25 COURT: Thank you,

1 gentlemen.

2 MR. LONG: Your Honor,

3 if I may speak for a couple of minutes in

4 rebuttal here, I would like to try to analyze

5 the application of the statute here, and

6 ask the Court to bear with me and follow

7 my analysis.

8 COURT: First of all,

9 Mr. Long, you take the position before a

10 man can be held responsible for the support

11 of a child, that, as I understand, exclusively

12 he has to live with her for ten months?

13 Is that what you are saying?

14 MR. LONG: No, your Honor,

15 what I am saying is. . .

16 COURT: Or are you

17 saying that is in addition to other

18 evidence?

19 MR. LONG: What I am

20 saying, your Honor, is that under the

21 statute, 20-61.1, in cases where parties

22 are not married, that either if a man

23 admits before any court having jurisdiction

24 to try and dispose of the same that he is

25 the father of the child, or that the

1 court finds that he has voluntarily
2 admitted paternity in writing -- none of
3 which has happened here -- or that if it
4 be shown by other evidence beyond
5 reasonable doubt that he is the father,
6 et cetera, et cetera. The statute goes
7 on to say, "Such other evidence shall be
8 limited to . . ." So what I am saying,
9 your Honor, is unless he has admitted
10 paternity in writing, the Commonwealth
11 is confined to such other evidence as
12 is shown in paragraphs 1, 2, 3 and 4;
13 and I think the legal scholars would
14 clearly agree with that interpretation
15 of the statute. I have never heard of
16 any other interpretation of it.
17 May I continue, your Honor?
18 COURT: Go ahead.
19 MR. LONG: I would ask
20 the Court, first of all, if it would
21 follow me on a very brief analysis here,
22 first of all by taking a look at 64.1-17.
23 That statute says, and I quote: "The issue
24 of marriages deemed null in law, or dissolved
25 by a court, shall nevertheless be legitimate."

1 That seems like a simple enough statute.
2 But I call the Court's attention to the
3 first words of the statute, "the issue
4 of." How do you know this child is the
5 issue of this marriage? That is the very
6 first step you have got to determine
7 before you can even raise the presumption
8 under the statute. And how do you show
9 it? Well, since the parties are not
10 married, there is only one way you can
11 show it, and that is under the paternity
12 statute, under 20-61.1, which says, and
13 I quote: "Whenever in proceedings, et
14 cetera, concerning a child whose parents
15 are not married. . ." and that is what
16 we have here, a case where the parents
17 are not married, they have never been
18 married under the law of this Commonwealth.
19 The statute makes it pretty clear that if
20 the parents are not married -- it makes it
21 very clear that if the parents are not
22 married, the Commonwealth has got to prove
23 the evidence under 20-61.1 before it can
24 apply this presumption.
25 I would go next to the

1 Henderson case, the case cited by
2 Mr. Hicks, and I would read from Page 13
3 of the case, the Court's opinion, which
4 says, as follows: "In this case, the
5 parentage of the child is not in question.
6 Both mother and father acknowledge him
7 as their son, and both claim the right
8 to his custody."
9 Your Honor, that is the only
10 kind of cases we have in this state as
11 a matter of record, cases where parentage
12 is not in question. And therein lies the
13 crucial distinction between that case and
14 this case. In this case, it is very clearly
15 in question. It is the only question that
16 is presented to this court.
17 As I said before, to me, the
18 underlying reasoning for the promulgation
19 by the legislature of 20-61.1 is clear.
20 If you allow women, in cases where the
21 parties are not married, to bring in evidence
22 of sexual relations, then you are putting
23 an impossible burden on the man to try to
24 go out and find other men who have had
25 sexual relations with this woman to try to

1 offset it. And I am confident that that
2 is what led the legislature to promulgate
3 this statute, to keep from putting such
4 an impossible burden upon the Defendant.
5 Your Honor, I would submit
6 to the Court that even a cursory reading
7 of these statutes, that is, 64.1-7, 20-61.1,
8 and the Henderson case, make it abundantly
9 clear that in a case where the parties are
10 not married -- and I reiterate again that
11 void equals not married, void is the
12 same as . . .
13 COURT: Mr. Long, even
14 though these parties were married, and say
15 the marriage is void, was it ever declared
16 void by a court of law?
17 MR. LONG: It doesn't have
18 to by the statute.
19 COURT: I realize that,
20 but has it ever been?
21 MR. LONG: No, sir, your
22 Honor, it has not. Of course, I am sure
23 the Court is aware that that is not required
24 under the statute.
25 COURT: I am aware of that.

1 MR. LONG: But reading
2 these two statutes along with the Henderson
3 case, in a case where the parentage is in
4 question, is contested, the Commonwealth
5 can't rely on this presumption, it has to
6 prove the very first words of the statute,
7 "the issue of a marriage." Well, how do
8 we know that this child is an issue of this
9 marriage, this jointure of this man and this
10 woman? How do we know that it is an issue?
11 The only we can prove it, since the parties
12 aren't married, is to go back to 20-61.1.
13 The Commonwealth can't rely on this.
14 There are no cases -- this is a
15 case of first impression is what I am trying
16 to say. But all the cases of record are
17 cases where parentage was not in question.
18 Now, to me, it is very
19 important that the Court in the Henderson
20 case, which is the leading case interpreting
21 these statutes, laid it out very clearly
22 in its opinion, "In this case the parentage
23 of the child is not in question." To me
24 the implication there is perfectly clear,
25 if the parentage was in question, the Court

1 would have reached a different result.
2 I think that is very clear; otherwise,
3 why would the Court have gone to the
4 trouble to put that in its opinion?
5 And accordingly, I ask that
6 the Commonwealth's evidence be stricken,
7 because I say all this is a rather
8 circuitous argument, but nevertheless
9 it takes us back to 20-61.1. We are
10 confined to five elements of proof
11 contained in that statute; that is,
12 a voluntary admission, under oath, or
13 in the alternative, or in addition thereto,
14 any of the evidence in paragraphs 1, 2,
15 3 and 4; and the Commonwealth has not
16 presented one iota of evidence under that
17 statute, and accordingly I move that the
18 case be dismissed and the Commonwealth's
19 evidence be stricken.
20 COURT: Thank you,
21 Gentlemen at the Bar, for your statements.
22 Of course we do have the
23 statute heretofore discussed by Counsel
24 at the Bar, the issue of a void marriage
25 is nevertheless deemed legitimate if it

is issue of that marriage.

We have, up to this time, evidence to show that these parties were married. We have evidence to show the relationship of these parties. They lived in a trailer together for some time. They had been seeing each other off and on at the parents' home, sometimes from 8:00 or 10:00 in the morning, until 12:00 at night; going places together; she had seen no other man during that time; during the time that she was pregnant, she received two endearing letters from the accused here today. Based upon all of those facts brought forth, the Court overrules the motion.

Next witness, Mr. Long.

MR. LONG: Well, I would ask the Court to please note my exception to the ruling. We have no evidence to put on at this time. We rest.

MR. HICKS: Your Honor, I would like to call the Court's attention that the witness was summonsed by the Defendant, and the Defendant did not choose

1 to offer that witness, so it is presumed
2 that that witness could not offer any
3 testimony beneficial to the Defendant.
4 COURT: Well, gentlemen,
5 any further argument either of you wish
6 to make for the record before the Court
7 rules?
8 MR. HICKS: I would just
9 to state further from the Henderson case
10 which gives a great history on this statute
11 of presumption; and the fact that in that
12 case, it cites older case law in Virginia
13 where the Court says, in the case -- the
14 first case was that Stones v. Keeling,
15 9 Va. 143, where it was held that the
16 issue of a bigamous marriage might inherit
17 from his father. Judge Tucker therein said,
18 "The law ought to receive the most liberal
19 construction, that it was the sense of the
20 legislature that the turpitude or guilt
21 of the marriage shall not break upon the
22 heads of their innocent offspring.
23 There is nothing that our
24 legislature, or our courts, from this 1804
25 case down to the present, have said that in

1 any way takes away takes away from that,
2 and they have affirmed it every time it
3 has come before it.
4 COURT: Mr. Long?
5 MR. LONG: Your Honor, just
6 one or two other points. I think that even
7 if the Court found that 64.1-7 had an
8 application in this type of case, I don't
9 think it could find that it would have
10 applied if the marriage relationship had
11 terminated. And in this case it had. There
12 is no evidence that these parties had a
13 marital relationship of any sort after
14 February of 1973. They acknowledged living
15 together for one month after the marriage
16 in Isle of Wight County in a trailer; but
17 they never lived together after that. That
18 was far, far, before this thing happened,
19 far before she became pregnant, well in
20 excess of a year.
21 And I would, if I may, cite
22 one other case to the Court, which is
23 Toler v. Oakwood Smokeless Coal Corporation,
24 173 Va. 425, which states that since a
25 bigamous marriage is absolutely void without

1 any legal process, "The parties to a
2 bigamous marriage are never considered
3 married." Your Honor, I think that is
4 important in this decision. I think it
5 has its place in the scheme of this case,
6 that the parties are never considered
7 married.
8 COURT: We are dealing
9 with issue here, Mr. Long.
10 MR. LONG: Yes, sir, I
11 am going to get to that. I have one more
12 point to bring to the Court's attention.
13 COURT: All right.
14 MR. LONG: Under the
15 case law of Henderson v. Henderson,
16 64.1-7 does not affect the question of
17 paternity, but would merely legitimate
18 the admitted -- and I emphasize the
19 word "admitted," -- child of a bigamous
20 marriage, who would otherwise be
21 illegitimate.
22 I would submit, your Honor,
23 the section has no application in a case
24 in which paternity is denied, since
25 64.1-7 does in no way affect the rights of

1 the parties, but affects only the right
2 of the child; it does not in any way
3 affect the rights of the husband or the
4 wife, it affects only the rights of the
5 child. So, for that reason, your Honor,
6 I would submit that 64.1-7 has no
7 application.
8 I am not going through all
9 my other arguments again, the Court has
10 heard them already.
11 COURT: Thank you,
12 Gentlemen at the Bar, for your statements.
13 Gentlemen, this case, as
14 you know, is an appeal from the Juvenile
15 and Domestic Relations Court, and therefore
16 it is a chancery cause, and we have proceeded
17 on the chancery side of the docket, although
18 it is in the name of the Commonwealth; and
19 in the Order of Judge Feild, it states:
20 "The Court finds the Defendant guilty as
21 charged and hereby orders him to pay through
22 the Court for the support of his dependent
23 shown on the Petition, the amount of Twenty
24 five Dollars per week, with payments due on
25 Friday of each week, commencing August 29, 1975,

1 and continuing until further order of
2 this Court; of which Twenty Dollars is
3 to apply toward current support, and Five
4 Dollars is to apply to the balance due
5 on the original amount of $868.75 for
6 medical expenses. Enter this Order.
7 August 20, 1975. Herbert I. Feild,
8 Juvenile and Domestic Relations Judge."
9 Gentlemen at the Bar, the
10 Court has had no evidence on that, and
11 is not advised whether those payments have
12 been kept up; but by this Decree, by this
13 Order, which you Gentlemen at the Bar will
14 have to prepare since it is a chancery
15 cause, the Court would reaffirm the
16 decision of the Juvenile Court, and would
17 ask that that be incorporated in the
18 Decree.
19 MR. LONG: Your Honor, I
20 submit this is not a chancery cause, it is
21 a criminal cause which usually is considered
22 to be tried on the chancery side of the
23 court, but it is a trial of a criminal
24 nature.
25 COURT: That is correct,

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JAN 16 1976

COMMONWEALTH OF VIRGINIA, ex rel

KATHY JOAN CUSTIS

v. ORDER

RANDOLPH TAYLOR BROWN

This matter came on the 5th day of January, 1976, to be heard upon the appeal from the Juvenile and Domestic Relations District Court for the County of Gloucester and was heard on evidence ore tenus presented on behalf of the Commonwealth, no evidence having been presented on behalf of the defendant.

And the Court finds that the defendant and Kathy Joan Bonniville Custis were married on December 29, 1972, and that said marriage was a void marriage, but there was born of said marriage a female infant child to Kathy Joan Bonniville Custis on July 11, 1974, at Riverside Hospital in Newport News, Virginia. The Court finds that a child born of said void marriage, under the provisions of Section 64.1-7 of the Code of Virginia, is deemed to be legitimate, and therefore, there is an obligation on the part of the defendant to support said child. The Court doth further ORDER the defendant to pay support in the amount of TWENTY-FIVE DOLLARS ($25.00) per week to Kathy Joan Bonniville Custis, of which $20.00 shall be for current support and $5.00 shall be for payment of or reimbursement for medical expenses incurred by Kathy Joan Bonniville Custis in the prenatal care and delivery of said child, to which rule of the Court the defendant doth note his exception.

I ask for this:

/s/ Harry A. Morris, Jr.
Commonwealth's Attorney

Seen and objected to:

/s/ R. Bruce Long
Counsel for defendant

ENTER this 26 day of January, 1976.

/s/ John E. DeHardit, JUDGE.
Middlesex, Va.

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

COMMONWEALTH OF VIRGINIA, ex rel

KATHY JOAN CUSTIS

v.

RANDOLPH TAYLOR BROWN

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR PURSUANT TO RULE 5:6 OF RULES OF SUPREME COURT OF VIRGINIA

Now comes petitioner, Randolph Taylor Brown, by counsel, and files notice of appeal from the final order herein entered by The Honorable John E. DeHardit in the Circuit Court for Gloucester County, Virginia; and assignment of error, pursuant to Rule 5:6 of the Supreme Court of Virginia.

Petitioner respectfully assigns the following as error:

(1) That the defendant's motion to strike at the conclusion of the Commonwealth's case should have been granted.

(2) The Commonwealth's Exhibits 1 and 2, letters, should not have been admitted into evidence.

(3) That evidence of sexual relations between the parties should not have been admitted into evidence.

(4) That the Court relied on a presumption which did not exist as a matter of law and as a matter of evidence, to-wit: Section 64.1-7 of the Code of Virginia (1950), as amended.

****

(7) That the Commonwealth failed to prove paternity and any obligation of support on your petitioner.

Petitioner states that a transcript of this matter will be filed in the Office of the Clerk as required by Rule 5:9 of Rules of the Supreme Court of Virginia.

Respectfully submitted,

RANDOLPH TAYLOR BROWN

BY /s/ R. Bruce Long

/s/ R. Bruce Long
Of Counsel
R. Bruce Long
J. Edgar Pointer, Jr.
Attorney at Law
Gloucester, Virginia 23061

I hereby certify that a copy of the foregoing pleading was mailed to Harry A. Morris, Jr., Gloucester, Virginia, Attorney for the Commonwealth; and C. F. Hicks, Gloucester, Virginia, counsel for Kathy Joan Custis, this 30 day of January, 1976.

/s/ R. Bruce Long

Mon 21,
Jan 1974

Hi Darling,

Just received the letter you sent me on the ~~twelth~~ 12th. Please forgive my spelling, it is horrendous. When I read your letter it made me realize really how much I love you. Please forgive me when I act like an asshole. My nerves are fraged but I'm trying to rid myself of that problem. I can overcome anything as long as I have you and Gary. When I ~~a~~ am down and feeling blue, it makes things seem brighter when I think of you and Gary. If there is anything you & Gary need, please write and ask me. I do my best to get it for you. Enclosed is five dollars. It's not much but take it and use it on yourself and Gary. I just wish I could give you much

much more. I guess I'd better close for now. Remember I love you both and write soon.

Love You Always,

Randy

P.S.- My new address will my mail here faster than the old one.

GMT3 Randy Brown
USS SIERRA AD 18
WEAPONS DIV
NAVAL BASE
CHARLESTOWN, South CAROLINA
29408

2

January 5, 1976
Charles E. King, Jr.

COMMONWEALTH
~~PLAINTIFF~~
~~DEFENDANT~~, Exhibit No. 1 SUNDAY JAN. 6
Filed in open Court
January 5, 1976
Charles E. King Jr. Clerk

Hi Honey

Well as you can see I made it here. It was a very boring trip, but it's even more boring here without you. I sure wish you could be here. I felt a little a better this morning when I heard your sweet voice over the phone. I love you so much, Darling. We (the ship) arrived here about 2:30 PM yesterday. The whole harbor was nothing but a mass of fog. I was beginning to think we were in London. Ha! Ha! Just kidding. What's Gary been doing? I miss him quite a bit. Tell him I love him and I'm thinking about him. I want you and Gary to go up and visit Mom and Dad while I'm gone. I'm sure they'll be glad to have you. They think a lot of you and Gary. They should, because you and Gary are the two sweetest people in the

world. I don't know what I'd do if I lost you. If you and Gary need anything while I'm gone, just write me and ask for it or ask me when I call. Well I guess I'd better go for now. Remember I love you and I'm thinking of you.

P.S. - Write soon!

Love You With All My ♡,
Randy