



Case Files, General Index, and Briefs
of the Supreme Court and the Court
of Appeals

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VOLUME III

SUPREME COURT
FILED

JAN 20 1971

STATE OF MINNESOTA
IN SUPREME COURT

JOHN McCARTHY
CLERK

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	:	File No. 42174
In Re Jerome Daly	:	
28 East Minnesota Street	:	
Savage, Minnesota	:	<u>TRANSCRIPT OF PROCEEDINGS</u>
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The above-entitled matter came on for hearing before a referee; the Honorable Donald C. Odden, Judge of the District Court; on the 9th day of February, 1970, in Room 722 of the Flour Exchange Building, in the City of Minneapolis, Minnesota.

This volume contains the testimony as given on Thursday, February 12, 1970, and Friday, February 13, 1970.

Appearances as heretofore noted.

Reported by:

Lana M. Fruke

* * * * *

Thursday, February 12, 1970
Approximately 9:30 a.m.

(WHEREUPON, court was reconvened
and the following proceedings were duly had:)

MR. DAVIS: Mr. Cudd.

JONATHAN EARL CUDD

being first duly sworn, testified
as follows on behalf of the
Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your name please.

A Jonathan Earl Cudd.

Q What is your address, Mr. Cudd.

A I live at 7020 Morgan South, Richfield, Minnesota.

Q What is your business or occupation?

A I am first Assistant United States Attorney for the
District of Minnesota.

Q You are admitted to practice law in Minnesota?

A I am.

Q When were you licensed?

A I was admitted in October of 1954.

Q Have you practiced continuously since that time?

A I have.

Q For how long a time have you been in the office of the United States Attorney?

A Well, on this tour of duty, I have been there since March of 1967.

Q Did you have occasion, Mr. Cudd, to have any dealings in the course of your work with the United States Attorney's office with Jerome Daly?

A Yes, I did.

Q Was one of those dealings related to a tax return filed for the year 1965?

A Yes, it was.

Q We have in evidence a so-called amended tax return, which Mr. Daly has furnished to the Court, purporting to cover the years 1965, 1966, 1967, 1968. Mr. Daly has indicated that it is in most respects identical with the filing, which he made in 1965. I show you that tax return, which is marked Respondent's Exhibit C, and ask you whether you recognize it as similar to or identical to the return with which you were dealing. I believe further that Mr. Daly's testimony was that the first page and the first twelve of the other pages were submitted in 1965; the rest is new material that has been added.

MR. DALY: I think it was substantially

the same.

A For my examination, it appears to be substantially the same tax return as we were concerned with, yes.

THE COURT: That was Petitioner's Exhibit--

MR. DAVIS: Respondent's Exhibit C.

Q Will you outline for the Court what was done in relationship to the return filed by Mr. Daly in 1965?

A Yes, that return would have been filed in, I think, I believe, as I recall, April 16, 1966. The case was referred to our office in approximately November of 1966, after an Internal Revenue Agent had issued a Summons to Mr. Daly to appear before him and answer certain questions relative to his 1965 tax return.

At the time he appeared before the agent, other than his name, his Social Security number, his address and his occupation; I believe he answered those questions; he declined to answer the remaining questions and it was referred to our office.

We then commenced an action to enforce or obtain a Court order for Mr. Daly's appearance before the Internal Revenue Agent, to answer the questions propounded to him by the agent. In December of 1966, the Court entered an order requiring him to appear, I believe, on January of 1967.

THE COURT: Was that in Tax Court?

THE WITNESS: That was in the United States District Court, Your Honor, before Judge Miles W. Lord.

He appeared pursuant to the District Court Order on January 6, 1967; again declined to answer the questions, except those questions as to his name and occupation.

He was then brought back to Federal District Court in March of 1967; he was found in contempt; I believe the Court's order was entered in May of 1967, adjudging him in contempt.

He then appealed from that order to the Eighth Circuit Court of appeals.

MR. DALY: Can you excuse me a minute. I have a copy of the record here, if you want the exact dates and the procedure, if it will help.

MR. DAVIS: Surely.

THE WITNESS: And the Eighth Circuit sent the matter back to Judge Lord for a hearing to determine whether Mr. Daly's objections under the Fourth, Fifth and Sixth Amendments of the Constitution were valid to the questions propounded by the Internal Revenue officer.

A hearing was held pursuant to the Eighth Circuit Court of Appeals remand in the summer of 1968, if I recall; at which time the Judge upheld Mr. Daly's objections

and the order finding him in contempt was discharged.

Q (By Mr. Davis, continuing) You have in your hand Petitioner's Exhibit Number 30; is that the original order, finding Mr. Daly in contempt?

A That is correct.

(WHEREUPON, Respondent's Exhibit O was marked for purposes of identification.)

Q I show you Respondent's Exhibit O, which purports to be the record of that proceeding in the Court of Appeals, do you recognize the exhibit?

A Yes.

MR. DALY: Yes, I have no objection.

MR. DAVIS: We offer or I guess you offer, Mr. Daly.

MR. DALY: It was a part of the record and I thought it would help the witness on dates.

THE COURT: It will be received; Respondent's Exhibit O.

Q I also show you Petitioner's Exhibit Number 32, are those the Findings of Judge Lord, following the time when the matter was remanded by the Court of Appeals for the Eighth Circuit?

A Yes, that is correct.

Q Have you been involved in any other or further proceedings relative to Mr. Daly's income tax?

A No, this is the only proceeding to which I have been involved.

Q Have you been involved in any other proceedings in which Mr. Daly or clients of his have been litigants?

A I have been involved with them; I have not appeared directly in court with Mr. Daly on any of these other matters; but our assistants have and I have consulted with them and assisted them in handling these matters.

Q Can you estimate for the Court, the time that you or other individuals in your office have spent in relationship to cases brought by Mr. Daly or on behalf of his clients, involving the contention that the Federal Monetary System is unconstitutional?

A Oh, I would say the total time, within the last three years, would total approximately three hundred hours, which would include preparation and appearances in District Court; that is preparation for and appearances in District Court, in state courts; in state courts, preparation of removal petitions, etc.; the handling of appeals and the appearance before the United States Court of Appeals for the Eighth Circuit.

MR. DAVIS: I have no further questions.

Thank you, Mr. Cudd.

CROSS-EXAMINATION

BY MR. DALY:

Q You handled the hearing with reference when it was sent back from the Eighth Circuit Court of Appeals, is that right?

A That is right.

Q You didn't handle the hearings before it went to the Eighth Circuit?

A No, I did not; not directly, no, Sir.

Q Now, did you bring your file with you today?

A No, I did not, Mr. Daly.

Q There was a transcript of all of the hearings before the Court, both before it went to the Eighth Circuit and afterward, is that right?

A I believe that is correct; I know I have a transcript of the proceeding on the hearing we had after the remand by the Eighth Circuit and I do believe that also contained in the file are the transcripts of the proceedings before the Internal Revenue officer and I believe the transcripts of the prior hearings before Judge Lord.

Q Would the Government have any objection if your whole file were brought here and put into evidence?

A I would have no objection to the production of the transcripts relative to those hearings. We would have no

objection to the production of the briefs and other matters that were filed with the respective courts.

The other matters in the file would be principally our internal work product and the work product of the lawyers of the Internal Revenue Service, to which I would object; but those documents, which I have described, no objection, no, Sir.

Q Would you be willing to bring them over so we can have them marked and put in evidence?

A Certainly.

Q One of my contentions was in the original enforcement hearings of the Internal Revenue Summons, is that the United States had to proceed by serving me with a Summons and Complaint, isn't that right?

A That is correct.

Q And the Eighth Circuit held that I was correct on that; but they found that they felt I had waived my rights to that in this case.

A Well, if I may answer your question. I think that is correct; you appeared in the District Court and asserted-- I might explain, the proceeding was started on a petition for the enforcement of an Internal Revenue Summons and at your appearance before Judge Lord, initially you appeared and objected to the jurisdiction of the Court. The Court overruled that objection and ordered you to appear, on January 6,

1967.

You appeared on that date and in your brief and before the Eighth Circuit, you asserted that the Court had no jurisdiction over you and the Eighth Circuit, I think, took the position in its opinion that you were perhaps correct at the time you asserted it; but that by appearing pursuant to the Court's order on January 6th before the Internal Revenue officer, you had waived your objections to the jurisdiction of the Court; because the Court's order at the time it was entered was appealable and you did not appeal.

Q But in any event, they held it clearly was an adversary proceeding between the Internal Revenue agents and myself, isn't that right?

A No, I don't agree. They held it an adversary proceeding, no.

Q Do you have a copy of the decision?

A I have a copy in my file.

Q Well, I have a copy somewhere; I don't know if I can find it or not.

MR. DALY: Do you have a copy of it?

MR. DAVIS: No, I don't; I am sorry.

Q Well, can you bring a copy of the decision over also?

A I certainly will.

Q I think it speaks for itself; but in any event, you

came back for a rehearing and I objected on numerous grounds and one of the grounds I objected on was the grounds it might tend to furnish evidence that might tend to incriminate me, isn't that right?

A That is correct.

Q And we had a hearing that lasted two or three hours, isn't that right?

A That is correct. I think most of one day as a matter of fact; we started in the morning and finished about five o'clock in the afternoon.

Q And I made objections on the grounds that it infringed upon my rights as secured by the First Amendment, isn't that right?

A Well, my best recollection is that you asserted the Fourth, Fifth, Sixth and Fourteenth Amendments.

Q Well, you have a transcript?

A That is correct.

Q And a transcript would show?

A That is correct.

Q But in any event, the Court finally decided or his decision went off on the issue for me to give evidence might tend to incriminate me under state or federal law?

A I think the Court took the position that the tax return, which is marked here as Respondent's Exhibit C, may be considered a tax return and that to compel you to answer

questions might tend to incriminate you under the Fifth Amendment.

Q Now, let me see that please. Let me ask you this: Are you familiar with the Internal Revenue Criminal Statutes?

A Well, I am somewhat familiar with them, yes, Sir.

Q Well, you prosecute the cases under them many times?

A That is correct, Sir.

Q Now, let's just take 7201 states: Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Now, that is broad and sweeping, is it not?

A Well, I would say the statute speaks for itself; I can't agree with you it is broad and sweeping, no.

Q Well, and then 7202: Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

That is quite broad and sweeping with reference to it, isn't it?

A I can't agree with that.

Q Section 7203, Title 26, Internal Revenue Code: Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

That is quite broad and sweeping, to file returns and estimated returns and supply information and pay tax, isn't it?

A Well, I would have to say that I disagree with you; it is not broad and sweeping. Maybe we are--

Q Well, we could have an honest disagreement, isn't that right?

A I suppose we could, depending upon the definitions of broad and sweeping.

Q And going on to 7210: Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, required under the sections, and neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

That is quite definite about being an offense, for failure to produce books and records, isn't that right?

A That is correct, that it is an offense.

Q Well, now, I have taken the position, have I not, that taking all of these Internal Revenue Criminal Statutes together, it amounts to extorting money out of people, under the threat of criminal statute, haven't I?

A Well, --

Q That has been my position?

A I guess that is a fair statement, yes.

Q And you gentlemen have disagreed with me; but that has been my position?

A I guess that is a fair statement of your position, that is correct.

Q And my position all the way along has been that the Sixteenth Amendment gives Congress the right to lay and collect a tax on incomes and it does not give Congress a right to lay and extort a tax on incomes, that has been my position?

A I think that is a fair statement of your position, as I have understood it, if I do.

Q Now, as a practical matter, the United States can serve me with a Summons and Complaint and take me into the United States District Court and give me a civil trial and lay and collect this tax, could they not?

A Well, I am not sure I can answer your question, Mr. Daly.

Q You don't think it is possible for them to bring a civil action against me with present evidence, whether from me or from other witnesses and lay and collect a tax, from the tax return?

A I will answer your question this way: I think the Government has an enforcement power and powers to collect income taxes, if that is what you are driving at.

Q They can start a civil action against me, isn't that right?

A Well, I think they can under certain circumstances, yes.

Q Now, there is nothing in such a circumstance, there is nothing to stop Congress from passing a law giving me complete immunity from any state or federal prosecution, as a result of any information which might arise out of such an action and inquiry based thereon, is there?

A Well, if you are asking me if there is nothing to

stop Congress, I suppose I would have to agree with you. If they want to pass such a law, they would.

Q If I was given complete immunity from state or federal prosecution, I could be put on the witness stand and questioned about anything, isn't that right?

A I am not sure I agree with that question.

Q Certainly the objection that it might tend to incriminate me would not be a valid one.

A It would depend upon the particular immunity statute upon which we were relying.

Q I am talking about a broad one, giving immunity from any state or federal prosecution.

A Of course, Congress couldn't give you immunity from state prosecution; but they, of course, could, I assume if they so desired, grant you immunity by statute or grant immunity from prosecution for crimes, correct.

Q So, they can get around the Fifth Amendment objection and give the taxpayer due process of law, can't they?

A Well, I am not sure I can answer that question.

Q Well, that has been my contention all the way along, hasn't it?

A I don't recall you making that specific contention, but--

Q Well, it has been in some of these returns.

A Well, that may be true.

Q Well, one more thing. When Judge Lord decided in my favor when it came back, the Government filed a notice of appeal to the Eighth Circuit, did they not?

A That is correct.

Q And within eight or nine days after they filed it, they dismissed the notice of appeal?

A The notice of appeal or the appeal was dismissed; but I don't recall specifically the number of days afterward in that. If you desire, I can produce that.

Q But it has been dismissed?

A That is correct.

Q There is no action or proceeding pending over there at the present time?

A Not with reference to that contempt proceeding, no, that is correct.

MR. DALY: I believe that is all.

MR. DAVIS: Thank you, Mr. Cudd.

ROBERT W. DYGERT

being first duly sworn, testified
as follows on behalf of the
Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A Robert W. Dygert.

Q What is your address, Mr. Dygert?

A I live at 717 East 57th Street in Minneapolis.

Q What is your business or occupation?

A I am an attorney.

Q Are you licensed to practice law in the State of Minnesota?

A Yes, I am.

Q When were you so licensed?

A October 4, 1958.

Q Have you practiced law in the State of Minnesota continuously since that time?

A Most of that time.

Q Where are you now practicing?

A At 414 Title Insurance Building in Minneapolis.

Q Are you associated with anyone in practice?

A I am a member of the firm of Dygert and Gunn and we have another attorney associated with us besides Mr. Gunn.

Q Were you and Mr. Gunn associated during the time of the matter or matters relating to the divorce case of Faye V. Peterson and Dr. Palmer Peterson?

A Yes, we were.

Q Did you associate yourself with another lawyer in connection with that case?

A Yes, I did.

Q Who was that lawyer?

A James P. Rorris.

Q Will you tell the Court how you became involved in the divorce proceeding?

A Early in 1962, Mr. Rorris called me and told me that he had a divorce case that involved a trust and because he thought I was familiar with the area of trusts, he wanted me to become associated with him in that case.

THE COURT: What was the name please?

THE WITNESS: James P. Rorris,

R-o-r-r-i-s.

Q And you and Mr. Rorris undertook the representation of the plaintiff, Faye V. Peterson?

A Yes, he was already attorney for her and I became associated with him for her.

Q After your association, did you attempt to learn what the facts of that matter were, concerning the trust?

A Yes, we did.

Q What did you discover?

A Dr. Peterson had endeavored to set up a trust a few days before he was about to be served with a divorce complaint and actually during a period when the divorce complaint was in the hands of the sheriff for service upon him. He went to an attorney and the attorney drew or suggested there be

drawn, a trust. This trust was actually signed quite a bit after the divorce proceedings had started. On the day before the divorce proceedings started, they signed some blank papers, which ultimately may have been used as the signature pages for the trust.

This trust was a document which turned over certain securities and the sum of \$10,000 in cash to Dr. Peterson's brother-in-law, under an irrevocable trust, providing for benefits to the various members of Dr. Peterson's family, other than his wife; his brothers and sisters, his father and mother and his children. And it was discretionary with the trustee as to how the benefits from the trust should be distributed to these people.

MR. DALY: I want to interpose an objection here or I want to ask Counsel, if I might have permission of the Court, is there any claim I had anything to do with this trust?

MR. DAVIS: We claim you may have had something to do with the trust.

MR. DALY: Well, then okay.

Q (By Mr. Davis, continuing) Now, in addition to this effort on the part of Dr. Palmer Peterson to put assets that he owned out of the reach of his wife, did he also do other things to secret assets?

A We soon discovered that he had; in the month before

his divorce proceedings started and in the few months--

MR. DALY: Can you give us a time on this?

THE WITNESS: In January, 1961, immediately prior to the commencement of the divorce proceeding and in the two or three months after it, had withdrawn all of his savings accounts and that that money had completely disappeared. This amounted to somewhere in the neighborhood of thirty or forty thousand dollars that had disappeared from savings.

We also discovered that he had followed a course of action of having some of his records disappear and of not depositing receipts from his medical practice. So that ultimately, after many days of trial, it was determined that his reports of his income were quite inadequate.

We discovered during the course of the trial that he had taken a trip to Europe and among other places, Switzerland, and we traced one check withdrawal from his business account to a Swiss bank account, which was reported to us to have been in his name.

Q (By Mr. Davis, continuing) At that time, Mr. Daly was not involved in any way in the representation of this man, Palmer Peterson?

A Not at all, to my knowledge.

Q And this proceeding continued over a long period of time, did it not?

A Yes, it did.

Q Inviting your attention to December 4, 1964, I believe, yes, December 4, 1964; was an Amended Findings of Fact, Conclusions of Law and Order for Judgment signed by Judge Brand of the Hennepin County District Court?

A Yes.

(WHEREUPON, Petitioner's Exhibit 71 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit Number 71 and ask you what that is?

A This is a photocopy of the certified copy of the Amended Findings of Fact, Conclusions of Law and Order for Judgment, signed by Judge Brand under date of September 4, 1964, with a memorandum that was made a part of the order, attached thereto.

MR. DAVIS: We offer in evidence Petitioner's Exhibit Number 71.

MR. DALY: Well, I claim that all of this is immaterial insofar as I am concerned; but for whatever it is worth, why I have no objection.

THE COURT: It will be received.

Q Now, referring you to that exhibit, will you describe for the Court what orders were made by the District Court,

relative to the trust assets, which you have described and relative to the accounts receivable from Dr. Palmer Peterson's medical practice?

A The Court, in this order, in respect to the trust, ordered that a hearing be held before the judge, who signed the order, on December 15, 1964, at 11:00 a.m. for the purpose or in respect to the nature and value of the trust assets held by defendant, Paul L. Halvorson, and the distribution to be made by them.

I might explain that Paul L. Halvorson was a defendant; he was the trustee and he had been brought in as a defendant in the action and our pleadings had been amended to ask that the trust be set aside and that the assets be distributed under order of the Court, as part of the defendant's assets.

In respect to the accounts receivable of Dr. Peterson, the Court ordered that with respect to the accounts receivable as of December 31, 1963, which were the accounts, a record of which was in evidence; in connection with those, the Court reserved jurisdiction to make disposition of the amounts collected thereon; either by way of allowance of additional money to plaintiff and additional support money to the children or by an award of property to the plaintiff or both.

And the Court also reserved jurisdiction to make further orders concerning any further property, which the defendant, Palmer Peterson, may own, which was not proven at the trial

of the matter.

Q Now, when that order was signed, what did you do with it?

A We received this order on Saturday morning, December 5th, and we prepared a notice of filing, in which notice we incorporated a further motion that we had previously made, which we had not been able to bring on for hearing because Dr. Peterson did not appear. This further motion asked the Court to further amend the Findings of Fact and to determine the nature and value of the trust assets being held by Paul L. Halvorson, awarding the same to the plaintiff and also awarding us attorneys' fees.

And in addition to that, we asked that the defendant Peterson be adjudged in contempt of court for failing to furnish us an authorization as ordered by the Court to explore this Swiss bank account; that he be adjudged in contempt of court for failing to maintain an accurate system of accounting and for failure to bill out the accounts receivable and for an order directing that all of the accounts receivable be sequestered and that those accounts be administered and collected by a receiver.

We attached this notice of filing with the notice of these motions and we set these motions for hearing on December 15, 1964, which conformed with the date that the Court had ordered the hearing on the nature and distribution

of the trust assets.

Q Was that then furnished to a person for service?

A Yes, we furnished to a process server this notice, with an attached copy of the amended Findings of Fact, Conclusions of Law and Order for Judgment and the memorandum. And in addition to that, we furnished to the process server, a certified copy of the judgment that was entered, the amended judgment that was entered pursuant to these amended findings and order for judgment.

That judgment was entered on December 7th and as soon as it was ordered, we secured a certified copy and also gave that to the process server and he took those documents, together with the original findings of fact, conclusions of law and order for judgment, out to Dr. Peterson to be served upon him.

Q And was Dr. Peterson served on December 7th?

A He was served the evening of December 7, 1964, with all of these documents.

(WHEREUPON, Petitioner's Exhibit 72 was marked for purposes of identification.)

Q Showing you what has been marked for identification, Petitioner's Exhibit Number 72, will you look at that and tell the Court what those documents are?

A Well, the first document is an Affidavit of Service and attached to it is a Notice of Filing Findings of Fact,

Conclusions of Law and Order for Judgment and Notice of Hearing, which is the notice that I just described, including our notice of motion on these contempt matters and for the appointment of a receiver. And also attached to it is the Amended Judgment and Decree, dated December 7, 1964.

The affidavit of service covers more documents than are actually attached to this affidavit; it also covers the matter of service of the Amended Findings of Fact, Conclusions of Law and Order for Judgment, which is Exhibit Number 71.

MR. DAVIS: We offer Exhibit Number 72,
Your Honor.

MR. DALY: Well, I don't have any objection; these are copies and they are not the original and, of course, they are not the best evidence, they are substituted evidence; but I am not going to admit for the purposes of this proceeding that there was any judgment served on the Doctor, so far as relation to myself is concerned. In other words, he has claimed all the way along, the Doctor has, that the judgment was never served on him.

MR. DAVIS: The Doctor will be here tomorrow and you can ask him.

MR. DALY: All right; otherwise, I have no objection.

THE COURT: It will be received.

Q Now, have you come to understand certain facts, which occurred on December 8th of 1964 at this time, which you did not know at that time?

A I have.

Q Will you tell the Court what occurred on December 8, 1967.

MR. DALY: Where?

MR. DAVIS: With reference to the trust assets.

MR. DALY: Well, I object to this as calling for a conclusion of this witness.

MR. DAVIS: All right, I thought we could shorten it up; I have Mr. Drexler under subpoena; he has not appeared pursuant to that subpoena. I will ask the Court for a bench warrant for his arrest if he doesn't appear tomorrow; but he will be here, I hope. He has been subpoenaed; he was subpoenaed for Monday of this week. He has failed to appear thus far. I have written him a letter requesting that he be here tomorrow. If he comes, why fine; if he doesn't, we will adjourn until such time as the sheriff can bring him here. I thought if you would permit this man to recite what happened, we might get on with the problem; if not, we will wait for Mr. Drexler.

MR. DALY: Well, I have no objection

to him rambling on, if it is understood that I have a running objection as to his conclusions and I have a running objection to any foundation. In other words, I don't want a lot of hearsay to go into this record without some foundation.

THE COURT: Well, so far there hasn't been any and I don't know what he is going to say.

MR. DAVIS: I will withdraw my question, Your Honor.

THE COURT: Why don't we proceed and he can make individual objections to questions if they involve hearsay.

MR. DAVIS: Very well.

Q (By Mr. Davis, continuing) Now, Mr. Dygert, was the hearing scheduled for December 15, 1964, held on that date?

A No, it was not. Judge Brand's reporter called me on December 8th and said that the Judge had a conflict and he wanted to continue it to December 16th. We then received a letter, which I believe was dated December 9th, from Judge Brand, addressed to Dr. Peterson, Mr. Halvorson and we received a copy, continuing the matter from Tuesday, December 15th at 11:00 a.m. to Wednesday, December 16th, at the same time.

Q Did you, prior to December 16th, receive a telephone call from Mr. Jerome Daly?

A I did.

Q When did you receive the call?

A On Monday, December 14th.

Q Did he identify himself to you?

A Yes.

Q Will you report to the Court what the conversation was, what conversation you had with Mr. Daly?

A At that time, Mr. Daly informed me that the preceding Saturday, December 12th, Dr. Peterson had been in his office and I believe he said had dumped a bunch of papers on my desk. He said, I am not able to go through all of these matters; it seems like a complicated matter and I wonder if you would consent to a two weeks' continuance of the hearing. I told Mr. Daly that I would not consent to a two weeks' continuance; for the reason that I wanted the matter heard before December 25th, if at all possible, because of the fact that I knew that there might be some problems in reference to visitation of the children on December 25th and because of the erratic way that Dr. Peterson had been working and I was really quite concerned that the children be permitted to visit him, until after all of these matters had been resolved by the Court.

There had been some trouble in reference to visitation on Thanksgiving Day and I wanted the matter fully heard before December 25th. But I said, with that understand, I had no objection to Mr. Daly asking Judge Brand to continue the matter.

Q Did you eventually receive a call from Judge Brand or did you call Judge Brand following your conversation with Mr. Daly?

A I did.

Q When did you make that call?

A That was either the same day or the following day.

Q What were you informed with respect to the continuance of the hearing?

A Judge Brand said that he told Mr. Daly he would continue the matter for two weeks; he understood from Mr. Daly that I had consented to a two weeks' continuance. I told him that I had not; that I had consented only to one week; that I wanted it heard before Christmas and he said, under those circumstances, you better appear at the hearing on December 16th and I will ask Mr. Daly to appear also.

Q Did you appear at the hearing on December 16th?

A I did.

Q Was Mr. Daly present?

A He was not.

Q What transpired before the Court on December 16th?

A The Court waited for a considerable period of time; in the meantime, some previous attorneys of Dr. Peterson appeared and asserted a lien on the trust fund for their attorneys' fees. The Court, after waiting until 11:20 a.m., ordered or called in the reporter and ordered that the matter

be continued until December 31st. He told me that he felt that he had made this commitment to Mr. Daly and that therefore, he would continue it to the 31st and he wrote a letter to Mr. Daly and the parties, which he dictated in my presence, continuing the matter to that time.

The letter also said that all parties and their respective counsel are requested to appear before the Court at that time for a full hearing on the above-mentioned matters and the parties are hereby required to comply with any previous orders of this court.

Q Was the hearing held on December 31st?

A It was.

Q Was Mr. Daly present at that time?

A He was not.

Q Was anyone present at his request?

A Mr. Daly's brother, I believe his name is Robert Daly, appeared on December 31st and either at that time or within a few days before that, there had been filed two documents.

One was a motion for amended findings of fact, conclusions of law and order for judgment and the other document was an affidavit of prejudice against Judge Brand.

And Mr. Robert Daly was also furnished with a letter from Jerome Daly, introducing him, and stating that he appeared for the sole purpose of requesting a twenty-day period in

which to file a brief in support of the motion for amended findings. The letter stated that his authority is limited to that.

(WHEREUPON, Petitioner's Exhibit 73 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit Number 73, is that a copy of the letter sent by Judge Brand to Mr. Daly?

A This is a photocopy of a certified copy of the letter sent to Mr. Daly; to Mr. Gill; Mr. Saliterman, Dr. Peterson's previous attorney; myself and James Rorris and to Mr. Paul Halvorson.

MR. DAVIS: We offer in evidence
Petitioner's Exhibit Number 73.

MR. DALY: I have no objection.

THE COURT: Then it will be received.

Q Did you make any discovery at about the time of the hearing of December 31st, concerning a disposition of the trust assets?

A We made a discovery later; but on that date, the only thing that we knew was that no one had appeared, except ourselves and Robert Daly, for this limited purpose. That Mr. Halvorson was not there as we had expected him to be and there was no explanation for these non-appearances.

Q Did you then seek to find Mr. Halvorson?

A Yes, the court adjourned the hearing until the

following Monday, which was the next court day; December 31st, in that year was on a Thursday, the following day being the 1st of January was a holiday and so, of course, was Saturday and Sunday. So, it had to go clear over to January 4th for the next court day.

And the Court asked us to locate Mr. Halvorson and subpoena him, if possible, and also to locate Mr. Daly and to get him back to court on January 4th.

Q Were you successful in locating Mr. Halvorson?

A Yes, we found that he was visiting his in-laws in Cashton, Wisconsin; we talked to him there and he told us that he didn't understand that he needed to be present; but that he would be there on January 4th.

We told him we wanted to subpoena him and he said that he would come over to Minnesota, so we could serve a subpoena upon him and we did that and we served him on Saturday, the 2nd of January.

Q Did you also locate Mr. Daly?

A Yes, my recollection is somewhat vague as to how I located Mr. Daly; but my impression is that I finally got him on Sunday, before the 4th of January. He had been out of the state and he had just returned over the week end.

Q Was a hearing held on December the 4th?

A January 4th.

Q January 4th.

A Yes, a hearing was held on January 4th, 1965.

Q Before which judge?

A That was before Judge Brand.

Q Was Mr. Halvorson present?

A He was.

Q Was Mr. Daly present?

A He was.

Q Was testimony taken from Mr. Halvorson at the time of that hearing?

A Yes, some testimony was taken from Mr. Halvorson at that time.

Q Do you have a transcript of that testimony before you?

A I have a transcript of the proceedings of that morning, which includes Mr. Daly's arguments in reference to his affidavit of prejudice. That particular transcript I hold in my hand covers only that matter apparently. I also have a separate transcript of Mr. Halvorson's preliminary statement to the Court and then after he made this statement, to the Court, he was sworn to testify and the rest of it is a transcript of his testimony.

Q Will you tell us what Mr. Daly's argument was on the question of the affidavit of prejudice?

A In substance, Mr. Daly's argument was that the affidavit of prejudice had the effect of divesting Judge

Brand's jurisdiction from hearing any matters in reference to this divorce case, except his motion for amended findings of fact, conclusions of law and order for judgment.

He argued that Judge Brand still had jurisdiction to hear that; but in respect to the matters that were covered by our notice of motion, such as the appointment of a receiver, the nature and distribution of the trust assets, the sequestration of the accounts receivable, which was part of the motion for receiver; all of those matters, Mr. Daly argued, Judge Brand was prevented to hear, because of the affidavit of prejudice.

Q What did Judge Brand decide with reference to that argument?

A Judge Brand set a hearing for January 7th, to hear the arguments more fully in reference to the affidavit of prejudice and its effect. He made no decision in reference to this matter on January 4th.

Q Was there any statement made at the January 4th hearing by Mr. Daly, that he intended to seek a Writ of Prohibition?

A No, he made that statement following the disposition of his motion in respect to the affidavit of prejudice, which occurred on January 7th.

Q I see. Now, getting back to the statement of Mr. Halvorson and his testimony, will you outline to the Court

what that was?

A Mr. Halvorson disclosed that on December 8th, a Mr. Drexler and Dr. Peterson had come out to his residence and had informed him that the trust had been set aside and had taken into their possession all of the securities that he had and a check for the balance of the cash funds on hand, amounting to slightly over \$8,000.

THE COURT: This was Mr. Drexler and who?

THE WITNESS: Dr. Peterson, the defendant in the divorce case.

Q What did you do at that time with reference to Mr. Drexler?

A We subpoenaed Mr. Drexler to appear. I believe he was subpoenaed to appear at the next hearing, which was the 7th of January.

Q Did you attend the hearing on the 7th of January?

A Yes.

Q And was Mr. Daly present?

A Yes, Mr. Daly was present.

Q What matters were discussed before Judge Brand on that date?

A Well, on January 7th, the principal matter that was discussed before Judge Brand was the motion by Mr. Daly, based upon his affidavit of prejudice, that the Judge disqualify

himself from hearing any of the matters relating to the trust or the receivership or anything else that had been covered by our notice of motion.

Q What did Judge Brand determine with reference to that?

A Judge Brand determined in essence that the matters that had been pending before him, to wit: The matter of the determining the nature and the distribution of the trust assets, which had been the subject of the litigation before him, would be heard by him and he was not barred from hearing them by the affidavit of prejudice; because of the fact that those matters were in process and partially heard.

He viewed the matter of appointment of a receiver and the sequestration of the accounts receivable as a new matter and he felt that the affidavit of prejudice was effective on that and he immediately assigned that to the assignment clerk for assignment to another judge.

MR. DAVIS: Shall we recess?

THE COURT: Yes, a fifteen minute recess.

(WHEREUPON, a morning recess was duly had at approximately eleven a.m.)

* * * * *

Q (By Mr. Davis, continuing) Was any order made by

Judge Brand relative to the trust assets at that hearing?

A. Yes, Judge Brand made -- excuse me, Counsel, you are referring to the hearing on January 7th?

Q. Yes.

A. On January 7th, before Judge Brand, at the time of determination of the question of the validity of effectiveness of the affidavit of prejudice, the Court made the following oral order:

"I believe there is one further matter. This Court has the inherent power to maintain the status quo with respect to all previous orders made by it. And pending any further order of this Court, the Court hereby orders Defendant Palmer A. Peterson forthwith to return to the trustee, Defendant Paul Halvorson, all trust assets obtained from the trustee subsequent to the order of this Court of December 4, 1964.

It is further ordered that Defendant Palmer A. Peterson shall refrain from, and all persons who are his agents, employees, servants or otherwise under his control shall also refrain from disposing, secreting, transferring or otherwise dealing with the trust assets heretofore referred to, other than to return them to the trustee, Paul L. Halvorson."

Now, in addition to this, Judge Brand ordered that the matter of determination of the nature of the trust assets and

their distribution be heard before him on January 13th. Mr. Daly objected to going forward with the hearing on that matter on January 7th, the day we were in court; because he told the Court that he wanted to apply to the Supreme Court for a Writ of Prohibition. And the Judge told him, based upon that, he continued the hearing on the trust assets for one week, until the 13th of January.

Q Do you have a transcript of the proceedings before Judge Brand on the 7th day of January?

A I do.

(WHEREUPON, Petitioner's Exhibit 74 was marked for purposes of identification.)

Q Showing you what has been marked for identification, Petitioner's Exhibit 74, will you tell the Court what that is please.

A These are the proceedings before Judge Brand on January 7, 1965.

MR. DAVIS: We offer Petitioner's Exhibit Number 74.

MR. DALY: I have no objection.

THE COURT: That was January 7, 1965?

MR. DAVIS: Yes.

THE COURT: It will be received.

Q What occurred with reference to the motion, which you had made for the appointment of a receiver to sequester

assets?

A We told Mr. Daly in court that we were going to the assignment clerk and ask it be immediately assigned to another judge, pursuant to Judge Brand's order disqualifying himself. And he accompanied us to the assignment clerk's office and thereafter to Judge Kane's courtroom, where the matter of appointment of a receiver was heard by Judge Kane.

Q Who was present in Judge Kane's court?

A Mr. Rorris; myself; and my associate, Charles B. Andrews; Jerome Daly; Judge Kane and his reporter.

Q What did Judge Kane do on January 7th, 1965?

A Judge Kane heard the arguments and he ordered a bench warrant for the arrest of Dr. Peterson and he ordered that a receiver be appointed and that the accounts receivable be sequestered. In his order, he said that the oral order would become effective forthwith; but that he would also sign a written order, which we were to prepare and submit to him.

Q And this order was made in the presence of Mr. Daly, is that correct?

A It was.

(WHEREUPON, Petitioner's Exhibit 75 was marked for purposes of identification.)

Q I show you what has been marked for identification, Petitioner's Exhibit Number 75, will you tell the Court what that is?

A This is a photocopy of the transcript of proceedings before Judge Kane on January 7, 1965. This covers the portion of the proceedings that contain the orders that he made.

MR. DAVIS: We offer Petitioner's Exhibit Number 75.

MR. DALY: I have no objection.

THE COURT: It will be received.

Q Was a written order issued by Judge Kane appointing a receiver?

A Yes, it was.

(WHEREUPON, Petitioner's Exhibit 76 was marked for purposes of identification.)

Q When was that order issued?

A Under date of January 11, 1965.

Q Showing you Petitioner's Exhibit Number 76, will you tell the Court what that is please?

A This is a photocopy of the order that I referred to.

MR. DAVIS: We offer Exhibit Number 76.

MR. DALY: I have no objection.

THE COURT: Then it is received.

THE WITNESS: If I may, I should add to that, Counsel, in addition to appointing a receiver, this order appointed the same person, Joe A. Walters, as a referee of the court, with the power to subpoena witnesses and to take testimony and all of the power and

authority granted under the rules of procedure.

Q Were further proceedings held on January 13th, 1965, before Judge Brand?

A Yes.

Q What were those proceedings? First, you better tell us who was present?

A Mr. Rorris and myself, appearing for the plaintiff, Faye V. Peterson; Jerome Daly appeared for the defendant, Palmer A. Peterson; Paul Fisch appeared for defendant, Paul L. Halvorson. And in addition to the counsel and the Court, Mr. Halvorson was present during those portions of the proceedings that occurred out in the courtroom, as was William Drexler and during at least part of the proceedings, Mr. James Haverstock, who was the stockbroker who had handled these securities during the time of the trust, was also present and testified.

Q How did you locate Mr. Haverstock?

A Well, we had known that Mr. Haverstock was the person, who had possession of the stock certificates when they were in Dr. Peterson's name and then actually, on behalf of the trustee; he had had possession of them during all of the trial, in the name of the trustee.

Q Did you make inquiry from Mr. Halvorson concerning the location of the stock certificates, from the part of the trust?

A We put Mr. Halvorson on the stand and he testified.

Q All right, will you tell the Court or describe for the Court what occurred at that hearing?

A There were some proceedings in chambers, attended by just counsel, where the Court outlined the nature of the testimony and the investigation that he wanted to make in reference to the location and the value of the trust assets.

Mr. Daly asserted some objections to the Court, going into the trust assets at all. He thanked the Court for granting him time to go for a Writ of Prohibition; but stated to the Court he had been instructed by his clients not to get the Writ of Prohibition; but he objected to the Court hearing the matter of the trust assets, on the grounds that the beneficiaries of the trust were not present and hadn't been served with papers. The Court overruled that objection and then we adjourned to the courtroom.

In the courtroom, we took the testimony of Mr. Paul L. Halvorson. He was cross-examined by Mr. Daly. We took the testimony of Mr. Haverstock. And we also took the testimony of Mr. Drexler and he was examined by all parties and then finally, Mr. Daly made a statement of his position in the matter.

Q Will you outline for the Court what the testimony of Mr. Halvorson, Mr. Drexler and the third person--

A Mr. Haverstock.

Q Mr. Haverstock, was.

A. Mr. Halvorson stated that on December 8, 1964, Mr. Drexler and Dr. Peterson had showed up at his home and informed him that the trust had been set aside. They also had some documents with them, which he identified as the amended Findings of Fact, Conclusions of Law and the memorandum attached to it and they showed him only some quotations out of this, from which he arrived at the conclusion that the trust had indeed be set aside and that he was to turn the assets over to Drexler and Peterson. He thereupon went with Drexler and Peterson to the savings and loan association in Stillwater, which was his home, and they withdrew the entire balance of the savings account in a check. I have forgotten whether the check was made payable to Dr. Peterson or Mr. Drexler.

But at any rate, they delivered a check, which I think was made payable to Dr. Peterson. Yes, I am now reminded by seeing a copy of the check. It was made payable to Palmer A. Peterson.

Drexler and Peterson then left and they came back somewhere around about noon, at which time they had the stock certificates, which they had secured from Haverstock and they asked Paul Halvorson to endorse the stock certificates.

He endorsed these certificates in blank and delivered them to Drexler and he testified that he hadn't seen them since and didn't know what disposition had been made of them

or the cash from the trust.

He also testified that he had been served with a copy of the amended findings of fact and conclusions of law on December 11th and from that, and I believe also from a letter from Judge Brand, he knew that he was supposed to appear before Judge Brand on December 15th. He thereupon called Mr. Drexler and was assured that he did not need to appear.

Now, in either this conversation or in a subsequent conversation, according to Mr. Halvorson's testimony, Mr. Drexler said that Mr. Daly is representing Dr. Peterson and you should call him and Halvorson testified that he did call Daly and Daly told him that he didn't need to be there.

Halvorson also stated that he learned of the hearing on December 31st, through another letter from Judge Brand and at that time he again called Drexler and at that time Drexler told him that he did not need to appear; but that he would send some powers of attorney, which would permit either him or Mr. Daly to make the appearance for him. These powers of attorney were sent to Halvorson; Halvorson signed them and returned them to Mr. Drexler and then went on to his Christmas vacation, which he spent with his in-laws in Cashton, Wisconsin.

Q What was the testimony of Mr. Haverstock?

A Mr. Haverstock stated that shortly before noon on December 8th, 1965, Mr. Drexler and Dr. Peterson appeared at his

office and asked him to give them the stock certificates, because the Court had ordered that the trust be set aside. He did not see any documents, but he took Mr. Drexler's word for it as an attorney. Mr. Haverstock said that his brother and his father were attorneys and that he felt that if an attorney told him something, he could believe it.

So, he asked the cashier to get the stock certificates together and prepare a receipt for them. I think he left for lunch before they were actually turned over; but he gave instructions for them to be turned over to Drexler and Peterson.

Q Will you summarize Mr. Drexler's testimony.

A Mr. Drexler repeated the information that we already had received from Mr. Halvorson, in reference to his and Dr. Peterson's receiving the stock certificates endorsed by Halvorson and receiving the money. But when we attempted to ask him as to what had happened to the money or what had happened to the stock certificates, he refused to answer, on the grounds that his answer would be a violation of the attorney-client privilege and he stated that he had been instructed by his client not to give any information as to what had happened to the stock certificates or what had happened to the money.

Q By his client, to whom did he refer?

A Palmer Peterson.

Q Mr. Daly was also representing Dr. Peterson at that

time?

A Mr. Daly was in court as counsel for Dr. Peterson.

MR. DALY: If you want to mark all of the exhibits in one pack, I have no objection.

(WHEREUPON, Petitioner's Exhibit 77 was marked for purposes of identification.)

MR. DAVIS: We offer Petitioner's Exhibit Number 77.

MR. DALY: I have no objection.

THE COURT: They will be received.

Q Showing you Petitioner's Exhibit Number 77, what is that?

A This appears to be a partial transcript of the proceedings on January 13th, being the testimony of Paul L. Halvorson and William E. Drexler.

MR. DAVIS: Exhibit 77 has been received, Your Honor?

THE COURT: Yes.

MR. DALY: This is a photocopy of the transcript.

Q Did you have a telephone conversation with Mr. Daly at or about January 14th, 1965, regarding the trust assets?

A I had a telephone conversation with Mr. Daly on January 14th, in reference to certain offers of settlement that he had made to me, prior to that time.

Q Did Mr. Daly identify himself to you?

A Yes, I am not sure but what I called him on the 14th of January. This related to a discussion that we had had, either on that day or some day prior to that time, here in this building, down in the coffee shop.

Q Now, will you report to the Court the content of your discussion in the coffee shop in the Flour Exchange Building with Mr. Daly?

A Well, Mr. Daly had sought me out to determine whether we would accept a cash settlement for Dr. Peterson. And we discussed the basis upon which we would consider a settlement. And we told him that we felt that the prerequisite to any settlement was for Dr. Peterson to return the trust assets to the trustee as the Court had ordered and that then we would either make a settlement of the property division and the matter of the child support and alimony or we would submit those matters to the Court for its further determination. But, we did take the position that the only basis upon which we would talk about a settlement was to have the trust reinstated.

Q Did Mr. Daly either at the meeting in the coffee shop or in the telephone conversation on January 14th, refer in any way to the trust assets?

A In the coffee shop, Mr. Daly said there is no sense talking about that; those trust assets are long gone and so

is the doctor.

Q After the appointment of the receiver, did you make any discovery of a method of collection of the accounts receivable of Dr. Palmer Peterson by a means, other than through the receiver?

A Yes.

Q How did you make that discovery?

A Along about this time, since the accounts receivable records were not in court as the Court had ordered, the receiver had nothing to operate on, except for the copies of accounts receivable records that we had previously introduced in court. And they only ran up to December 31, 1963.

We determined to run a series of garnishments on behalf of our client, the plaintiff, against the patients, whose names were referred to in the record that we did have. And as our process server was out serving the garnishments, it rather quickly came to our attention that many of these accounts had been paid or were being paid through a direct solicitation, that asked the patients to send their money to a certain post office box. And this turned out to be a post office box at the Metropolitan Airport Station, which is under the jurisdiction of the Saint Paul Post Office.

We also picked up a copy of a letter that had accompanied these solicitations and copies of the return envelope, directed to this post office box.

(WHEREUPON, Petitioner's Exhibits 78 and 79 were marked for purposes of identification.)

THE WITNESS: I have a copy of the letter; I also have a copy of the envelope, the return envelope.

(WHEREUPON, Petitioner's Exhibit 80 was marked for purposes of identification.)

THE WITNESS: And I also have these.

(WHEREUPON, Petitioner's Exhibits 81 and 82 were marked for purposes of identification.)

Q Showing you what has been marked for identification purposes as Petitioner's Exhibit Number 79, will you tell the Court what that is?

A This is a photocopy of one of the envelopes, that was the form of return envelope that we started to pick up during the period I mentioned.

Q And showing you Exhibit Number 80, what is that?

A This is a photocopy of the letter that had been sent out to Dr. Peterson's patients in January, 1965.

MR. DAVIS: We offer in evidence Exhibits 79 and 80.

MR. DALY: I have no objection.

THE COURT: Then Exhibits 79 and 80 will be received.

Q Did you make inquiry to determine who had applied

for and paid the fee for that particular post office box?

A. We did, by subpoenaing the post master ultimately and learned it through that way. I don't remember that we learned who was the box holder, until the post master actually appeared on the stand and told us.

Q. He was subpoenaed into court?

A. Yes.

Q. Before Judge Kane?

A. Yes, he was originally subpoenaed before the referee and the United States Attorney appeared and objected to his testifying; so, the matter was referred to Judge Kane and heard by him.

Q. Who was present in court at the time that the post master was examined?

A. Myself and Mr. Rorris; Jerome Daly and William E. Drexler, who appeared on behalf of the defendant, Palmer A. Peterson; Paul G. Fisch, appearing on behalf of Paul L. Halvorson; Gerard W. Snell, Assistant United States District Attorney, appeared on behalf of the post master and Albert D. Levin appeared on behalf of the Commercial State Bank. Joe A. Walters, the referee, was also present in court; as was the post master; the member of his staff, who was in charge of the Metropolitan Airport Post Office, and there may have been others present in court.

THE COURT: That was on what date,

Counsel?

THE WITNESS: This was on February 17, 1965.

Q Showing you Petitioner's Exhibits 81 and 82, will you tell the Court what those are?

A Exhibit 81 is a photocopy of the page from the receipt book brought in by the post office witnesses, showing the receipt issued for this post office box rent, to Mr. William E. Drexler on December 10, 1964, and again for the renewal of the same box on January 19, 1965.

And Petitioner's Exhibit 82 is a photocopy of both sides of the card that was signed by Mr. Drexler in applying for that post office box, under date of December 10, 1964.

MR. DAVIS: We offer Exhibits 81 and 82 in evidence.

MR. DALY: I have no objection.

THE COURT: They will be received.

Q Now, at that hearing on February 15th, was it?

A February 17th.

Q February 17th, were the contents of that post office box delivered into court?

A Yes.

Q And were they opened pursuant to the order of Judge Kane?

A They were.

Q By whom?

A By the receiver and the post master.

Q Were Mr. Daly and Mr. Drexler present?

A They were present at the time of the Court's order, which was that this may be opened during the noon recess. They were present, I am sure, at the commencement of the opening; but whether they stayed for the entire procedure of opening the mail, I do not know.

Q Was any objection made by Mr. Daly on behalf of his client, regarding the opening of the mail?

A Oh, yes, yes, he objected throughout and his objections were overruled by Judge Kane.

Q Were you present when the mail was opened?

A I was present; I didn't participate in it.

Q Do you know what the contents of these envelopes were?

A Yes, I know from my own observation and also Mr. Walters testified to the contents of them, immediately following the noon recess.

Q What were the contents?

A Well, there were eighty pieces of first class mail, three of which had postage due and of the eighty pieces of mail, all but five contained payments to Dr. Peterson or related directly to the billings that he had sent out or that someone had sent out.

There is nothing in the mail of any personal nature; it all related to statements.

In some instances, the referee testified the statements were corrected and in connection with these five envelopes; one of them was empty and the others seemed to contain some correspondence of a personal nature to Dr. Peterson and outside of that, they all had to do with either having checks in them or the return of the statements with corrections.

Q In what form were these pieces of mail, from the standpoint of their exterior appearance?

A They were all in these envelopes, such as Exhibit 79.

Q And to whom were all of the pieces of mail addressed?

A They were all addressed to Dr. Peterson, to my recollection; at a subsequent hearing, Counsel, when additional mail was opened in court; there were, I believe, a couple of pieces of mail, which involved envelopes of this nature, in which Dr. Peterson's name had been stricken out and Mr. Drexler's name had been added.

Q I show you Petitioner's Exhibit Number 78, are those the two photocopies of the two envelopes addressed to William E. Drexler, which you found in the second opening of the box?

A They are or that is.

MR. DAVIS: We offer Exhibit Number 78,
Your Honor.

MR. DALY: I have no objection.

THE COURT: It will be received.

Q And during this entire time, is it true that you were working with Mr. Daly and with Mr. Drexler as co-counsel for Dr. Peterson?

MR. DALY: Say that again?

A Well, I wasn't working with them; but they appeared on February 17th as co-counsel for Dr. Peterson, yes. And that in the other proceedings prior to that time, Mr. Daly had appeared commencing with a hearing on January 4th, as attorney for Dr. Peterson, and Mr. Drexler had testified on January 13th; that is, he had acted as attorney for Dr. Peterson in these procedures, whereby they collected the trust assets.

Q Did you discover what had taken place concerning the trust assets, after the time that they had been delivered by Mr. Halvorson to Mr. Drexler and Dr. Peterson?

A Yes, we did.

Q How did you make that discovery?

A At or about the time that Mr. Drexler refused to testify as to what had happened to the trust assets, which was on January 13th, we sent letters to the transfer agents for each of the companies involved, asking them to stop transfer of these certificates, on the grounds that they were unlawfully taken and we received letters back from all of these transfer agents, during the latter part of January, which reflected

that all of the stock certificates had been transferred already to Caldwell Phillips, Inc., a stock brokerage house in Saint Paul.

We thereupon subpoenaed Caldwell Phillips and we took their testimony, the testimony of their representatives. And by checking with the savings and loan associations, we determined what had happened to their check.

So, we traced the proceeds of the money through a series of transactions involving the First National Bank and some banks over in Saint Paul and we determined that ultimately, as a result of all of these proceedings, that on December 14th, Drexler and Peterson had taken the stock certificates, endorsed by Halvorson, to Caldwell Phillips and asked them to sell them.

On that date, Caldwell Phillips said, since they are registered in the name of a trustee, we have to make a certificate as to the existence of this trust. So, they asked for copies of the trust instrument and were furnished with copies of the trust instrument by Drexler. And they made a certificate, based upon his representations that the trust was still in existence and in full force and effect.

They had to put the stock in their own name, in order to give a good delivery; because under the rules of the stock exchange, the delivery of stock in the name of a trustee is not considered a good delivery. So, that was their first step.

and thereupon, they sold the stock and distributed checks to Drexler on December 28th and December 31st, totalling about \$27,000, representing the proceeds of sale of the stock. These checks were made out to Paul L. Halvorson as trustee for Palmer A. Peterson. That was a kind of a misnomer, because, of course, it was or could better have been made under trustee, with agreement with Palmer A. Peterson.

Peterson thereupon endorsed Halvorson's name on these checks and turned the checks over to Drexler and Drexler delivered them to a Commercial State Bank of Saint Paul and had them converted into cashier's checks of the Commercial State Bank of Saint Paul.

These ultimately were in turn cashed and some of the money, in fact an exact ten per cent, was traced into Drexler's own accounts and the other ninety per cent, Drexler subsequently testified was transferred over to Dr. Peterson or was given to Dr. Peterson in cash in one hundred dollar bills.

The last of this process eventually occurred on January 4th. The last checks issued by Caldwell Phillips were on December 31st and that was the day that Drexler appeared and secured cashier's checks for these proceeds. These checks were then cashed and apparently on January 4th, the money was delivered to Dr. Peterson.

Q January 4th would have been the same date, January 4th, 1965, would have been the same date when you first were able

to get Paul Halvorson into the courtroom to inquire about where these proceeds were, is that correct?

A. That is correct.

Q And this was originally intended to be done on the 16th of December at the hearing, is that correct?

A. That is correct.

Q And that hearing was then continued to the 31st, is that correct?

A. That is correct.

Q At which time, Mr. Daly did not appear?

A. That is right.

Q His first appearance being January 4th?

A. That is right.

MR. DAVIS: May we break for lunch?

THE COURT: Court is adjourned until one-thirty.

(WHEREUPON, Court adjourned for the morning at approximately twelve o'clock noon.)

* * * * *

Thursday, February 12, 1970
Approximately 1:30 p.m.

(WHEREUPON, Respondent's Exhibits P through S were marked for identification.)

MR. DALY: Respondent's Exhibit S is

a record in Jerome Daly versus United States of America, Civil 18906 and it is a record of the proceedings prior to the time that it went to the Eighth Circuit Court of Appeals.

Respondent's Exhibit R is the Government's brief and Respondent's Exhibit Q is the opinion.

(WHEREUPON, Respondent's Exhibit T was marked for purposes of identification.)

MR. DALY: Respondent's Exhibit T is my brief that I filed and Respondent's Exhibit P is the transcript of the proceedings before the United States District Court on July 17, 1968. And I think page -- one of the last pages or two, shows the disposition that the Court made of the proceeding.

P is the transcript on July 17, 1968, indicating the Court's decision ordering a dismissal of the contempt proceedings.

THE COURT: There is no objection to their offer or receipt?

MR. DAVIS: There is no objection, Your Honor.

THE COURT: They will all be received.

MR. DALY: Mr. Cudd stated that he wanted this back.

THE COURT: I will see that all

exhibits are returned as soon as we are through with them.

(WHEREUPON, Petitioner's Exhibits 83 through 89 were marked for purposes of identification.)

Q Mr. Dygert, I show you Petitioner's Exhibit Number 89, which comprises a series of documents, will you tell the Court what those documents are please.

A Petitioner's Exhibit Number 89 consists of photocopies of the following: First is a check from Caldwell Phillips, Inc., to Paul L. Halvorson, Trustee for Palmer A. Peterson; the word trustee being abbreviated T-r, dated December 31, 1964, in the amount of \$13,167.86, endorsed purportedly by Paul L. Halvorson, trustee for Palmer A. Peterson. Mr. Halvorson denied that he endorsed these; it was learned in the subsequent testimony that they were endorsed in his name by Dr. Peterson.

The second is a check of Caldwell Phillips, Inc., dated December 28th to the same party, endorsed in the same manner, in the amount of \$9,511.46.

And the third is the third check issued by Caldwell Phillips, Inc., in the amount of \$4,219.05, which was endorsed in the same manner.

Following that are photocopies of three cashier's checks, issued by First National Bank of Minneapolis on December 8, 1964, which were the checks issued by the bank in cashing the

check of Washington Federal Savings and Loan Association and they total to that amount. These three checks are made out to William E. Drexler and the second page, in each case, shows the endorsement.

The testimony subsequently developed that these were all converted into cash and turned over to the -- the cash was turned over to Dr. Peterson; following that is a request for cashier's checks totaling \$4,219.05, representing one of the checks from Caldwell Phillips and this is on December 30, 1964.

And following that are the two cashier's checks that were issued by the Commercial State Bank, pursuant to that request, both to Dr. Palmer A. Peterson, subsequently endorsed by him and cashed by Mr. Drexler at another bank.

Also, there is here the request by Mr. Drexler on December 30, 1964, for cashier's checks totaling \$9,511.46, representing the proceeds of one of the other Caldwell Phillips checks and the cashier's checks that were issued pursuant to that. Two of these checks were in the amount of \$3,000 each, payable to Palmer A. Peterson and one was in the amount of \$2,138.46 and the fourth check was in the amount of \$1,373.00, payable to William E. Drexler, which was ten per cent of the amount of the checks that he cashed that day.

Attached to each of these checks is a photocopy of the back, showing the course of these checks through other banks.

It suffices to say, they were all ultimately, except for

the one made out to himself, Drexler ultimately cashed each of these checks and turned the proceeds over to Dr. Peterson; according to his testimony, the check made out to himself went into his own account.

Following that is a requisition for cashier's checks dated December 31, 1964, signed by Drexler and in the total amount of \$13,167.86, which was the amount of the checks of Caldwell Phillips that Drexler brought in on December 31st.

And again all of these checks were converted into smaller cashier's checks payable to Palmer A. Peterson, subsequently cashed by Drexler and according to his testimony, the money turned over to Dr. Peterson, except for one check, which was made out to William E. Drexler in the amount of \$1,316.78, representing ten per cent of the amount that he collected that particular day.

MR. DAVIS: We offer in evidence
Petitioner's Exhibit Number 89.

MR. DALY: I have no objection.

THE COURT: It will be received.

MR. DAVIS: We will have to find some
way to attach these together, Your Honor.

Q I show you Petitioner's Exhibit 83 and ask you what that is?

A It is a photocopy of the front and back of the Washington Federal Savings and Loan check, which was delivered

to Drexler on December 8th, made out to Palmer A. Peterson and subsequently cashed on the same day and converted into cashier's checks at the First National Bank of Minneapolis.

Q And I show you Exhibit Number 84.

A Exhibit Number 84 is a photocopy of the front and back of the account card maintained by Washington Federal Savings and Loan Association, showing the account that they held in the name of Paul L. Halvorson as trustee.

Q Number 85.

A Exhibit Number 85 is a photocopy of the receipt taken by Woodard-Elwood and Company, Mr. Haverstock's company, for the stock certificates that were turned over by Haverstock to Peterson and Drexler on December 8th.

Q And 86.

A Exhibit Number 86 is a photocopy of the Washington Federal Savings and Loan Association Savings Account ledger card relating to the account maintained by Paul L. Halvorson as trustee.

MR. DAVIS: We offer Exhibits 83 through 86.

MR. DALY: I have no objection.

THE COURT: Received.

Q I show you Petitioner's Exhibits 87 and 88, will you tell the Court what those are please.

A On or about March 2, 1965, Mr. Daly, as attorney for

William E. Drexler, commenced an action against Stanley D. Kane, the District Judge who had handled the post office matter; Joe A. Walters, the referee and receiver; Mr. Rorris and myself and the firm of Dygert and Gunn; Sigurd A. Bertelson, Postmaster; the United States of America as a defendant and Faye V. Peterson, our client.

And this action was commenced in the United States District Court for the District of Minnesota and sought first of all an immediate order on motion directing the defendants to deliver forthwith to the plaintiff, Drexler, as agent for Dr. Palmer A. Peterson, all mail and other material that had been sequestered from the mail box and temporarily enjoining, during the pendency of this action, the defendants and each of them, from interfering with the mail box.

And Exhibit 87 is the motion and notice of motion, to which is attached the summons and complaint in that action.

Exhibit Number 88 is a dismissal, which Mr. Daly and Mr. Drexler subsequently executed. It is a dismissal without prejudice.

MR. DAVIS: We offer Exhibits 87
and 88.

MR. DALY: I have no objection.

THE COURT: Received.

Q Mr. Dygert, did you continue your efforts to garnish the persons, who owed Dr. Palmer Peterson money, on

his accounts receivable?

A Yes, we did. Our arrangement with the receiver was that in any case where a disclosure was made, reflecting that money was due Dr. Peterson, we would inform him and he was authorized to demand the money from the patient. And upon his collecting it, we would furnish a release of the garnishment.

(WHEREUPON, Petitioner's Exhibit 90 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit 90, do you recognize that exhibit?

A I do.

Q Will you tell the Court what it is please.

A In the course of these continued garnishments, it came to our attention that another letter went out about the 24th or 25th of February, 1965, from Mr. Daly's office. And this is a photocopy of one of those letters.

MR. DAVIS: We offer Exhibit Number 90,
Your Honor.

MR. DALY: I have no objection.

THE COURT: Received.

Q And the purpose of that letter was what?

A Mr. Daly indicated that he had received, as attorney for Dr. Peterson, notice of the garnishment. He stated that a garnishment was prohibited, unless the amount was due absolutely and unequivocally, without depending upon any

contingency. And he undertook to notify these people, who had been garnished, that the money was not due absolutely and without depending upon any contingency and he claimed that he had a lien upon Dr. Peterson's accounts receivable in the amount of \$1,500.00, which came ahead of any claim or judgment asserted by the plaintiff in the action. And it invited the person receiving the letter, if they had any questions, to call him at 890-2274 and also if they had any mail or wanted any information directly with Dr. Peterson or wanted to make any payments to Dr. Peterson, that they should address them to him, Jerome Daly, Box 644, Savage, Minnesota, and he would see to it that it was forwarded to the doctor.

(WHEREUPON, Petitioner's Exhibit 91 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit Number 91, will you tell the Court what that is?

A This is a copy of two powers of attorney, that were introduced in an action involving Mr. Drexler.

Q Have you seen the original of that instrument?

A No, the original has never been produced by Mr. Drexler.

Q Have you seen other purported copies of those documents?

A Yes, I have.

Q What can you tell the Court regarding what you understand the original to have contained?

A Mr. Halvorson acknowledges that these are his signatures on these two documents. He states that the original document consists of three powers of attorney. The top one was directed to William E. Drexler; the second one was directed to Jerome Daly and the third one was entirely blank.

He furnished these to Mr. Drexler for the purpose of permitting either Mr. Drexler or Mr. Daly to appear, to represent him at the hearing on December 31st, and for no other purpose. He assumed that the reason he was being asked to sign a blank power of attorney, was that maybe Mr. Daly's brother would make the appearance or some other lawyer and that another name would be filled in to make this appearance for him in court.

Now, the document here, this exhibit, contains a power of attorney at the top, which is made out to Palmer A. Peterson. Mr. Halvorson testified that at no time did he authorize Palmer A. Peterson to appear for him or be his attorney in fact or sign any documents, and specifically not to sign the checks that Peterson signed in his name.

MR. DAVIS: We offer Petitioner's Exhibit 91.

MR. DALY: May I ask a question for purposes of clarification?

THE COURT: You may.

MR. DALY: You indicated there was a power of attorney signed by Halvorson to me. This Exhibit 91 does not contain any power of attorney by Halvorson signed over to me.

THE WITNESS: I assume the original document of three on a page was cut into strips.

MR. DALY: You don't have a copy of a power of attorney by Halvorson to me?

THE WITNESS: I have no copy and my information on that comes from Halvorson.

MR. DALY: This is hearsay that you got from Halvorson?

THE WITNESS: You characterize it as you will; it is his testimony.

MR. DALY: With that, I have no objection.

THE COURT: It will be received.

Q (By Mr. Davis, continuing) Were proceedings later brought to hold in contempt Palmer A. Peterson, William Drexler and Jerome Daly?

A Yes.

Q When were those proceedings brought?

A One proceeding, which was to hold in contempt William E. Drexler, Jerome Daly and Jan Achman, a secretary of Dr. Peterson, came on for hearing before Judge Kane on

February 17th, the same date that the matter involving the opening of the mail came on for hearing.

This proceeding not only asked that these people be held in contempt; but also was a motion directed to the Court for an order requiring them to forthwith turn over to the Court and its receiver any records that they might have of Dr. Peterson, specifically the record of the accounts receivable or any other business records that he had.

Q How was that proceeding handled?

A Drexler and Daly filed an affidavit of prejudice against Judge Kane and the matter was then referred to Judge Fosseen.

Q Was the matter tried to Judge Fosseen?

A The matter came on for hearing and was continued, I believe twice by Judge Fosseen, and ultimately tried by him in March of 1965.

He filed his findings and at that time the matter went to the Supreme Court and it was later remanded and it was remanded to take further testimony. And additional testimony was taken in September of 1965.

Q Were there eventually Findings of Fact, Conclusions of Law and Order for Judgment in the contempt proceeding?

A There were two of them. The first of them was Findings of Fact and Order of Conviction for Criminal Contempt and that was after the first trial and that was dated March 19,

1965.

(WHEREUPON, Petitioner's Exhibit 92 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit Number 92, will you tell the Court what that is please.

A These are the Court's Findings of Fact and Order of Conviction in respect to William E. Drexler and Jerome Daly and it was also Findings of Acquittal in respect to the Respondent Jan Achman and these were dated March 19, 1965.

(WHEREUPON, Petitioner's Exhibit 93 was marked for purposes of identification.)

MR. DAVIS: We offer Petitioner's Exhibit Number 92, Your Honor.

MR. DALY: Well, I have no objection as to foundation; but I want to object on the grounds it is immaterial and it is calling for a conclusion with reference to the whole. In other words, my objection so far as this proceeding is concerned, it is incompetent, irrelevant and immaterial.

THE COURT: The objection will be overruled; Petitioner's Exhibit 92 will be received.

Q What were the proceedings in September of 1965 in that subject matter?

A Mr. Daly, through his attorney, had requested a remand to the District Court for the purpose of his being

permitted to testify.

In the original proceedings, he had declined to testify on the grounds that his testimony might tend to incriminate him. And after the matter got to the Supreme Court, he evidently changed his mind and the matter was remanded and he testified, Mr. Drexler testified and the Court made further findings, affirming its original findings.

Q And that matter again was appealed to the Supreme Court, is that right?

A Yes.

Q I show you Petitioner's Exhibit 93, will you identify that for the Court.

A Exhibit Number 93 is a copy of the Supreme Court's decision in reference to the conviction of Mr. Drexler.

On the same date, the Supreme Court issued another decision in reference to Mr. Daly and on the authority of this decision in respect to Mr. Drexler; also reversed and remanded the conviction in respect to Mr. Daly.

MR. DAVIS: We offer Petitioner's Exhibit 93.

MR. DALY: I have no objection.

THE COURT: Received.

Q Have you read that opinion, Mr. Dygert?

A Not recently; but I have read it, yes.

Q What was the holding of the Court with reference to

the reversal of the conviction.

A Basically, that the Court erred in not granting to these two respondents a jury trial, as they requested.

Q Were proceedings taken on behalf of your client to recover the trust fund monies that had formerly been in the hands of Paul Halvorson?

A Yes.

Q And those proceedings were brought where?

A We brought an action in District Court in Hennepin County against Halvorson and a good many other people to recover these funds.

Q Did those defendants include Mr. Drexler and Mr. Daly?

A They did.

Q And was there a decision in that matter?

A Yes, there was.

Q What was that decision?

A Based upon a verdict of the jury and their answers to certain specific interrogatories, the Court made its findings and decision and order for judgment against each of Mr. Drexler and Mr. Daly in the sum of, I believe it was \$35,500.00, and specifically provided that as found by the jury, that this amount was allowed as a result of fraud, false pretenses.

(WHEREUPON, Petitioner's Exhibit 94

was marked for purposes of identification.)

Q I show you Petitioner's Exhibit Number 94, is that the decision and order for judgment in that proceeding?

A It is.

MR. DAVIS: We offer Exhibit Number 94, Your Honor.

MR. DALY: Well, I have no objection to it; except insofar as it is incompetent, irrelevant and immaterial. The same objection I made to the other one; but so far as foundation is concerned, I have no objection.

THE COURT: The objection will be overruled and it will be received.

Q And an appeal was taken, was it not, from that judgment?

A It was.

Q And upon appeal to the Supreme Court, the Supreme Court reversed the decision of the trial court?

A It did.

(WHEREUPON, Petitioner's Exhibit 95 was marked for purposes of identification.)

Q I show you Petitioner's Exhibit 95, will you tell the Court what that is please.

A This is a photocopy of the decision of the Minnesota Supreme Court in that matter.

MR. DAVIS: We offer Exhibit 95,
Your Honor.

MR. DALY: I have no objection.

THE COURT: It is received.

Q Are you familiar with the decision of the Supreme Court, which is Petitioner's Exhibit 95?

A I believe so.

Q Will you tell the Court what basis the Court determined to exist, in reversing the judgment?

A As to Mr. Drexler, the Court held that the trial Court should have honored an affidavit of prejudice, filed by Mr. Drexler. As to Mr. Daly, the Court held in substance that Mr. Daly had not been sufficiently notified that the trial of the matter was to commence.

Q Now, neither Mr. Drexler nor Mr. Daly participated in the entire trial of that matter, is that correct?

A They were there for some of the preliminary proceedings.

Q And then they left the courtroom?

A That is correct.

Q Has the matter involving the divorce of Mrs. Peterson and Dr. Palmer Peterson now been settled?

A Substantially so.

Q Will you tell the Court when that was accomplished?

A Within the last three months, Your Honor. I don't believe I can put an exact date on it; I don't have my notes

with me.

Q Does that involve a settlement as respects Mr. Daly and Mr. Drexler?

A It did not.

Q Those matters are still pending before the court?

A Those matters--

Q Not before the court; but they are still pending?

A Those matters have been remanded from the Supreme Court to the District Court here.

MR. DAVIS: I have no further questions.

CROSS-EXAMINATION

BY MR. DALY:

Q When did this divorce action start with Dr. Peterson and his wife?

A I believe it was on February 2nd or thereabouts, in 1961.

Q And were you the attorney on it when it started?

A I was not.

Q Who was?

A Andrew Miner.

Q And who represented Dr. Peterson?

A I am not sure in the first instance; I believe

Kermit Gill.

Q And Andrew Miner represented Dr. Peterson's wife, Faye V. Peterson?

A That is right.

Q How did Miner happen to get off the case?

A I don't know. I do know that James Rorris was substituted as attorney for the plaintiff three or four months later.

Q And when did you enter into the proceedings?

A I was first consulted by Mr. Rorris on February 10, 1962, and filed a notice of association of counsel some time, I believe, during the month of February.

Q And why were you brought into the proceedings?

A I was brought in, because of the fact that Mr. Rorris had by that time discovered that this trust had been set up and he felt that he wanted, in this proceeding, to set the trust aside and wanted me to assist him in amending the pleadings and carrying on that phase of the litigation.

Q Now, previous to this, Dr. Peterson and his ex-wife, Faye V. Peterson, had started several divorce actions against each other, had they not?

A I understand his wife had started several actions; I don't know of any that he had started.

Q But his wife had started some three or four?

A I think that might be correct.

Q And they had a family of how many children?

A Three children.

Q And before you got onto the case, these actions, it was always possible to settle them between the two of them?

A I believe that in every case, the action was dismissed by Mrs. Peterson.

Q Now, what did you do when you got onto it?

A Well, I conferred with Mr. Rorris about the matter and I researched the law and I attended a hearing in May, before Judge Knutson, and I reviewed the file and the deposition and I prepared an amended complaint, drafted notice to the beneficiaries of the trust, and ultimately filed the amended complaint and sent out the notices.

Q And when did the trial commence in the action?

A The first day of trial was December 18, 1962.

Q And who did the trial commence before?

A Judge Brand.

Q And who was representing Dr. Peterson?

A Samuel Saliterman and Kermit A. Gill.

Q And that was the first day of trial, December 18, 1962, is that right?

A That is correct.

Q When was the last day of trial?

A Excluding a number of post-trial motions, which occurred during 1964, I believe that the last testimony that

was taken in the trial itself was some time in around the 24th day of October, 1963.

Q October 24, 1963?

A That is right.

Q So, the first day of trial was December 18, 1962, and the last day of trial in this divorce case, that is the day that the parties rested, was October 24, 1963?

A I believe I am correct; I am not certain of that date; my notes would indicate that that would be the last day.

Q Was there judgment entered in August of 1964?

A There was.

Q Do you have a copy of that judgment?

A Yes, I do.

Q I believe I have one here. So, the actual trial itself lasted for ten months?

A That is not correct. It wasn't continuous during all of this period. For example, in December, 1962, trial consumed three days and then there was a long continuance at the request of the Judge, until we took some more testimony.

Q Then when did you take testimony again?

A I think I should explain, one of the reasons that the Judge asked us to continue the matter, was that Dr. Peterson was unwilling to bring in his books and records and we could get no information in reference to the status of his accounts receivable or the financial status from him on the witness

stand.

So, the Judge asked us to and did recess the trial, to permit this information to be obtained, through other procedures. So, in January and February, continuing right on until the first day of trial, we went through many procedures of depositions, subpoenaing bank records, examining the bank records, attempting to analyze them, to try to obtain this information. There were also a number of motions before Judge Brand in reference to disclosure of information and orders by him with reference to attempting to compel the Doctor to turn over his records and to get the information, so we wouldn't consume so much trial time.

Q All of these continuances were at your insistence, were they not?

A No, no, they were not. They were as a matter of fact, there was really just one continuance and that was the Judge merely recessed the trial and directed us to go through these procedures in order to get the information, because we weren't getting it from Dr. Peterson voluntarily on the witness stand and we weren't prepared to bring it in through the other witnesses.

Q So, it is your testimony then there was no motion by Faye V. Peterson to have it continued, it was the Court's idea?

A I have no such recollection of any such motion;

there may have been, Counsel, at that time.

Q And there was no motion by Palmer Peterson to have it continued?

A I have no recollection of that either.

Q And the judgment and decree of August 19, 1964, indicates that the Court didn't make its findings of fact and conclusions of law and file them until August 17, 1964, is that right?

A I believe that is correct. The sequence of the matters were that from those December hearings, these various procedures that I have outlined, including numerous motions and things of that kind, consumed all summer and I now have the date, it appears that the first day of trial, after that, was September 10, 1963.

Q Now, let me ask you something, the actual trial itself, that is from the time that the testimony started, until the parties rested, was almost a year and the decision didn't come down until almost a year after that. So, between the start of the trial and the handing down of the decision, was almost two years. Now, do you think that is justice administered promptly and without delay?

A Well, in this case, let me explain, Counsel.

Q No, you can answer that just yes or no. What is your opinion?

A I think, as applied to this case, the Court acted

properly.

Q Promptly and without delay?

A Yes.

Q And completely and without denial?

A I don't understand your last question.

Q Do you think justice was rendered in this case completely and without denial?

A Without denial of what?

Q Denial of a fair trial?

A I believe it was.

Q So far as Dr. Peterson was concerned?

A I think that he had an exceptionally fair trial.

Q There was another judgment you indicated; the judgment of August 19, 1964, didn't dispose of the issues that were pending before the Court, did it?

A No, it did not; the Court reserved jurisdiction over the trust assets, the accounts receivable, other properties of Dr. Peterson.

Q So that the issues that were presented by the complaint and by the prayers for relief were not resolved by this judgment?

A The Court expressly reserved jurisdiction as to those matters that I referred to.

Q And then there was another judgment entered on December 7, 1964?

A Judgment was entered December 7th, pursuant to the Court's order for judgment dated December 4th and that was an amended findings of fact, so denominated, and I believe the judgment was also denominated an amended judgment.

Q Now, let me ask you this: Going back to the time that you got in the case, did you determine that you were having difficulty getting Dr. Peterson to obey the orders of the Court?

A From the start, we had extreme difficulty in that respect.

Q And did you come to the conclusion yourself that he was hiding assets?

A Without any doubt.

Q And he was very difficult to get information from?

A Yes, he was.

Q And very uncooperative?

A Well, he was very uncooperative with the Court and with us.

Q And now when the trial started, Samuel Saliterman and Kermit Gill were representing him?

A That is correct.

Q And during the middle of the trial, he got Desmond Pratt?

A Prior to the reconvening of the trial in September, 1963, he fired Saliterman and Gill and engaged Mr. Pratt.

Q And so it was quite obvious that he was not following the advice of his attorneys, isn't that right?

A I don't know what conclusion you could draw from that; he changed lawyers.

Q Do you ever think he followed the advice of his attorneys?

A Well, I certainly do.

Q And do you think that Pratt told him to hide his assets?

A No, I do not.

Q Pratt was very cooperative with you?

A No, he would not give us any stipulations along the trial of the case; he made it very difficult for us; but he tried a very honorable case and properly. He made it difficult for us to prove every step of the way.

Q Did Pratt make any objections to any of these continuances?

A I don't know what continuances you are talking about, Counsel.

Q The continuances in the trial itself?

A Well, let me explain that commencing on September 10th, the trial went more or less continuously until this October date that I mentioned, which was the last day of trial. Now, there may have been and there were continuances for short periods of time within that period. Some of them were

at the request of Mr. Pratt and some of them may have been at our request and some of them were for the convenience of the Court and I think some of them were for the convenience of obtaining the testimony of certain witnesses.

Q Well, in any event, when did you first learn that Desmond Pratt was no longer going to represent Mr. Peterson?

A On November 17, 1964.

Q November 17, 1964?

A Correct.

Q And you had scheduled certain hearings, had you, before December 7th?

A We had scheduled for hearing on November 17, 1964, the motions that were ultimately incorporated in the notice of motion that we included in our notice of filing, the decision of December 4th. This was to hold Dr. Peterson in contempt of court; to require him to bring his records and specifically his accounts receivable, to sequester all of his accounts receivable and for the appointment of a receiver to collect and administer them.

Q Well, now, you say the first time that I called you about this was on the 14th of December of 1964?

A That is correct.

Q And I told you that I was in trial at Hastings?

A I think you mentioned you were in trial, I forget where.

Q I called you asking for a continuance?

A Yes, you did.

Q And you indicated that you were not willing to give a continuance for two weeks?

A That is correct. I indicated that I would object to a continuance of two weeks. Of course, it wasn't within my jurisdiction to give a continuance as such; but that I would object to a continuance for more than one week.

Q I told you I would call Judge Brand?

A Yes.

Q And you later learned that I did call Judge Brand?

A That is correct.

Q And then I called you back?

A You may have.

Q Well, do you recall me calling you back and indicating that the December 16th date was not satisfactory as I was in trial at the time?

A You may have called me back and told me of the December 31st date. At any rate, I learned about it either from you or Judge Brand and I voiced my objection to it and I did talk to Judge Brand and he said under those circumstances, you better all come down on the 16th of December.

Q And I told you that I couldn't be there?

A I don't recall your telling me that.

Q Do you recall my telling you I couldn't be there;

if you were going to have a hearing, you would have to have it without me?

A. I don't believe that you said that, because we expected you to be there and waited for you to show up.

Q. You don't recall me telling you that I wasn't going to show?

A. I don't recall that and I don't believe you did.

Q. Well, in any event, you did proceed to a hearing on December 16, 1964?

A. We appeared and the hearing consisted of Judge Brand listening to our argument that the matter should not be continued for more than a week and his order that it be continued to December 31st and notwithstanding our argument.

Q. Well, what were the issues that were to be heard on December 16, 1964?

A. That was our notice of motion, as I say, to have the Doctor adjudged in contempt of court, requiring him to bring into court that day his records, including his accounts receivable; for our motion for the appointment of a receiver and sequestration of all of the assets of Dr. Peterson under the sequestration statute. And in addition to that, pursuant to the Court's findings and conclusions and order of December 4th, the Court was to determine the nature of the trust assets and how they should be distributed.

And we also asserted in our motion, a motion that the

Court do that on that particular day and we had also asked that the matter of our attorney's fees be determined, which had not at that point been determined.

Q Did the judgment of December 7th command that Dr. Peterson appear on December 16th?

A The judgment set a hearing on these matters for December 15th and I think that is as far as it went.

Q Was Dr. Peterson served with an order?

A I may have misspoken myself; the order for judgment set the hearing. Now, whether that was incorporated in the judgment as such, I don't know right now. The judgment will speak for itself.

Q Was Dr. Peterson served with an order to show cause to appear on December 15th or 16th?

A Dr. Peterson had been served with an order to show cause for appearance on November 17, 1964, asking for the same relief that we had in this later motion. He was served with this order of the court, setting the hearing and our motion, which reincorporated and referred back to our prior motion and those were all the documents he was served with.

Q Well, you are familiar with the rule that when judgment is entered, all temporary orders or all orders not included in the judgment, fall with the entry of the judgment?

A I am not familiar with that rule and I don't believe that is the law.

Q You don't believe that is the law; it is possible it is?

A I do not believe it is. We have had this issue between us in some of this litigation and I have researched it and I do not believe that all prior orders of the Court are automatically wiped out by the entry of a judgment.

THE COURT: Wiped out by what, Counsel?

THE WITNESS: By the entry of a judgment.

Q I contend that all orders, not included in the judgment, fall with the entry of the judgment?

A I realize that is your contention and that was your contention.

Q So, the purpose of the judgment is to settle the matter, is that what you recognize as the purpose of a judgment?

A I recognize the purpose of a judgment as just what it is; it is a judgment in respect to the particular matters that the Court determines and nothing more or nothing less than that.

Q Did you have Dr. Peterson under subpoena to appear either on December 15th or December 16th?

A We had him under order to show cause of November 17th. We reasserted our motion; but we had not issued any subpoena for him.

Q Did you have Paul Halvorson under subpoena for December 16th?

A We did not. He was a defendant and we didn't see the necessity for that.

Q Did you have him under an order to show cause to appear on December 16th?

A Not as such, unless you can construe the Court's order, setting the hearing, to be an order to show cause.

Q And who had the possession of these trust assets at that time, physical possession?

A As I understand it, up until December 8th, Woodard-Elwood Company; the company of which Mr. Haverstock is an officer had possession of the stock certificates and carried them in an account, under the name of Paul L. Halvorson as trustee, that is the savings account book was held by Mr. Halvorson.

Q By the way, did you ever have these stock certificates subpoenaed over to court at any time?

A No, we subpoenaed Mr. Haverstock and he came in and gave us a list of the stock certificates and that was in evidence; but the stock certificates themselves were not brought in court.

Q The stock certificates themselves were never inside the courthouse?

A To my knowledge, no.

Q And the bank book of the bank account of the savings institution down in Stillwater was never inside the courthouse?

A I don't know as to that; Mr. Halvorson may have brought the bank account there. He did introduce into evidence, during the trial of the matter, his records in respect to that bank account; but the book itself was not introduced in evidence.

Q And you didn't have any subpoenas or orders on the savings and loan bank in Stillwater?

A No.

Q Is that right?

A That is correct.

Q In other words, there wasn't any order that they couldn't dispose of the funds?

A We served no orders on them.

Q And no orders had been served upon -- was it Haverstock that had possession of the stock?

A No orders had been served on Haverstock or his company, Woodard-Elwood.

Q And no orders had been written, no orders had been served on Halvorson?

A Well, the findings of fact and conclusions of law and order for judgment, dated December 4th, and a certified copy of the judgment were served on Mr. Halvorson. But because

of the fact that it was necessary to exhibit the Court's signature on the original order, we sent these out first to be served upon Dr. Peterson and that was accomplished on December 7th and by the time we got them back and then sent all of these documents to the Sheriff of Washington County and by the time he served them, it was December 11th before Mr. Halvorson was served.

Q Prior to December 11th, you had no orders served on Halvorson?

A Well, we had not had this specific order served upon Halvorson. During the trial of the matter, the Judge, from time to time, gave Mr. Halvorson orders.

Q Well, let me ask you this: Did you have the trust instrument itself in evidence during the divorce case?

A There was a copy of the trust instrument in evidence and in addition to that, there were a number of other preliminary drafts of the trust instrument in evidence.

Q I am not concerned about that. The thing I am concerned about is you didn't have the stock certificates themselves brought in and marked and introduced in evidence?

A That is right.

Q You didn't do that? That is correct, isn't it?

A That is correct, they were not in evidence.

Q Now, how did you know for certain that those stock instruments themselves related to that trust?

A Well, the trust document contained by an exhibit, a list of the certificates that were included. We had Mr. Haverstock testify and his testimony and the exhibits that were put in, included specific stock certificate numbers and number of shares and the exact names of the companies, all of that was in evidence in the form of exhibits and in his testimony.

Q Well, as a matter of mechanics in a lawsuit, wouldn't you have to take the stock certificates and introduce them in evidence to show the actual stock that the trust relates to, the corporates of the trust itself?

A We didn't deem it to be necessary, since we had a list with numbers and the number of shares and for the further reason that from time to time, these stock certificates would generate stock dividends, which also became a part of the trust.

Q If the trust stocks and the bank book were introduced in evidence and were in the possession of the clerk, Dr. Peterson couldn't possible have run off with them on December 8th, could he?

A It turned out he did.

Q But he couldn't have, if you did do that, isn't that right?

A I don't believe I understand.

Q Dr. Peterson could not possibly have run off with

the trust assets if you had them introduced in evidence in the court on December 8th or previous to that?

A. He probably couldn't have obtained possession of them from the clerk; I am sure that is true.

Q. And you have consistently blamed Drexler and myself for your own negligence, isn't that right?

A. I blamed you and Drexler for engineering this, these transactions whereby the trust assets were taken from the jurisdiction of the Court and dissipated. Yes, I have.

I don't feel that I have been negligent about the matter at all.

Q. They have never been tied up by Court order or by garnishment or otherwise, have they?

A. They were a part of the Res Gestae, the very subject matter that was before the Court. The Court was in the process of making a determination of what their distribution would be. They were certainly, to our way of thinking, tied up by the court and being under its jurisdiction.

Q. Well now, let me ask you something else: This Doctor had a going medical practice in south Minneapolis, in Bloomington?

A. I am not sure where it was; it was 79th and Portland and it may be Richfield or Bloomington, I don't know.

Q. And he qualified as one of the better surgeons in the city?

A I don't think I can speak as to his qualifications one way or the other.

Q Well, what you have termed previous, in previous hearings as a very lucrative medical practice?

A He did that, yes.

Q And he had a going business out there?

A Yes, he did.

Q He had a lot of patients?

A Yes.

Q And what was the purpose of all of these proceedings?

A Well, the main purpose of this action was to obtain a divorce and to obtain the Court's judgment in respect to the matters of custody, alimony, child support and a division of property. An ancillary purpose of the action was to obtain the Court's judgment that the trust had been set up for an invalid purpose, that it was invalid and that these trust assets would be considered in the distribution of the Doctor's property, under the divorce decree.

Q Well, after you got into it, didn't you try to get the parties back together?

A Yes, we did.

Q And what luck did you have?

A Unsuccessful.

Q By the way, during the course of the divorce case, Faye Peterson worked in your office?

A For two or three days, she did at a time, when she was completely out of funds and we wanted to help her generate some income so she could pay for her groceries.

Q And you were advancing her money?

A During the course of these proceedings, we advanced her a total of something around \$400.00, at times when she became under acute financial distress.

One occasion I remember and maybe more than once, when the gas company had actually come out and turned off her gas and it had to be turned back on and she was just without funds to handle it.

Q When was this?

A I can't give you the exact date; I don't have my office financial records with me, so I can't tell you the exact date that this occurred, but it was during these proceedings.

Q Well, now, let's get back to the December 16th hearing, you did go in before the Court, isn't that right? And you had no witnesses under subpoena?

A December 16th?

Q 1964.

A I believe that that first trial date--

Q I am talking about the hearing on December 16, 1964.

A Oh, on December 16, 1964, I appeared before Judge Brand and as I understood it, the purpose of my appearance

and the appearance that was expected of you, was to determine when the matter would be continued to.

Q But at that time, you had no witnesses under subpoena?

A Well, I don't recall whether I had witnesses under subpoena or not; but in any event, the ultimate matter, when it came to trial, we expected to be a matter of testimony by the parties primarily and legal arguments. But at any rate, I don't recall that or we certainly didn't have any witnesses with us that day.

Q You didn't have Haverstock, the stock man that held the stock, under subpoena?

A No, no, we saw no occasion for doing that. We had no knowledge that the stock certificates had been taken from his possession.

Q But you had had knowledge that Dr. Peterson was hiding assets for two or three years?

A Oh, well, we knew that, yes.

Q And he had gone to almost any ends, according to you, to hide assets?

A Those are your words, Counsel, not mine.

Q Including setting up a Swiss bank account?

A Apparently he did. As I say, we received a number and information that it was in his name.

Q And you even traced funds through the National City

Bank of New York over to Switzerland, didn't you?

A We did.

Q How much did you trace?

A \$3,000.00.

Q But you have accused him of hiding some two or three hundred thousand dollars?

A It is my judgment, over all these proceedings, including the amount of the saving accounts that he withdrew, the shortages on his office income, the trust assets, that it was certainly in excess of two hundred thousand dollars.

Q Now, on the hearing on December 31, 1964, did you have Mr. Halvorson under subpoena?

A No, we did not; he was a party to the action. He had received this same order in respect to the distribution of the trust funds that we had and we expected him to be there and in addition to that, the Court had written a letter requesting all parties to be present.

Q This is the letter of December 16, 1964?

A I believe that is the one, yes.

Q Isn't it a fact that is how the parties were summoned into court, was by the letter signed by the judge?

A That is how they were notified of that hearing, yes.

Q They were notified of all other hearings that way, too, isn't that right?

A The only other letter that I recall was the letter

of December 9th, which continued the December 15th hearing to the 16th.

Q Now, I didn't appear until January 4th of 1965, did I, in court?

A Well, you were not personally present in court until January 4th. You had appeared, however, because your name appeared on the motion for amended findings, which was filed prior to that time and also I believe that you notarized the affidavit of prejudice that Dr. Peterson signed that had been filed prior to that date.

Q And on January 4, 1965; you correct me if I am wrong; but didn't I take the position that the Court had lost jurisdiction, because the trial itself had been dragged out for over two years and four months and that the Constitutional provision that every party shall have a certain remedy in the laws for all injuries to his person, property -- I should have the exact language.

MR. DAVIS: May we recess, Your Honor.

THE COURT: I think so. We will take a fifteen minute recess.

(WHEREUPON, an afternoon recess was duly had at approximately three o'clock p.m.)

* * * * *

MR. DALY: May I proceed, Your

Honor?

THE COURT: Certainly.

Q The hearing on January 4, 1965, either on that one or the one on -- was there another one on January 7, 1965?

A There was.

Q I did, did I not, take the position before the Court that the Court had lost jurisdiction, because the trial was dragged out for, the actual trial itself was dragged out for two years and four months, between the start of the trial and the entry of the judgment; on the basis that it was in violation of the Minnesota Constitution, Article One, Section Eight; Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive to his person, property or charter. He ought to obtain justice freely and without prejudice, completely and without denial, promptly and without delay, conformable to the laws. And my position was he had not obtained justice promptly and without delay and the Court had lost jurisdiction of the action, isn't that right?

A I have reviewed my copy of the transcript of the proceedings on January 4th, Counsel, and I do not find anywhere in there that you took that position on that date.

Q You do recall though that that was my position, either on that date or the next hearing or the next hearing after that on January 13th?

A No, I don't recall that.

Q Do you have transcripts of those hearings?

A I have some of them, Counsel. Here is a transcript of the hearing on January 4th.

(WHEREUPON, Respondent's Exhibits U, V, W, and X were marked for purposes of identification.)

MR. DALY: I will offer in evidence Respondent's Exhibit X, which is a transcript of the hearing, January 13, 1965. Respondent's Exhibit U, which is a transcript of a hearing on January 4, 1965, and Respondent's Exhibit V, which is a letter, the original of a letter of December 16, 1964, by Judge Brand to myself and Respondent's Exhibit W, which is a copy of the Judgment and Decree of August 19, 1964, in the case of Faye V. Peterson versus Palmer Peterson and Halvorson.

MR. DAVIS: I have no objection.

THE COURT: They may be received.

THE WITNESS: Counsel, may I examine the first exhibit, the proceedings of January 4th, Exhibit U? May I make a statement for the record with reference to the exhibit, Your Honor?

THE COURT: You may.

THE WITNESS: Respondent's Exhibit U, which has been identified as the proceedings occurring on January 4th, is incomplete in that there are approximately

twelve pages of transcript omitted between pages 18 and 19 thereof.

Now, those twelve pages of transcript are the testimony of Mr. Halvorson on that day, which I believe is a part of another exhibit, which has been actually introduced in another exhibit on that day. But, this does not purport to be all of the proceedings on that day.

THE COURT: I see.

Q The witness wishes to comment about these exhibits?

A It does appear that Respondent's Exhibit X is a complete transcript on January 13th.

Q May I refresh your recollection, Mr. Dygert, from Petitioner's Exhibit Number 74 on Page 24, where the Court stated to Mr. Rorris: There is nothing further to say at this point, Mr. Rorris.

And then I stated: Let the record note an exception on the following grounds: Number One, an affidavit of prejudice timely filed in this matter; Number Two, this Court first started the trial in this matter in December of 1962; trial was dragged out through September and October of 1963, through April 20 of 1964, and August 13 of 1964;

Upon the ground that the Court has no jurisdiction to continue a matter this long and reserve jurisdiction for any purpose, as such activity is being in conflict with Article I,

Section 8 of the Bill of Rights of Minnesota and unconstitutional;

On the further grounds that the denial of justice is contrary to the 14th Amendment of the Constitution of the United States.

The Fifth Amendment of the Constitution of the United States; it is contrary to the Declaration of Independence and the rights secured by that instrument, which Declaration of Independence is incorporated by reference into the Constitution of the United States through the Ninth and Tenth Amendments of the Constitution of the United States;

Upon the further grounds that this procedure amounts to an oppression of Defendant, Palmer A. Peterson.

So, does that refresh your recollection that I did?

A May I see the transcript please?

Q Yes, Page 24 starting.

A The transcript does indicate that you made those statements to the Court, after the Court had made its ruling in reference to your affidavit of prejudice.

Q Now, there was a hearing after that with reference to the amount of attorneys' fees that were to be charged?

A No.

Q By you and Mr. Rorris?

A No, there was a hearing in reference to the amount of attorneys' fees that would be allowed by the Court to

Mr. Rorris and myself.

Q And you submitted a bill and it was approximately \$23,000.00?

A No, that is not correct. I informed the Court as to the amount of time that we had expended on this case during all that period and I informed the Court that were we to be allowed attorneys' fees, based upon the minimum bar fee then in use in Hennepin County, the amount, in respect to our office, would be in the neighborhood of twenty-two or twenty-three thousand dollars.

Q And I asked you, is this your bill, and you said, that is right?

A Well, I don't recall making that specific answer.

Q That is possible though?

A I don't recall that I did; because my testimony was to the effect that if we were to be allowed fees on the basis of the minimum bar association schedule, that that would be what it would amount to.

Q And Mr. Rorris testified to some \$14,000.00 in attorneys' fees?

A I think that he testified that that was the reasonable value of his services.

Q So, the total amount of the attorneys' fees added up to approximately \$37,000.00?

A Well, the testimony in reference to the reasonable

value of our services may have added up to that figure, yes.

Q And this was the approximate amount or the exact amount of the trust fund, was it not?

A The value of the trust fund was in the neighborhood of \$35,000.00.

Q Now, I believe Judge Brand did award between the two of you, some fifteen, sixteen thousand dollars?

A I believe the fees and expenses, it was in that neighborhood, yes. Now, just a moment please, his award was an award to us out of the trust funds, that was a part of the distribution that he ordered of the trust funds, yes.

Q When was the final judgment entered in this case?

A There was a supplemental judgment entered the latter part of January, 1965.

(WHEREUPON, Respondent's Exhibit Y was marked for purposes of identification.)

Q Do you recognize Respondent's Exhibit Y as a notice of entry of judgment, which you caused to be mailed to me?

A Yes.

Q And that judgment is dated what?

A This is a judgment decree dated January 28, 1965.

Q Now, will you read that judgment and decree to the Court please.

A The whole thing?

Q Yes.

MR. DAVIS: Can't we just receive it in evidence?

THE COURT: Why don't we just receive it in evidence.

MR. DALY: I will offer it in evidence then.

MR. DAVIS: No objection.

THE COURT: It will be received.

Q This is the judgment that you served notice on me, as attorney for Dr. Peterson, and you indicated: You will please take notice, that on the 28th day of January, 1965, judgment was entered in the above-entitled matter as set forth in the judgment and decree dated January 28, 1965, a true copy of which is hereto attached and hereby served upon you.

A That was my notice.

Q That was your notice. And along with the notice, you sent a copy of the judgment to me?

A I did.

Q And that judgment reads as follows: The above-entitled action having been regularly placed upon the calendar of the above-named Court for the September A. D. 1964 General Term thereof, came on for trial before the Court on the 13th day of January, A. D. 1965; and the Court, after hearing the evidence adduced at said trial and being fully advised in the premises, did on the 26th day of January,

A.D. 1965; and the Court, after hearing the evidence adduced at said trial and being fully advised in the premises, did on the 26th day of January A. D. 1965, duly make and file its findings and order for judgment herein.

Now, pursuant thereto and there are several things listed in here that the judgment affects, isn't that right?

A May I see it please?

Q Yes.

A Yes, it does read as you have read it.

Q And nowhere in this judgment is there any mention of accounts receivable, isn't that right? I will show you the judgment.

A This particular judgment does not deal with the subject of accounts receivable whatsoever; it deals simply with the trust fund and the allowance of attorneys' fees.

Q It doesn't deal with the issue of accounts receivable; it doesn't deal with the issue of alimony and it doesn't deal with the issue of child support, does it?

A No.

Q Isn't that right?

A No, it does not, those matters--

Q And I took the position that all the way along, only judgment can be entered in an action and that has to settle all of the matters in dispute before the Court, isn't that right?

A You took that position and when you took that position, you were overruled by the Court.

Q And you disagreed with that position?

A Yes.

Q You are of the opinion that there can be anywhere from one to a thousand judgments entered in an action?

A I am of the opinion that the Court may enter a subsequent judgment, as it did here, limited just to a matter or to matters that it previously had reserved jurisdiction on and that that does not have the effect of wiping out the previous matters.

Q Previous judgments?

A It does not, for example, have the effect of vacating the divorce that was granted back in August; it doesn't have the effect of vacating the award of alimony and child support that was granted back in August and it just deals with the things that are dealt with in here.

Q This is your contention; but I contended that all matters not included in an amended judgment, fall with the amended judgment, that was my position, isn't that right?

A That was later your position, Mr. Daly, yes.

Q Now, after this judgment was served on me is when those letters went out of my office, telling these people to disregard your attempt to collect the accounts receivable, isn't that right?

A That is correct.

Q And I based my position on the fact that the judgment entered on January 28, 1965, didn't affect the accounts receivable and that was the last judgment entered?

A I don't know what you based your position on.

Q You don't recall that?

A Well, I can't look into your mind; I don't know what you based your position on; it wasn't in the letter.

Q You do recall me being ordered by Judge Kane, before Judge Kane to show cause why he shouldn't enter an order, ordering me to stop sending out letters to Dr. Peterson's patients and interfering with your garnishments, isn't that right?

A I think that before Judge Kane you took the position there could only be one judgment and that this later judgment, dealing with trust assets and attorneys' fees, had in effect wiped out everything else.

Q Yes, and Judge Kane did order me to stop sending those letters out, didn't he?

A I don't recall that; because before Judge Kane you filed an affidavit of prejudice and I don't believe Judge Kane ordered you to do anything. I believe that the matter of requiring you to produce the record of the accounts receivable and all other matters were referred to Judge Fosseen by Judge Kane, immediately upon your filing of the affidavit.

Q I was to try to shorten this down now. You introduced a letter in evidence here that was sent out of my office that carries the initials of my secretary, who was my then secretary, who is in court here now. You say you don't recall any order by Judge Kane ordering me to stop sending those letters out, after I sent those letters out?

A I don't recall that the Court acted on that matter; but he may have, he may have.

Q It is possible.

A I think that the Court--

Q But you are not claiming that I violated the Court's order about sending those letters out, after the Court entered it, are you?

A I certainly am; I am claiming that you were present and--

Q Wait a minute; I am talking about after January 28th.

A May I answer your question?

Q Wait a minute, after January 28th and between March 19th, there was an order, you say you don't recall, an order by Judge Kane ordering me to stop sending these letters out.

A I don't recall that order, no; there may have been.

Q Well, I also contended that the order appointing the receiver of January 11th fell with the entry of judgment on January 28th, did I not, because it wasn't included in the judgment?

A. You made that contention, yes.

MR. DALY: That is all the questions I have.

MR. DAVIS: No further questions.

MR. DALY: I have one further question.

Q (By Mr. Daly, continuing) This matter has gone to the Supreme Court on this question of contempt, isn't that right?

A. It has gone to the Supreme Court a number of times on the question of contempt and one time on the question of your contempt, yes.

Q And the Supreme Court reversed the so-called contempt conviction entered by Judge Fosseen; we didn't get a jury trial and number two, you had no business prosecuting the case, because you did not represent the State of Minnesota?

A. That is correct; I neglected to add that. The Court in addition to saying you had a right to have a jury trial, said that this being a criminal contempt proceeding, it should have been prosecuted by the County Attorney, rather than by one of the attorneys for the parties.

Q And thereafter, there was another action started here against Dr. Peterson, all of his former employees and Mr. Drexler and myself, Caldwell Phillips and Woodard-Elwood and Halvorson, some thirteen defendants, isn't that right?

A I am not so sure if it was thereafter, but such an action was started.

Q And this action was taken to the Supreme Court and reversed as to myself, because I wasn't given notice at the start of the trial?

A That is correct.

THE COURT: I didn't get that, Mr. Daly, I am sorry.

MR. DALY: That is this last one that they have; there is a claim in here that there is a jury verdict finding myself and Mr. Drexler guilty of fraud and the Supreme Court reversed that and sent it back, on the grounds that I was not given adequate notice of the start of the trial. In other words, what they did, they had the trial set down as, the case set down on a non-readiness status and they started the trial, without any notice to me and the date of the calendar call and I didn't have any knowledge that the trial had started, until I think the late evening after the first day it had started. And I appeared and I think the following Monday and filed a further affidavit of prejudice against Judge Brand and an objection to the jurisdiction of the Court over me and my objections, I think, were overruled and they proceeded any way.

And I took it to the Supreme Court and they

reversed it on the grounds I didn't get adequate notice.

THE WITNESS: Judge Bergin, Counsel.

MR. DALY: Pardon me?

THE WITNESS: Judge Bergin.

(WHEREUPON, Respondent's Exhibit Z was marked for purposes of identification.)

Q And showing you what has been marked as Respondent's Exhibit Z, this is the brief I filed in the proceeding, isn't that right?

A It appears to be a joint brief of the two appellants, yes.

MR. DALY: I offer Respondent's Exhibit Z in evidence.

MR. DAVIS: No objection.

THE COURT: Received.

Q Now, as the present state of the proceedings are concerned, there has been contempt proceedings brought against myself by you, Mr. Drexler, Jan Achman and Dr. Peterson. And the ones brought against Jan Achman were dismissed by the state court over here, were they not?

A At the trial court level, yes.

Q The contempt proceedings on Dr. Peterson, Mr. Drexler and myself were reversed in the Supreme Court?

A That is correct.

Q And that ended them?

A It ended them, unless the County Attorney wished to proceed and I have no information he has ever proceeded or

attempted to.

Q And then you went over and got an indictment in Saint Paul against Dr. Peterson and William Drexler for forgery?

A I didn't go over and get the indictment.

Q You sent Faye Peterson over to get it?

A An indictment was returned by the Grand Jury at the instance of the County Attorney of Ramsey County. I subpoenaed a number of witnesses, including my client, Faye Peterson.

Q In any event, you sent Faye Peterson over to the County Attorney?

A I arranged for her to be present at the Grand Jury hearing at the request of the County Attorney.

Q Well, you instigated the proceedings with the County Attorney though, didn't you?

A I, with others, informed the County Attorney of the facts and he instigated the proceedings.

Q That netted an acquittal for Dr. Peterson and a dismissal as to Mr. Drexler?

A The final result, Dr. Peterson was acquitted and the proceedings were then dismissed as to Mr. Drexler.

Q And then in the civil case you brought in Hennepin County, you dismissed as to every other defendant, except Drexler and myself and we weren't present. And then you had

a judgment entered for \$35,000.00, against each of us, isn't that right?

A. Well, some of the defendants secured a dismissal on their own motion and in respect to some of the defendants, as the proceedings progressed, we voluntarily dismissed the proceeding.

The proceedings did result in the judgment that you mentioned, yes.

Q. And that was reversed by the Supreme Court?

A. In respect to each of you, yes.

Q. And since then you have settled the case with Dr. Peterson and given him a complete release with reference to all litigation that might arise out of the divorce case?

A. That is not quite accurate; the documents have not been completed in reference to our settlement. There has been no court approval of the settlement; there has been no amendment of the decree; there are many details to be completed in reference to the settlement; it is also not accurate to say we gave him a complete release of all matters arising out of the divorce case, if you have reference to the claim of Faye V. Peterson against yourself and Mr. Drexler, because those matters have not been released and are still pending.

Q. Is that so set out in the release?

A. No, they are not mentioned in the release.

Q. Well, now if there is a judgment against Drexler

and myself, we have a right for indemnity against Peterson?

A I have no opinion on that.

Q Well, as the present state of the record stands, Drexler and I are the only ones that have a judgment against Faye Peterson and that is a cross-judgment in the Supreme Court?

A That is correct.

Q And that hasn't been settled?

A That is right.

Q And you have made no attempt to settle that on her behalf with either Drexler or myself?

A I have made no attempt to settle that directly with you. As part of our negotiations for settlement with the doctor's attorney, he represented to us that that matter could also be settled upon the payment by Mr. Drexler of certain sums of money and a dismissal of the cross-judgment by you and Mr. Drexler. That has not been accomplished and because of the lapse of time, I am assuming that that phase of the settlement cannot be accomplished.

Q How much was Drexler supposed to pay?

A \$1,500.00.

Q And this was conveyed?

A Conveyed to me by the attorney for Dr. Peterson.

Q Phillips told you he had talked to Drexler?

A He did.

MR. DALY: I believe that is all I have.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Dygert, did you ever receive, at any time during the proceedings involving the Peterson cases, a substitution of attorneys, naming Mr. Jerome Daly as attorney for Dr. Peterson?

A I did not.

Q Did you have a telephone conversation with Mr. Daly on May 14th, 1965?

A I did.

Q Will you tell the Court what the circumstances were giving rise to that call and what the conversation was?

MR. DALY: May I ask Counsel, is this a new matter not covered under direct examination?

MR. DAVIS: Oh, it relates to a similar problem as that covered under direct examination.

A May 14, 1965?

Q Yes, Sir.

A I called Mr. Daly and told him that I had received a call from Dan Cody, who had represented him as an attorney in the contempt matter, and that Mr. Cody had said that they

were thinking about remanding for further testimony. And we discussed that matter and I also asked Mr. Daly about where Dr. Peterson was and we discussed the possibility of arriving at a settlement and I told him that I felt that it was his duty to help us locate the assets and he claimed that he had been informed by Dr. Peterson that he had lost the money betting and I discussed the fact that for awhile, he had permitted Drexler to handle the cash and Mr. Daly told me that he never got his hands on any of it. And then he said, but he told me along the 20th or the 21st, when he was in the office, that he was going to settle it with the trust.

And I told him he hadn't made any effort to and that I thought he might have convinced Drexler that he was going to sell the accounts receivable. And I would say that Mr. Daly, he had me pretty well convinced that he was going to pay the tax on that trust and whatever income tax was due on that and that was the purpose of cashing it in.

That is what he told me; I guess he told Halvorson that. I don't know what he told Drexler, that seems to be the situation at the time. I don't want to be quoted on this; but I would guess that the trust isn't gone, he said; even if he did go off his rocker, he didn't go that far off.

Q And by the dates mentioned there, did you form an opinion concerning which month he referred to?

A When he said the 20th or the 21st, he was undoubtedly

referring to the 20th or the 21st of December; those were the days when Dr. Peterson was in the office and preparing the motion for amended findings and the affidavits of prejudice that were filed in December, in January and February and up to the time of this conversation, why Dr. Peterson had been gone.

MR. DAVIS: I have no further questions.

RECROSS-EXAMINATION

BY MR. DALY:

Q Let me ask you this: I did in January of 1965, this being down at the coffee shop in this building here, I did offer you or told you I had authorization to offer you thirty or thirty-five thousand dollars to settle the case?

A I don't recall what the figure was, Counsel; I do remember that we had stated that our pre-requisite was replacing the trust fund first and then we would see if we could get together on the rest of it.

Q But you wouldn't do anything; you wouldn't do anything until the trust funds were replaced?

A No, I wouldn't say that. I indicated to you that if a sufficient amount of money were put up; so that we could, out of those funds, replace the trust funds and still have some

money for her, over and above that, that we would talk about that.

Q Well, in February or March, do you recall me saying that I had authority to offer you fifty or fifty-five thousand, over in the Hennepin County Courthouse?

A I don't recall that.

Q Possibly though?

A Well, it is possible; but it seems to me that if you had made such an offer, that I would have a definite recollection of it and would have discussed it with my client and we would certainly have taken some action in respect to it.

Q Now, the case has finally been settled for a total amount of fifty-five thousand?

A Well, you can say that, I believe. Part of those funds, we have agreed, will be put in a trust for an education of the children.

Q Twenty-five thousand dollars in trust for education of the children?

A That is correct.

MR. DALY: I believe that is all the questions I have.

MR. DAVIS: No further questions.

Thank you, Mr. Dygert.

Mrs. Guintier.

DORIS GUINTIER

being first duly sworn, testified
as follows on behalf of the
Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Your name is Doris Guintier?

A Correct.

Q That is G-u-i-n-t-i-e-r?

A That is right.

Q What is your address?

A 7730 Fourth Avenue South.

Q Are you married?

A No, I am not.

Q Do you refer to yourself as Mrs. Guintier?

A Yes.

Q Were you formerly married?

A Yes.

Q Were you at one time employed by Jerome Daly?

A Yes.

Q In what capacity?

A Part time secretary.

Q During what period of time were you so employed?

A I would say roughly September 1965, 1964.

Q Through what time?

A Spring of the following year.

Q What duties did you have to perform for Mr. Daly?

A Mainly just typing, dictation.

Q I show you Petitioner's Exhibit Number 90, did you prepare that or the originals of that exhibit?

A Yes.

MR. DALY: I wonder, before you answer, in order to protect myself, Your Honor, I have to make an objection for the record. Dr. Peterson indicated that he did not want me to testify to any privileged communications with reference to myself or any of my employees, during the time or between the time that he came to see me on December 12, 1964, through the entire time that I represented him. So, to protect myself, I want to make that objection for the record.

And I think that the office secretary of a lawyer is also privileged to any matters or frankly--

THE COURT: I think as to whether she typed this letter up in the office though, I think she can answer that question.

MR. DALY: I don't have any particular objection personally, myself; except that he told me to make an objection for the record.

THE COURT: I think I will let you answer that question.

THE WITNESS: Yes.

Q Upon whose instructions did you type the letter?

A Mr. Daly's.

Q Did Mr. Daly dictate the letter to you?

A Yes.

Q I observe that this is signed Jerome Daly, with parens and initials d.g. below it; did you sign his name to the letter?

A Yes.

Q And are those your initials appearing below his name?

A Yes.

Q Did you do that at his instruction?

A Yes.

Q How many of these letters did you prepare?

MR. DALY: Once more, I have to object on the grounds of privilege.

THE COURT: Objection is overruled, you may answer the question.

A I would say roughly, again, close to a hundred.

Q And were they mailed by you?

A I would say yes; I am sure if I signed the letter, I would mail them, too.

Q To whom were they mailed?

A It is hard to say; it is so long ago. I was given instructions to mail so many out from some list of some sort. I don't even recall what it was.

Q You were given a list by whom?

A Mr. Daly.

Q Mr. Daly?

A Yes.

Q And was there anything on that list, which identified the names of the persons as being patients of Dr. Palmer Peterson?

A No, I believe it was a document of some type; it just showed names and addresses; but it wasn't like an account or anything. It was some type of a document.

Q You mailed approximately a hundred copies of Exhibit Number 90 on Mr. Daly's instructions, is that correct?

A Uh Hmm.

Q You will have to answer.

A Yes.

MR. DAVIS: I have no further questions of this witness.

MR. DALY: I have no questions.

MR. DAVIS: That is all, thank you.

Your Honor, that is all the witnesses that Petitioner has scheduled for today. We have only two more witnesses, who are under subpoena for tomorrow

morning.

May the record show that pursuant to Mr. Daly's request, I furnished him a list of the witnesses, which I intended to call in this proceeding. Since we are about to conclude the Petitioner's case, I would like to make the same demand of Mr. Daly.

MR. DALY: Well, I haven't made up my mind exactly yet, who I am going to call; but as soon as I do, I will let him know.

THE COURT: That should be soon.

MR. DALY: I will know by noon on Friday; I will say this, I indicated I was going to call Judge Knutson and I will tell you definitely, I am not going to call him off the Supreme Court.

(WHEREUPON, court adjourned for the day at approximately four o'clock p.m.)

* * * * *

Friday, February 13, 1970
Approximately 9:45 a.m.

(WHEREUPON, court was reconvened and the following proceedings were duly had:)

MR. DAVIS: Mr. Raymond Salfer.

(WHEREUPON, Respondent's Exhibits AA

through II were marked for purposes of identification.)

MR. DALY: Before we proceed, Your Honor, so far, we have referred to Respondent's Exhibits AA through II, which are Myers' Finance Review and the article from the San Diego Union from San Diego, California. And I have already talked with Counsel and I want to offer them all in evidence.

THE COURT: Any objection?

MR. DAVIS: No objection.

MR. DALY: Myers' Finance Reviews from May 27, 1969, I think through December 5, 1969.

THE COURT: Respondent's Exhibits AA through II are received.

RAYMOND SALFER

being first duly sworn, testified
as follows on behalf of the
Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A. Raymond Walter Salfer.

Q What is your address, Mr. Salfer?

A. 1701 West 92nd Street, Bloomington.

THE COURT: How do you spell your last name?

THE WITNESS: S-a-l-f-e-r.

Q Mr. Salfer, are you acquainted with Jerome Daly?

A Yes, I am.

Q When did you first become acquainted with him?

A I don't know the exact date; but I think it was November, the beginning of November, a Sunday night, when I went to see him, about the second Sunday in November.

Q In what year?

A 1969.

Q Where did you go to meet him?

A Out at his office in Savage.

Q What was the purpose of your visit to him?

A I was going to have him for an attorney; I was picked up for DWI and speeding charge.

Q Did you meet with Mr. Daly that evening?

A Yes, I met him.

Q And did you make any arrangement with Mr. Daly for him to represent you?

A Yes, I talked to him about representing me and he said he didn't know for sure if he could represent me; but he would get his brother if he couldn't.

Q Did you pay Mr. Daly a retainer?

A Yes, a retainer of a hundred and fifty dollars.

Q Did you attempt to talk to Mr. Daly after the time that you first met him and until the time that your matter came up for pretrial conference in Hennepin County in municipal court?

A I tried to get a hold of him a couple of times, but I never got a hold of him. A pretrial came up and I didn't know what it meant. I figured I could go to that without having him represent me.

Q You did appear before Judge Chester Durda, did you not?

A Yes, I did.

Q On the pretrial?

A Right.

Q Did you advise Judge Durda that Mr. Daly was your attorney?

A Yes, he asked if I had an attorney and I said, I talked to Mr. Daly.

Q Mr. Daly was not present in court?

A No, he wasn't and they just said they were going to talk over the matter and I didn't know if I needed an attorney. I didn't know they could settle it out of court.

Q Had you been arraigned for this charge, before the time of the pretrial conference?

A What do you mean, arraigned?

Q Asked whether you were guilty or not guilty?

A Yes, I went to court there and I pled not guilty and asked for a trial by jury, that was before I even got a hold of Mr. Daly.

THE COURT: That was before you talked to Mr. Daly?

THE WITNESS: Well, I had called him once on the phone and then I asked if I should have a trial, what I should do; should I go to the court. And he said he would recommend a trial by jury.

THE COURT: You had called Mr. Daly before being arraigned?

THE WITNESS: I didn't have him for an attorney, that is the first time, and I was kind of wondering what to do.

THE COURT: When was that?

THE WITNESS: That was the night before the trial, I am pretty sure.

THE COURT: What date was it that you saw Mr. Daly?

THE WITNESS: That was after that, after I went to trial and pled not guilty.

THE COURT: Do you remember what the date of that was?

THE WITNESS: It was on a Sunday night; probably the second Sunday in November or something

like that; I believe the second Sunday in November.

THE COURT: How long before that time was it when you had talked to Mr. Daly by telephone and he told you to ask for a trial by jury?

THE WITNESS: That is the first time I got a hold of him, right before I went to trial. I went the first time and I told him I wanted to postpone it, the first time I went to trial, that is the first Thursday after I got picked up. And I postponed it until the next week and I got a hold of him the night before.

Q (By Mr. Davis, continuing) On a Sunday evening, Mr. Daly told you to go down to the arraignment and plead not guilty and ask for a jury trial?

A Not at that time.

Q When did you do that?

A The night before I had to go to the pretrial, I think it was; I am not sure of the dates here.

Q What occurred at the time of the pretrial?

A Well, they talked it over and then they asked me if I wanted to settle out of court and they said, I had a speeding and a DWI charge and they said they would drop the speeding charge and then they put me on probation for a year and fined me \$200.00. I figured I was just as good off to settle out of court; because I thought I wouldn't get by any better by going to court.

Q You paid Mr. Daly \$150.00 for a retainer?

A Yes.

Q And he has since returned that?

A He returned it immediately when he found out I had a pretrial.

MR. DAVIS: I have no further questions.

CROSS-EXAMINATION

BY MR. DALY:

Q Was there an attempt made by Judge Durda to get you to write a letter to the Supreme Court?

A Yes, and I told him I didn't know what to write and I didn't want to get anybody in trouble. I didn't have any complaint about anybody.

MR. DALY: That is all I have.

MR. DAVIS: That is all. Thank you.

Dr. Peterson.

DR. PALMER A. PETERSON

being first duly sworn, testified

as follows on behalf of the

Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A Dr. Palmer A. Peterson.

Q What is your address, Dr. Peterson?

A My home address is 417 East Old Shakopee Road,
Minneapolis.

Q And your profession?

A Physician and surgeon.

Q Do you maintain offices where you practice?

A Yes, I do.

Q Where are they located?

A At 7856 Portland Avenue, Minneapolis.

Q Dr. Peterson, are you the same person as the Dr.
Peterson, who was a defendant in a divorce proceeding brought
by Faye Peterson?

A Yes, I am. At this time, I would like to ask if I
may ask, what this proceeding is and the nature of it and so on.

Q The particular proceeding involved here is a pro-
ceeding instituted by the State Board of Law Examiners for
the State of Minnesota on a petition and accusation alleging
that Mr. Daly has been guilty of certain acts of misconduct,
which require his discipline.

A May I ask who brought the petition?

Q The State Board of Law Examiners.

A I see, is the State Bar Association involved in this
in any way?

Q The State Bar Association recommended to the State Board of Law Examiners that disciplinary proceedings be instituted.

A I wonder if I might make a statement for the record here, Your Honor?

THE COURT: I should explain to you a little further, that under the rules of the Supreme Court, disbarment proceedings brought by the State Board of Law Examiners are usually brought before the Supreme Court.

The Supreme Court, under statute, has the right to appoint a referee to act in their stead and hear the testimony; reduce the same to findings and make recommendations to the Supreme Court; that is what we are doing here today. I am acting as referee for the Supreme Court in this hearing.

And having that in mind, you may make a statement, yes.

THE WITNESS: Well, I think that this may pose possibly some problems; possibly some aspects of this that should be brought on the record, as far as I am concerned, at any rate.

I don't know what my position here is just exactly, that is what my position is and what might ensue as a result of these proceedings; but I think I should make it

clear and on the record that I submitted a complaint to the State Bar Association, Ethics Committee, in person, against certain attorneys, Robert Dygert and James Rorris, who were opposing counsel in this divorce matter that has been tried, which Mr. Daly has referred to, for a period of nine years. And this was presented in person, with the proof of unprofessional and unethical conduct. And in the years since that presentation, I have not had any communication whatsoever from the State Bar Association.

Now, from information I have received, I have been subpoenaed here, of course, and from information that I have received, that one of the attorneys, Mr. Dygert, participated in a similar hearing in Saint Paul, as a participant in disbarment proceedings against attorney, William Drexler, and was also a witness in this proceeding. Now, I understand he has also been a witness in this proceeding?

THE COURT: That is true.

THE WITNESS: And whether or not he has been a participant in this proceeding, I do not know and I am not an attorney. I do not know all the legal aspects of this, in the nature of these proceedings. I am not aware of what the policies and procedures of the State Bar Association are in this regard; whether or not

this is proper and acceptable, to proceed in this manner.

I do wish to again state that I have not received any communication from the State Bar Association regarding the complaint, which I submitted, which I was certain I had the proof. And now, I am being subpoenaed into this proceeding here, after being subjected to nine years of undescrivable harassment; the damages of which are not so severe to me as they were to my family and particularly my children.

There is proof of conduct of contempt of court by these attorneys. Immediately upon the appearance of one of them on a case, as a matter of fact, almost the first court order that was issued in the case, was not only disregarded by these attorneys; but actually conduct of contempt was conducted on certain acts of disobeying their court orders, with such disastrous and damaging results to my children, as to be almost undescrivable.

There have been false affidavits filed in court; there have been falsehoods stated in court, which there is proof of. I have been accused, for instance, as an example, when attempting to see my children, in open court, by one of these attorneys, of lurking on the premises of my own home. Now, I think that lurking is in itself an offense, is it not?

And I just don't know where all this is leading, you

see.

THE COURT: Well, I don't know where all the other proceedings that you are talking about are leading to either. I have had no participation in any of them. I don't even know right now, for instance, what Mr. Davis has in mind to ask you.

I am just sitting here as a referee; I happen to be a District Judge in Duluth, Minnesota. And why don't we wait and see what the questions are and what he expects to elicit from you for this hearing.

As to your complaints in regard to other attorneys, I am not here as a referee on those matters. I am only here as a referee to determine the fitness and qualifications for Jerome Daly to be licensed to practice law in the State of Minnesota. And we have been going for a week on this and I don't want to start another case today.

You may proceed with the questioning.

MR. DAVIS: Thank you, Your Honor.

Q (By Mr. Davis, continuing) Dr. Peterson, are you acquainted with Jerome Daly?

A Yes, I am.

Q When did you first become acquainted with him?

A I think it was about the middle of December of 1964.

Q How did you become acquainted with him?

A I went to his office to see him about my case.

Q Did you receive a recommendation from any person, on Mr. Daly's behalf?

A Well, to the best of my recollection, he was one of a number of attorneys that had been recommended to me by Mr. Drexler. I am not certain of that, however; I couldn't say for certain; but to the best of my recollection, he was.

Q When you went to see Mr. Daly, did you take the documents and other papers, which you had in your possession, relative to your divorce proceeding, with you?

A I don't think I could answer that question with certainty, whether I did or not.

Q What did you tell Mr. Daly concerning your divorce proceeding?

A Well, to the best of my recollection, I told him about the details of some of the details of the divorce proceedings, such as I have listed here today, and the conduct going on in the case from the start.

And I would have to be very frank and honest in this regard, as I recall, one of my prime concerns at that time was that I felt on the basis of the evidence, that had gone on in the case, that frankly, there was dishonesty involved, that occurred in the case.

Q Did you tell Mr. Daly that you were also represented by Mr. Drexler?

A I don't recall whether I had indicated that or not. I know I had informed Mr. Daly that the Judge that was on the case should not be on the case and there was evidence of improper conduct here and improper statements and so on. And that this was my prime concern at the time.

Q Dr. Peterson, did you ever deliver to Mr. Daly, any records of accounts receivable due to you as a result of your medical practice?

A Gee, I don't remember if I did or not.

Q Will you tell the Court whether or not you ever delivered any such records to Mr. Drexler?

A I don't recall handing any to him, no, personally.

Q Can you tell the Court whether those records were present in your office at the time of the appointment of a receiver in that proceeding?

A I don't think I know whether they were there or not.

Q You don't know?

A I really don't know.

Q Can you tell the Court where those records were located during the period December 1st, 1964, through April of 1965?

A I just don't remember at this time.

Q Did you, Dr. Peterson, attempt to secret those records from the Court?

MR. DALY: Well, now, that is objected

to as being immaterial in this proceeding.

THE COURT: Except that eventually, and according to the testimony yesterday that they at one time, at least had to have been in your hands, Mr. Daly. Didn't you dictate a letter to your secretary to patients; wasn't that what your girl testified to yesterday?

MR. DALY: No, she never testified that I had them; she said she had a list of people that had been garnished, I think.

THE COURT: Who were patients of Dr. Peterson.

MR. DALY: But I didn't have the accounts; there is no evidence in this case that I ever had the accounts at any time.

THE COURT: Except that the people that were garnished were patients and people, who owed money to Dr. Peterson.

MR. DALY: He is talking about the physical accounts receivable themselves; there is no evidence in this case that I had the accounts at any time.

Q (By Mr. Davis, continuing) Well, I don't remember what the question was, but let me ask another question.

Dr. Peterson, did you furnish a list of accounts receivable to Mr. Daly at any time during the period December 1st, 1964,

through April, 1965?

A. I don't recall furnishing any list.

Q. Did you furnish such a list to William E. Drexler at any time during that period?

A. I don't remember doing this, doing this myself; I don't recall doing it myself, no.

Q. Did you cause such a list to be furnished to either Mr. Drexler or Mr. Daly, whether you did it personally or not?

A. I don't remember doing that, no.

Q. Did you ever have any conversation with Mr. Daly concerning accounts receivable?

A. Well, I think that in these matters, I will have to claim privileged communication.

MR. DAVIS: The claim is one of privilege, Your Honor.

THE COURT: It is sustained.

Q. Did you proceed with Mr. William Drexler to Stillwater on December 8th, 1964?

MR. DALY: I object to this on the grounds it is also privileged. May I ask one further question?

MR. DAVIS: It is not a communication, Counsel.

THE COURT: Objection is overruled and the question may be answered.

A. These events are so vague in my mind now, I just don't recall. I think if the questioning is going to take this approach, I should have some counsel represent me here.

Q. You may make the request to the referee; if he deems it necessary that you have counsel present to be represented, he will permit you to do so.

THE COURT: If this is the Doctor's request; request is granted. The Court cannot appoint counsel.

THE WITNESS: No, I understand that.

MR. DAVIS: When will it be possible for you, Doctor?

THE COURT: I should tell you, Doctor, the purpose of these proceedings are not to bring action against you, Doctor, and they are not actually to bring criminal proceedings against Mr. Daly. If you want to hire yourself an attorney to be here and if you want to have an attorney to discuss this matter with, before coming back here, you are perfectly privileged to do the same.

MR. DALY: I am not going to consent they are not for the purpose of bringing criminal proceedings against me. I won't consent to it.

THE COURT: Whether you consent to it is irrelevant and immaterial. The purpose is not for

criminal proceedings.

MR. DALY: That is my thought.

THE COURT: Mr. Daly, we have been trying to hold a hearing here and I have my thoughts and you have your thoughts and Mr. Davis has his thoughts.

MR. DALY: Well, I mean, but I don't want--

THE COURT: From the testimony so far, I am sure the Doctor has his own thoughts. I am not going to argue with the Doctor; if you want to have an attorney here, I won't deny this witness the right. If you would like to discuss it with counsel, as far as your testimony is concerned, it may be recessed at this time and you can return on Monday.

THE WITNESS: Ordinarily, Your Honor, of course I wouldn't make such a request.

THE COURT: Dr. Peterson, I spent a day yesterday in here going over the testimony in your case. And I can understand, after the number of years you have been involved in this divorce case, that you are a little confused right now in regard to these proceedings. Perhaps it would be best if you did discuss this with your own lawyer.

THE WITNESS: Well, as I said, ordinarily, I suppose I wouldn't make such a request; but,

Your Honor, there have been so many proceedings in this case and so many accusations and false claims by opposing counsel, that I have a record of the list here of the proceedings and that have been initiated in this case, and I must say in all sincerity and in all truth and honesty, that the record is unbelievable and it is unbelievable what has been done in this case and on the basis of this, I don't know what to say.

I mean, I have been accused of lurking; I have been accused of any number of things in this case, false accusations. Opposing counsel has lied to my former wife on numerous occasions and even brought a false lawsuit against my present wife, based upon no information or evidence whatsoever; caused her unbelievable distress and agony. She finally was compelled to bring a counter-suit against them for abuse of process of law.

Anything that I might say here today, I don't know what it might turn into.

MR. DAVIS: Dr. Peterson, do you wish to be represented in this proceeding by counsel of your own choice?

THE WITNESS: Well, I just don't know.

THE COURT: Do you have an attorney representing you at this time?

THE WITNESS: Well, Mr. Phillips in

Saint Paul has been representing me and I thought he has done an excellent job in settling the case and finally got the case disposed of. And I thought this was the end of all this and now it seems to be grinding out and starting all over again.

And I am being subjected to more of this and I have had one heart attack on the witness stand and was left lying on the hard bench in the back of the courtroom for two hours with a right bundle branch block and I could have died of cardiac arrest and they obsessently went on with the case.

MR. DAVIS: Your Honor, I would like the Court to instruct the witness to proceed to seek counsel if he wishes to do so and to return to this courtroom on Monday.

THE COURT: Well, perhaps it wouldn't be unwise of us to sit down and see what this is all going to lead to in regard to Dr. Peterson. We will go back in chambers.

(WHEREUPON, a short recess was duly had at approximately ten-fifteen a.m.)

* * * * *

MR. DAVIS: I believe, Mr. Daly, you have a statement to make for the record.

MR. DALY: Let the record show, we have just had a discussion in chambers and I am going to raise the objection on behalf of the Doctor, to any questions that are asked of the Doctor that may elicit information, which might tend to incriminate him or which might be privileged; I raise the objection on his behalf.

MR. DAVIS: Do you raise that objection on the last question?

MR. DALY: I do.

MR. DAVIS: Your Honor, it appears that much of the material, which I would attempt to discuss with Dr. Palmer Peterson, might involve claims of the defense of privilege and the defense involving the Fifth Amendment of the United States Constitution.

And I do not feel, therefore, that it is of any further benefit to the Court to hear further testimony from this witness and I will excuse him.

MR. DALY: I have no questions.

THE COURT: I should state for the record, Doctor, that the privileged communication of which we speak is your privilege, not Mr. Daly's privilege. And is it your contention that you will claim privilege of any communication during the course of the proceedings of Peterson versus Peterson in the divorce action, between you and Mr. Daly? You would claim and you want to

claim a privileged communication?

THE WITNESS: I am sorry, Your Honor, are you asking me, is it my decision?

THE COURT: Yes.

THE WITNESS: Well, I want to qualify the statement and say in this particular instance, where there has been so much irregularity and I must say, unprofessional and unethical activity in the proceedings I have previously described, I don't think I have any choice, but to do so.

THE COURT: You will claim privilege?

THE WITNESS: I think I have to, yes.

THE COURT: And I imagine there would be some questions that I did discuss with Mr. Davis and Mr. Daly in my chambers, that there would possibly be some questions, which could implicate you. And in those instances, as to those questions, Mr. Daly says that you would claim the Fifth Amendment and refuse to answer those questions? I believe he did leave my chambers and come out and discuss this with you, did he not?

THE WITNESS: Well, he asked me, yes.

THE COURT: And as to those questions, it is your intention to claim the Fifth Amendment?

THE WITNESS: Well, again, as I say, because of the nature of the previous proceedings in which

the many things were taken out of context and many things, false accusations were made. For instance, again, I think as I say, I have no choice, if this is the direction that this proceeding is going to take. I have claimed the privilege, yes.

THE COURT: Okay.

MR. DALY: I have no questions.

THE COURT: Then you will be excused.

THE WITNESS: Thank you. Are there any of the records that the Court would like to have left here?

THE COURT: Off the record.

(WHEREUPON, a discussion was had off the record.)

MR. DAVIS: Petitioner calls William Drexler. Is Mr. Drexler in the courtroom?

DR. PETERSON: No, he is not.

(WHEREUPON, Petitioner's Exhibits 96 and 97 were marked for identification.)

MR. DAVIS: Will the Court swear me please.

HERBERT C. DAVIS

being first duly sworn, testified
as follows on behalf of the
Petitioner:

MR. DAVIS: First, my name is Herbert C. Davis, I am an attorney for the State Board of Law Examiners for the State of Minnesota. My office address is 6100 Excelsior Boulevard, St. Louis Park, Minnesota. I am a lawyer, duly licensed to practice law in the State of Minnesota and was so licensed in June of 1949. I have continuously practiced law in the State of Minnesota since that time.

Pursuant to my responsibility as attorney for the State Board of Law Examiners, I secured from the Clerk of the Supreme Court on the 12th day of January, 1970, subpoenas for use in the matter, In re Jerome Daly.

I caused one such subpoena to be directed to William E. Drexler, William Edward Drexler, requiring his appearance before the Honorable Donald C. Odden, referee appointed by the Court, for appearance at Room 722 Flour Exchange Building at Minneapolis, Minnesota, on the 9th day of February, 1970 at two o'clock in the afternoon, to give evidence in connection with that matter.

The subpoena and a copy of the subpoena were forwarded to--

MR. DALY: What was the date he was subpoenaed for?

MR. DAVIS: He was subpoenaed for the 9th day of February, 1970, at two o'clock in the afternoon

of that day.

The subpoena was forwarded to the Sheriff of Ramsey County and in due course, I received by mail the original of that subpoena and the Sheriff's return of service, stating that on the 4th day of February, 1970, the Sheriff had served the subpoena attached, upon William Edward Drexler, by substituted service, by handing to and leaving with Mrs. Drexler a true and correct copy thereof at the usual place of abode of William Edward Drexler.

That Mr. Drexler was duly paid a witness fee and mileage for attendance. That Mr. Drexler failed to appear on the appointed day and has not appeared at any time since the appointed day in this courtroom.

That upon his failure to appear on February 9th, 1970, I addressed a letter to William E. Drexler, 1602 Selby Avenue, Saint Paul, Minnesota, requesting that Mr. Drexler appear in response to the subpoena on Friday morning, February 13, 1970, at nine-thirty o'clock.

The letter forwarding the subpoena to the Sheriff, dated February 3, 1970; my letter of February 9th, 1970; the return of the Sheriff, dated February 4, 1970; and the original copy of the subpoena are included in Petitioner's Exhibit Number 96, which I hereby offer in evidence.

MR. DALY: Well, I have no objection

as to foundation.

THE COURT: Then it will be received.

MR. DAVIS: On the 11th of February, according to a date stamp of the post office in Saint Paul, Minnesota, in an envelope with William E. Drexler, Attorney at Law, Justice of the Peace, 1602 Selby Avenue, Suite 2-A, Saint Paul, Minnesota 55104, given as the return; I received in due course of mail a memo-letter entitled: William E. Drexler, Attorney at Law, with his address; stating a message to Herbert C. Davis, Attorney, 6100 Excelsior Boulevard, St. Louis Park, Minnesota 55416, dated February 11, 1970, a communication signed by Susan Brown, Secretary for William E. Drexler; stating: Our office is in receipt of your letter of February 9, 1970. Mr. Drexler has been out of town all week and I do not know where to reach him. I am his new secretary and have been working only a short time. I do not know how to contact him in this matter. If Mr. Drexler call, I will relay the information in your letter on to him.

That envelope and memo-letter has been marked as Petitioner's Exhibit Number 97, which I now offer in evidence.

MR. DALY: I have no objection, no

objection.

THE COURT: Received.

MR. DAVIS: I further state to the Court that on February 4th, I was trying a civil action in District Court for Hennepin County before Judge Leslie Anderson. I arrived at the courtroom at approximately one-thirty on that day.

As I entered the courtroom, Mr. William E. Drexler was seated in Judge Leslie Anderson's courtroom with two witnesses or clients, I am not sure which, two other persons.

That I continued the trial of my action on the afternoon of the 4th, the 5th, and the 6th, which would have been last Wednesday afternoon, Thursday and Friday, Your Honor. That all during that time, Mr. Drexler was engaged in trial before Judge Elmer Anderson, in the adjoining courtroom on the second floor of the courthouse in the City of Minneapolis. That I saw him there every day.

Upon inquiry from the Clerk of the Court, assigned to Judge Elmer Anderson, I have secured information that the case tried before Judge Elmer Anderson was the case of Rosemary Nelson versus Charles F. Nelson, File Number 2719, which was called for trial at 9:30 o'clock a.m. on February 4, 1970, and was tried for three days.

Judge Elmer Anderson is now on vacation; however, his clerk, Benjamin Brunsvold, is in the courtroom.

The case was tried in courtroom 212 in the courthouse in the City of Minneapolis.

Mr. Brunsvold.

BENJAMIN E. BRUNSVOLD

being first duly sworn, testified
as follows on behalf of the
Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A Ben E. Brunsvold.

Q What is your address, Mr. Brunsvold?

A 3987 Johnson Street North East, in Columbia Heights.

Q What is your business or occupation?

A I am a law clerk for Judge Elmer Anderson of the Hennepin County District Court.

Q In which courtroom does Judge Anderson hold court?

A Courtroom 212.

Q What courtroom is immediately adjoining Judge Anderson's courtroom?

A The courtroom of Judge Leslie Anderson; I don't know

the number.

Q Were you in court, engaged in trial on February 4th?

A Yes, Sir, we were.

Q And what case was being heard in your courtroom at that time?

A It was the case of Rosemary Nelson versus Charles F. Nelson.

Q Who were the attorneys? Who was participating in the trial of that case?

A William Drexler for the plaintiff and Fred Allen for the defendant, Charles F. Nelson.

Q Were you there after February 4th?

A No, Sir, I was not.

Q Another clerk was substituted for you?

A Yes.

Q What is his name?

A Russell M. Johnson.

Q Have you reviewed the clerk's docket entry and the Judge's notes?

A I went up to the vault in the courthouse and got my own minutes from February 4th and the minutes of the clerk, who was substituted for me, of February 5th and February 6th and I did review the minutes of my own Judge.

Q Does it appear that Mr. William Drexler was present in the courtroom 212, for the period February 4th, 5th and

6th?

A Yes, Sir, it does.

MR. DAVIS: I have nothing further.

Do you have any questions?

MR. DALY: No.

MR. DAVIS: Mrs. Racette.

DONNA R. RACETTE

being first duly sworn, testified

as follows on behalf of the

Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A Donna R. Racette.

Q What is your address?

A 2612 Kentucky Avenue, St. Louis Park, Minnesota.

Q What is your business or occupation?

A I am a secretary to Herbert C. Davis.

Q That is me. Did you at my request make a phone call
to the residence of William E. Drexler?

A Yes.

Q When was that call made?

A I called between ten-fifteen and ten-thirty last night, February 12th.

Q Did you reach anyone at the time of that call?

A Yes, I did.

Q Who did you speak with?

A I spoke with a youngster; I did not ask his name.

Q What was your conversation?

A When the phone was answered, I asked if I could please speak with Mr. Drexler. May I look at the notes I took?

Q Yes, you may.

A And the youngster said, he is not home. And then I asked, what time do you expect him? And the youngster said, I don't know, why don't you call him in the morning.

THE COURT: I didn't hear that.

THE WITNESS: And the youngster said, I don't know, why don't you call him in the morning.

Q And so then what further conversation did you have?

A Then I asked, what time should I call, I don't want to awaken him. And then there was some conversation in the background, the youngster was talking with someone else. And he came back on the phone and he said, oh, he is out of town; my brother says he is out of town. And so, I asked when Mr. Drexler was expected back. And the youngster said, I don't know, why don't you call my mother tomorrow. And I said, your mother is not home now? And he said, no. And I

said, what time should I call tomorrow? And he said, oh, any time in the morning. And so then I thanked him and I hung up.

Q Did you make a further call?

A Yes, I did.

Q When did you make that call?

A At twenty minutes to eight this morning.

Q Did you speak with someone at the other end of the line?

A Yes, I did.

Q Did that person identify themselves?

A Yes, she did.

Q Who did you talk with?

A The lady identified herself as Mrs. Drexler.

Q Will you report what conversation you had with her?

A Yes, when the phone was answered, I asked again if I could please speak with Mr. Drexler. And this lady said, he is not here. And so I identified myself, I was Mr. Davis's secretary calling, and I would like to confirm the fact that Mr. Drexler would be in court at nine-thirty this morning. And she said, he is out of town. And I asked when did he leave? And she said, he has been in Houston for a couple of weeks; a friend of ours is having heart surgery. And then I repeated, he has been in Houston for a couple of weeks? And she said, yes; I am sure he has everything cancelled for a couple weeks.

MR. DAVIS: I have no further questions.

CROSS-EXAMINATION

BY MR. DALY:

Q This is Mrs. Drexler that you talked to?

A Yes, after I initiated the conversation by saying, good morning, may I speak with Mr. Drexler? And this lady said, he is not here. And I said, may I speak with Mrs. Drexler please? And she said, this is Mrs. Drexler speaking.

MR. DALY: That is all the questions I have.

(WHEREUPON, Mr. Davis resumed the stand and the following proceedings were duly had:)

MR. DAVIS: Mr. Daly, you said you had some questions.

CROSS-EXAMINATION

BY MR. DALY:

Q Have you caused a subpoena to be served personally upon Mr. Drexler?

A It was served by substituted service, as I stated in my testimony; it was served upon Mrs. Drexler at his home.

Q Well, the sheriff's return does not indicate where

it was served? Just by handing and leaving with Mrs. Drexler a true and correct copy thereof, isn't that right?

A That is what the return says, yes, Sir. I am told by the Sheriff, it was served at his home.

MR. DALY: I have no further questions.

MR. DAVIS: Your Honor, we request that the Court make an order, directed to Mr. Drexler, demanding him to appear. We can't resubpoena him, I expect; but while the statute provides for substituted service of subpoenas and authorizes the clerk of any court of record to issue them. I am not at this time intending to request that the Court hold Mr. Drexler in contempt. Upon his appearance, however, I intend to examine Mr. Drexler concerning the question, whether he, in fact, did receive notification of this subpoena and I may at that time take another course of action with regard to him.

THE COURT: You want me to issue an order, commanding him to appear?

MR. DALY: Let the record show, I am going to object to it on the basis of the record so far.

THE COURT: The objection is overruled and such command may be issued from the clerk. Do you

have any other witnesses?

MR. DAVIS: No other witnesses this morning. Counsel, you stated at this time you would have a list of your respective witnesses.

MR. DALY: I want to examine the exhibits and see who I want to call.

THE COURT: The only thing, I will do this; that if after notice has been given as to the witnesses that are to be called, if you request time, the Court will grant it to you.

MR. DAVIS: Well, I am just trying to schedule my work for next week, Your Honor, and if I could know how many witnesses. I guess I don't feel I need extra time to prepare for them; but I do feel if I knew how many witnesses we were talking about, why I could make plans.

MR. DALY: Let's see, it wouldn't be over -- at the most there would be three, four short witnesses that wouldn't take over fifteen minutes, twenty at the most, and one witness that wouldn't take over half an hour. And then possibly myself; so I am sure that I am not going--

MR. DAVIS: Well, that raises an interesting point; if we are only going to have half a day's work, why don't we finish it today. Unless you

plan to occupy a lot of time--

THE COURT: Well, have you arranged to have these witnesses here?

MR. DALY: Not today, no.

THE COURT: Pardon?

MR. DALY: Is this going to be continued over to Monday, any way?

THE COURT: I am afraid it is going to have to, Mr. Davis.

MR. DALY: Frankly, I can't see there has been anything proved so far.

THE COURT: There is no sense in arguing it yet.

MR. DALY: I want to examine the evidence and see if I need to bring in some witnesses.

THE COURT: So far, it looks like we will not be recessing this thing until Monday evening or Tuesday noon, one or the other.

MR. DALY: I would say that, yes.

MR. DAVIS: Fine.

THE COURT: We will recess until Monday morning at 9:30 o'clock.

(WHEREUPON, court adjourned for the day at approximately eleven o'clock a.m.)

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VOLUME III

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