

VIRGINIA:

IN THE CIRCUIT COURT OF KING GEORGE COUNTY

COMMONWEALTH OF VIRGINIA

vs.

J. SAMUEL DISHMAN,

Defendant.

King George

May 1958

May

FRANCES G. WEBB

206 PROFESSIONAL BUILDING

COURT HOUSE SQUARE

ARLINGTON, VIRGINIA

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Horace T. Morrison	9	56	146	
H. H. Wyland	107	110	112	113
N. W. Staples	114			
Walter N. Jones	116	117		
Dewey Earl Darby	118	119	120	
Joe Bland	121	123		
Henry S. Fitzhugh	124			
Lloyd Farmer	129			
C. T. Layne	130	134	144	
Dr. L. F. Lee	152	155		
Dr. R. N. Harris	153	160	160	
William Strother Jones	161			
Frank A. Motley	164	165	166	167
George S. Mason, Jr.	167	169		
R. A. Peed	170	171		
W. D. Taylor	172	173		
W. Thomas Weaver	176	177		
A. L. MacGregor	180	185		
Charles B. English	186	188		
Garnett Brooks	189	190		
Lawrence B. Mason	191	192		

I N D E X - 2

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
J. Samuel Dishman	194	218		
G. D. Richardson	232	233	233	
W. A. Spillman	234			
Thelma Cloek	235			
W. A. Grigsby	236	238		

VIRGINIA:

IN THE CIRCUIT COURT OF KING GEORGE COUNTY

-----X
COMMONWEALTH OF VIRGINIA

vs.

J. SAMUEL DISHMAN,

Defendant.
-----X

King George, Virginia

Saturday, May 29, 1954

The above-entitled cause came on to be heard before the Honorable Leon M. Bazile, Judge of the Circuit Court of King George County, Virginia, commencing at 10:00 o'clock a.m., eastern standard time.

PRESENT:

R. H. L. CHICHESTER, ESQ., on behalf of the Commonwealth;

JOSEPH A. BILLINGSLEY, JR., ESQ., and

JOHN D. BUTZNER, JR., ESQ., on behalf of the Defendant.

PROCEEDINGS

(The following occurred in chambers:)

MR. CHICHESTER: Judge, I want to make a motion that the Court impanel the jury to try the case of Commonwealth against Dishman.

MR. BUTZNER: On what authority? Judge, I have a memorandum which at the appropriate time I want to present to you, but I would like to know on what authority this motion is made.

MR. CHICHESTER: The authority is this. It is contended that the Commonwealth has an equal right to a jury as an accused does.

THE COURT: On what authority are you relying?

MR. CHICHESTER: I am coming to that now, if you will just give me time. Under Section 15-501, a general section for the removal of officers.

THE COURT: Yes, sir; 15-500 authorizes the removal of officers, and 15-501 provides for the procedure.

MR. CHICHESTER: Yes, sir, that is right. None of these sections, I believe, state whether or not the Commonwealth or the accused has a right to a trial by jury, but if you will turn to Section 15-503, it reads as follows: "In any trial under this article the attorney for the Commonwealth shall represent the Commonwealth if the proceedings is against the attorney for the Commonwealth. Any such officer proceeded against shall have the right to demand a trial by

jury except in cases when the officer is appointed."

I take the position, stopping right there, that this section does not particularly refer to attorneys for the Commonwealth who may be charged with misfeasance or malfeasance, but it has to do with all elective officers.

THE COURT: I think it does have to apply to all elective officers.

MR. CHICHESTER: And it says here that any such officer proceeded against shall have a right to a trial by jury except in cases when the officer is appointed.

THE COURT: In cases when the officer is appointed, he does not have any jury trial.

MR. CHICHESTER: That is right, but if he is elected he could.

THE COURT: In other words, Tribble could not demand a jury trial, but an elective officer could demand a jury trial.

MR. CHICHESTER: Yes, sir. That is the point I make there, sir.

THE COURT: In Warren against Commonwealth, the defendant asked for a jury and a jury acquitted him and the Court set aside the verdict and entered up the final judgment against him and the Court of Appeals reversed that and found the Court had a right to set aside the verdict, but had no right to set up judgment under Section 15-251 of the Code because it was a quasi proceeding and not a civil proceeding.

MR. CHICHESTER: Section 19-165 and 168 provided for the

trial of felonies and misdemeanors, and goes on to give the right to an accused on a plea of guilty to be tried by the Court with the consent of the Commonwealth.

Both those sections provide that the Commonwealth must consent before trial by the Court alone. I think it will be admitted that this procedure is a quasi criminal proceeding

THE COURT: Yes, but it is neither a felony nor a misdemeanor.

MR. CHICHESTER: And therefore it seems to me it could not be tried by the Court unless with the consent of the Commonwealth attorney.

MR. BUTZNER: If the Honor please, we present a memorandum. I have a copy for Mr. Chichester, and I think there is no question whatsoever but what the Sheriff is entitled as a matter of right to have these proceedings conducted by the Court without the intervention of a jury

The Commonwealth against Malbon is the most recent case I have been able to find, and there the Chief Justice wrote, I believe in 1953, "Courts have no inherent power to remove a public officer from office Their authority is derived entirely from the provisions of the pertinent statutes, Code Section 15-500 and 15-501."

That case, incidentally, concerned the removal of a sheriff.

Now, when you turn to those sections 15-500 and they are the only sections which are pertinent, we find that 15-500 says, and I am not going to quote the whole thing, but the

gist of it is the Circuit Court may remove from office all state, county, city, town, district officers elected or appointed except such officers as are covered by other methods, which does not affect us here.

So the statute says a Circuit Court can do it.

THE COURT: Yes, sir.

MR. BUTZNER: Now, Section 15-501 provides for a rule to be issued as the trial is heard on the rule, and ordinarily you do not have a jury for a rule. I am not arguing that as final, but I am just arguing as to what the Legislature was thinking when it wrote this.

That Section 15-503 mentions a jury, and how does it mention it, and I agree with Mr. Chichester that 15-503 refers to any officer, not merely a Commonwealth attorney, because it says in any trial under this article the attorney for the Commonwealth shall represent the Commonwealth.

And then it goes on, any such officer proceeded against, meaning any such officer under this article, I am sure, shall have the right to demand a trial by jury. It limits that right to that officer.

He does not have to, and we are not claiming it is the case here, but the Legislature was wise. Suppose an officer is enforcing the law to the letter of the law, and a bunch of lawbreakers come in and get up a petition, as they have a right to do, and say in effect, "We do not want this man. He is too strict." Does it mean that he has to go back to the county,

where those people may have drummed up tremendous feeling against him and have a jury?

We do not claim that is the case here, but it shows how wise the Legislature was in limiting the right to a trial by jury to the officer.

Now, as Your Honor says in Warren against Commonwealth, it was held that it was a quasi criminal proceeding. It is not a criminal proceeding.

THE COURT: No, neither a misdemeanor nor a felony.

MR. BUTZNER: They do not apply, it is not a felony. Section 8-195, concerning waiver to a trial by jury, as this section is concerned with several cases.

THE COURT: The Court has specifically held it is not a civil case.

MR. BUTZNER: That is right, and it is held in Commonwealth against Malbon--that is the sheriff of Princes Anne County of Virginia Beach--to the provisions of 15-500 and the following sections, Section 8 of the Constitution concerning jury trials, but that is not applicable. That is criminal proceedings, and it could not be applicable in the eyes of the Legislature, so they could not go along and say an appointive officer has a right to a trial by jury.

THE COURT: Let me see 195 Virginia. That is right up there.

MR. BUTZNER: Please do not misunderstand me in citing that

illustration in this case. I am citing that as the wisdom of the Legislature in doing this.

THE COURT: I understand.

MR. BUTZNER: I am not charging that Mr. Morrison is a malefactor.

MR. CHICHESTER: I understand that.

MR. BUTZNER: Here is the Malbon case.

THE COURT: I know why we do not have 1954. It is in the advanced sheet, I guess.

MR. BUTZNER: They cite the Warren case. In fact, they cite a great many of the cases.

THE COURT: In the Warren case, the Court held that this kind of a proceeding was neither a civil or a criminal proceeding, saying, "From the language of the revisors' note, and the use of the technical terms 'civil action' in section 6251 of the Code of 1919, it is apparent that that section means to embrace only private personal actions, and not such a quasi criminal statutory proceeding as a proceeding to remove a public officer, which is not a private or personal action--is not purely private or civil--but one which is primarily public in its nature, which, although not a criminal case, is one highly penal, and one in which the Commonwealth is a party plaintiff."

That is a specific holding that it is neither a civil nor a criminal case, but that it is a quasi criminal case which is controlled by the statutes under 15-500 of the Code.

That being true, we cannot, in its construction, appeal under the statutes relating to either criminal or civil procedure, but we have to appeal only to Article 3 of Chapter 16 of the Code, Sections 15-500 through 15-503 for the authority as to the granting of a trial by jury.

Section 15-50, has expressly provided that any such officer proceeded against shall have the right to demand a trial by jury except in cases when the officer is appointed, in which case it shall be triable by the Court without a jury.

Now, the fundamental rule of constructions of statutes is the doctrine, *inclusio unius est exclusio alterius*, which is applicable.

The assembly, having specifically given to the officer the power to call for a jury and having failed to give the Commonwealth such right, has necessarily excluded the Commonwealth from calling for a jury, and in the absence of a request from the defendant the Court is without jurisdiction to impanel a jury.

If the defendant demands a jury, the Court has the authority to impanel the jury, but under this statute I am of the opinion that the Court has no authority of its own motion or on motion of the Commonwealth to impanel the jury because the statute

under which we are proceeding has tied the hands of the Commonwealth and the Court in such a case.

Of course, you except to that.

MR. CHICHESTER: Yes, sir. Attorney for the Commonwealth excepts to the ruling of the Court in denying the right of the Commonwealth to a trial by jury.

THE COURT: Personally, I will say that I wish I could shirk the responsibility, the responsibility that is cast upon me by the construction I placed upon the statute. The Court does not wish to assume the burden and responsibility that is cast upon it by such a construction, but the Court is compelled to construe the law as it is written, and it has no other alternative.

(The hearing was resumed in the Courtroom.)

THE COURT: Commonwealth against Dishman Are you all ready?

MR. CHICHESTER: Yes, sir.

MR. BUTZNER: Yes, sir.

THE COURT: Are there any motions?

MR. CHICHESTER: No, sir.

THE COURT: All right. Are you ready to proceed?

MR. CHICHESTER: Yes, sir.

Thereupon,

HORACE T. MORRISON

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as

follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Would you please state your name?

A Horace T. Morrison.

Q Your occupation?

A Commonwealth attorney, King George County, and attorney at law.

Q How long have you been Commonwealth attorney of King George County.

A Since March 1, 1948, about 11:30 a.m.

Q Mr Morrison, you have brought seven charges here against J Samuel Dishman, the present sheriff of King George County. I will not go into the detail of these charges, but I will read to you each separate charge as it appears and a bill of particulars filed here, and I will ask you to state the basis and the evidence you have supporting each complaint.

Number 1, you have charged, Mr. Morrison, in the case of the cases of Commonwealth against Hundley which were originally set for trial in the Trial Justice Court of King George County, Virginia, on April 8, 1952, at 10:00 o'clock a.m., that on April 7, 1952, at approximately 5:15 p.m., the attorney for the Commonwealth addressed a letter to the Honorable E. J. Slipek, Trial Justice of said Court, asking that the following witnesses be summoned for trial of the said case on the date

given above, and under that you specifically set forth six witnesses.

When the said case was called for trial on that date, said witnesses had not been summoned, but the sheriff was in Court. Because of this fact and at the request of the defense attorney, the case was continued to April 15, 1952, at 2:00 o'clock p.m.

Will you please state what you know about that, sir.

A Yes, sir. In that period, and I cannot give you the exact date, March 1952, a warrant was sworn out by a young boy named Frank Mottley, who lives at Port Royal, Virginia, charging a fellow named Hundley from down there, some county below here, with an assault which occurred at King George High School.

I knew nothing about the occurrence of that. It had been in existence for several days before--in fact, I think a week, probably--before I had any knowledge whatever of the fact that a man had committed a crime in my county.

It came to my attention first by the family of the victim who came to me--I think it was the boy, himself, first--and wanted to know if I was going to prosecute the case. I asked him what case, and he then proceeded to tell me he had tried to get the sheriff to investigate, with little help, if any.

MR. BUTZNER: I object to that hearsay.

THE COURT: That is hearsay, Mr. Morrison. You must not

go into any hearsay.

THE WITNESS: The sheriff himself told me later. I am coming to that.

BY MR. CHICHESTER:

Q I believe the charge is failure to summon witnesses?

A That is right. On April 7, I addressed a letter to the Honorable Edwin Slipek, and that is a copy of the letter.

BY THE COURT:

Q How did that letter go to Mr. Slipek?

A It was handed to him in person around 5:15 p.m. of that day, and I personally saw him issue the summonses and hand them to the sheriff because I wanted to make sure they were there.

Q 5:15 p.m.?

A Yes, sir.

Q They were to be summoned for what day?

A For the next day. No, they were to be summoned-- I will have to look at the letter, Judge. I cannot carry all of those dates in my mind, but the reason I took it personally to Mr. Slipek and made sure the summons were issued so the witnesses would be there was because I had been taken by surprise on the case and wanted to make sure the witnesses were there, and I saw to it that they were handed to the sheriff in person.

Q What date did the letter say they would be summoned?

MR. CHICHESTER: If Your Honor please, Mr. Butzner and I have agreed to read a certain part of the letter into the record.

THE COURT: All right, sir.

MR. CHICHESTER: If I may be permitted to do so.

THE COURT: Read the whole letter.

MR. CHICHESTER: No, sir. We have agreed not to read the whole letter. He has made objections which I think are proper.

THE COURT: All right, sir

MR. CHICHESTER: April 7, 1952 Approximately 5:15 p.m. Mr. E. J. Slipek, Trial Justice, Courthouse. Reference Commonwealth versus Hundley. Please summon the following witnesses for the Commonwealth in the above case which is set for 10:00 a.m., April 8, 1952: 1. Frank Taylor, Sealston; 2. Edward Taylor, Sealston; 3. Ella Creed, Edgeville; 4. Truett Shooks, King George; 5. Lawrence McDaniel, Weedonville; 6. Sheriff."

I ask that this be marked as exhibit B-1.

THE COURT: All right.

(Said letter was received in evidence and marked "Exhibit B-1.")

BY MR. CHICHESTER:

Q Were those witnesses summoned, Mr. Morrison?

A On the date of the trial, which was the next day, I discovered in Court for the first time that they were not

there, and I looked at the warrant and could find no summons issuing and the sheriff, as I recall it, admitted in open Court he had not summoned them. The summons still remained in the warrant where they are supposed to be

MR. CHICHESTER: If Your Honor please, I would like to have the court clerk produce the warrant in that particular case, Commonwealth versus Hundley. The warrant should be returned to his office from the Trial Justice Court.

THE COURT: Where is the clerk?

MR. CHICHESTER: I do not know, sir.

THE COURT: Get the clerk of the court.

MR. CHICHESTER: I am a stranger here, Judge. I would not have the slightest idea. I am just doing that to save time, Judge.

THE COURT: He is asking for the production of a warrant in the case of Commonwealth versus Hundley of April 8, 1952, or about that time.

MR. CHICHESTER: Yes, sir. You will find it around April 8.

THE COURT: Do you have the warrant?

THE CLERK: Yes, sir.

THE COURT: Will you produce it?

THE CLERK: Yes, sir.

MR. CHICHESTER: I ask that this be filed as exhibit C-2.

THE COURT: All right.

(Said warrant was received in Evidence and marked "Exhibit C-2.")

BY MR. CHICHESTER:

Q When was this case reported to you?

A It was reported to me sometime, a very short time before this hearing on the eighth. I do not recall exactly how many days, but the victim either came to my home or my office. I am inclined to think it was my home. He came there to make sure I would prosecute, because he had been--

MR. BUTZNER: If Your Honor please, we have been through this once Mr. Morrison knows the rules of law.

BY MR. CHICHESTER:

Q Let me ask you this question. When did the sheriff report it to you?

A The sheriff never reported it until after it got in Court.

Q Number 2, in the bill of particulars filed, and I will read--

THE COURT: Before we pass to number 2, Mr. Morrison, did the sheriff give you any explanation when he came to Court the next morning about the witnesses?

THE WITNESS: "There ain't nothing there," to use his exact words. He told me what he had told me in so many cases, "There ain't nothing there."

He later told me he was trying to get them to settle it out

of Court.

BY MR. CHICHESTER:

Q Do you know what he meant by, "There ain't nothing there"?

A My understanding of his words was that meant what he said in so many cases, that he is trying to keep it out of Court.

Q Passing on to number 2 of the bill of particulars, I read as follows: "In the case of the Commonwealth versus Larrain Thomas, charged with violation of Section 18-301 of the 1950 Code of Virginia as amended, to wit, operating a lottery, and so forth, by letter dated May 4, 1954, the attorney for the Commonwealth requested the clerk of the Trial Justice Court, Mrs. Layne, to summon, among other witnesses, Edward R. Crusoe, of Owens, Virginia, to testify in said case which was set for trial at 10:00 a.m., May 5, 1954. When the case was called for trial, Edward R. Crusoe was not in the courtroom and Sheriff Dishman said in open court that he had not summoned him. The attorney for the Commonwealth demanded that he forthwith summon him before Crusoe leaves this state, he having been charged by the Federal Bureau of Investigation with violation of a Federal law and a Civil Service hearing was pending, and the said sheriff failed and refused to comply with this request and did not summon the same Crusoe until the 6th day of May 1954."

State what you know about that charge, Mr. Morrison.

A Precisely what I said there, namely, the first knowledge that I had that Crusoe was not in the courtroom was after the case had been called and Mr. Moncure, who represented the defendant, informed me that he was going to ask for a continuance.

I told him that I would oppose it because I was opposed to continuances particularly where they were asked for at the last minute, and he then made his motion for a continuance. I opposed it.

Then when it was set for a subsequent date I asked that my witnesses be recognized. Crusoe was not there and the sheriff mumbled and finally said to the Court, said to Judge Tribble, "I guess I have mixed it up. I have not summoned him," and he had executed his own summons and Trooper Layne was not summoned. He was asked for in the same request with the papers in the case, so he summoned Crusoe on the sixth.

Q All right. In other words, he summoned this witness the following day after the date the trial was set?

A Right. I do not know what time, but some time that day.

MR. CHICHESTER: I wish to introduce a copy of a letter dated May 4, 1954. "Mrs. Layne, Clerk, Trial Justice Court, reference Commonwealth versus Lorraine Thomas. Dear Mrs. Layne: Please summon the following to testify in the above case which is set for trial at 10:00 a.m., May 5, 1954; 1.

Sheriff J. S. Dishman; 2. Trooper C. T. Layne, S.P."--

THE COURT: The letter was written what date?

MR. CHICHESTER: May 4, Your Honor.

THE COURT: What date was the trial?

MR. CHICHESTER: May 5.

Edward R. Crusoe, Owens, Virginia.

I want to introduce this as exhibit C-3.

THE COURT: All right.

(Said letter was received in evidence and marked Exhibit C-3.)

MR. CHICHESTER: I would like also to introduce in evidence the warrant of Commonwealth versus Larrain Thomas, dated April 10, 1954. That will be marked as exhibit C-4.

THE COURT: All right, sir.

(Said warrant was received in evidence and marked "Exhibit C-4.")

BY MR. CHICHESTER:

Q The charge under Roman letter II reads as follows:

"The acts charged in paragraph b of the petition are: 1.

The attorney for the Commonwealth informed the sheriff on numerous occasions since January 1, 1952, that complaints had been made to him that Alec Grimes, Allen Jackson and others were selling whiskey illegally, but the sheriff said he would only go if papers were put in his hands."

Tell me what you know about that, Mr. Morrison.

A On many occasions during that period--I live near

Owens, and this Allen Jackson lives near Owens. Many people in the vicinity reported to me that he was selling whiskey. I knew that myself.

In addition, I have reports that Alec Grimes down near there was selling whiskey. I knew that myself.

Sam Grimes had been reported to me a number of times. He has been in court once or twice and held not guilty, I believe, and just so many that it would fill a book up to tell you all that, but I remember this specifically, those specific ones.

The sheriff gave me the usual brush-off, "Get papers drawn up and I will serve them, but I cannot go out doing ABC work," or words to that effect. I am not quoting him precisely, but I know this, he did not do it, and finally I had to get the ABC man up on a number of violations and we got some results.

Q Did the sheriff ever obtain any such--I assume you mean a search warrant?

A Yes. Not necessarily a search warrant, but to go there and try to make sales and do whatever he thought was proper to get these violators.

Q I assume the papers referred to were search warrants?

A That is right.

Q Did the sheriff ever obtain search warrants for those premises?

A To my knowledge, during my term of office, I have

never known the sheriff to get a warrant for a whiskey violation unless I swore them out, and I swore out a good many.

THE COURT: Mr Morrison, Allen Jackson was not convicted of selling illegally?

THE WITNESS: Yes, sir. You are coming to that later, if you do not mind waiting.

THE COURT: Yes, sir.

BY MR. CHICHESTER:

Q Number 2 under Roman letter II in the case of Commonwealth versus Hundley (Assault at the King George High School on March 29, 1952) prior to the trial of this case and after Sheriff Dishman had failed to summon witnesses as set forth in one above, Sheriff Dishman did not investigate or report this assault until he knew about it.

How about that?

BY THE COURT:

Q Whose assault was that?

A Oh, Frank Mottley of Port Royal, Caroline County.

Q He is not the same one as Hundley?

A Hundley is the defendant. The victim is named Mottley. This is another phase of the same case.

Q I see, the same case?

A Yes, sir, another phase of it. I have to say what the victim reported to me, and if they are going to object to it, I can show what the sheriff later said.

Q You cannot go any further than that because you cannot tell what he told you.

A Mottley reported an assault. Again, I say he either came to my home or office shortly before trial and said he had been assaulted at the High School and wanted me to prosecute. Dishman later talked to me about it and told me he had not investigated because -I asked him why he had not reported it and he gave me the usual run-around, just walked off or something like that.

I had to go to Port Royal myself to get the facts and talk to the witnesses up here when I found out who they were.

BY MR. CHICHESTER:

Q Number 1, under Roman letter II, on February 11, 1954, H. T. Barry of Owens, Virginia, telephoned Sheriff Dishman that he had shot a dog owned by Horace T. Morrison, which Barry alleged was in his sheep.

The sheriff informed Barry that he would call the game warden. Later the sheriff boasted that he was not going to answer any more calls from Barry.

What about that, Mr. Morrison?

A On November 11, 1954, that being Armistice Day, my wife had worked for me that day and we decided to go home a little earlier than usual, that being Armistice Day.

MR. BUTZNER: What day?

THE WITNESS: November 11, 1954.

MR. BUTZNER: 1954?

THE WITNESS: Read that back again.

MR. CHICHESTER: On February 11, 1954. There must be an error.

THE WITNESS: That is a mistake. When was Armistice Day?

THE COURT: Armistice Day is in November.

THE WITNESS: Wait a minute. I am mixed up on my holidays. On Armistice Day--no, it must be 1955, because we have not come to Armistice Day in 1954 yet.

On Armistice Day 1955, as I said, we were going home a little earlier because we did not want to work quite as long that day.

I arrived at my entrance to my farm over which I have a legal right of way over Mr. Barry's property, my wife being in the car with me, and Mr. Barry was near the entrance with his gun still smoking, and I saw my dog after he pointed to it.

Naturally, it was quite a shock to see a little puppy-- incidentally, it was a cocker spaniel with some other mixture-- very small, belonging to my daughter, Sallie, who had been trying to call it home when she saw Mr. Barry was going to shoot it.

MR. BUTZNER: If Your Honor please, he cannot use this vehicle to get it in.

BY MR. CHICHESTER:

Q Let me ask the question and I can cure the objection.

A I agree. You know, when you get to talking here, you get into details, Mr. Butzner.

Q You charged, Mr. Morrison, that the sheriff boasted that he would not answer any more calls from Mr. Barry. That is the one you are referring to?

A Yes, sir. The next day after this event, which occurred on November 11, 1953, Mr. Dishman came into my office. My wife was sitting there, too, typing or doing something, and since he played both ends against the middle--

MR. BUTZNER: I object to that, if Your Honor please. It is scurrilous and I ask that it be stricken.

THE WITNESS: I am sorry. He told me Barry had called him that evening and he had told Barry that he would call Stuart Parks, the game warden, and tell him he wanted him, and he further said he was not going to answer any more calls to Barry, that he made a nuisance of himself.

My wife was present.

BY MR. CHICHESTER:

Q Subsection 4 under Roman letter II, I quote as follows: "In September 1952, ABAC agents H. L. Wyland and W. H. Hennage were requested by the attorney for the Commonwealth to investigate alleged liquor sales made near Owens, Virginia, by Allen Jackson. These officers made liquor purchases

from said Allen Jackson on September 14, 1952, September 18, 1952, September 21, 1952 and September 27, 1952. On the latter date agents Wyland and Hennage met the sheriff at the circle after communicating with him for a meeting and told him that they were going to Allen Jackson's house and they wanted to make a search, and so forth, and wanted the sheriff to go along. The sheriff refused to accompany them, saying he had a headache. He is charged with refusing to accompany the ABC agents.

What do you know about that?

A Mr. Wyland is in the courtroom, and since what I would say on that proposition is hearsay, I think you will have to question him. I can tell you why he contacted the sheriff and nothing more. I asked him to.

Q Do you know whether or not the sheriff was contacted for that purpose?

A That would be hearsay, too, I think, but Wyland is here.

THE COURT: Do you know whether the sheriff was sick or not?

THE WITNESS: Do I know whether he was sick? All I know, he has told me on many times on liquor or other raids he gets a headache right quick. I do not know a thing about his condition that day. He told me the same thing on the lottery.

BY MR. CHICHESTER:

Q You mean to say it upsets his nervous system?

A It appears to. I am not acquainted with his nervous system.

Q Passing on to subsection 5 of Roman letter II, on or about February 19, 1952, the home of Mr. W. N. Staples, near Edgeville, was broken into in the daytime. The victim, Mr. Staples, tried to have the sheriff come and investigate, but without avail. The crime is still unsolved.

Do you know anything about that, personally?

A Yes, I do. I was in court when the offense happened and know to my personal knowledge that Trooper Layne was reached here by the victim or someone on his behalf, and he left for the scene right from the court, and I knew the subject matter but not the details.

Later, Mr. Staples, the victim, personally asked me to come there, and I did. Upon arriving, he said, "Will you please--"

MR. BUTZNER: Was the sheriff there then?

THE WITNESS: Was the sheriff there?

MR. BUTZNER: That is right.

THE WITNESS: He was only there once, and then he left in a hurry.

MR. BUTZNER: Was he there when you are relating the hearsay?

THE WITNESS: The first occasion?

MR. BUTZNER: The occasion you just mentioned.

THE WITNESS: The first trip down there, he was not down

MR. BUTZNER: Then it is elementary, if the Court please.

THE WITNESS: Do you want me to tell about the occasions
he went there?

MR. BUTZNER: I am not going to tell you what to tell.

THE COURT: You can tell what you did, but not what was
said.

BY MR. CHICHESTER:

Q Were you there on any other occasion?

A Yes, sir.

Q In the presence of Sheriff Dishman?

A Yes, sir.

Q What occurred on that occasion?

A On that occasion, after Mr. Staples had repeatedly
asked me to get something done--

MR. BUTZNER: If Your Honor please, that is hearsay.

THE WITNESS: He is the victim, the man.

THE COURT: I do not know--

MR. CHICHESTER: I would say that would be proper.

THE COURT: The sheriff was there. What was said and
done.

THE WITNESS: May I first say who went with me?

THE COURT: All right.

THE WITNESS: I got Sergeant Pittsinger, who was then the
new area sergeant for the state police, and he went personally

with me to the scene of Mr. Staples' break-in. Mr. Staples was there and the sheriff was somewhere near the back, and I heard him tell Mr. Staples when he saw us coming or when we got there, rather, I heard him say, "I have turned everything over to the police. They are going to handle it."

BY MR. CHICHESTER:

Q Meaning the state police?

A Yes, sir.

Q Subsection 6 under Roman letter--

A There is one more thing about that, if you want me to tell it, Judge, and it is not hearsay.

Q Go ahead.

A I personally asked Sheriff Dishman several times would he please go to that man's home because he had wanted it done. He said, "I am not going." He said he broke in his own house.

Q Now going to subsection 6 under Roman letter II, in August 1952, the service station of W. N. Jones at Chestnut Hill was broken and entered in the night time. The sheriff was notified. He did not go promptly and made a poor investigation. The crime is still unsolved.

In that paragraph, you charged the sheriff with not coming promptly and was making a poor investigation. Will you please tell me what you know about that?

THE COURT: What is the number of that?

MR. CHICHESTER: That is number 6 under subsection II.

THE WITNESS: I might have to qualify that slightly. Mr. Jones has had, I believe, four break-ins in recent years, and it could be that that particular one--and I since I am not sure, I do not want to cover it in that sense--it could be that particular one was investigated by a trooper, but I could say this, and I do not think there is hearsay, that I personally asked the sheriff to go there at some time after one of those four break-ins and he said the police were handling it.

I think it was four, either three or four break-ins in the nighttime.

BY MR. CHICHESTER:

Q You also charged he made a poor investigation. What about that.

A It seemed to me that the first thing to do would be to take fingerprints. He did not do it. The state police later took them and I sent them to the FBI and, of course, it was so late that they came back. Of course, they were not very good.

BY THE COURT:

Q Do you know whether this sheriff knows how to take fingerprints?

A I do not know, but he ought to learn. He either ought to do that or get somebody else to do it, because time

is of the essence.

Q Does not the testing of fingerprints require an expert?

A The state police are equipped with it. The police at Fredericksburg, I personally heard them say all they have to do is ask and they will come down and do it. Promptness is important, because after the things are monkeyed with, they cannot get good prints.

Q I know that. That is why they call the state police.

A May I just say this? The state police do not have the equipment down here but they do have it in Fredericksburg.

BY MR. CHICHESTER:

Q Subsection 7 in Roman letter II, in the year 1952, D. E. Darby's Service Station near Dahlgren was broken and entered in the night time, and 16 automobile tires were stolen. The matter was reported to the sheriff, who turned the investigation over to the state police and the crime is still unsolved.

In that paragraph you charged the sheriff with turning the investigation over to the state police.

Tell me what you know about that.

A On a Sunday morning, following the happening of this break-in, I went in Mr. Darby's Service Station to get a Sunday paper, the Richmond Times-Dispatch, I think it was, and on that occasion he reported to me--he is the victim--that his place had been broken into. I asked him was the thing

investigated. I believe he said Trooper Layne had been there and he might have said the sheriff had been.

I then the following day asked the sheriff about it and he said he had turned it over to Trooper Layne. It is still unsolved.

Q Section 8 under Roman numeral II. In March 1954, the residence of Colonel J. B. Cralle near Owens was broken into and property valued at more than \$500 was stolen. The sheriff was notified on or about the 14th of March 1954 of the crime and requested to go to Joe Bland's house, the caretaker, who would unlock Colonel Cralle's gate and go with him to the house for investigation.

A day or so later the sheriff informed the attorney for the Commonwealth that he had been to the Cralle entrance and that the gate was locked and that he did not go to Bland's home, as requested.

Bland made three or four calls to the attorney for the Commonwealth, requesting that the sheriff investigate. About one week later the sheriff took a trooper and made a poor investigation. The defendant could not even determine the point of entry into the house.

Joe Bland sent for him later and showed him the robbers got in from the roof. The crime is still unsolved.

In that paragraph, Mr. Morrison, you charged the sheriff of going to the scene of the crime a week later, taking a state trooper and making a poor investigation. What about that?

A On the Monday morning following the weekend that I notified the sheriff I tried to notify him to go there, and he got word from me--incidentally, the sheriff in my office told me that he had gone to the gate and I said, "Well, sheriff, you remember I informed you that Joe Bland, the caretaker, lived just below the gate. He is a colored man and will take you to the house. The gate is locked, as I told you originally it was locked, and he will take you up there and show you everything."

"You know," the sheriff said, "I did not do that." I said, "Well, please go back because he keeps calling me and I am not a policeman."

I think about a week later he went up. The exact time I do not know. He got the trooper and he told me this himself, and went to the scene, got Bland this time and went to the house.

It is an old colonial house, vacant, because Colonel Cralle is now serving in Fort Slocum, New York, in the military forces.

The sheriff told me later, because I kept contacting him, that he had been there with Trooper Layne and could not get too much to investigate on because the caretaker, Joe Bland, did not have a list of what was stolen, that he was getting it from Colonel Cralle.

He further said he could not find out how they got in,

and later he told me that Bland had gotten him back again and that he had found they had got in from the roof of a porch and that a lot of stuff had been taken, and in due time the list was given to him.

BY THE COURT:

Q Do you know how long after the break-in he got the list?

A I could not tell you the exact date because I had my wife run a mimeograph off so the state police could get in this, too. They got copies.

Q Do you know approximately when, how long after the breaking-in?

A Colonel Cralle came down. I do not recall the exact date, but it was not too long after that.

Q Was it a week or a month?

A It was less than a month. I can get it for you if you need it. It is in my office.

BY MR. CHICHESTER:

Q Subsection 9 under Roman letter II. "The sheriff had reports of criminal activities in a house near Potomac Church then owned by Missouri Berry and occupied by Pearl Brown and others. Nevertheless, the sheriff did nothing to properly investigate the alleged violations and finally the attorney for the Commonwealth and state police got sufficient

evidence to obtain an injunction closing the house in 1952, after a fight there."

The file in the Circuit Court styled Commonwealth versus Missouri Berry, Jackson--

THE COURT: Let me see that file.

MR. CHICHESTER: Does Your Honor want to look at that first?

THE COURT: Yes. The witnesses seem to be named, the state police officer, and Sheriff Dishman.

THE WITNESS: Yes, sir. I can tell you about that when he questions me.

THE COURT: All right.

BY MR. CHICHESTER:

Q Under that section, Mr. Morrison, you charged that the sheriff did neglect to properly investigate the violations set out in that. Please tell me what you know about that.

A I want to make it clear that he was not called in on this occasion either which the house was closed, but where he fits into that is this.

I anticipated that these people would try to come in and deny they were living lasciviously and rowdily, and the sheriff had been there many times, had had complaints up there because he told me, and he said he would testify in the case when it came up before Your Honor, that he had had all these complaints up there, and he made an affidavit to that effect, which I

think it did in 1952, that he had had numerous and many complaints up there about that house, and to my knowledge he has never done anything about it.

MR. CHICHESTER: The record of the case that Your Honor has there, does that involve? I have not seen it.

THE COURT: It is an injunction proceeding brought by Mr. Morrison to enjoin and restrain this house as a public nuisance, and it was set down for trial in May 1952, and at that trial Estes, state police officer, testified the place had been a source of trouble and was a public nuisance, but there was no evidence that it was a house of prostitution, and James Payton testified he lived there with Pearl Brooks.

THE WITNESS: Pearl Brown, was it not?

THE COURT: Brooks, I think it is, and she sleeps with him; that Margaret Smith and George Brown slept together, and then Pearl Brown said that those persons rented the house from Berry and Margaret Smith and George Brown and James Payton and she lived in there and she said they had all been married, 'And I stayed downstairs in the bedroom, that James Payton and I slept in the same bed, and that Margaret Smith and George Brown slept together.'

MR. CHICHESTER: Judge, I do not care to hear all that.

THE COURT: The state police officer called the house on last Saturday night and somebody hit Margaret Smith with a piece of wood and Sheriff Dishman said that he had had many

calls to the place and Pearl and Margaret said Payton shot at them and he says that it was a nuisance, and that seems to be the substance of the thing and I granted an injunction.

THE WITNESS: Stanley Owens, Prince William, wrote Berry and cooperated.

THE COURT: Yes, yes.

BY MR. CHICHESTER:

Q I believe you stated the sheriff did not investigate it?

A He did not, no, because he got no notice of it. I got a call from Peter Washington who has been trying to clean up Cash Corner for a long time that there had been an assault up there.

I am talking about this particular occasion, and I got the police because we had to act fast, and I met the police there. I did not do any police work, but I stood there to make sure that they got everything they could so we could close that house up. It was so near a church we wanted to close it up.

Q You charged the sheriff did nothing to properly investigate the violations.

A Previous violations.

Q Subsection 10 under Roman letter II in the latter part of 1951, Henry S. Fitzhugh of Owens, reported to the sheriff that some very valuable 1812 cannon balls, heirlooms, had been stolen from his home.

The sheriff made a very incomplete investigation and found nothing. Later, the attorney for the Commonwealth, with the assistance of Washington police, developed strong evidence as to the guilty party, and the sheriff was requested to go with the victim and the Commonwealth attorney to Washington, D. C., to assist the District of Columbia police in further investigations.

The sheriff refused to go and took no interest in the case. The accused was indicted on March 14, 1952, and the jury acquitted him later.

See the file in Commonwealth versus John W. Watson, Jr., in the Circuit Court.

A Do you want the record?

Q Let me have it, please. I do not care to go through all of these papers right now.

You charge under that item that the sheriff refused to go to Washington to investigate and took no interest in the case. How about that?

A All right. After I developed, with the help of the metropolitan police chief, Murray, and certain detectives around through Washington, I got information that a person named John W. Watson, Jr., that Henry Fitzhugh had suspected from the beginning was in Washington, and we decided to go up there. Mr. Fitzhugh agreed to drive his own car, his better car, not his old one, and I then got the sheriff and asked

him would he go along because I felt that was a police matter and the high sheriff could certainly be with the attorney for the Commonwealth and the victim when you go out of the state.

He said, "I am not interested and I do not want to go," his exact words. He said, "I do not want to go," or words to that effect, and he did not go.

Mr. Fitzhugh and I went alone and met the police in Washington. Mr. Fitzhugh is in the courtroom for testimony on the rest of the case because it would probably be hearsay.

Q Subsection 11 under Roman letter II, the sheriff made incomplete and poor investigations in the following additional cases, and they are numbered from A to D. I will just read A.

(a) Webber's store broken in November of December 1955. See the file in the Circuit Court of Commonwealth versus Mericle.

You charged the sheriff made incomplete and poor investigation of that case. Tell me what you know about that, Mr Morrison.

A Yes, sir. After the crime first came to my attention through the sheriff or the trooper--I am not sure which--the sheriff told me that he had turned it over to Trooper Layne and that Layne was handling the matter. Trooper Layne worked hard. He worked night and day. I know it, because I went

with him several times at his request.

Several times I asked the sheriff if he did not think he ought to go down there and take more interest in it because Mr. Webber is a new man in the county, a neighbor of his, and I thought he ought to have the full protection of the law like everybody else.

He said Layne would handle it.

Lloyd Farmer, his former deputy sheriff, discovered the true evidence that led to the arrest of Mericle, who was in Florida, and we extradicted him. He was convicted and plead guilty, and due to his age and background, being in the service, just discharged, he got a year.

THE COURT: You said the former deputy got the evidence on him?

THE WITNESS: Yes, sir. The former deputy sheriff got the lead and turned it into Layne and Layne got the evidence, went to Florida and got the prisoner.

BY MR. CHICHESTER:

Q Subsection B under section Roman letter II, Commonwealth versus James Ford, assault upon his wife in March 1952, tried in April 1952 in the Trial Justice Court.

You charged that the defendant, Sheriff Dishman refused to investigate for the wife. Please state what you know about that.

A Yes, sir. I will try to keep away from hearsay, and

if I mention it, please stop me, Mr. Butzner. You know lawyers are poor witnesses.

Marguerite Ford complained to me that she had been badly beaten by her husband. She came to my home. She had such a black eye it was hard to see she had an eye. It was a horrible thing.

In due time the warrant was sworn out and the case was tried in the usual procedure. Marguerite Ford is here, I believe, to testify.

THE COURT: Who was present when she was beaten?

THE WITNESS: Who was present?

THE COURT: Yes.

THE WITNESS: The witnesses that testified in court.

The sheriff testified that he had been called and a warrant had been issued, I think. He testified he made no investigation, as I recall it.

Marguerite Ford testified. She was the victim. Then on the defense side--

THE COURT: I am not interested in the defense.

THE WITNESS: Joseph Johnson, Jr., testified for the Commonwealth, I believe.

THE COURT: He saw the attack made on her?

THE WITNESS: Yes, sir. He saw the attack. It occurred in the store at the circle. Wilson Cash testified. I do not think he saw the whole thing, but he saw part of it. If he

did not testify, he was here.

Boozie Payton testified. He was there, and I think that is about all.

BY MR. CHICHESTER:

Q Was Sheriff Dishman notified of this violation?

A Yes, definitely. I informed him myself after the complaints.

THE COURT: What happened to Ford? Was he convicted?

THE WITNESS: In due time he was convicted and got a \$50 fine and I believe a suspended jail sentence.

BY MR. CHICHESTER:

Q Subparagraph C under subsection II. Harry and Horace Long, misdemeanors and felonies in late 1953 or 1954. He turned the matter over to the state police and to you, saying he was busy or something else.

You charge the sheriff with turning over the investigation of these matters to the state police and to you, saying that he was busy.

What do you know about that?

A These were two boys, ages 14 and 15, living near Edgemoor. They were students in school. Complaints were made and in due time violations admitted by them totalling ten or twelve--I cannot remember exactly--two of them being felonies, the rest of them misdemeanors.

Sheriff Dishman was constantly informed about these

cases and asked to investigate, and he said he was investigating, but the crucial time came after part of the violation had been heard in the Trial Justice Court and the others were still being investigated, there were so many of them.

The sheriff personally came in my office in the presence of Trooper Layne and myself and said, "You boys can handle this investigation."

We had to go to the home of the parents, where the boys were. They had been suspended from school.

He told us to handle it and I felt it was inadvisable for me to take part in such a violation because a prosecutor should have to keep out of those sorts of things. Trooper Layne investigated them and did a good job.

Q B under subsection Roman letter II, on or about September 17, 1952, James Thomas Merritt, who was then residing at a house near Dahlgren, Virginia, the same house where Larrain Thomas was found with money and numbers tickets on April 30, 1954, died. The sheriff was called in.

The defendant had a private physician from Stafford pronounce the death, and our coroner made no investigation. There is evidence that deceased may have been poisoned. There was no report to me by the sheriff.

You charge there that the sheriff had a private physician to come from Stafford County and pronounce the death, and that your local coroner in King George did not investigate the

matter. What do you know about that?

A After this lottery arrest on April 30, 1954 at his house which had been under suspicion for a long time near Dahlgren, I told the sheriff that I had just received information which indicated that this particular man, whose name was James Thomas Merritt--I believe it is two r's--had died on September 17, 1952, and that I wondered why there was no coroner's investigation.

The sheriff told me himself in the clerk's office just very recently that he called in Dr. Lee, and Dr. Lee is a fine doctor and he is coroner in Stafford, but not in King George, and I told him that I had information indicating the man may have been poisoned, and he said, "Uh-uh, uh-uh."

I asked him why he did not get our coroner, and I do not know yet what his answer was because it was very evasive. Dr. Lee does not have to make an investigation. I do not have to talk to him. All coroner's reports are sent back to the Commonwealth attorney from the Chief Medical Examiner's office, so they can examine them.

I have no such report. I have the death certificate here. I might say the death is now being fully investigated by proper authorities. There may be an exhumation, but I do not know.

THE COURT: He is the coroner in Stafford County?

THE WITNESS: Yes, sir, and a good one, but coroners have to know what they are investigating.

MR. CHICHESTER: I would like to file this as C-5.

(Said document was received in evidence and marked "Exhibit No. C-5.")

(A short recess was taken.)

MR. CHICHESTER: The last paragraph was D.

THE WITNESS: I was about to make one more sentence on that. Sheriff Dishman has not yet reported that unattended death to me as Commonwealth attorney.

THE COURT: I thought you said he talked to you about it?

THE WITNESS: Not as a death. When I questioned him about my report it may have been poison, he told me what he did, but he did not report the death in 1952 as an unattended death, or at any other time.

BY MR. CHICHESTER:

Q Roman numeral III. The acts charged in paragraph C of the petition are: 1. In the case of Commonwealth versus Earl Thomas Cliff, charged with grand larceny, that a preliminary hearing in the Trial Justice Court on the 25th day of March 1952, the Sheriff persistently evaded simple questions and as to statements made by the accused in his presence and the presence of a state trooper and the attorney for the Commonwealth.

The transcript of this testimony was made by V. H. Stevens of Richmond, and the record clearly shows that the sheriff was

not freely and frankly testifying. This matter weakened the case.

Please tell what you know about that, Mr. Morrison.

A Yes, sir. On the day that the sheriff and Trooper Estes picked up this young boy for investigation, they decided to bring him to me to question him in my presence, and so forth, and they asked for any legal advice I could be able to give them.

It was on a Sunday around 10:35 a.m., standard time. I was at St. Paul's Sunday school, where I was then teaching class.

Sheriff Dishman came in the church and beckoned for me to come out and I did. We went to the sheriff's car or the Trooper's car, I think it was, where they had this boy, and they asked me to get in the car, which I did, and they proceeded to question the boy in my presence.

At the preliminary hearing on March 25, 1952, the sheriff's testimony, which covers pages 60 through half of page 74, both direct and cross--I do not know whether Your Honor wants to read this. It would take a good while.

Persistently the sheriff did not even answer simple questions. I asked him who was in the car at St. Paul's church when I came out at his request for questioning. He could not tell me who was in the car at any time. He evaded. He could not say whether Earl Thomas Cliff was in it or other people.

He was evasive about whether he had made an investigation, and yet he had been working with Trooper Estes all along.

His testimony was such that if we had a good case it would certainly be shot to pieces when a Commonwealth witness, the sheriff, so testifies.

I have the record here if you care to see it.

THE COURT: What happened to the case?

THE WITNESS: It was sent to the Grand Jury because we found it was slightly over the \$50 valuation, according to the court's findings, that later this boy had a terrible accident and out of the interests of humanity, I not pressed the case for that reason. I would do it for anybody. He was paralyzed from the waist down.

BY MR. CHICHESTER:

Q You said the sheriff in his testimony at that time was similar to an adverse witness?

A It reached the point where I am not sure whether I did cross examine him as an adverse witness, but if I did not, I certainly should have. He was adverse throughout, yet he was supposed to be helping Trooper Estes because the state police, while they certainly cooperate with the sheriff, they have to follow the instructions of the governor to stay on those highways as much as they can. We do not have enough of them.

MR. CHICHESTER: Have you read this.

MR. BUTZNER: I have read it.

MR. CHICHESTER: Do you have any objection to it?

MR. BUTZNER: Just put it in the record. I want the whole thing in the record from 61 to 74.

MR. CHICHESTER: I would like to introduce this as Commonwealth Exhibit 6. That will be from page 61 to the middle of page 74.

THE COURT: All right.

(Said pages were received in evidence and marked "Exhibit C-6.")

BY MR. CHICHESTER:

Q Subsection 2 in Roman numeral III. In other cases too numerous to mention, during his present term of office, the said sheriff has frequently been very evasive as to what he could testify to in any cases.

THE COURT: In specific cases?

BY MR. CHICHESTER:

Q The further bill of particulars reads as follows:

1. In the case of the Commonwealth versus a 1954 Plymouth automobile and \$478.96 in money, on information filed by the Commonwealth attorney in reference to car and money seized in a lottery arrest made on April 30, 1954, Sheriff Dishman has been telling many people in the county, including the Commonwealth attorney, that the state cannot confiscate the car and that the car is not in his custody.

In other statements he states that he has seized the car and so forth. His statement to the Commonwealth attorney is

contradictory as to how he will testify, and his remarks about the state's rights in the matter are prejudicial and improper.

State what you know about that.

A Yes, sir. On April 30, 1954, this Larrain Thomas was caught with numbers and money and charged accordingly, and within the ten-day period I filed the information as directed by law to confiscate the car.

Before doing so, I complied with the code section in question, which is, I think, 18-, no, it is 14-5 or something.

Q It does not make any difference.

A Anyhow, I filed the information, but I think I first took the precaution of having the sheriff sign a written statement to me that he had seized the car and had custody of it. I drew it up and showed it to him and said, "Is that true?" He said it was true and he signed it, yet after the arrest the car was parked near the Dahlgren scales where there is usually one trooper and some civilian employees around.

So I had to go there in the course of this other matter, with the trooper. I found that the car was not only unlocked--that is the front part of it--but was sitting there where if a trooper had to go a JP as they do frequently for arrests, it would be unprotected. Somebody could pull up there and take it away with a wrecker.

I personally asked Randall Hoge to move that car to his garage, where it could be put under guard or, rather, locked up,

and after first trying to find the sheriff and I could not, I personally had it done because I felt that that car was extremely important that it be not moved away.

The sheriff several times accused me of taking possession of the car and said he did not have custody of it, yet he knew where it was and was with me when we went through it carefully for evidence.

He told me and he told a lot of others that the law was he could not confiscate a car, and I told him why wouldn't he be a sheriff instead of a lawyer, or try to be.

Q Subsection 2 under further bill of particulars. In the preliminary hearing in the case of Commonwealth versus James D. Prior, charged with forgery, Sheriff Dishman went to Alexandria or Washington to get the prisoner. Upon his return, the Commonwealth's attorney could get no satisfactory information from Sheriff Dishman as to what questioning he made of the defendant after taking him in custody from the District of Columbia police.

His testimony at the preliminary hearing was so weak that the Commonwealth attorney did not call him to testify at the trial. He should have been able to develop evidence for this state to demonstrate no real interest. The defendant was acquitted. See Commonwealth versus James D. Prior, Circuit Court.

I ask you what you know about that.

A James D. Prior was charged on a warrant sworn out by my complaint from Wayne Newton, cashier of the bank of King George, with forging the name of old man Staley Prior, who was then 90-some years old or around 90.

He had endorsed a note of this party and the bank had to charge it back against Mr. Staley, the endorser, and it was discovered in due time there had been a forgery on a renewal.

He was charged with that. We had the testimony of old man Staley before the Grand Jury upon which the indictment was issued, yet at the trial Staley changed his story, as Your Honor may remember.

THE COURT: He certainly did, and said he signed it.

THE WITNESS: I asked you to not press it and you said--

THE COURT: I found him not guilty.

THE WITNESS: The jury did. When a witness commits perjury, I am not pressing. Anyhow, the sheriff--

THE COURT: You know, I do not know what he testified before the Grand Jury.

THE WITNESS: I do. The grand jurors told me.

THE COURT: But the Court of Appeals held in the Jacobs case, I think it was, if a man testifies one way in one court and another way in another court, that was not sufficient for an action on perjury.

THE WITNESS: I looked up all the cases in Virginia at the time I charged Wyman with perjury. The cases held if

there are two false statements you have to prove which one was false. I know the first one was true. The second was not, but I cannot help but think the old man had pride--

BY MR. CHICHESTER:

Q Continue, Mr. Morrison.

A The sheriff went into the District of Columbia after we got out the warrant, turned in to him, located him through the Washington police, and was told after he arrested him, like any good officer he should question him after warning him of his constitutional rights, and when he came in and I thought he had himself an excellent opportunity which would fortify the old man, he said he had not questioned him one bit. He took a lackadaisical attitude about the whole case, and as I said, I did not call him for the trial because he proved to be so thoroughly uncooperative toward the whole matter.

Q Paragraph 3 under further particulars, in the case of Commonwealth versus Ford tried in the Trial Justice Court on March 29, 1952, Dishman kept testifying, "I cannot remember" to questions from the attorney for the Commonwealth. He admitted on the stand that he had made no investigation of this assault.

What about that, Mr. Morrison?

A My notes, I do not believe I have them here, but I always make notes at hearings and trials to show that he would frequently use this statement, "I cannot remember" on things

that I know he did remember, and I thought if he was going to testify like that, even though his memory might be short, I certainly should not use him in the trial. I am not sure whether I cross-examined him adversely or not, but I think I did, and when a Commonwealth witness has to be cross-examined adversely, a police officer, you have no case.

THE COURT: What case is that?

MR. CHICHESTER: Commonwealth versus Ford.

THE COURT: Where was that?

MR. CHICHESTER: The Trial Justice Court.

THE WITNESS: Judge, may I say something? There is one witness here who runs the Hillcrest Grill, and I imagine he wants to get back, S. B. Butler.

THE COURT: Whose witness is he?

MR. CHICHESTER: A Commonwealth witness. I suggest you let him go.

THE COURT: If the Commonwealth attorney wants to do that, you might let him go. S. B. Butler used to be a state trooper.

MR. CHICHESTER: Mr. Butler, would you like to go home and prepare something to eat? We will not need Mr. Butler until this afternoon.

BY MR. CHICHESTER:

Q This Roman letter IV, the acts charged in paragraph E of the petition are, 1. On April 30, 1954, all arrangements had been made for a search warrant to be sworn out and executed in connection with possible violation of

The said sheriff could not be found, and after considerable waste of time, he was found to be in the courthouse sound asleep. This delayed the plans and operations materially. On this search warrant James was charged with possession and so forth of numbers slips while parked at the house where James Merritt died.

What do you know about that?

A We had, for many weeks, --when I say, "we," I mean myself and the FBI security officers at Dahlgren had formulated plans for trying to get this lottery thing wiped out, and liquor violations along with it, because we felt there were violations, and when our plans had been carefully laid, the security officer was to call me when they were ready.

They called me on the date in question, namely, April 30, 1954, a little before noon, and said everything was set and I had got one fellow at Dahlgren and we knew shortly there would be one coming to that house, so time being important, I called the sheriff's home, could not reach him, called the Circle Inn, could not reach him.

I called everything I could think of and yelled out the front quite a bit, and no answer. I am not sure, I do not recall whether his car was here or not.

In any event, I could not find him, so I had to be at Dahlgren to get this search warrant ready. I took them with me and got a JP there and a trooper there, and I asked my wife

to please go find the sheriff, if she had to call everybody in the United States, because he should be there, he being the high sheriff, and my wife will have to testify where she found him, because I did not find him.

Q This is B2 under Roman numeral IV. About one week or ten days--the exact date unknown--prior to May 13, 1954, attorney for the Commonwealth wanted to reach the sheriff reference report of liquor complaints. He was not at home that time and his wife said she had no idea where he was, but that he had gone to Ryland's store.

He was not at Ryland's store and not at any other number called by the Commonwealth attorney. Mrs. Dishman took the telephone number of the Commonwealth attorney. He asked her to have him call him when he came home. He never called.

A He has not called yet.

Q How about that, Mr. Morrison?

A On that particular occasion I had some people that were getting more informative after this trial. They were coming and telling me a lot of things I already knew or at least thought, but they were getting more loose with it and I had reports of more violations on liquor, myself, so I thought I had better get in touch with the sheriff and lay plans along with other plans.

I called his home and Mrs. Dishman answered the phone, said she did not know when he did go out. I know she said--

MR. BUTZNER: Is that not quite a bit of hearsay?

THE WITNESS: All right. In any event, he was not home. I gave her my number, No 3-3151--that is my home--because I would be there at night, and I asked her to please call me, no matter what time it was.

I was used to getting up at night. I asked her to have him call me because I had something important to tell him. I did not think I would reach him at Ryland's store because I think they are on fast time and the phone would not answer, and I assumed they were closed.

THE COURT: When did you next see the sheriff after that?

THE WITNESS: What day, what month was that? About a week prior to the 1st. Unless the next day was Sunday, I probably saw him the next day. I would not say for sure.

BY MR. CHICHESTER:

Q Did he ever indicate that he knew of your call?

A No. I might say this that might help you on that. I am not sure it was the following day, but certainly around that time. I had to go to Richmond. When I came back, Mr. Mason told me Tom Rose wanted to see me, and on my way back I came up number 3. Number 3 is the way to Shadow, not to 9, and I passed the sheriff on the road. He was headed that way, down route 3, and a short time thereafter I passed another car in which Mrs. Warrington was travelling, and I did not know

whether they were out on a welfare investigation or what, but I did see him later that day.

He came to my office later that day and I told him about Tom Rose and told him to go down there, and he did. Tom Rose had a minor complaint, but I think you ought to answer all complaints, no matter how minor or how erratic the complaint is.

Q This IV under 2, Roman numeral IV. During the past two or three months -- the exact dates are unknown -- the attorney for the Commonwealth called the sheriff's home, looked in his office and called every conceivable place for the sheriff to discuss law enforcement problems. On many of those occasions he was finally found either in the office of the superintendent of welfare of King George County or out in the car with her.

What do you know about that?

A Again, I cannot give specific dates because it was almost daily occasions over the past two or three months -- I am not suggesting anything immoral. Do not misunderstand me, but I just could not find him and generally if I found him -- I would not say every day, but certainly very frequently -- I would find him either upstairs in the welfare office, maybe officially, I do not know, or in the car with Mrs. Warrington. Maybe it was something official, I do not know, but for my purposes of law enforcement, my purposes of trying to protect

the people in this county, I could not find him on many occasions.

MR. CHICHESTER: I believe, if your Honor please, 4 under this section of the served bill of particulars and the original bill of particulars is the same, and I think we have gone over that under section 3, which Mr. Morrison has just answered.

MR. BUTZNER: Are you dropping any specification?

MR. CHICHESTER: No. I am not dropping. I am just not offering any testimony on it. It would be the same thing or approximately the same thing.

THE COURT: Have you finished with the charges against the sheriff?

MR. CHICHESTER: Yes, sir. That winds this up. We are through with the witness.

CROSS EXAMINATION

BY MR. BUTZNER:

Q Mr. Morrison, who did you say the complaining witness who got out the warrant in the Hundley case was?

A As I recall it now, the warrants are in evidence here. As I recall, Frank Mottley drew it out, but it might be Dishman did on that complaint.

Q Frank Mottley?

A He was the victim. I do not know who swore the warrant out.

Q You previously testified, I believe, that Frank Mottley swore it out.

A He was the cause of its being sworn out.

Q As a matter of fact, the very man you are citing here is the Defendant, Dishman, the sheriff, who swore out the warrant?

A Good for him. I am glad to see him do it for once. I wish he would do it more often.

Q Now, let us take the next one. The witnesses who were summonsed were Frank Taylor of Sealston, Edward Taylor of Sealston, Ella Creed, Truett Shooks of King George, and Lawrence McDaniel of Weedonville.

The sheriff received notice some time after 5:15 p. m. on April 7, concerning this, did he not?

A He received the summons in my presence in Mr. Slipek's office. I went over purposely because the thing had been kept from me so long I wanted to be sure they were there. They were, I believe, witnesses.

Q As a matter of fact, he received the summons after 5:15 p. m., did he not?

A Yes, but he knew about the crime for a long time, and I did not.

Q He knew that it was coming up the next day?

A He should have known.

Q What time were these summonses put in his hands?

A Around 5:15. I do not know the exact time.

Q You wrote this letter in your office at 5:15?

A I took it to the Trial Justice's office.

Q What time were all these summonses issued?

A Five minutes later, ten minutes later. You will have to ask Mr. Slipek.

Q I thought you said you were there?

A I was. I do not know how long it took him. He will have to answer that himself.

Q But you were there and you admit you do not know what happened while you were there?

A I did not say that.

Q You admit you do not know anything about how long it took to prepare the summons, do you not?

A I did, because I did not stand there and watch every typewriter hit. My point was to get those witnesses here.

BY THE COURT:

Q Mr. Morrison, did you not say you saw the summons put in the sheriff's hands?

A I saw the summonses put in the sheriff's hands, but I did not see the actual typing of the things.

Q What I mean, what time was the summons put in his hands?

A I cannot tell you the exact time. I took the letter. It was probably a minute or two because I rushed it through in

a hurry, because I wanted the witnesses in court the next day.

MR. BUTZNER: Judge, we have been through that.

BY MR. BUTZNER:

Q You were asked simply what time.

A I told him I did not know the exact date.

Q You do not recollect?

A No.

Q You do not remember?

A I have said that three times.

Q Of course, the sheriff is being highly criticized both because when he sat in that very chair he did not remember things --

A When he did what?

Q When he answered he could not state the exact minute.

A I have never heard him get down to the question of two or three minutes. If he would get that close, I would be happy.

Q Yet you take the same records and state you do not remember?

A I did not say that. I said I do not recall the exact time and I am not going to lie. You cannot make me lie.

Q I do not think it is within my province to make you a liar or not a liar.

A You might make me appear to be one.

Q Your character remains, though.

A That is right, and it is my reputation.

MR. CHICHESTER: Mr. Morrison, let us not get alarmed.

THE WITNESS: I am not alarmed, but I think he should quiet down.

MR. BUTZNER: Your Honor, I am not going to quiet down. I am not going to whisper this case through court.

THE WITNESS: I can hear him. Go ahead and yell.

BY MR. BUTZNER:

Q So you do admit the sheriff got out the Hundley warrant?

A I have not seen it. I have said if he did, God bless him for once.

Q Do you doubt he did?

A I do not question your word. You have the warrant in your hands. I have not.

Q The Hundley was found guilty?

A The Hundley man was found guilty eventually, yes, at the second trial.

Q At the second trial he was found guilty. The sheriff testified in the second trial, did he not?

A I would have to look at my notes on that.

Q He was one of the witnesses you wanted summonsed?

A I wanted him in the courtroom. I did not mean I was going to put him on the stand.

Q He swore out the warrant?

A That does not mean he is going to be here.

Q The man was convicted?

A The man was convicted on the testimony of those Taylor boys.

THE COURT: Did he not plead guilty?

THE WITNESS: No, sir, he did not plead guilty.

BY MR. BUTZNER:

Q Do you deny under oath he did not plead guilty? You said, "Certainly, he did not plead guilty." I want to get it straight.

MR. CHICHESTER: Wait a minute, Mr. Butzner. The warrant speaks for itself as to whether or not he pled guilty.

MR. BUTZNER: The warrant speaks for itself. He is testifying under oath.

MR. CHICHESTER: That is all right, but that can only go, your Honor, to test his memory.

THE COURT: To test his memory, yes.

MR. BUTZNER: And his credibility.

THE COURT: All right. You can do both.

BY MR. BUTZNER:

Q You answered the man did not plead guilty? You said he did not?

A Let me answer it.

Q I asked you --

MR. CHICHESTER: Wait a minute, Mr. Butzner. You let

him finish his answer.

A I did not say that. You are not going to put words in my mouth.

Q All right. Finish your answer.

A At the trial when it was finally called, as I recall the case and again, I am doing it from memory, and in that case, as I recall it, the attorney who represented Hundley was a young fellow from Montrose, Clifford Hutts (?), whom they call Rabbit.

MR. CHICHESTER: Judge Smith called him Rabbit?

THE WITNESS: Rabbit. At first he told him to plead not guilty. As I recall it, after the Commonwealth case had rested or was ready to rest, he changed his plea to guilty, after I put on my evidence.

BY MR. BUTZNER:

Q He was not convicted on the testimony of any witnesses? He was convicted on his plea of guilty?

MR. CHICHESTER: That is a matter of opinion.

THE COURT: The record must speak for itself.

MR. CHICHESTER: Mr. Morrison cannot say what factor made him plead guilty.

THE COURT: Mr. Morrison cannot contradict the record, and even a Trial Justice cannot contradict the record. What does the record say?

MR. BUTZNER: To contradict what has been testified.

to, I want to read into the record the finding of the court in the case of Commonwealth against Walter L. Hundley. "Upon the defendant's plea of guilty to the within charge, and upon examination of the witnesses, I find the accused guilty as charged and judge he shall pay a fine of \$200 and costs and be confined in jail for a period of 15 days unless sooner discharged."

That is the warrant.

THE COURT: All right.

BY MR. BUTZNER:

Q Now we will move to the next one. Now, in the Caruso case --

THE WITNESS: Crusce, not Caruso.

BY MR. BUTZNER:

Q As a matter of fact, in that case it was not the Commonwealth that moved for any continuance, it was the attorney for the accused who moved for a continuance, was it not?

A Mr. Butzner, to answer your question I will have to give a little information.

Q Read my question to him again. It is very plain and very simple. I asked who moved for the continuance.

A He moved for the continuance, Mr. Moncure from Stafford County, and he just informed me when he walked in this courtroom.

Q Who moved for the continuance?

A He did.

Q And the court in its discretion granted the continuance?

A It did, over my opposition.

Q So, as a matter of fact, no witnesses, whether they were summonsed or not, testified that day, did they?

A No witness testified that day because undoubtedly the sheriff knew there was going to be a continuance. I did not, because he kept asking me was there going to be a continuance and I asked him who was he representing, Ralph Gwynes?

Q May I time you know the lawyer will call the clerk, call up posing counsel, will call State Troopers and say he is going to ask for a continuance?

A Oh, yes, but Mr. Moncur came to this courtroom and said he had been employed two days ago. Why did he not call me up?

Q He is a very honorable lawyer, is he not?

A Honorable gentleman and lawyer.

Q A very good lawyer?

A Excellent, and his father is even better.

Q And you are complaining about Mr. Moncur's way of handling his case?

A I am telling you about what one particular lawyer did. He had his reasons.

Q So, to get back to it, no witnesses, whether they were

in court or not, were called that day?

A They could not. There was no trial that day.

Q And when the trial was finally hold, Crusoe was properly summonsed and in court, was he not?

A It has not been tried yet.

Q The case has been continued again?

A It is in the breast of the Trial Justice Court and no date has been set to my knowledge. It could be without my knowledge. I do not know.

Q Is it not a fact the case was continued to another date certain?

A Which case now are you talking about?

Q I am talking about the Larrain Thomas case.

A At what point?

Q On the 5th day of June.

A Let me put it this way. It was not exactly continued. It was just generally carried over because in the meantime I informed Mr. Muncure I was sending it to the Grand Jury and his Honor called a special Grand Jury for that reason.

Q Were not witnesses summonsed after the 15th of May, after the new trial date was set?

A They summonsed Crusoe on the 6th. I do not know what date they told him, but he was not brought in here that day because I did not want him to get out of the state.

Q He did not get out of the state, as a matter of fact?

A I do not know. It was heard one later date. I do not know where he is now.

THE COURT: Is he a resident of King George or not?

A He was a resident of King George for a long time. He works at Dahlgren and they had a civil service hearing, and I do not know what the outcome was.

BY MR. BUTZNER:

Q Now, there are a lot of general allegations. We are not going to take them one by one, but you admit that you changed your date from February 11, 1954, concerning the Berry conversation to another date. This is in error?

A I corrected it.

Q I say, it is in error?

A November 11, being Armistice Day. There again, here cannot be any question about it.

Q I say, this is an error?

A You are looking at it. I have not seen it.

Q You wrote it?

A I wrote it, but I have not got it in my hand right now. What does it say?

Q Right here, February 11, 1954. Right there. Your counsel knows.

A That is a typographical error. It should be November 11, 1953.

Q What is the typographical part of it? Was there a

key misstruck? You say it is a typographical error?

THE COURT: What do you have now?

MR. BUTZNER: He makes a specific charge against the sheriff, such and such a thing happened on February 11, 1954.

THE WITNESS: It should be March 11, 1954, Armistice Day.

BY MR. BUTZNER:

Q It should be what, sir?

A November 11, 1953, Armistice Day. You know, Mr. Butzner, I had a young lady type that up who is not too used to typing legal stuff, and she made a mistake and I did not catch it.

Q You are putting it on the young lady?

A I am putting it on myself. I made an error when I wrote it. I was working under mighty strenuous conditions, working at night trying to catch crooks --

Q Actually, let us go into this number 3. You and Mr. Berry have had a great deal of trouble, have you not?

A Mr. Berry and I -- what does that have to do with this case?

Q You started talking about it.

A I will gladly tell you more. What do you want to know? I will tell you anything you want to know.

Q I want to know just what I asked you. Answer my question.

A The answer is yes, I have had a lot of trouble with Mr. Berry, beginning in 1936.

Q And you have sought the sheriff to side with you, have you not?

A That is absolutely untrue.

MR. CHICHESTER: I object to that question.

THE COURT: What is the objection?

MR. CHICHESTER: The objection is this, Judge, that of course it is known to your Honor and known to me and Mr. Butzner that Mr. Morrison and Mr. Berry never got along well together, but I cannot see how it affects this charge against Mr. Dishman. It does not make any difference to me, but I am trying to save time.

THE COURT: He put something in the bill of particulars about Mr. Berry.

MR. CHICHESTER: He mentioned his name, and that is all.

THE COURT: I have had any amount of litigation between Mr. Morrison and Mr. Berry.

THE WITNESS: In which Mr. Morrison was always the plaintiff.

THE COURT: Mr. Morrison was the plaintiff, I believe, yes, Gates, Ditches, Dogs.

THE WITNESS: Trespass, Fences, Yelling, Interfering with my wife and children.

MR. CHICHESTER: Mr. Berry has the greatest voice in King George County.

THE COURT: I have not had any suit filed about interfering with your family.

THE WITNESS: Yes, you have, trespass. A notice was served on him in 1955 to quit molesting my wife and my mother, 30 years old, and my daughter, driving sheep in the yard and cussing them and telling them to get the Hell in the house.

BY MR. BUTZNER:

Q What question are you answering now?

A Yours.

Q You have already answered it. The answer was yes.

A All right. You want to know some more?

Q I will ask you the questions.

A I believe you represented him once or twice?

Q I certainly did, and each time I believe -- I won't go into that.

A Are you going to testify?

Q The sheriff received such a call from Mr. Berry, that he had shot the dog?

A He told me he had received the call.

Q And he referred it to the game warden?

A He told me that, yes.

Q There is nothing wrong with that?

A I did not say there was.

Q Then he said he is not going to answer any more calls from Berry?

A That is right. He told me that.

Q There is nothing wrong with that?

A I think it is wrong.

Q You do not answer them, do you?

A Answer calls, from Berry? Not when he yells at night. I had to try to get some sleep. I had to get a pill from Dr. Harris to sleep.

MR. CHICHESTER: You would wear your voice out if you tried to answer him?

THE WITNESS: Man, I would never get any sleep. He has cut it out lately. I do not know why.

BY MR. BUTZNER:

Q That is the gist of the complaint?

A That is one complaint. You mean in this instance?

Q Yes.

A Yes. I do not care if he is or is not my friend. Anybody is entitled to get the law officers. I do not care who they are.

Q Mr. Berry sent you a complaint about the sheriff not acting?

A On previous occasions, he had. He got me to come to Bedford one time because he could not get the sheriff. He said the sheriff would not come and cussed him in my presence

when he would not come.

Q That made you and Mr. Berry right close together?

A No, Mr. Butzner. I testified about grievances and official duty.

Q You have your personal grievance and your official duty wrapped right close?

A No, sir, not for myself.

Q Then the complaint about your dog, that was what?

A My daughter's dog.

Q Let us go down to this Missouri Berry place, another Berry, Potomac Church?

A That is a colored Berry. This other one is white.

Q In this case, you referred to a bill of injunction against Missouri Berry, Pearl Brown and James Payton, P-a-y-t-o-n. You have out an injunction in that case and the injunction was granted, was it not?

A That is correct.

Q The witnesses who testified were the two troopers, Trooper Estes and Trooper Layne and Sheriff Dishman?

A I think there were more officers than that in it. The whole Fredericksburg staff came along, and the rescue squad, too.

Q I am reading from the record in the case.

A I am not familiar with the record. It has been a long time since I saw it.

Q And the sheriff's testimony -- and he testified in the case in a way that did not prevent you from getting the injunction?

A He testified on the one thing I wanted to know, had he had previous complaints about the house.

Q You needed that to establish whether or not there was a reason to get an injunction?

A I should not have needed it, but I felt I would.

Q When you asked him for the affidavit, he gave you that?

A I drew it up.

Q He signed it? He did what you asked him to do in regard to that?

A In this instance, yes.

Q There are some warrants against Pearl Brown and against James Payton now pending in the Trial Justice Court, are there not?

A James Payton and Pearl Brown, that is correct. They are continued generally until they get married.

Q You are the complaining witness to that case, are you not?

A I am, based on many complaints.

Q Horace T. Morrison, complaining witness. I am going to read these warrants, not the entire type, but the gist of the warrant. "Complaint being made by Horace Morrison that

James Payton --

A Commonwealth Attorney, it says, too.

6 Q Commonwealth Attorney, James Payton, within the past 12 months unlawfully cohabited with Pearl Brown in a lewd and lascivious manner, they not being married to each other, and the same warrant made against Pearl Brown, charging cohabitation with James Payton.

MR. CHICHESTER: Pardon me, are you referring to the charge on the number 9, Missouri Berry?

MR. BUTZNER: That is right, and they were mentioned

MR. CHICHESTER: All right.

MR. BUTZNER: Those warrants were gotten out or executed by the sheriff on the 30th day of April, the record shows.

THE COURT: What year?

MR. BUTZNER: 1954, and the case, as the Commonwealth Attorney says, has been continued generally.

THE WITNESS: Until they got married.

BY MR. BUTZNER:

Q Here you have absolute evidence from this case of a crime being committed in the county?

A And they are charged.

Q And they are charged, but you are going to convict them or not going to convict them?

A If they get married, I am going to nol pros them.

because I am interested in the social welfare of the people more than I am in putting them in jail.

Q So you, having got out the warrants, are planning to not pros them if they get married?

A That is my intention.

Q Is one of them presently married?

A One of them is presently married, and came to me.

The one who is presently married is Pearl Brown, and she came to me and said, "I want to marry this man." I found out they were living together after Judge Bazile told them not to do it, and they came to my office with a whole lot of citizens, Washington and I do not know who else, and said they wanted to get married, and that she was already married but had never lived with Crusoe.

7 She asked me would I get her a divorce. I told her I would go over and talk to Mr. Billingsley first. I told him what she asked me. He said, "Go right ahead. I have no interest in talking to James Payton, for goodness sakes, and go ahead and get them married," and in due time, if I ever get through working at night, I intend to get a divorce for the woman.

MR. CHICHESTER: If your Honor please, I can follow Mr. Butzner's questioning, and I submit that Mr. Morrison is not on trial.

THE COURT: No, Mr. Morrison is not on trial, but

Mr. Morrison is on cross examination.

MR. CHICHESTER: Yes, sir, but he is not on trial. If he wants to test his credibility or anything like that, that is all right, but the questions that he is going to propound now --

THE COURT: I do not know what they are.

MR. CHICHESTER: I know, sir. They are not proper questions, even on cross examination.

THE COURT: I cannot anticipate what is in Mr. Butzner's mind.

MR. CHICHESTER: I am just warning him, sir.

THE WITNESS: I will welcome the question.

MR. BUTZNER: Maybe if the attorney would make a plea to me for mercy instead of to the Court for the law, I might withhold these questions.

THE WITNESS: I think that is an improper statement from counsel because when he knows the answers to these questions, I think he will agree there is nothing unethical about it.

MR. BUTZNER: That is the first time that word has been used. I have not gotten to say anything like that. Are you anticipating it?

THE WITNESS: No.

MR. BUTZNER: Why are you talking about that?

THE WITNESS: I do not know. I could expect almost

anything from you, Mr. Butzner.

THE COURT: That is very uncalled for, Mr. Morrison.

MR. CHICHESTER: Mr. Morrison, please just answer the necessary questions.

MR. BUTZNER: Let us put it this way. The record shows that Mr. Morrison as Commonwealth Attorney got out warrants against two people charging --

MR. CHICHESTER: Your Honor, Mr. Morrison is not on trial. That is an improper question on cross examination.

MR. BUTZNER: (Continued) -- charging lewd and lascivious living, so to speak. The record also shows that there is ample testimony to support that charge.

BY MR. BUTZNER:

Q You admit that, do you not?

A Let me tell you what the record shows, the previous situation, and Judge Bazile, after hearing the matter, told them not to live together again and I found out just recently they were living together and I swore out the warrants on that complaint, after complaints came to my office, people who wanted to clear the mess up.

Q You do not deny on your motion to have this continued, it was continued?

A That is right, and with the consent of Mr. Billingsley.

Q Naturally; he is going to consent to doomsday.

A And also getting them married.

Q And he will ask you to marry them, if you can do that, to keep his client out jail?

A I do not want to marry them.

Q You want to have him agree to this continuance.

MR. CHICHESTER: If your Honor please, I object to that question.

THE COURT: That is all right.

MR. CHICHESTER: And also I am going to object to each and every one until Mr. Butzner finishes.

THE COURT: All right.

MR. CHICHESTER: And I am going to take exception.

THE COURT: I cannot see anything improper about his asking these questions.

MR. CHICHESTER: That is up to your Honor, but I will have to except to it.

BY MR. BUTZNER:

Q The reason you want to have it continued, the reason you have stated is that you are going to wait until they get married?

A If they get married. The remedy is what I seek, not cold-blooded prosecution.

Q In order to get married, one of them has to get divorced?

A That is right. The woman, Mr. Billingsley does not represent, and nobody else.

Q You represent her?

A Not in the criminal matter, with the consent of the other attorney.

Q How can he consent? Does he represent her true husband?

A He represents the man she wants to marry.

Q Do you mean to say that because he represents the co-defendant that he consents? What can he consent to? How could he prevent you?

A You will have to answer that.

Q There is no question. He could either consent or not consent?

A The answer is that I think Mr. Billingsley, like me, wants to see these people married and have legitimate children, if they can or want to, and not have them live up there lewdly and lasciviously.

Q Mr. Billingsley has told me what his position is.

A That is what he told me.

Q You want to get this record just straight about this. I am not commenting at this time on the rights or wrongs of it. You represent Pearl Brown, then, in seeking a divorce for her?

A Only in a divorce.

MR. CHICHESTER: I object to that question.

Q And if she gets a divorce and then gets married --

A To that man.

Q To that man, then you will dismiss criminal charges against her?

A I would ask the Court to nol pros it and the Court may or may not grant it. Generally, he does not grant it.

Q And then you would go in as Commonwealth Attorney in the circumstances asking that the case by nol prossed?

A I would, indeed, seeking a remedy, and I hope more of them would do that.

Q These alleged violations in number 9, are the violations of merely living down there?

A You will have to tell me what number 9 says.

MR. CHICHESTER: Wait one minute, now. I think you have finished your line.

MR. BUTZNER: No. I am coming back to it.

MR. CHICHESTER: All right.

BY MR. BUTZNER:

Q I will read all of number 9. "The sheriff had reports of criminal activities in a house near Potomac Church then owned by Missouri Berry and occupied by Pearl Brown and others. Nevertheless, the sheriff, did nothing to properly investigate these alleged violations."

The violations you are speaking of, and I think you testified about, were largely violations of people living together lewdly and lasciviously?

A And bootlegging.

Q But they included lewd and lascivious cohabitation?

A Purportedly. At that time, I had not seen evidence and wanted the sheriff to get it.

Q And now that the evidence of those crimes is in court, warrants have been sworn out, still there has been no conviction, has there?

A Mr. Butzner, I do not think you have all the facts. The charge upon which these warrants were based was on an entirely new location many miles from there.

Q Don't --

A Let me answer your question.

Q All right.

A And they had been handed to Judge Bazile on their previous violations of the title and law, both. This is entirely new. It came to my attention they are living together again.

Q I am not speaking of the house. I am speaking of the people.

A The same parties, and I knew nothing about it until recently.

THE COURT: From whom did you learn about it?

THE WITNESS: From Peter Washington, who is part lawyer and part preacher, and I learned about it from some other people, and let me tell you this, Judge. Peter Washington and his friends told me that they felt that cleaning

up the morals of their race came even ahead of segregation and they wanted to clean up --

MR. BUTZNER: Now we will proceed.

MR. CHICHESTER: If your Honor please, I move the Court to strike out such testimony as Mr. Morrison and the questions to Mr. Morrison and his answers as to his activities regarding the matter of Pearl Brown and James Payton.

THE COURT: No, Mr. Chichester.

MR. CHICHESTER: For the reason, sir, that Mr. Morrison is not the defendant here and regardless of what his actions may have been, whether right or wrong, does not affect the charge in this case.

THE COURT: It is true he is not on trial here, but he is charging the sheriff with a lot of derelictions and failure to act and so forth, and whatever Mr. Morrison's deeds and what his actions are, is a fair subject of examination to see whether the charges against the sheriff are true.

MR. CHICHESTER: And I except to the ruling of the Court, sir.

THE WITNESS: May I tell the Court one more thing about that incident?

MR. BUTZNER: We are through with it, unless you want to offer any defense.

MR. CHICHESTER: Mr. Morrison, I do not think you should testify to any more. I think you have said enough,

already.

THE WITNESS: That is why I want to go on a little further.

BY MR. BUTZNER:

Q In a case of Commonwealth against Albert Mercle, the defendant was convicted, was he not?

A On the plea of guilty.

Q In the case of Commonwealth against James Ford, Mr. George F. Mason, Jr., was retained by the complaining witness as counsel in that case to help prosecute it, was he not?

A I believe so, but I might say this, that in the course of the case she wanted to employ me to get her divorce and I sent her to George Mason.

I said, "I am not going to handle it," and she got a divorce, I believe. That was a different type case where there was a community of interests, Mr. Butzner.

Q I am not putting you on trial. You did not have to explain yourself. I never asked you about any divorce for the accused. I am asking you if Mr. George F. Mason, Jr. was not associated in the prosecution of that case?

A I think he was brought in later in the case and I think I requested it because the complaining witness said she wanted a divorce.

Q And he came in and prosecuted the case?

A He assisted me, I think.

Q Associated or assisted?

A Don't you call it associated?

Q As a matter of fact, he went into it thoroughly and did a lot of investigation?

A He worked hard on it.

Q And in that term of court it was the only case on which there was a conviction?

A I do not think it was tried before a jury.

MR. CHICHESTER: It has nothing in the world to do with this case. If Horace Morrison lost every case he had ever brought before the court, it has nothing to do with this. If he won every case he brought before the court, it would have nothing to do with it.

MR. BUTZNER: It has a great deal to do with it because he is charging he lost cases, inferentially because of the sheriff and not because of him.

MR. CHICHESTER: It still does not have anything to do with it.

THE COURT: It does have something to do with it. Go ahead.

9 BY MR. BUTZNER:

Q Next one is talking about the John Thomas Merritt death. That death occurred September 17, 1954, or thereabouts, did it not?

A I think it was the 27th, but I am not sure. I gave

you the death certificate in evidence. Whatever it says is correct.

Q And that says --

A Down on the left.

Q September 17, 1952?

A That is correct.

THE COURT: 1952?

MR. BUTZNER: Yes, sir.

BY MR. BUTZNER:

Q Of course, it was some 18 months later that Bruce Dennis and Larrain Thomas were found in the house?

A It was on April 30, 1954, not in the house but a car parked outside.

Q Parked outside the house?

A Right.

Q You charged here specifically the sheriff was called in. The defendant had a private physician from Stafford pronounce the death, and our coroner made no investigation.

As a matter of fact, the coroner who pronounced the death was Dr. L. F. Lee, who is the medical coroner of Stafford?

A I understand he is, and a good one.

Q So he was the one who pronounced the death and he is a very competent, capable --

A I have always found him in these sanity hearings that I sit in as extremely competent, but he is not the coroner of

King George.

Q This says coronary occlusion or coronary sclerosis. You have seen them?

A I have seen that. A coronary occlusion is a blockage of the heart.

Q Or coronary sclerosis?

A That is a hardening of the arteries.

Q And that is right here in the death certificate signed by Dr. Lee?

A That is right.

Q And it was not until after April 30, 1954, I believe you testified, which would be some 18 months later, that any question about poisoning came up, is that not right?

A Precisely. Upon information received by me, not from the sheriff, however.

Q No, and the sheriff had got a very competent man, you have just testified, to go into it?

A Provided he gave the doctor enough background to know what it was all about.

Q The sheriff is not a doctor?

A I do not know. He says he is a lawyer. I do not know. He might be a doctor. He does everything except be a sheriff.

Q The sheriff, I say, is not a doctor?

A If he has a medical degree, I have not seen it. A

law degree, either.

THE COURT: You know the sheriff is neither a doctor nor a lawyer, either.

MR. BUTZNER: You cannot get a simple answer out of him.

MR. CHICHESTER: Does he practice one profession or the other?

THE WITNESS: He has been practicing law a long time and has no license. He has been drawing wills and giving advice to people.

BY MR. BUTZNER:

Q I asked you whether he was a doctor. I did not ask you whether he was a lawyer.

A As far as I know, he is not a doctor.

Q That was not hard, was it? That is all I wanted.

A It was very easy.

Q He got a man whom we all admit is very qualified?

A A good doctor.

Q And he holds an official position as coroner of the adjoining county?

A He did that, yes.

Q Have you talked with Dr. Harris as to why Dr. Harris was not called?

A I have not, but I was informed -- do you want to hear that?

Q I will ask the questions. As a matter of fact, Dr. Harris was sick at that time?

A So I am informed, but that does not excuse him from complying with the law.

Q As a matter of fact, would you be willing to change your evidence after a thorough examination?

A How much of the evidence?

Q Change your charges and allegation in paragraph 9 if you knew the sheriff had called Dr. Harris and Dr. Harris said "I am sick. Call Dr. Lee."?

A Not in the least, because Dr. Harris did not know and I am sure Dr. Lee did not know that there are now findings it may have been poison.

Q I am speaking of 18 months ago.

A All right. I say he should call the coroner of this county, and if he cannot get him, let the coroner designate somebody to act for him, to do it as a coroner, not as a physician.

Q That is all I wanted to know, and I think that just about cleans us up.

This car that you have talked about which was down there near Dahlgren Scales, was it not?

A It was at one time.

Q And state, please, when you speak of the Dahlgren Scales, just so the record will be straight about that, the

Dahlgren Scales are state highway scales, are they not?

A They are state highway scales.

Q Maintained by the state police department?

A Not maintained by them. They are maintained by the department of highways, but they have to have the trooper there because under the laws of Virginia, they are the ones that can make an arrest.

Q They do have a trooper there?

A When they are not taking somebody to a J. P. or called out on accidents.

Q And the car was put there by the sheriff at those scales?

A I do not know who put it there. It was there.

Q This Pryor case, James D. Pryor, Mr. Willie Pryor, father of the defendant, on the trial of the case said that he might have signed the note, did he not?

10 A At the actual trial of the case he said words to that effect.

Q I am not trying to quote him.

A I am not quoting him, either.

Q At any rate, the jury acquitted the man?

A I do not know why they acquitted him. I asked that it be not pressed after he lied.

THE COURT: The court held the man had been put in jeopardy and the jury should return a verdict whether he was

guilty or not guilty.

THE WITNESS: The jury came in not guilty and I never asked them. I do not know why.

THE COURT: They came in not guilty because the man testified he might have signed the note.

BY MR. BUTZNER:

Q You do not say the sheriff lost the case, do you?

A He gummed it up.

Q How did he gum it up?

A By his testimony originally and showing he was not cooperative in getting a confession from the man when he had a chance.

Q Wait a minute, here. It turned out when the case came to trial there was nothing to confess about because the very man whose name was signed as an alleged forgery said he signed it. Do you mean to say the sheriff should have got a confession, extorted a confession wrongfully?

A Not wrongfully. He should have gotten an honest confession and the witness never takes the stand and testifies.

Q It could not be honest when Willie Pryor came in and said he signed it?

A I am sure in my own mind somebody talked to him.

Q You are not charging the sheriff with talking to him?

A No. I cannot prove it.

Q You are not charging it by implication?

A No. I cannot prove it.

Q You are not charging even by implication, are you?

A No, sir.

Q Why are you bringing it up?

A You asked for it.

Q I asked you, sir, a very simple question. The defendant was acquitted after the man whose name was forged came before the jury and under his oath said he either signed it or might have signed it.

A Or words to that effect. The sheriff did not testify in that case. I was afraid to call him.

THE COURT: There was not any use to call him after the old man testified he had signed the note.

THE WITNESS: If he had given any under his proper function, I would have called him as the first witness, but he did not give any under that spirit.

BY MR. BUTZNER:

Q You testified that on April 30, 1954, you looked all over for the sheriff and the sheriff was right back there in his office, was he not?

A Sound asleep.

Q Did you go back and look there?

A I looked in the courtroom and saw a slight crack in the door, as I recall it, and I assumed he must have not been here or he would hear me.

Q There is a big sign that says Sheriff's Office?

A A big sign says Sheriff's Office, but you seldom find him there.

Q You looked every place but the office that day?

A I am not accustomed to opening other people's office doors.

Q There he was?

A I did not open it. My wife did.

Q You charge in your allegation and specification he was there?

A She will have to testify to that.

Q He was in his own office, was he not?

A Do you want me to give hearsay?

Q Yes. You can give hearsay. He was there asleep.

You charged it.

A Yes, he was there sound asleep, apparently been out late the night before, not on law enforcement, either.

Q It was about noon or around it, was it not?

A It was around noon. There are so many conflicts in fast and slow time, I do not know. It was around that time.

Q You do not know on this night one week or ten days prior to May 13, 1954, when you called Mrs. Dishman, you do not know whether Mrs. Dishman did or did not give that message to her husband?

A I do not know. I told her it was urgent. She even

wrote the phone number down and she is a very conscientious lady.

Q You charged he goes up to the superintendent of welfare's office and charged he goes out in the car with her?

A Yes.

Q As a matter of fact, all sheriff in Stafford and these other counties go to the superintendent of public welfare's office, do they not? You know that?

A I cannot speak for the sheriff of Stafford. I know the gentleman. He is an efficient sheriff. I know Caroline County has one so busy catching bootleggers he does not have time to go to the welfare office. He is Mr. Brooks.

Q He will be here as a witness.

A I am glad to hear it. I wish I had him over here.

Q There is one other case I want to question you about, and then I am through. That is the case of Earl Thomas Cliff. In that case the issue was whether Cliff was guilty of stealing or whether there was probable cause that Cliff took certain automobile tires, is that correct?

A And tubes.

Q Accessories for automobiles?

A Yes, white walls, vory high-priced tires.

Q That was the issue in the case, was it not?

A That was one of the issues. The other one was the value in the preliminary hearing.

Q One of the pieces of evidence that you did say that those tires were found in a Blackie's place?

A At Colonial Beach.

Q Is that the same thing as Mr. Christopherson?

A The same thing. I do not know why they call him Blackie.

Q A nickname, I believe?

A Could be.

Q And they were found in Blackie's place and you had evidence from Blackie that the defendant had come in and sold those tires?

A That is right, according to the testimony.

Q So the big issue in the case about his statements were whether or not he affirmed or denied that he sold those tires to Blackie?

A That was one issue. The other was statements he made in the police car at St. Paul's Church in which the sheriff kept denying he even heard them.

Q The sheriff did say, just as you have said, he did not remember certain things and he said it very frankly because he was under oath. The sheriff testified -- this is the sheriff telling the court, "The results of your investigation leading up to the arrest, briefly," and the answer was, "It strikes me that the first thing we did was go down and see these witnesses at Colonial Beach."

In other words, the sheriff in this case went down to Colonial Beach?

A Yes.

Q And you questioned him and then he was asked did he examine the tires and he said, "I did," and you said, "Where were the tires?" and he said they were in Blackie's place, and then there is further discussion about the tires.

A I wish you would read all of it.

Q You had a chance to read it all.

A No, I did not want to burden the Court with it.

Q Then it says, "In the course of your investigation did you and Trooper Estes finally put Mr. Cliff under arrest?" Answer, "We did." Question, "Did you question him or did he make any statements?"

"He made very few statements," said the sheriff.

"He would not talk."

A You skipped a lot.

Q No, I did not.

A It is in there.

Q He says he did not talk any at all and the answer was very little. Now, the question was, "Were you present in a car operated by Trooper Estes when you came to St. Paul's Church and got me out of church," and the sheriff said quite frankly, "Yes, sir."

A Read on.

Q "Was Cliff in the car when statements were made?"

Answer, "Yes."

Q The question is, "Was Cliff in the car when statements were made?" And he said, "I think he was. I won't be positive, but I think he was."

A Proceed.

Q Now, the question was, "You think he was, sheriff?" And he said, "Yes."

A Proceed.

Q The question is, "How about reflecting a minute?"

A It was the admissions I was trying to get out of him.

Q "That was the day of the arrest. Do you recall coming to St. Paul's Church and getting me out of church?" And he said, "I did go. There is where the hassle began."

Mr. Williams, the attorney for the defendant, objected that you were trying to refresh him.

A I tried hard, but I could not do it.

Q Now, I am going to go on and not skipping any of this, skipping a lot of argument when the Court ruled on certain things, and we get down, as I say, the issue in the case is what he had said about Blackie selling those tires.

A No. That is your conclusion. My conclusion is the most important thing in the case was the admissions made by that boy in Trooper Estes' presence and the sheriff's presence and my presence in the Trooper's car, because he never made

any admissions later. Cliff was in the car the whole time and could not have been questioned anywhere else.

Q The question was, Will you please tell the Court who ^{was in the car} when you took me to it? Answer: Tommy Cliff, Estes and myself.

"Question: Who else? Answer: Right off the bat, I do not know.

"Question: Was I in it? Answer: Right after I got you, yes."

Here, I imagine, is what you are talking about.

"Question: Will you tell the Court whether or not Tommy Cliff made any statements in the car in the presence of those officers, including yourself?" and the answer was, "I won't say so because I do not recall.

"Question: You cannot recall? Answer: No. Question: That is all right." You are saying that is all right.

"Where, if anywhere, did you then go?" In other words, that was your question in which after he said he could not recall, you said that was all right.

A Yes. He was the Commonwealth witness. I was trying to protect the Commonwealth.

Q "We came to your office. Question: Who was present? Answer: We four. Question: The same four? Answer: Yes.

"Can you recall whether or not Tommy Cliff made any statements in the presence of the four of us in my office? Answer: First, you talked about the car and then you asked

about the tires."

A He certainly remembered he went to church.

Q He says he made a statement that he had not been to Blackie's place for three months. Do you remember him saying that?

A That was not what I was trying to get out of him up at church.

"Question: Do you remember anything else he said? Answer: I do not recall it now because he did not say a great deal."

Then the Court gets in, then there is more argument about your contradicting the witness.

A That is right. I hate to contradict a witness but sometimes you cannot help it.

Q And then the Court asked him a simple question and he answered it. The Court said, "Sheriff, you testified that you and some other people were in Mr. Morrison's office. Among them I believe you said the defendant was there? Answer: Yes."

A Is that cross examination?

Q It is the Court. "If any statements were made by the accused, kindly tell the Court what those statements were, made in the office or in the car."

A That is not me asking that question.

Q No, the Court. "Tommy Cliff said in his home, as well as I can remember, he had not stolen any tires."

The question was, "He made that statement in his home.

What else did he say? At any of the other places he was questioned?"

The answer is, "I do not remember anything else that he said."

This was simply a preliminary hearing, was it not?

A It was a preliminary hearing, not "simply," a very important consideration.

Q Whether there was probable cause to send it on to the Grand Jury?

A Yes, and I do not want to do injustice. I want to make sure.

Q And it was sent on to the Grand Jury?

A It was, and I not pressed it.

THE COURT: Did not Estes testify to exactly the same thing the Sheriff testified to?

MR. BUTZNER: Approximately the same thing.

THE WITNESS: That is not in evidence.

THE COURT: I think the record is here.

MR. BUTZNER: The whole record is in here.

MR. CHICHESTER: Judge, you are supposed to read only from Page 67 to 78, something like that.

THE COURT: Now the controversy has arisen --

MR. CHICHESTER: You are reading too much.

THE COURT: I am reading what the two police officers said. It seems to me they are saying the same thing.

THE WITNESS: If you read that, Judge, you have not read the whole thing.

MR. BUTZNER: Mr. Estes -- I am now turning to page 77, and I want to read it in the record.

MR. CHICHESTER: Is that in?

MR. BUTZNER: No, sir.

MR. CHICHESTER: Let me look at it, Mr. Butzner.

MR. BUTZNER: The same statements, entirely.

THE COURT: He said, "I asked Tommy if he had stolen any tires at the beach, and he said he had."

MR. CHICHESTER: Judge, what are you reading?

THE COURT: Page 77.

MR. CHICHESTER: That is not in evidence.

THE COURT: You passed this record up to me.

MR. CHICHESTER: I included seven pages in the list.

MR. BUTZNER: If it is only limited to certain pages, I now offer the entire record.

MR. CHICHESTER: Judge, I do not have a bit of objection in the world; I was just trying to have a little fun.

BY MR. BUTZNER:

Q You were there when Mr. Estes testified? You cross examined him?

A I did. I examined him on direct. I did not have to cross examine the good ones.

Q "After you placed Mr. Cliff under arrest, did he or

did he not in your presence, in the presence of the sheriff, make any voluntary statements?"

"Answer: He did. Question: Will you tell the Court what they were? Answer: I questioned Tommy."

Evidently, he was the one who was doing the questioning, was he not?

A The sheriff was present the whole time.

Q The sheriff was present, but just answer my question.

A I was not there the whole time.

Q "First I informed him that I was a policeman and informed him of his constitutional rights and at that time he did not have to answer any questions unless he wanted to, but that I preferred he would. I asked Tommy if he stole any tires at the beach and he said he had not. He also said he had not been to the beach for three months."

Of course, that is what the sheriff testified to.

"I asked him if he knew about Mr. Hare losing some tires. He told me he knew nothing of the tires. I proceeded to describe the tires to him and he still insisted he knew nothing of them."

Then it goes on he was told who had accused him of selling the tires. He said Mr. Christopher at the beach accused him of selling two tires, "And I asked him if he was willing to go to the beach and be faced with Mr. Christopher, and he told me he did not want to talk to Mr. Christopher.

"We asked him a number of questions as to where he got

the tires and he said he did not have any and had not had any. That is all he told me about it, and, of course, he was not cross examined."

✓ In connection with that, I would like to ask you if you have not brought charges against both Trooper Layne and Trooper Estes?

A No, sir, I have not.

Q Have you made complaint?

A What do you mean, "charges"? You will have to explain what you are talking about.

Q I am asking you some questions.

A Tell me what charges you are talking about?

Q Have you brought any charges against either Trooper Layne or Trooper Estes to their superiors?

A You will have to tell me what you mean by "charges."

Q Have you made any complaints to their superiors?

THE WITNESS: Does your Honor want that?

MR. CHICHESTER: Regarding this matter, do you mean?

THE WITNESS: Judge, is that relevant? I do not think it is.

MR. BUTZNER: I am going to show that this --

MR. CHICHESTER: If your Honor please, if Mr. Butzner is arguing the question whether or not Mr. Morrison made any complaints to their superiors regarding their testimony that he has just read, that is all right, but I am going to object to

questions on any other charges.

MR. BUTZNER: I am going to show this man makes chronic complaints. I am going to question him about this.

MR. CHICHESTER: I object to any questions about any other complaints than those in the record he has just read.

THE COURT: This is a serious case against the sheriff in which he has made some very serious charges against the sheriff. If he makes charges against the sheriff and other charges against other people, that is to be considered, I reckon.

MR. CHICHESTER: I do not think so. I do not reckon anything about it. I know this, you cannot bring any other crimes --

THE COURT: In Bramhall's case they held you could, to show the intent.

MR. CHICHESTER: Yes, sir.

THE COURT: What he is trying to do is to show his intent here.

MR. CHICHESTER: That is not what he said.

THE COURT: I assume he is doing it for a lawful purpose.

MR. CHICHESTER: I think I am entitled to know what purpose he is doing it for, first.

THE COURT: Anyway, I sustain his right to examine him about it.

MR. CHICHESTER: Attorney for the Commonwealth
excepts to the allowance of testimony regarding any other
charges, made about any other charges.

MR. BUTZNER: The question is, did you make any
charges to the superiors of Trooper Estes and Trooper Layne?

THE WITNESS: When you say "charges," do you mean
complaints?

MR. CHICHESTER: If your Honor please, he has asked
a blanket question and I think if he mentioned the names and
dates, that that is all right, but Mr. Morrison is not in a
position to answer a blanket question like that.

BY MR. BUTZNER:

Q Then answer it to the best of your recollection.

A I will be glad to. I cannot give you the exact date,
but I think it was in 1952, it may have been 1953. I do not
remember the date. I can get it later from my letter. I
wrote Colonel C. W. Woodson, Superintendent of State Police,
and first I had someone in Richmond contact C. W. Woodson in
person, tell him that I wanted to have him inquire into some
situations up here with respect to Troopers Layne and Estes.

I am going to answer you fully. Just bear with me.

Q If you wrote a letter, I suggest that that is the
best evidence.

A I will get the letter after a bit. I wrote a letter,
although I think a lot of it is confidential and should not be

seen in here.

Q I am not going to talk here if you have a letter. If you want to go into detail, bring in the letter.

A Are you going to let me answer?

I first saw Honorable Charles F. -- and in person to Colonel C. W. Woodson and told him orally I would like to have him look into the situation up here, and the reason I did not put it in writing was because I did not want to cause any friction. I wanted cooperation, and a letter might precipitate friction. I wanted to tell the Colonel that Troopers Estes and Layne wanted to do much better work and I wanted Woodson to believe both Estes and Layne were tied down by Chatham who has left the service; and an excellent sergeant, he may have been, I do not know, but he would not act on my complaints.

I had reason to believe and I had told the Colonel that Troopers Estes and Layne had to do all the sheriff's work and that if they were transferred away from here they would do better work.

Q Will you produce that letter?

A It is in my office, and if my wife is here she can go get it in the state police drawer, the second drawer down. I think that is the drawer.

After a full investigation by Lieutenant Walton, who is in charge of the whole area in this vicinity and Sergeant Pitsinger, who came on the job almost the day after the

complaint, and thank God for him, he is a wonderful sergeant -- I noticed a terrific change from that time. I wrote Woodson commending both Estes and Layne for this work.

Q Have you brought proceedings against the Trial Justice of this county to have him ousted from his office?

A Wait a minute. Are you sure that this other one --

MR. CHICHESTER: I object to the question for the same reason as given above.

THE COURT: Objection overruled.

THE WITNESS: What is the question?

MR. BUTZNER: Read him my question.

(The pending question was read.)

THE WITNESS: I brought quote erranto proceedings. I do not think you would call them ouster. "Ouster" is all right, but it says by what authority do you hold office, and that is in the breast of the Court at this time.

BY MR. BUTZNER:

Q Have you written the Governor of the State a letter concerning the judge asking that the legislature be convened concerning his discharge of his duties in this county?

MR. CHICHESTER: The question is objected to for the same reasons I gave before. How about it, Judge?

THE COURT: What is that?

MR. CHICHESTER: I made an objection.

THE COURT: What is your objection?

MR. CHICHESTER: I object to the question.

THE COURT: The objection is overruled.

MR. CHICHESTER: I except to the ruling of the Court.

THE WITNESS: In the year 1950 -- I think that was the correct year -- I do not recall the exact date, but I wrote the Honorable John S. Battle, then Governor of Virginia, and asked him to convene a special session of the legislature to hear me on complaints.

MR. CHICHESTER: I believe, Mr. Morrison, if I may interrupt --

MR. BUTZNER: He can answer the question yes or no, but he will not do it.

MR. CHICHESTER: Mr. Morrison, I think if you answer it yes or no --

THE WITNESS: Yes, yes, yes. I am sorry.

MR. BUTZNER: I think that is all.

THE COURT: Suppose we take three-quarters of an hour for lunch?

(Whereupon, at 1:10 o'clock p. m., this hearing was recessed until 1:55 o'clock p. m. of the same day.)

AFTER RECESS

(This hearing was resumed at 2:05 o'clock p. m.)

MR. BUTZNER: May it please the Court, we offer these two warrants. They have been read, Commonwealth against Payton and Commonwealth against Brown.

THE COURT: I suppose copies of these ought to be furnished so they can be withdrawn and go back to the Trial Justice Court.

Thereupon

H. H. WYLAND

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Please state your name, sir.

A H. H. Wyland.

Q What is your occupation?

A I am an employee of the Alcohol Beverage Control Board of Virginia.

Q Were you so employed in September, 1952?

A At this time, yes. I was employed as an investigator. At the present time, I am foreman in the shipping department.

Q Were you contacted by the Commonwealth's Attorney of King George County as to liquor violations around that time in

September, 1952?

A No, sir. I contacted Mr. Morrison at his request in July of 1952.

Q Did you, pursuant to that, make an investigation in King George County?

A I did, sir.

Q Did you contact Sheriff Dishman on that occasion?

A No, sir, not on that occasion. I did not in July, no, sir.

15 Q I have not talked to you, Mr. Wyland, and I have to fish around a little bit.

A Yes, sir.

Q So you first came up here in July, 1952?

A Yes, sir. Mr. Morrison requested my presence in his office in the latter part of July, 1952.

Q Then did you make further investigations in September of 1952?

A I did. I made investigations in July, August and September.

Q Did you obtain any evidence?

A I did.

Q What was the nature of that?

A I made three buys or three purchases of whisky from Allean Jackson of Owens at that time.

Q Did you have occasion to contact Sheriff Dishman?

A Yes, sir, over the phone on September 27, which was a Saturday, I think. I am pretty sure it was. I called Sheriff Dishman at his home. I lived in Warsaw at that time. I was working seven counties and I lived in Warsaw. I contacted the sheriff and made plans to meet him at his home at 5:00 o'clock.

Q Did you meet him at his home at 5:00 o'clock?

A No, sir. I proceeded to his home with three other state officers, to his home at 3:00 o'clock and I was told by the lady at the house that the sheriff had gone on to the circle and had left word for me to go to the circle.

Q Did you go to the circle?

A Yes, sir, and as I approached the circle, I observed the sheriff's car at the farthest side, parked near the restaurant, and the sidewalk was there then. He was standing out on that walk.

Q Did you have any conversation regarding these investigations that you were making?

A No, sir, not those investigations. I parked the car past the sheriff's car and got out of the state car and went to meet the sheriff and he stepped down to meet me and I asked him at that time would he accompany us on a raid, I had a search warrant for Allean Jackson's house, and would he accompany us.

The sheriff looked at the car and seen those men in

there and said, "Wyland, if you need me, I will go, but it looks like you have enough help to execute a search warrant, and I have got information on a drunk driving and I am watching for it."

I said, "Cheerio," and left him. That is all.

MR. CHICHESTER: The witness is with you.

CROSS EXAMINATION

BY MR. BILLINGSLEY:

Q Mr. Wyland, you were investigator for the ABC Board at that time?

A Yes, sir.

Q And it is a policy of the ABC in this case to contact sheriff when they go into their counties?

A That is a courtesy we try to show all sheriff's, yes, sir.

Q Do not all sheriff go with you on these raids?

A No, sir, about fifty per cent.

Q About fifty per cent go?

A Yes, sir.

Q When you talked to the sheriff on that date, he left himself open to go with you if you needed him, did he not?

A That is the statement said to me, "If you need me, I will go." He said, "You have plenty of help in your car."

He left me under the impression if I had said, "Mr. Dishman, we want you to go along," he would have said, "Yes,

sir."

Q You told him you had plenty of men, you did not need him?

A No, sir. That was his statement. He said, "You have plenty of men in your car." He said, "I have information on a drunk driver and I am going to try to apprehend him."

Q He never gave you any excuse he had a headache?

A No, sir, never said anything about being sick in any way, shape or form. That is his statement to me, and under oath I spoke that same statement. I was asked that two weeks after, in the trial of Allean Jackson. I do not remember which one it was, you or Mr. Morrison, asked who went with me, and I said the state officers and I said the sheriff at that time said he was waiting or observing or trying to apprehend the drunk driver.

It was under oath when I made that statement.

Q And your testimony at that time, two weeks after this, in early October, 1952, was exactly the same as it is today?

A Yes, sir, with relation to that, yes, sir.

MR. BILLINGSLEY: That is all.

BY THE COURT:

Q Mr. Wyland, what is the practice of the ABC Board about buying liquor from people that are supposed to be selling it? They send somebody that is known to the person?

A No, sir. You send someone that is not known. In

other words, I was not known at that time at Owens, and I just purchased from this woman.

In the meantime, while we are purchasing we do not ever try to let anyone know our identity, so when we are, they will pull one investigator from one post and send him off to another post, sir.

Q Do sheriff or police officers go and buy liquor from bootleggers who know them?

A No, sir. Nobody would sell you whisky if they knew you, Judge. They would turn you down right away.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. CHICHESTER:

Q Just one question. You had collected the necessary evidence, had you not?

A Sir?

Q I say, you had collected the necessary evidence against this party at that time, having made three or four buys?

A I made three buys and Investigator Hancock made one. We completed investigations by September 27.

Q And you were ready to go in and make the arrest?

A Arrest and raid, yes. As a rule, we made a purchase at the same time. We raided her to see what whisky she had in the house, 22 fifths.

MR. CHICHESTER: That is all.

REXCROSS EXAMINATION

BY MR. BILLINGSLEY:

Q You had been in this county on previous investigations?

A Yes, sir.

Q Is it not so on those occasions the sheriff cooperated with you whenever you requested him to do so?

A Yes, sir. I have never asked the sheriff -- in other words, the sheriff asked me more times back and forth. I think the sheriff called me on a Sunday, when I was sick, insisted on me coming to King George County and he had a still located back over in this section. We proceeded over there. The sheriff did not know where it was. It was dry. It was not in operation.

We decided to let it stay in hopes we could apprehend the manufacturers of the whisky. I made plans then to return up here two weeks after that.

I returned on a weekday, met the sheriff, went back over to the same still. It was not in operation then. We give it up then. I did not have too much occasion to call on the sheriff up in King George County. There are not too many violations up here, but I have never called on him that he did not cooperate with me one hundred per cent.

Mr. Morrison the same thing. I have never called on

Mr. Morrison he did not cooperate with me one hundred per cent.

MR. BILLINGSLEY: All right.

Thereupon

N. W. STAPLES

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name, sir?

A N. W. Staples.

Q Where do you live?

A I live on Route 205, just below Edge Hill, Virginia, in this county.

Q Mr. Staples, did you on or about February 19 -- did someone break into your home in the daytime?

A Yes, sir.

Q Did you have occasion to, at that time, call Sheriff Dishman?

A Yes, I saw him about an hour after it happened.

Q You did what?

A I talked with him about an hour after the house was broke into.

Q Did you talk with him personally or by telephone?

A I found him in the Circle Inn. He was eating dinner

with a major, and I told him I would wait outside until he got through, and then I talked with him privately outside after he got through, and I told him.

Q You told him what happened?

A Yes.

Q Did the sheriff investigate that?

A No, he did not.

Q Did he ever investigate it?

A No, not to my knowing. I asked him to investigate it.

Do you want me to go on with the testimony or just ask questions?

Q No, sir. Just let me ask the questions. Did you have occasion to ask him any more to go investigate?

A Did I ask him again?

Q Yes.

A I asked him that day. He said he could not investigate, he left that work entirely to road cops.

THE COURT: You asked who?

THE WITNESS: I asked him that day to investigate. He said no, sir, he left it up entirely to the traffic cops to do that work.

THE COURT: Did he send the traffic officers down there?

THE WITNESS: No, sir. I came up here to the courthouse about half an hour afterward and saw Mr. Morrison, talked

with him, and he sent Mr. Layne down.

BY MR. CHICHESTER:

Q When did Mr. Layne come down?

A He came the same day.

Q But the sheriff never came at all?

A Yes. He came back around afterwards and asked me -- I said, "Have you heard anything?" And he said, "No. I have not heard anything," and I said to him, I said, "Come on, go in the house, look around and see how they broke in, broke out of this house," and I said, "I want you to go in and see where they ransacked the room there," and he said, "No. I am not going in."

I said, "Why?" He said, "I leave that entirely to the road cops to investigate."

MR. CHICHESTER: I believe that is all.

THE WITNESS: That is all that I know about the case.

MR. BUTZNER: We have no questions.

Thereupon

WALTER N. JONES

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name, sir?

A Walter N. Jones.

Q Where do you live?

A Chestnut Hill.

Q What business do you operate?

A I run a service station and small shop.

Q Around August, 1952, was your service station broken into, sir?

A I think so. I have been broken in four times. I do not remember the exact date.

Q Have you ever had occasion to call the sheriff into make an investigation?

MR. BUTZNER: Just one case, August of 1952, you charge.

MR. CHICHESTER: That is right, excuse me. Around August, 1952.

THE WITNESS: I could not say for sure. I do not remember whether I called the sheriff in on that one or not.

BY MR. CHICHESTER:

Q I refer now to the one in August, 1952. Was anyone ever prosecuted in that case?

A No, sir.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BILLINGSLEY:

Q You called Sheriff Dishman in on each of these four

break-ins that you had, did you not?

A It seems like I did.

Q Did he not come within a reasonable time after you called him, and made an investigation?

A I imagine he did. I do not remember.

Q He came when you called him, did he not?

A I presume he did.

Q There was not any clues or anything like that there that he could work on?

A Not to my knowledge. I do not know.

Q You do not blame the sheriff in any way for the fact no one has been caught for this break-in, do you?

A No. I cannot say that I do.

MR. BILLINGSLEY: That is all.

Thereupon

DEWEY EARL DARBY

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name?

A Dewey Earl Darby.

Q Where do you live?

A I live at Dahlgren.

Q Mr. Darby, in 1952, was your service station broken into near Dahlgren?

A Yes, sir.

Q Did you have occasion to report this to the sheriff?

A Yes, sir.

Q What action did you get from that report?

A Well, I called the sheriff and he came over and looked around and found some tracks out in the back, that there was a frame window where whoever broke in, how they got in, and he was around 15 or 20 minutes, I guess, 30 minutes, something like that.

Q Did anybody else investigate it?

A Well, I do not know whether anybody else investigated it or not.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BILLINGSLEY:

Q Mr. Darby, you lost some tires on that occasion, did you not?

A Yes, sir.

Q You called the sheriff and he promptly came to your filling station, is that not so?

A That is right.

Q You did not have any numbers or anything to give him for those tires, did you?

A No.

Q He made as thorough an investigation as he could, as far as you could ascertain, did he not?

A I did not know about that.

Q You stated you could not give him the numbers of the tires or any way to trace them, is that not correct?

A That is right.

Q And I believe you realized when you called the sheriff that you did not have much for him to go on, is that not correct?

A I am not an investigator. I do not know what there was to go on.

MR. BILLINGSLEY: That is all.

REDIRECT EXAMINATION

BY MR. CHICHESTER:

Q Just one question. Did you request the Commonwealth's Attorney, Mr. Morrison, to carry on any further investigation?

MR. BUTZNER: If your Honor please -- all right, we will let him go ahead.

A Mr. Morrison came by my place about a week or ten days after the robbery and I asked him had there been any progress made on recovering my tires and stuff that was stolen, and Mr. Morrison did not know anything about that I had had a burglary. He said that that was the first he knew about it.

MR. CHICHESTER: That is all.

THE COURT: Did Mr. Morrison recover your tires?

THE WITNESS: Has not anybody recovered them, Judge.

MR. BUTZNER: If your Honor please, I ask that the last question of Mr. Chichester and the answer be stricken because it is not responsive to the pleadings.

MR. CHICHESTER: I do not object.

THE COURT: All right. Strike it.

Thereupon

JOE BLAND

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Your name is Joe Bland, is it not?

A Yes, sir.

Q Joe, are you caretaker for Colonel Cralle?

A Yes, sir.

Q Was his house broken into some time around March of this year?

A Yes, sir.

Q Was the break-in reported to anyone, and if so, to whom?

A I reported it to Mr. Morrison.

Q Did anybody investigate the break-in, and if so, when?

A Mr. Dishman and the sheriff came out.

Q Mr. Dishman and the sheriff?

A Yes, Mr. Dishman and Mr. Layne.

Q When did they come there, do you remember? How long after the break-in?

A Afterwards. I do not remember when I made the report. I have forgotten when I made the report.

Q How long was it after the break-in that you made the report?

A I made it as soon as I saw it.

Q How long after that was the investigation made?

A Mr. Dishman and Mr. Layne went down on the 6th of March.

Q Did they make an investigation?

A Yes.

Q What did they find out, if you know?

A They went around and looked at the window where somebody broke in at.

Q Had they been there prior to that? Had anybody been there before that?

A No.

Q Did anybody come there after that?

A They came down there again on the 10th, after I called up and told them someone I found out had broken in the house.

Q Who found out the house was broken in?

A I went upstairs and I seen it.

Q Was that after they had made the investigation?

A Yes.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BILLINGSLEY:

Q Would you say you discovered a break-in and reported it to Mr. Morrison?

A Yes, sir.

Q You do not know how long it was before the break-in occurred that you reported it?

A No, sir.

Q Trooper Layne and Sheriff Dishman came down and went through the house?

A Yes, sir.

Q You went through the house and through the shed?

A Yes, sir.

Q You went around the grounds?

A Yes, sir.

Q None of you could find out how the people got in the house?

A That is right.

Q You could not find out how they got in at that time?

A No, sir.

Q They went away and you found out the way they got in

the house and they came back again?

A They came back on the 10th.

Q You found out how they got in the house, but that was all you could ascertain?

A That is all.

Q You did not even know what was gone?

A Only what he had told me was gone, that is all.

Q At that time, you did not know what was gone?

A No. I did not know what was gone.

Q You just saw somebody had been in the house?

A Yes.

Q When the sheriff was down there, he appeared to be interested in finding out about that break-in?

A It appeared like to me he did. Him and Mr. Layne was down there together.

Q Trying to do what they could?

A Yes, sir.

MR. BILLINGSLEY: That is all.

Thereupon

HENRY S. FITZHUGH

was called as a witness by counsel for the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Your name is Henry Fitzhugh, is it not?

A That is right.

THE COURT: You lost the cannonballs?

THE WITNESS: Yes, sir. They are still lost.

BY MR. CHICHESTER:

Q You are the victim of the famous cannonball case?

A That is right. Your Honor, I have never recovered them.

Q You are still a victim?

A Yes, sir.

Q Did you have a theft occur at your place, Mr. Fitzhugh, in the latter part of 1951?

A That is correct.

Q What was the nature of that theft?

A I had four cannonballs which were relics of the War of 1812, and they were stolen from my premises while I was away.

Q Did you make an investigation of the matter, yourself, to some extent?

A Well, they were taken at separate times. On July 20, which was Friday, there were two taken while I was away. I worked at Dahlgren. I discovered the theft when I got back from the Proving Grounds, and I made no report of it.

I had had other things taken from my premises, small items which did not amount to a whole lot, but on Monday, the

23rd, when I returned from work, this truck was coming out of my driveway and I got the license, and then, as a matter of fact, I talked to the driver of the truck and I suspicioned that he had the cannonballs, but I had no proof of it because I could not see the front part of the house from where I come into my premises, so after talking to the driver of the truck for a few minutes, I went around to the front part of the house and I saw the other two cannonballs were gone, so then I went up to Mr. Butler's and had Butler call the State Police.

We called the headquarters at Culpeper and, if I recall correctly -- that is right. I called the State Police headquarters at Culpeper and then we went down to the Potomac River Bridge and had the policeman usually on duty there call the headquarters up at Waldorf because the truck had District tags on and I suspicioned that they would be going back into the District of Columbia.

Q Was there later anyone apprehended and charged with the theft?

A Yes, a man from Washington.

Q Did you at any time request the services of Sheriff Dishman in this matter?

A Well, I had someone call Sheriff Dishman the night of the theft. I stayed down on the bridge, the Potomac River Bridge, until about dark, and I asked S. V. Butler, who operates the Hillcrest Grill, to call Mr. Dishman and inform him because

I wanted him to know of the theft.

Q Did the sheriff ever make any investigation?

A The sheriff was -- the night of the second theft, which was the 23rd, the sheriff met me and we went down to the gas house in the sheriff's car to discuss it with the company.

Q You discussed it there?

A Yes, because they had arrested the man who was driving the truck that I saw leaving my premises. They arrested him when he was coming into Washington about two hours or more after he left my place.

Q Did the Commonwealth Attorney or you or either or both of you ever make a request of Sheriff Dishman to investigate the matter in Washington?

A Well, personally, I did not. My dealings were mostly with the Commonwealth, with the exception of the night of the second theft, which was July 23, 1951, when the sheriff and I went down to the gas house. It was late at night then. It could have been before midnight, but it was getting pretty late.

The arrest in Washington then had been made and I had been notified that this party had been arrested, so to get the legal aspects of the matter and what could be done, we went down to discuss it with the company.

Q Pursuant to that, did you and Mr. Morrison and the sheriff take a trip to Washington?

A Mr. Morrison and I took a trip to Washington, but we two were the only ones who went in the car.

Q Do you know why the sheriff did not go?

MR. BUTZNER: Just a minute. He said he personally did not know. He said he dealt with the Commonwealth Attorney. I do not think he can state.

MR. CHICHESTER: If that is true, all right.

BY MR. CHICHESTER:

Q You dealt after the first night with the Commonwealth Attorney, is that right?

A That is right.

Q And you do not know why it was that Sheriff Dishman did not go to Washington?

A I could not answer any questions on that.

MR. CHICHESTER: That is all.

BY THE COURT:

Q You and Morrison went up to Washington and got in touch with the Washington police?

A I think the Commonwealth had got in touch with the District Police before we left here. They were expecting us, as far as I know.

Q And the Washington Police investigated the matter in Washington, did they not?

A As far as I know, they did.

MR. BUTZNER: We have no questions to ask Mr.

Fitzhugh.

Thereupon

LLOYD FARMER

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name?

A Lloyd Farmer.

Q Your address?

A I live down on Route 205, below 9.

Q I believe you are former deputy sheriff of King George, is that right?

A Yes, sir.

Q Mr. Farmer, did you have occasion to investigate a break-in that occurred at Webber's store in November or December of 1953?

A No, sir, I did not.

Q Did you know of it?

A Yes, sir.

Q Did you report it, sir?

A No, sir. I did not know of it until morning when I went over to the store and Mr. Webber and Mrs. Webber told me the store had been broken in and the sheriff and the troopers

had been there.

Q Did you make any private investigation of it?

A No, sir, I did not.

Q Did you obtain any information as to who committed the crime?

A Yes, sir. Trooper Layne -- I was talking to Trooper Layne the day I think the break-in was overnight, and he asked me did I know anything, and I told him I did not.

He also asked me would I go with him to a couple of places to investigate with him and I told him, "I do not know," and after I left he said, "Keep your eyes open and if you know anything let me know."

I said, "I won't bother about the eyes but I will keep my ears open."

Q Did the sheriff investigate it, as far as you know?

A I do not know.

MR. CHICHESTER: That is all.

MR. BILLINGSLEY: No questions.

Thereupon

C. T. LAYNE

was called as a witness on behalf of the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q State your name, please.

A C. T. Layne, State Police, stationed King George Court House.

Q Servant of the Commonwealth of Virginia?

A Yes, sir.

Q Mr. Layne, do you know or have you heard of Harry and Horace Long?

A Have I heard of them?

Q Yes, sir.

A Yes, sir.

Q There was a case some time back in May, 1953 or 1954, was there not, involving them?

A In 1954. I believe it was April, 1954. I am not certain, March or April some time.

Q Did you ever have a conversation with Sheriff Dishman regarding this case in the office of Mr. Morrison?

A Yes, sir.

Q Did you have any conversation with him regarding who was to investigate the case?

A I believe that on the date to which you have reference, something about going down to see them again -- of course, the case had already been investigated.

Q It had already been investigated?

A Yes, sir.

Q By whom?

A By me.

Q Did Sheriff Dishman ever investigate the case, as you know?

A I do not know what Sheriff Dishman done in this. In this particular case, when this thing broke, the first I was not even in the county. I went to Richmond that. I believe a trooper from Fredericksburg started out on the case and I got called in on account of a subsequent investigation.

Q To the best of your knowledge, did Sheriff Dishman investigate it or not?

A He could have worked on the case, Mr. Chichester.

Q I say, to the best of your knowledge, do you know anything about whether he investigated it or not?

A Right off-hand, I could not say, one way or the other.

Q You do not know, then?

THE COURT: Did your investigation produce any results?

THE WITNESS: The first investigation was by, I believe, Trooper Townsend of Fredericksburg and I kind of finished it up and it did produce results when I finished investigating, that was it.

BY MR. CHICHESTER:

Q Officer Layne, there was a subsequent investigation, I believe you said?

A That is where I was involved, yes, sir.

Q And you had some conversation with Sheriff Dishman regarding that, did you not?

A I believe it was more conversation between the three of us.

Q You mean Mr. Morrison?

A And the sheriff and myself, rather than just one individual.

Q I understand, yes.

A And I will tell you about that. It took place over in Mr. Morrison's office and it seemed like to me the sheriff had another matter which he wanted to attend to.

Q What was that, do you recall?

A I do not recall exactly what it was, but I know he had something he wanted to do and Mr. Morrison and myself went down to Long's place.

Q Repeat that, please. I did not hear it.

A The three of us was in the office there and the sheriff had another call or something. Anyway, he had something to do and Mr. Morrison and myself went -- I believe it was one time along about noon or some time in the afternoon, or maybe a little before, and we questioned those boys there at their home.

Q Did the sheriff tell you to go or not? Did he say anything about that, why he would not or did not go?

A No.

THE COURT: He said he had some other matter to attend to, I believe his explanation was.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BILLINGSLEY:

Q Trooper, I want to ask you one question regarding this case of Commonwealth versus Hundley, about which we have spoken, and about which the Commonwealth has said that Sheriff Dishman did not properly investigate this case. Were you not with Sheriff Dishman the night that he arrested Hundley?

A I was with Sheriff Dishman the night of this incident, yes, sir.

Q And as far as you can recall, or as far as you can ascertain, did not the sheriff pick that man up and arrest him?

A Yes, sir. To the best of my ability, the sheriff arrested that man that night. I am not positive on that, but I do recall the sheriff done everything he could.

Q The sheriff did everything he could at that time?

A Yes, sir.

Q Trooper, I want to take you to the Staples case. That case happened on February 19, 1952, and a look at the calendar says that was a Tuesday, and I believe on Tuesdays, at that time, Mr. Slipek was Trial Justice here and also Trial Justice Court on Tuesdays, is that correct?

A Yes, sir.

Q Both you and the sheriff were in the Trial Justice Court that morning?

A Along with Trooper Estes.

Q And the call came in about this break-in at that time that you were in court, is that correct?

A Yes, sir.

Q And you finished up court, your court dates before the sheriff, and you, went to investigate it, is that right?

A That is right.

Q And that is the reason that you were the first officers to go to the investigation because you were the first one that got out of court and you were able to go, correct?

A That is correct.

Q You talked to Mr. Staples when you got down there?

A I got a statement from Mr. Staples when I arrived at the scene.

Q You went inside the house that had been broken in?

A And ransacked.

Q Staples, I believe, told you he had left his house at about 10:20 a. m.?

A Yes, sir.

Q And he had returned about 11:30 a. m.?

A Yes, sir.

Q And that the house was broken into?

A Yes, sir, right.

Q Did he give you any leads, names of people to work on?

A He gave out two or three names. I do not recall all of them now, but I believe one of them was of the Price boy, and I believe one was a Dillam man. I am not certain about that. I think they were the two people.

Q Was one of them a former boy friend of his wife?

A I believe so.

21 Q Was he trying to impress you with the fact he was a Casanova or was he trying to help you apprehend a criminal?

MR. CHICHESTER: Who are you talking about?

MR. BILLINGSLEY: Mr. Staples.

THE WITNESS: I do not know how to answer that.

MR. CHICHESTER: What is a Casanova, Mr. Billingsley? You are talking in riddles to me.

THE COURT: The Court will take judicial notice of what a Casanova is.

MR. CHICHESTER: I come up from Stafford. We do not have such things up there.

MR. BILLINGSLEY: I did not know that we did, either.

MR. BUTZNER: In Stafford they call them by a different name.

BY MR. BILLINGSLEY:

Q Trooper, you checked out all these leads, did you not?

A I worked the case the best I knew how, sir. On top of that, I might say Sergeant Pitsinger also took part in that

case and at a later date I believe Mr. Morrison called a special investigator down to re-investigate what I investigated.

Q And he did not find out anything, either, did he?

A If he did, he did not say anything to me about it.

Q And I believe this is one of the things that Mr. Morrison reported you to the commanding officer of the State Police for not properly investigating it, is that not correct?

A Yes, sir.

Q You were in on one or two investigations of Mr. Jones station, were you not?

A I was in on one or two of them, yes, sir.

Q And Sergeant Pitsinger was with you?

A Sergeant Pitsinger was with me.

Q And no one was apprehended?

A We done the best we could. We got the F.B.I. and they could not give us no help, either.

Q Let us go down to the Cralle robbery. Did not the sheriff call you and ask you to go on that trip with him in that investigation?

A He did.

Q And you two went and contacted Joe Bland, is that not right?

A That is right.

Q He was the caretaker?

A That is right.

Q And you went through the house that had been broken into, the same house that had been broken into, and went over the grounds, is that not right?

A That is true.

Q Bland said that he did not know what had gone?

A That is true.

Q He did not know how long before he discovered it that the robbery had taken place?

A That is right.

Q You could not find how they got there?

A No, sir.

Q You could not find out how they got in the house?

A No, sir.

Q And all three of you were looking, is that correct?

A That is right.

Q And some time later you went back down there where Bland had found an entrance way up on top of the roof?

A Yes, sir. He pointed out something, marks that had been made, that appeared somebody had entered that way. I did not see those marks the first time I went down there.

Q In fact, they were very faint marks?

A To tell the truth, on the second time they were right deep. I could not understand how I did not see them.

Q But all three of you were looking for them?

A That is right.

Q And you still did not know what was gone?

A No, sir. Nobody did until Colonel Cralle came down himself.

Q And then you got a list of what was stolen?

A Yes, sir.

Q And you put it on the radio?

A Yes, sir.

Q Sheriff Dishman does not have a radio, does he?

A No, he does not.

Q Is it not so that he gave you material to put on your radio, he takes you with him and the other state troopers and gives you material so that you can put it out to the other state police?

A Yes, sir. We run it for any legitimate law enforcement officer.

Q You had no leads at all on the Cralle case?

A No, sir.

Q Was there anything that the sheriff did or did not do that impeded or interfered or hampered that investigation?

A To my knowledge, no, sir.

Q To your knowledge, he did not?

A No, sir.

Q Trooper, we have been talking about the Missouri Berry house and the fact that it was closed up after a fight. You had been to that house several times and in the company of

the sheriff before that time, had you not?

A I went with the sheriff, yes, sir.

Q You and the sheriff went there together?

A We did.

Q But there was no one there who would get out a warrant, is that not right?

A Nobody would make any.

Q Nobody would make any complaint? They would holler, "Wolf," and when you got there they would not do anything, is that right?

A That is right.

Q And you could see nothing to justify you in getting a warrant out, yourself, is that correct?

A No, sir. Whatever they complained about would not be there when you got there.

Q You could not get a warrant out yourself, and they would not do it?

A That is right.

Q It was only after this fight there that the parties got sort of shaken up and scared and made complaints?

A Made complaints that they stuck to.

Q And any prosecution or conviction before this fight was not due to the sheriff's failure to investigate, was it? Was it not due to the parties' failure or refusal to testify and swear out warrants?

A A whole lot of it, yes, sir, that is right.

Q Now, coming down to the Webber store break-in, I believe the sheriff got that call and called Estes and you were called by Estes, is that right?

A That is right.

Q And you all three went down to the scene, did you not?

A That is correct.

Q You saw the entrance?

A We did.

Q And they had come in a window and gone out a door, is that correct?

A That is right, if you will read the statement.

Q And then the three of you called Trooper Leach and he came down and made pictures of it with a camera?

A That is right. He was at Fredericksburg and that is where the camera was.

Q Mr. Webber did not have any leads to give you, is that correct?

A That is right.

Q Then there was some suggestion of searching a certain house in the area?

A There was.

Q The sheriff said he would help you search that house, I believe, but he did not think it would be any use because he did not think he would find it there, is that correct?

A Yes.

Q And that proved to be correct, did it not?

A That is true.

THE COURT: You searched it, did you?

THE WITNESS: No, sir. We did not search it.

BY MR. BILLINGSLEY:

Q You decided it would not be necessary to search it?

A In the meantime, I contacted the man who belonged to the house and I talked to him and I did not think it should be searched and I did not search it.

Q After that, you more or less split up and went on this investigation, each of you looking for leads?

A Yes, sir.

Q And then Mr. Farmer gave you the lead which broke the case, is that correct?

A He did.

Q And one of the men is now in the penitentiary?

A Yes, sir.

Q And the other one was found out to be not responsible?

A That is right.

Q About these Long cases that Mr. Chichester was asking you about, is it not true that you had the boys, they had confessed to stealing the money and you had the money?

A I think somebody had the money. I did not have it.

Q The Long cases?

A That part of it had already been over with before I got it.

Q One other thing. I want to take this up with you. That is the case of the Commonwealth versus a Plymouth automobile and a sum of money.

Is it not true that this statement that the sheriff made about that car was to the effect that he thought that the loan or the lien which was shown on the face of the title would have to be paid off when the car was sold? Is that not correct? And that that was what the law required?

A I believe that is the effect of the statement he said to me.

Q And is it not true that Sheriff Dishman asked you to move that car from the house where the Thomas woman was apprehended to the Scales for safe-keeping?

A He did.

Q And you did it?

A I did.

Q You put it down there where there were troopers at the sheriff's request? You put it down there where there were troopers on each 24 hours a day, so it would be in safe hands, is that correct?

A That is correct.

Q And Mr. Morrison went there and moved it to a private garage or had it moved to a private garage? Do you know about

that?

A I do not know who had it moved.

Q But you do know it was moved?

A Yes, sir.

Q Did you know when you went on duty at the Scales about 4:00 o'clock that day that the car was not there?

A The car was gone.

Q Now, Trooper, how long have you been stationed at King George County?

A Since June of 1948.

Q You have been here continuously since that time, have you not?

A Yes, sir.

Q You have worked with the sheriff, have you not?

A I have, sir.

Q In various investigations?

A Yes.

Q Is it not your information from your work with him and what you have observed about him that he is a competent sheriff?

A I believe so.

MR. BILLINGSLEY: That is all.

REDIRECT EXAMINATION

BY MR. CHICHESTER:

Q You testified that Mr. Morrison had made some

complaint about you to the Division of Motor Vehicles, I suppose. Do you know why that complaint was made, Mr. Layne?

A I am not qualified to answer that question, Mr. Chichester.

Q Did anyone tell you why it was made?

A I believe I have heard Mr. Morrison say why he made it, but to quote Mr. Morrison would be very difficult to do, to tell you right out, to be fair to him and myself, and I could not do it.

Q You do not remember it?

A The exact detail, no.

Q You do not know what it was about, in general?

A I can tell you what the complaint was, if that is what you are interested in.

Q Yes.

A The complaint is I did not correctly investigate the Staples case. One is I had given too many wrecks to the Circle Motor Company, that I would not cooperate with him nor other law-enforcing individuals in the county.

Q Who operates the Circle Motor Company?

MR. BUTZNER: If your Honor please, what does that have to do with this case?

THE COURT: That is an issue. I know that Clyde operates the Circle Motor Company.

MR. CRICHESTER: But I do not know who operates it.

THE COURT: He has the best restaurant in town, too.

MR. CHICHESTER: That is all.

Thereupon

HORACE T. MORRISON

was recalled as a witness and was further examined and testified as follows:

REDIRECT EXAMINATION

BY MR. CHICHESTER:

Q Mr. Morrison, there has been some testimony here with regard to your making a complaint against Officers Layne and Estes, and there has also been testimony here that you wrote a letter to Mr. S. A. Walton, State Police, Alexandria, Virginia.

MR. CHICHESTER: If there is no objection, sir, I will ask that he read the letter with such explanations as may be necessary into the record.

MR. BUTZNER: If your Honor please, I believe the letter will speak for itself. I have no objection if it is an accurate copy which is going in.

THE COURT: Why not let her copy it?

THE WITNESS: Let me read it into the record, your Honor.

THE COURT: All right.

(Letter dated February 29, 1952, was read into the record.)

THE WITNESS: ". . . however, I consider this to be . . ."

an administrative question for the state police to decide."

Now, your Honor, at this point I marked an asterisk because at the request or suggestion of Lieutenant Walton I changed this paragraph where I asked for transfer and at his suggestion asked him to keep them on probation, and he did that. I can tell you what it says, in substance, but because I had so many copies to give to Richmond, they have so many rules down there, so many copies, my copy shows there was a change.

THE COURT: I do not think you can testify from memory.

THE WITNESS: All right. I can get the original from Richmond and put it in the record.

THE COURT: That is introduced in evidence?

MR. CHICHESTER: Yes, sir.

THE COURT: That will be C-7.

(Said letter was received in evidence and marked "Commonwealth Exhibit No. 7.")

BY MR. CHICHESTER:

Q Mr. Morrison, what police sergeant was on duty?

A Sergeant Leonard Holmes, who received the facts in the complaint, and when the matter was heard in my office orally in the presence of Lieutenant Walton, Captain Williams from Culpeper, Troopers Layne and Estes and maybe another officer, I do not recall, in my office, and myself, Sergeant

Pitsinger was there but because he had freshly come on the job and he is doing a fine job.

Q Mr. Morrison, as you know, I am unfamiliar with the personalities involved in this case, and I would like to ask you a blanket question, if there is any other testimony that you want to give at this time. Remember, if you please, to stay within the bounds of your bill of particulars and subject to the bill of particulars.

A Yes, and the cross examination, I assume, yes, sir.

Trooper Layne testified that I got Sergeant Pitsinger to come to Mr. Staples' house, which he did, and also that I got a private investigator and Sergeant Pitsinger arranged it in the oral discussion in my office with Captain Williams and the other officials of the state police, that you told the high officers --

MR. BUTZNER: Your Honor, I object to that unless the sheriff was present.

THE WITNESS: Who, the sheriff?

MR. BUTZNER: The sheriff.

THE WITNESS: You questioned about my conversation with the state police?

MR. BUTZNER: Only so far as it pertains to the defendant.

THE WITNESS: I am coming to him right this minute.

MR. BUTZNER: Was he present in this office?

THE WITNESS: Who?

MR. BUTZNER: The sheriff.

THE WITNESS: No, he was not present when that letter was read.

MR. BUTZNER: You introduced the letter.

THE WITNESS: Your Honor, I would like to tell you this, if you will let me.

THE COURT: You cannot testify to hearsay.

THE WITNESS: I am not testifying to hearsay.

MR. CHICHESTER: The question I have is whether or not it was in the sheriff's presence, and I submit if the conversation was not held in the sheriff's presence, it cannot be testified to.

THE WITNESS: Judge, here is what I want to bring out --

MR. BUTZNER: Wait a minute. I object to it.

THE WITNESS: It will not go in the --

THE COURT: Mr. Morrison, you know what is hearsay evidence.

THE WITNESS: What I am going to say is not hearsay.

THE COURT: If the sheriff was not present, any statement made to you by anybody --

THE WITNESS: It is a statement I made.

THE COURT: Anything you made in his absence is hearsay.

THE WITNESS: Is hearsay?

THE COURT: Yes, sir, in his absence.

THE WITNESS: I cannot find enough to make any statements in his presence of any importance.

Getting back to your question, Mr. Chichester.

BY MR. CHICHESTER:

Q Do you have anything else you want to say?

A Yes, sir. Sergeant Pitsinger went to Mr. Staples' home at my request many, many days after the robbery, the break-in.

Q Which was that?

A Mr. Staples at Edge Hill, M. W. Staples, because Mr. Staples kept calling me and complaining.

MR. BUTZNER: Wait a minute.

THE COURT: He can say Mr. Staples kept complaining.

MR. BUTZNER: He has to testify from his own knowledge.

THE WITNESS: I am testifying from my own knowledge.

MR. BUTZNER: Is Sergeant Pitsinger here to testify?

THE WITNESS: Let me finish, will you? Mr. Staples came to me in my office and called me at the office, and I know his voice and said, "Will you have somebody investigate?"

So I then got the new sergeant Pitsinger and he went down there himself and the Sergeant was there on that occasion and left.

Sergeant Pitsinger then arranged to get a special investigator and the special investigator came, which was long

after the break-in and the trail was so cold he told me, "It is practically impossible at this date --"

24

Q You know that is hearsay, what he told you.

A You have so much hearsay in there it would shock a --

Q I am objecting to your hearsay.

A They testified to anything, but I cannot.

THE COURT: That case was investigated by Layne, the sheriff, Pitsinger, and a special investigator, was it?

THE WITNESS: Yes. I am trying to testify the others came so late --

THE COURT: You cannot tell what he told you.

THE WITNESS: Then I will tell you again, he came so late there was no facts left to investigate. That is not hearsay. I was there myself.

MR. CHICHESTER: Is there anything else, Mr. Morrison?

THE WITNESS: I have to reflect. Yes. Since Sergeant Pitsinger has come to the scene, these two troopers have done a fine job and I have written Woodson several letters commending them. If you want to see my letters, they are in the file.

MR. CHICHESTER: Do you have anything else?

THE WITNESS: I cannot think of anything else.

MR. CHICHESTER: That is all.

If your Honor please, at this time the prosecution will not call any more witnesses, but with your permission

we would possibly like to call maybe one in rebuttal, more or less.

THE COURT: All right, sir. Of course, you know the rule as to rebuttal. It has to be strictly rebuttal testimony.

MR. CHICHESTER: Yes, sir. I understand that.

Thereupon

DR. L. F. LEE

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you please state your name, residence and occupation?

A Dr. Lee, physician. I reside in Stafford County.

Q Do you hold any official job in Stafford County?

A Medical examiner of Stafford County.

Q Is that the same doctor as what is commonly referred to as the coroner?

A Yes, up until the first of last July; now it is medical examiner.

Q How long have you been a physician, Doctor?

A A physician since 1913.

Q How long have you been coroner of Stafford County?

A I do not remember exactly, Mr. Billingsley. I should

say approximately 12 years or more. I am not positive of that.

THE COURT: You have been coroner ever since I was Judge, and that has been more than 13 years.

THE WITNESS: I do not remember, Judge.

BY MR. BILLINGSLEY:

Q Doctor, I direct your attention back to the 17th day of September, 1952. Did you have any communication with Sheriff Dishman on that day?

A I did, because I have the sheet here which, of course, I filled out, one for the chief medical examiner and then I keep one, and if the Commonwealth Attorney in the case should suspect murder, foul play, the Commonwealth Attorney can request a yellow sheet like this.

Q If there is a suspected murder or foul play?

A If they do not request it, I do not furnish it. Yes, sir. It was on the 17th of September in 1952.

Q What was the nature of that communication?

A Sheriff Dishman called me and asked me, seeing that Dr. Harris, the medical examiner or coroner of this county, was sick, unable to attend this case, and asked me would I take charge of it and I told him I would.

He called me around 3:40 a. m. on the 17th of September, 1952.

Q 3:40 a. m.?

A Yes, sir. And I took charge of the case. Of course,

I authorized him, through him, to have the body removed. The body, of course, you all know, a body cannot be removed unless the investigating coroner or medical examiner authorizes it to be done.

Q You did authorize it?

A I did, authorized it to be removed to Kay's Funeral Home.

Q Where is that?

A That is in Fredericksburg, Virginia, where I made an examination on that same day. It was at 10:10 a. m. I made investigation of the body, and taking into consideration the witnesses in the case, there was the injury or the witness to the injury or illness, so he died at his home, and the one that testified in that case was Elmer Thompson of Delhlgren, was a witness to the death.

The history of this case, this man was taken sick suddenly with a pain in his chest, violent pain in his chest, according to the history that I got, and died suddenly, as I remember it, in the bathroom, went to the bathroom, was taken with an attack of what they thought at the time was indigestion, had severe pain in his chest which I considered was due to coronary occlusion, in other words, my diagnosis in the case.

Q Doctor, you made the report to Richmond for this death the same as you do deaths in Stafford?

A Yes, sir.

Q I show you this death certificate which is marked C-5.

A All coroners, when they make an investigation, by law they have to sign the death certificate. It does not make any difference if an ordinary doctor has attended them.

Q You signed that as a coroner?

A Wait a while. Let me see my handwriting. Yes, sir. I did. I see my name is on that here, name and address.

MR. BILLINGSLEY: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Doctor, are you reading from your original report there?

A Yes. It was made at the time. You see, I make out a yellow sheet. I fill out a white sheet, a facsimile of this one I got. They are notes I make on a special pad. I make notes on a special pad when I am making an investigation. I copy them on this sheet. Then I send a facsimile to the Department of Health, Office of the Chief Medical Examiner.

Q You send the white sheet to Richmond?

A Yes, sir.

Q And you keep that?

A Yes, sir.

Q That was originally made by you and retained by you?

A Yes, sir.

Q You acted as you usually do in cases as a coroner?

in this case?

A When I am called specially, I do not know as it has happened, but once or twice in Fredericksburg, when Dr. Goodloe was out on a case, it seems they have authority to call me to act.

Q That is all right. I do not care about that. I believe you said one of these witnesses was Elmer Thompson?

A M. Thompson, Dahlgren, Virginia, last seen alive by, that is in my form here. He was not found dead, according to the history of this case. He was still living, but in a morbid condition. Apparently, when he was last seen alive, he was still living when Elmer Thompson saw him.

Q Did you have any information on why you were called?

A Yes, sure. I have it written down here.

Q What is that?

A I was called by the sheriff of King George County to investigate the death of James Thomas Merritt. Dr. Roger Harris of Port Royal, the medical examiner for King George County, being unable to attend because he was sick -- that is what I was told at that time. It is down here I acted as medical examiner.

Q Yes, sir; did Dr. Harris ever say anything to you?

A Dr. Harris never talked with me concerning this case, no.

Q Did you send your original to Richmond, or a copy of

it?

A No, sir, sent the white sheet to Richmond.

Q You sent it in this case?

A That is right, and I put down here, acting coroner in the case.

MR. CHICHESTER: That is all.

BY THE COURT:

Q Doctor, is it not customary when one coroner is sick, that you call the coroner from the adjoining county to act?

A Judge, I do not know what the specific points of law are on that occasion. I am not a lawyer, but I have only been called in only one case, and that was in Fredericksburg where a police officer, as I said a while ago, called me asking me to act in the absence of Dr. J. D. Goodloe, who was the medical examiner at that time. He was in Washington. Whether they have the authority to call me or not, I do not know about that.

Q The Board of Medical Examiners or whoever you make your report to did not make any complaint about your action in this matter?

A No, sir, but they do want me to mention that I was acting in the place of the medical examiner of that county.

Q To whom do you make your report?

A To the Office of the Chief Medical Examiner, North 12th Street, Richmond.

Q That is Dr. Jeffrey Mann?

A Yes, sir. He is the Chief, but, of course, he has assistants.

BY MR. CHICHESTER:

Q That was the only witness?

A That was the only witness I had contact with, as far as I know. That was the only one present at the time. Of course, I do not know anything about that.

MR. CHICHESTER: That is all.

Thereupon

DR. R. N. HARRIS

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUTZNER:

Q Dr. Harris, will you state to the Court your name, please?

A R. N. Harris.

Q Your residence?

A Port Royal, Virginia.

Q Your occupation?

A I am a physician.

Q How long have you been a physician?

A 30 years.

Q Are you a coroner or, as you are now called, a

medical examiner?

A I am a medical examiner.

Q For what county?

A For King George County.

Q Dr. Harris, there has been some testimony here that a man named Merritt died on or about September 17, 1952. There has been further testimony that the death certificate which is in evidence was signed by the coroner of Stafford County, Dr. L. F. Lee, who, on the certificate, stated that he was acting coroner in the case and his certificate which he wrote had a notation that Dr. Harris was called by Sheriff Dishman and Dr. Harris was sick.

Will you please tell whether on or about September 17, 1952, you were or were not sick?

A I was sick.

Q So if the sheriff had called you, do you recollect whether he called you actually or not?

A I do not recall whether he called me.

Q But if he had called you, you would have been sick?

A Yes, sir.

Q And you could not have gone to investigate this case?

A That is true.

Q Would you have been likely to advise him to get Dr. Lee?

A I would have advised him to get a coroner, yea. I am

quite sure the coroner would have had to have been --

Q So it would have been impossible for you to have investigated the case on September 17?

A Yes, sir.

Q And did he get a coroner?

A Yes.

MR. BUTZNER: I think that is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q I just have one question, Doctor. Doctor, do you know what the usual procedure is? You attend a death and determine the cause and so forth, then you fill out these papers and keep the yellow sheet and send the white one on into Richmond? That is right so far?

A I deviate a little bit. I think you are supposed to keep the white sheet, but you can get a copy from the Commonwealth Attorney's office, so I actually make out one and send it in.

Q Does the Commonwealth Attorney receive one?

A There are three copies. One goes to the Chief Medical Examiner's Office and it is copied and sent back to the county in which the thing occurred. That is my understanding.

MR. CHICHESTER: That is all.

REDIRECT EXAMINATION

BY MR. BUTZNER:

Q The sheriff does not send those copies around, does he?

A Oh, no.

Q He does not have anything to do with filling them out?

A No.

MR. BUTZNER: That is all.

Thereupon

WILLIAM STROTHER JONES

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you state your name?

A My full name?

Q Yes, sir.

A William Strother Jones.

Q What is your occupation?

A I am a retired Naval man.

Q Where do you live?

A Potomac Beach.

Q That is in Westmoreland County?

A Westmoreland County.

Q How long have you lived there?

A We moved there in 1947.

Q Where did you live before that?

A In King George, at Waterloo Farm.

Q Where is Waterloo Farm?

A Waterloo Farm is a part of the property that Mr. Horace Morrison owns now.

Q That is down below Owensin the Potomac district?

A Yes, sir.

Q How long did you live down there?

A On that place I went down 1929 and I moved to Potomac Beach in 1947.

Q Prior to moving to Colonial Beach, did you live in King George most of your life?

A About half of it.

Q Do you know Horace T. Morrison?

A Yes, sir.

Q Do you know his general reputation in the vicinity in which he lives?

MR. CHICHESTER: Just a minute.

Q For truth and veracity?

MR. CHICHESTER: Just one minute, now. I object to the question on the ground it is not properly framed, sir.

THE COURT: The question is, are you acquainted with Mr. Horace T. Morrison?

MR. BILLINGSLEY: He said yes.

THE COURT: Are you acquainted with his general reputation for truth and veracity in the neighborhood in which

he lives? Is it good or is it bad? Would you believe him on his oath in a matter in which he is interested?

MR. CHICHESTER: That is not what he asked him. I do not object to it that way.

BY MR. BILLINGSLEY:

Q Are you acquainted with his general reputation in the vicinity for truth and veracity in the general neighborhood where he lives?

MR. CHICHESTER: In which he resides and moves.

THE COURT: In which he lives. That is the formula.

BY MR. BILLINGSLEY:

Q Are you, sir?

A You want me to answer his general reputation?

Q Are you acquainted with it, yes or no.

A Yes, sir, I am acquainted with it.

Q Is it good or is it bad?

A Me, personally?

Q No, the general reputation.

A I could not answer that, whether it is good or bad, but from my view, I can answer it.

MR. CHICHESTER: Just a minute, sir. You cannot answer what your view is.

MR. BILLINGSLEY: That is all.

MR. CHICHESTER: I have no questions.

Thereupon

FRANK A. MOTLEY

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUTZNER:

Q Mr. Motley, will you please state your name?

A Frank A. Motley.

Q Were you involved as a complaining witness in the case of Commonwealth against Hundley?

A Yes, sir, I was.

Q Mr. Motley, will you please state whether or not you ever went to the Commonwealth Attorney's home, Mr. Morrison's home, and asked him to prosecute that case?

A No, sir. I did not go to his home.

Q Did you ever go to his office and ask him to prosecute that case?

A No, sir, not until the day of the trial.

Q I am speaking now of some day before the trial.

A The only time I saw Mr. Morrison before the first trial, he was at my father's store at Port Royal.

Q He came down to see you?

A Yes, sir.

Q You never went to see him except the day before the trial?

A That is right.

Q And that was the 7th, I think? Did you ever complain to the Commonwealth Attorney that the sheriff was not properly investigating the case?

A No, sir, I did not. He came to me and asked me for a witness in the case.

MR. BUTZNER: I think that is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q So Mr. Morrison was the first person who contacted you about the case?

A After the night of the incident, yes.

Q Was it a break-in?

A No, sir, I was hit by another man.

Q You say you did not complain to the sheriff?

A Not after that night. Through my understanding that the man was arrested that night --

Q Did you complain to the sheriff?

A No, sir, I did not. Not that night nor any other time.

Q You did not make any complaint at all to anyone?

A No, sir, not after that night, no, sir.

Q Did you ever after that?

A Except I was a witness at the trial; that is all.

Q You were the star witness, were you not?

A Yes, sir. I was under the impression it was being

handled by the State at that time.

Q It was, was it not?

A Yes, sir, it was, as far as I know.

Q Was there any investigation made of the case?

A As far as I know, it was. The man was tried and acquitted.

Q Did Mr. Morrison investigate it?

A I do not know, other than when he came to me and asked me exactly what happened in the case.

Q He had to be interested in the case?

A That is right. He made an investigation.

Q Did Sheriff Dishman come to you and ask you about it?

A No, sir.

Q He never came to you at all?

A No, sir.

MR. CHICHESTER: That is all.

REDIRECT EXAMINATION

BY MR. BUTZNER:

Q As a matter of fact, the sheriff talked to you the night it happened?

A Yes, sir.

Q He and Trooper Layne?

A That is right.

Q And they did not have to come back to find out what you told them once?

A No, sir.

MR. BUTZNER: That is all.

RE CROSS EXAMINATION

BY MR. CHICHESTER:

Q Why did you tell me a little while ago the sheriff had never mentioned it to you?

A The night at the school, I said only the night at the school.

Q When I asked you that you did not say that.

A I thought I did.

MR. CHICHESTER: That is all.

Thereupon

GEORGE S. MASON, Jr.

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you please state your name, residence and occupation, please?

A George S. Mason, Jr., Colonial Beach, Westmoreland County, Virginia; attorney-at-law.

Q Mr. Mason, I direct your attention to the case of Commonwealth versus James Porter, tried in the Circuit Court of the County of King George. Were you attorney in that case?

A I was associated with Mr. Morrison in the prosecution

of the case.

Q Was Sheriff Dishman interested in the case or involved in that case?

A To the best of my recollection, the sheriff's testimony was not vital to the issues involved.

Q Did you represent Margaret Porter at a later date?

A I did, sir.

Q In what capacity?

A She was the complainant in a suit filed for a divorce against James Porter, who was the defendant.

Q Was the incident that took place at the Circle which brought about the criminal charge involved in that case?

A It was, sir.

Q Was Sheriff Dishman called?

A He was not, sir.

Q Why?

A This was an assault and battery case, sir, that occurred in a public store, and Sheriff Dishman was not present when the alleged crime was committed.

Q Did the sheriff do anything or fail to do anything that hindered or impeded the prosecution of James Porter?

A Certainly not to my knowledge, sir.

Q Mr. Mason, do you hold any official job at Colonial Beach?

A I am the Town Attorney.

Q As Town Attorney, have you had any occasions to work with Sheriff Dishman in King George County?

A I have, sir.

Q Will you tell the Court how he conducted himself on those occasions?

A He has been very cooperative and in my opinion he performed his duties as any sheriff should properly do.

MR. BILLINGSLEY: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Mr. Mason, you say you have associated with or assisted Mr. Morrison in this case. In prior testimony there has been some -- I think Mr. Butzner tried to make Mr. Morrison the defendant, so I am going to ask you one or two questions.

Mr. Morrison conducted himself, so far as you know, properly in the trial, did he not?

A He certainly did.

Q And you, so far as this later divorce business is concerned, would state that Mr. Morrison has conducted himself properly in that, is that right?

A I think Mr. Morrison correctly related the fact that he did refer the girl to me. At least --

Q And there was nothing improper in that, so far as you know?

A There was certainly nothing, sir.

MR. CHICHESTER: I believe that is all.

(A short recess was taken.)

Thereupon

R. A. PEED

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUTZNER:

Q Mr. Peed, will you please state to the Court your name?

A R. A. Peed.

Q Your residence?

A Weedonville.

Q What is your occupation?

A Commissioner of Revenue.

Q How long have you been Commissioner of the Revenue of King George County?

A 35 years.

Q Are you acquainted with Mr. Horace T. Morrison?

A I am.

Q Are you acquainted with the general reputation of Mr. Morrison for truth and veracity in the community in which he lives, moves and has his being?

A Yes.

Q Is that reputation good or bad?

A Bad.

Q Based on that reputation, would you believe him under oath?

A I would not.

MR. BUTZNER: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Mr. Peed, you do not like Mr. Morrison very well, do you?

A I do not think Mr. Morrison likes me.

Q I am asking you the question, Mr. Peed. I am not asking you about Mr. Morrison's likes and dislikes.

A Yes. I like Mr. Morrison all right.

Q You like him all right?

A Yes, I do.

Q Where do you live with reference to Mr. Morrison?

A I live at Weedonville.

Q Where does he live?

A He lives down at Owens.

Q How far away is that?

A Five miles.

Q What neighbors of his do you know?

A I know Mr. Berry, his brother-in-law.

Q Mr. Berry does not think his reputation is very good,

either, does he?

A No. I do not think he does.

Q Who else?

A I do not know. I am just talking for myself.

Q Tell me this, Mr. Peed, outside of Mr. Berry, who else have you heard in his neighborhood, now, in Mr. Morrison's neighborhood --

A Now, listen --

Q I am asking you a question.

A I am asking you one, too.

Q I am not answering it, but have you heard anyone in that area other than Mr. Berry discuss Mr. Morrison's reputation?

A I refuse to answer that question.

MR. CHICHESTER: I believe that will be all.

THE WITNESS: You asked me if Mr. Berry likes Mr. Morrison. You brought that out.

MR. CHICHESTER: That is right. I brought it out.

Thereupon

W. D. TAYLOR

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUTZNER:

Q Mr. Taylor, will you please tell the Court your name?

A W. D. Taylor.

Q What county do you live in?

A King George.

Q Have you ever held any official office in King George County?

A I was on the School Board for about four years.

Q Do you own or operate any farms?

A Yes, sir.

Q Are you one of the large landowners of the county?

A We own some land.

Q About how many acres of land do you own?

A About 1200.

Q Are you acquainted with Mr. Horace T. Morrison?

A Yes, sir.

Q Are you acquainted with the general reputation for truth and veracity of Mr. Horace T. Morrison in the community in which he lives, moves and has his being?

A Yes, sir.

Q Is that reputation good or bad?

A Bad.

Q Based upon that reputation, would you believe him under oath?

A I could not.

MR. BUTZNER: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Dan, you and I have been friends for a long time, have we not?

A Yes, sir.

Q Don't start getting mad now, but let me ask you a few questions.

A All right.

Q How far do you live from Mr. Morrison?

A I think it is about 20 miles.

Q Do you know Mr. Harry Berry?

A Yes, sir.

Q Who else of the neighbors of Mr. Morrison do you know?

A I know practically all the people in Northern Neck down in that section.

Q Who in that section have you heard discuss Mr. Morrison's reputation?

A A great many.

Q Can you give me the names?

A No, sir.

Q You do not know of a single one, Mr. Taylor, with whom you have discussed his reputation?

A Yes, sir, but I would not give you the names.

Q Then, Mr. Taylor, how can you come into court here and say that his reputation is bad for truth and veracity if

you are unwilling to tell the Court with whom you discussed the question?

A Well, I do not think I should.

Q I am not going to press you, Mr. Taylor, but I just simply asked you the question.

A I know you did.

Q You know about this feud, do you not, that Mr. Morrison and Mr. Berry have had?

A I think everybody has heard about it.

Q You are some relative of Mr. Berry?

A Relative, no, sir, no kin at all.

Q Not by blood or marriage?

A No, sir.

Q Tell me, Dan, have you actually discussed Mr. Morrison's reputation with any of his neighbors?

A With any of whose neighbors?

Q His neighbors.

A His neighbors?

Q Yes, sir.

A I have heard people make remarks.

Q What people, his neighbors?

A People there in that section.

Q How near would you say that they live to him?

A Some of them pretty close and some of them not so close.

Q Name the ones that are close.

A I would not name them.

Q You would not know them, either?

A I would not name them.

28

Q We are going to keep on being friends, you understand, but I am going to ask you a few more questions.

A O. K.

Q You come in here and tell the Court that Mr. Morrison's reputation for truth and veracity is bad and that you know his reputation in the community in which he lives and moves, but you will not tell the Court how you obtained that information, will you, and from whom you obtained it?

A I would rather not.

MR. CHICHESTER: I am leaving that up to you. I believe that is all.

Thereupon

W. THOMAS WEAVER

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you state your name, residence and occupation, please?

A W. Thomas Weaver, resident of King George, Virginia, operate the King George Supply Company, hardware and building

materials.

Q Do you have any other occupations or vocations?

A I am Commissioner of Rappahannock Baseball League and assistant scoutmaster and hold offices in a couple of other local organizations.

Q Civic organizations?

A Yes, sir.

Q Mr. Weaver, do you know Horace T. Morrison?

A I do.

Q Do you know his general reputation for truth and veracity in the community in which he lives, moves and has his being?

A I do.

Q Is that general reputation good or bad?

A I would have to say it is bad.

Q Based on that reputation, would you believe him under oath?

A I am afraid I would not.

MR. BILLINGSLEY: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Where do you live, Mr. Weaver?

A On Route 3, about two miles east of here.

Q Where does Mr. Morrison live?

A Mr. Morrison lives the other side of Owens. However,

I work right next door to him all day.

Q Right down here, you mean?

A Yes, sir.

Q Did he ever lie to you?

A Well, now, I would rather not be too specific.

Q I am going to leave that up to you, but I will ask you the questions.

A I believe that he has.

Q Are you willing to testify on your oath that he has?

A I just told you I did not have any proof.

Q Are you going to call a man a liar without proof?

A My answer was based on what I knew of his reputation.

I have heard him discussed very freely by a number of people for some time.

Q Who?

A I prefer not to name any of the people. I could, but I prefer not to.

Q So you are in the same position, you come here and call a man a liar on the information that you have obtained, and you do him the injustice not to mention the persons from whom you gained that information?

A I did not call the man anything, but I answered the questions to the best of my knowledge and belief.

Q You said you would not believe him under oath? Is that not calling a man a liar?

A I was forced to give that answer in view of some things that have happened.

Q Who forced you to this?

A My own information.

Q I asked you where you got your information?

A I will not tell you. I prefer not to divulge that.

Q You did not get it out of the air.

A I did not get it out of the air, but I prefer not to name the people in the case.

Q You and Sheriff Dishman are good friends, are you not?

A I have always tried to be good friends to everybody around here.

Q Especially so to Sheriff Dishman?

A Not any more so than to anybody else around the courthouse, I do not think.

Q Sheriff Dishman has done you favors in times past, has he not?

A It might be that he has.

Q Let us say yes or no. Do not evade the question.

A He has always treated me all right.

Q He has done you favors?

A He has treated me all right.

Q I did not ask you that. I asked you if he had done you favors?

A What do you mean by "favors"?

Q Do you not know what that word means?

A I do not know what interpretation you are using it on.

Q I do not think I am misleading in my questions.

MR. BILLINGSLEY: A favor is something you also give in advance, Mr. Chichester.

MR. CHICHESTER: Mr. Weaver knows I am not talking about that kind of favor, and besides, it has been so long since I had one of those favors, I have forgotten what it was about.

BY MR. CHICHESTER:

Q So you do not know what I am talking about?

A I know what you are talking about, but I do not know what specific favors you are talking about.

Q It is a blanket question.

A He has never done anything in any way, evaded his duty, if that is what you have reference to.

Q That is still not what I asked you, but let it pass. Did not Mr. Morrison help you out considerably when you first came here from Arlington?

A Everybody did, that is right.

MR. CHICHESTER: I believe that is all.

Thereupon

A. L. MacGREGOR

was called by counsel for the Defendant and, having been first

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUTZNER:

Q Will you please state your name?

A A. L. MacGregor.

Q What is your residence and occupation, sir?

A Sheriff of Stafford County, Virginia.

Q How long have you been sheriff?

A A little over six years.

Q Do you know Sheriff Sam Dishman of King George?

A Yes.

Q About how long have you known him?

A About ten years, I guess; before I was sheriff.

Q As Sheriff of Stafford County, from time to time, have you had occasion to call on Sheriff Dishman or has Sheriff Dishman called on you in the discharge of his duties?

A Yes, he has.

Q Is one of the duties of a sheriff to cooperate with the Superintendent of Public Welfare?

MR. CHICHESTER: I object to that question, if your Honor please.

THE COURT: Why do you object to that?

MR. CHICHESTER: This is why. The duties of the sheriff in one county may be different from the duties in another county. If the sheriff will testify that there is a

law requiring him to assist the Superintendent of Welfare, that is all right, if there is a State law to that effect, but otherwise, I submit that the work in each county is entirely different.

There are probably 50 or 60 counties in this state where the sheriff and the Public Welfare --

THE COURT: If you had left out of that bill of particulars any reference to the Superintendent of Public Welfare of King George County, I would have kept this evidence out.

MR. CHICHESTER: But there is no reference in there to Stafford County.

THE COURT: But it is perfectly admissible in view of what you put in the bill of particulars.

MR. CHICHESTER: Then, sir --

THE COURT: You will except and I will admit it.

MR. CHICHESTER: I object to the evidence and except to the ruling.

BY MR. BUTZNER:

Q Sheriff, it is generally thought to be one of the duties or one of the customs, is it not, for the sheriffs to help the Superintendents of Public Welfare?

A I always do.

Q You have driven in the automobile with your Superintendent of Public Welfare?

A Yes.

Q You have tried to help her out on cases?

A Yes.

Q They have to, from time to time, go to homes where there are delinquent children?

A Yes.

Q And they want help in that regard, do they not?

A Yes.

Q You go in?

A Yes.

Q The mere fact that the sheriff of a county and the superintendent of public welfare are riding in the same automobile does not bring any disrepute on either of them?

29

MR. CHICHESTER: I object to that question. It is a matter of opinion.

THE COURT: That may be a matter of opinion.

MR. CHICHESTER: Yes, sir.

BY MR. BUTZNER:

Q You also go to the office of the superintendent of public welfare of your county, do you not?

A Yes, sir.

Q In the discharge of your duties?

A Yes, sir.

Q Sheriff, has Sheriff Dishman, insofar as you know and in your official contacts with him, discharged the duties

of his office in a proper manner?

MR. CHICHESTER: I object to that question, your Honor.

THE COURT: He is the sheriff.

MR. CHICHESTER: If your Honor please, he has to tie it down to a charge laid right in this complaint. That is a general question.

THE COURT: That is a general question.

MR. BUTZNER: But there are general charges in here.

THE COURT: He can give an opinion.

MR. CHICHESTER: There is nothing as general as that, Mr. Butzner.

MR. BUTZNER: Yes, "on numerous occasions too numerous to mention" --

THE COURT: Go ahead.

MR. BUTZNER: The case of Commonwealth versus Malbon, where they ran 43 witnesses through the court on the sheriff's character and reputation. We are not bringing in 43, and the Commonwealth in that very case raised this same objection that you are raising and as the Supreme Court of Appeals said --

THE COURT: I sustained the objection.

MR. CHICHESTER: I except to allowing the question.

MR. BUTZNER: I will rephrase it.

BY MR. BUTZNER:

Q What is the sheriff's reputation as to the way he

discharges his duties, as far as you know? Is it good?

A Yes, sir.

MR. BUTZNER: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Sheriff, why did you come down here?

A I was summonsed.

Q Sheriff, whoever told you it was your duty to go with the public welfare superintendent? Whoever told you that?

A Nobody ever told me.

Q Did you ever read it in any books or anything?

A No, sir.

Q You do not know whether that is your duty or not?

A I never read it, myself. Anything against it, either.

Q But you do not know whether it is your duty or not, do you? You just go as a matter of courtesy, do you not?

A Yes, sir.

Q And to lend a helping hand?

A Yes.

Q But it is not any duty on you to do that, is it? That does not come under the head of your official duties?

A I do not know. I never asked.

Q You just do it?

A I just do it.

Q I do not object to it. You said that Sheriff Dishman's reputation is good. Sheriff, how many dealings have you ever had with Sheriff Dishman over this period?

A I do not know. I have come down here and met him with warrants and I would pick up some fellows down here.

Q But it has been seldom?

A Yes.

Q If no one said anything to you about Sheriff Dishman, you would not know whether his reputation was good or bad, would you?

A Just from what I have heard.

Q From your contact with him, you would not know, would you?

A That is all I had to go by.

Q And he could have a powerful reputation and you not know it?

A Yes.

Q And his reputation might be a shining light and you not know it, is that correct?

A It is possible.

MR. CHICHESTER: Thank you.

Thereupon

CHARLES B. ENGLISH

was called as a witness by counsel for the Defendant and, having been first duly sworn, was examined and testified as

follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Would you please state your name, your residence and your occupation?

A Charles B. English. I live at Kinsale; Sheriff of Westmoreland County.

Q Where is Westmoreland County located?

A It adjoins King George on the east.

THE COURT: Do you not think I know where Westmoreland County is?

MR. BILLINGSLEY: Judge, such a complete record is being made today --

THE COURT: I will take judicial notice of the fact.

BY MR. BILLINGSLEY:

Q How long have you been Sheriff of Westmoreland?

A I have been sheriff six years, deputy sheriff prior to that about 12, a total of 18 years.

Q Sheriff, during the time that you have been Sheriff of Westmoreland County, have you had any dealings with Sheriff Dishman of King George?

A Yes. We have associated together on some investigations down involving persons that live in his county along the line and over in my county from his side.

Q From your observations and your dealings with Sheriff

Dishman in an official capacity, would you say he was a competent sheriff?

MR. CHICHESTER: I object to that question.

THE COURT: He certainly is a sheriff. He ought to know whether a sheriff is competent or not.

MR. CHICHESTER: On the grounds that it is my contention that the question must be confined to the bill of particulars.

MR. BILLINGSLEY: I think your Honor has already ruled on that.

THE COURT: The trouble is that the rule charges malfeasance, misfeasance and gross neglect of duty, and I think that he has a right to answer that question. Go ahead and answer it.

MR. CHICHESTER: I except to the ruling.

THE COURT: All right. Go ahead.

THE WITNESS: In my dealings with the sheriff, working with him, I found him very cooperative, very thorough in investigations.

MR. BILLINGSLEY: That is all. The witness is with you.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Westmoreland County, does that adjoin this one?

A Yes, sir, on the east.

MR. BILLINGSLEY: Judge, I think that question was for Mr. Chichester's benefit.

Q Westmoreland is the cradle of Democracy.

THE COURT: This county is the birthplace of James Madison, my county the birthplace of Patrick Henry, Louis Littlepage and Thomas Somers.

MR. CHICHESTER: You know better than I do, Judge.

THE COURT: That is right.

BY MR. CHICHESTER:

Q How many investigations have you ever worked on with the sheriff of this county?

A I cannot recall the exact number, but it is six or eight, possibly more.

Q Six or eight over a period of about six years?

A Yes, sir.

Q You have not seen him any more frequently than that?

A Oh, yes. I have seen him more frequently than that.

MR. CHICHESTER: I believe that is all.

THE COURT: You have Colonial Beach in your territory?

THE WITNESS: Yes, sir, what of it is not in Maryland.

Thereupon

GARNETT BROOKS

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you please state your name, your residence and your occupation?

A Garnett Brooks, Bowling Green, Virginia, and Sheriff of Caroline County.

Q That is the county that borders King George on the south?

A Yes, sir, just a road between them.

Q How long have you been sheriff?

A Since 1948.

Q During the time that you have been Sheriff of Caroline County, have you ever had any occasions to work or to investigate with Sheriff Dishman of King George County?

A Yes, I have.

Q Sheriff, based on your observations during those investigations, and the times that you worked with Sheriff Dishman, would you say that he is a competent sheriff?

A I would say that he was.

MR. BILLINGSLEY: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Sheriff Brooks, when you have information of illegal sale and manufacture of ardent spirits in the county, do you report to the Commonwealth Attorney to swear out the warrant that is necessary for the arrest or search of the place, or do

you do it yourself?

A Sometimes I do; sometimes I do not.

Q Which do you do most often?

A Most of the time I try to catch them myself and he don't know anything about it and never gets into court.

MR. CHICHESTER: That is all.

Thereupon

LAWRENCE B. MASON

was called as a witness by counsel for Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q Will you please state your name, your residence, and your occupation?

A Lawrence B. Mason; residence, King George County; occupation, town clerk, of the Circuit Court.

Q How long have you been clerk of the Circuit Court of King George County, Mr. Mason?

A 37 years.

Q You, of course, know Sheriff Dishman?

A I do.

Q He works with you in your office, is that correct?

A Correct.

Q From your observations of Sheriff Dishman, would you say that he is a competent sheriff?

MR. CHICHESTER: I object to the question.

THE COURT: No. It is a proper question.

MR. CHICHESTER: I except to the rule of the Court,
sir.

A So far as his work in my office, it has been satisfactory, in my office.

Q Mr. Mason, your office is approximately 30 feet from the office of the sheriff, that is correct, is it not?

A About, yes.

Q Will you please state whether or not the sheriff is at King George Court House during the weekdays?

A I think he is here each day of the week, some time during the day.

MR. BILLINGSLEY: That is all.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Mr. Mason, you say you have seen the sheriff up here each day. You would not actually go that far, would you?

A Well, I thought you asked that question. He usually gets his mail. Some of his mail comes with my mail and I put it in here on the table and he usually stops during that day.

Q You do not mean to say you see him every day?

A I do not need to see him.

Q I say, you do not mean to say that you actually see him every day?

A I would say possibly or I see him on a trip somewhere over the county.

Q Is it not true that the sheriff may come in and get his mail and go out on business and you not see him?

A Oh, it could happen. He usually hangs around. He comes by the office and picks up the mail.

Q He always gets his mail, anyhow?

A Yes.

THE COURT: He is required to come by the office to pick up summonses and those things. It is the law.

Q I might say that I believe, if I am not mistaken, the sheriff is required to file with the clerk of the Circuit Court returns on search warrants that have been executed. How many of those do you have filed by Sheriff Dishman?

A I will have to check my files for that.

MR. BUTZNER: Is that one of your specifications?

MR. CHICHESTER: No. You brought it out on direct examination.

THE WITNESS: I would have to get the file.

BY MR. CHICHESTER:

Q You do not know about that?

A I do not know now.

Q Do you know that you have any that have been sworn out by him?

A No. I do not know it.

MR. CHICHESTER: I believe that is all.

(A short recess was taken.)

Thereupon

J. SAMUEL DISHMAN

was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILLINGSLEY:

Q You are Sheriff J. Samuel Dishman?

A That is right.

Q Sheriff of King George County and the defendant here today?

A Yes, sir.

Q Sheriff, how long have you been Sheriff of King George?

A 12 years.

Q What is your age?

A 68.

Q How large is King George?

A I think the sign says 174 square miles.

Q Do you have any deputies?

A Not at present, I have not.

Q Sheriff, the first charge against you is that in the case of Commonwealth versus Hundley, which was originally set for trial in the Trial Justice Court of King George County,

Virginia, on April 8, 1952, at 10:00 a. m., that on April 7, 1952, the day before the trial, at approximately 5:15 p. m., the attorney for the Commonwealth addressed a letter to the Honorable E. J. Slipek, Trial Justice of the said Court, asking that six witnesses be summonsed for trial on the 8th of April.

It further states that when the case was called for trial on the 8th of April, at 10:00 o'clock, the witnesses had not been summonsed but the sheriff was in court. Because of this fact, at the request of the defense attorney, the case was continued to April 15, 1952, at 2:00 p. m.

Do you have any statement to make on that?

A I did not have any summonses.

Q The summonses were not placed in your hands before court?

A No, sir.

Q And not having the summonses, you could not summons the witnesses?

A I did not do it, no.

Q In the second charge, in the case of Commonwealth versus Larrain Thomas, who was charged with violations of Section 18-301 of the 1950 Code of Virginia, I believe that is the lottery section, is it not?

MR. CHICHESTER: I do not know, sir.

Q (Continued) -- as amended, yes, to-wit, operating a lottery, by letter dated May 4, 1954, the Attorney for the

Commonwealth requested the clerk of the Trial Justice Court, Mrs. Layne, to summons in a witness, Edward R. Crusoe, of Owens, to testify in the said case which was set for trial at 10:00 a. m. on May 5. That was the next morning.

When the case was called for trial, Edward R. Crusoe was not in the courtroom, and Sheriff Dishman said in open court that he had not summonsed him.

The Attorney for the Commonwealth demanded that he forthwith summons him before Crusoe leaves the state, he having been charged by the FBI with violation of Federal law and a Civil Service hearing was pending, and the said sheriff refused and failed to comply with this request and did not summons Crusoe until May 6.

Do you have any statement to make on that?

A I did not summons Crusoe for the 5th. Is that the date of the trial?

Q Yes, sir. How about the other witnesses?

A That was an oversight. I summonsed the other witnesses.

Q In other words, the day before the trial you were given three summonses?

A That is right. That was the oversight.

Q Go ahead.

A And in open court when they asked why, I told him it was an oversight and I could get him very shortly, and Judge

Triplett told me they did not need him, the case was postponed.

Q You said in open court you could get him that day?

A Yes, and the Judge told me, "We do not need him," and the following Wednesday I had him in court.

Q The Commonwealth next charged that the Attorney for the Commonwealth informed you on numerous occasions since January 1, 1952, that complaints had been made to him that Allean Grymes, Allean Jackson and others were selling whisky illegally, but that you stated that you would only act if papers were put in your hands.

A Not true.

Q That is not true?

A Not true.

Q The next charge, that in the case of Commonwealth versus Hundley, which was an assault at King George High School on March 29, 1952, that prior to the trial of this case, after Sheriff Dishman had failed to summons witnesses as set forth by the charge, which I read you, that you did not investigate or report this assault although you knew about it.

What have you to say about that?

A I called at Prince George High School and got up there and Mottley said Hundley struck him and I asked Hundley about it and he said he did.

I placed Hundley under arrest, brought him down, swore out a warrant against him and put him under bond.

Q You had a confession, did you not?

A Yes. He said he struck him.

Q He said he struck him?

A Yes, sir. I arrested him on that basis.

Q The next charge is here on February 11, 1954. I believe that Mr. Morrison testified that that was a mistake in the bill of particulars, that it should have read on November 11, 1953, that H. T. Berry at Owens, Virginia, telephoned you that he had shot a dog owned by Horace T. Morrison, which Berry alleged was in his sheep.

The sheriff informed Berry that he would call the game warden, though later you boasted that you were not going to answer any more calls from Berry.

Do you have any statement to make about that?

32 A Horace Morrison called me one night. I have had numerous calls over there about Berry, and Mr. Morrison called me one night at ten minutes to 12:00 and he said Harry Berry has gone wild, whooping and hollering, and please come over.

I told him -- I got over there about 25 minutes after 12:00 and I found Mr. Berry there feeding his lambs and attending to his work very quietly. I stayed there and talked to him about half an hour.

I saw down to Mr. Morrison's house everything was very dark and everything was quiet. I told Mr. Morrison I was not going to answer any more calls like that, for them to get.

papers, warrants for him.

Q In other words, Mr. Morrison called you in the middle of the night and got you up and when you got there Mr. Morrison's house was dark and Mr. Berry was taking care of his sheep in a quiet and orderly manner?

A That is right.

Q Sheriff, the next charge regards Mr. Wyland's testimony or, rather, it regards a charge you would not go with him on his raid of Allean Jackson. You heard Mr. Wyland testify. Is that testimony correct?

A That is correct.

Q That you were willing to go with him?

A The testimony was correct.

Q But that he did not need you and you had a report of a drunk driver?

A I did.

THE COURT: Did you catch him?

THE WITNESS: No, sir.

BY MR. BILLINGSLEY:

Q Now, Mr. Dishman, the next charge, that on or about February 19, 1952, the home of Mr. N. W. Staples near Edge Hill was broken into in the daytime.

The victim, Mr. Staples, tried to have the sheriff come and investigate, but without avail. The crime is still unsolved.

What about that?

A I was in court. Trooper Layne was in court and the magistrate came. Mr. Morrison delivered the message and we both told him we would go just as soon as we could, and Trooper Layne got through and he told me he was going on.

I told him I would come on as soon as I got through, and when I got through here and got down there I met him at the Circle. I met Trooper Layne and Sergeant Pitsinger and they told me that they had been over the situation and I told them anything I could do to help them I would, and later, not that day, but later, I stopped there and had a talk with Mr. Staples and he went over the situation with me, and it was the same thing that Mr. Layne had told me, and Pitsinger and Layne were taking it in charge and got there first.

I informed Trooper Layne any assistance I could give him I would gladly do it.

Q The first officer on one of these investigations is the one who handles it, is that correct?

A That is the way I do.

Q And Layne was the first one there and you offered to help him in any way that you could?

A That is right.

Q Did you tell Mr. Staples that you always turned investigations of that type over to the troopers, or were you replying that when they got there first--

A I did not tell him that. I told him the troopers had it in charge and I would be glad to assist them. They had charge of that one.

Q That was just a misunderstanding on Mr. Staples' part?

A That is right.

Q Now, the next one. In August, 1952, the service station of Mr. W. N. Jones of Chestnut Hill was broken into and entered in the nighttime, that you were informed but you did not come promptly, and made a poor investigation. The crime is still unsolved.

Mr. Jones testified you came promptly and made all the investigation you could. Did you hear his testimony?

A I heard it.

MR. CHICHESTER: If your Honor please, I have listened to these leading questions and I have hesitated for a long time to object, but I must at this time, to further leading questions.

Q Just indicate if you have any comment about that.

A Mr. Jones called me and I went down there. I went over the situation with him as best I could and did all I could. I would be glad to solve it, but I had no leads.

Q Did you investigate it?

A Yes, sir.

Q The next charge in 1952, the Darby service station near Dahlgren was broken and entered in the nighttime and 16

automobile tires were stolen. The matter was reported to the sheriff, who turned the investigation over to the state police and the crime is still unsolved.

What is your comment on that, Sheriff?

A Darby called me and I immediately went down there with him and him and I went over the situation as best we could and listed the 16 tires, the kinds they were. I did not turn it over to anybody. I mentioned it to Mr. Estes and talked to him on it.

Q Did you turn it over to the state police?

A No, no more than talk with them on it.

Q You talked with them on it?

A Yes, sir.

Q Did you have any serial numbers to go on with these tires?

A No, did not have any serial numbers, had nothing to work on but the blank tire.

Q Now, the next charge. In March, 1954, that the residence of Colonel J. B. Cralle, near Owens, was broken into and property valued at more than \$500 was stolen. The sheriff was informed, on or about the 14th of March, 1954, of the crime, and requested you to go to Joe Bland's home, the caretaker, who would unlock Colonel Cralle's gate and go with him to the house for investigation.

A day or so later the sheriff informed the Attorney

for the Commonwealth that he had been to the Cralle entrance but that the gate was locked and he did not go to Bland's home as requested.

Bland made three or four calls to the Attorney for the Commonwealth requesting that the sheriff investigate.

About one week later the sheriff took a trooper and made a poor investigation. The defendant could not even determine the point of entry into the house; Joe Bland sent for him later and showed him the robbers got in from the roof. The crime is still unsolved.

What do you have to say about that, Sheriff?

33
A Mr. Morrison called me one evening, getting kind of late, and told me about the break-in and I told him I would check on it immediately, and I went down and found the gate locked. The house is half a mile from the highway, and the gate was locked and I knew of no road in there and I turned and went back and informed Morrison that I could not get in there.

I never heard anything about Bland until then, when he told me Bland was the caretaker and that he would make an engagement with Bland for me and he would meet me, and when he informed me Bland was ready, I picked up State Trooper Layne and we went down there and picked up Joe Bland and he opened the gate and got up and opened the house and we went to work on it, the best we could.

It is a small house. The first one we got to was broken into and the window was jimmied by using a heavy screw-driver or a chisel. We saw how that was broken in.

We got in there and we did not know what was taken and Joe Bland did not know. We had just had a rain a little prior to that and we searched for tracks, could not find tracks of any kind, and then he carried us to the main house and we could not find where they went in.

He opened the door and we went on through the house. We did not know what was missing and neither did he, and we searched around for any clue we could get and we could not find anything.

It was three days later I was called back by Morrison that Bland had something else for us. Me and Trooper Layne went down there and he showed us where somebody had been down on the lower house up to a gable window and I could see the imprint from him. There was dirt on the roof all the way up to the gable, but I did not see that the first time, and then we also searched around to see if we could find any clue at all, and about a week later Mr. Cralle came out and gave us a list of the stuff that was missing.

Q Now, the next charge that you had reports of criminal activities in a house near Potomac Church then owned by Missouri Berry and occupied by Pearl Brown and others.

Nevertheless, the sheriff did nothing to properly

investigate these alleged violations and finally the Attorney for the Commonwealth and the state police got sufficient evidence to obtain an injunction closing the house in 1952, after a fight there.

What do you have to say about that, Sheriff?

MR. BUTZNER: Excuse me, just a minute. There is an affidavit. I do not know whether it was introduced. It was presented here and Mr. Morrison read from it.

MR. CHICHESTER: If your Honor please, I do not know. I have not read the affidavit and I do not know whether I want it introduced or not.

MR. BUTZNER: He made reference to it and tucked it back in his papers.

THE COURT: Whose affidavit is it?

MR. BUTZNER: The sheriff's.

THE COURT: I think we are entitled to it if the sheriff made an affidavit. I think he has a right to call for it.

MR. CHICHESTER: Maybe so, but it has not been introduced in evidence yet. I have not read the affidavit.

THE COURT: Read the affidavit, now, sir.

MR. CHICHESTER: That is all right. I have no objection to it. It is a self-serving declaration, so far as the sheriff is concerned.

THE COURT: Mr. Morrison stated he drew the affidavit

and the sheriff signed it.

MR. CHICHESTER: That may be so, sir, but I do not think it is admissible.

MR. BILLINGSLEY: Strike that last question of mine, please.

MR. CHICHESTER: If your Honor please, I submit it is inadmissible because the sheriff can testify as to what is contained in the affidavit.

THE COURT: Let me see the affidavit. This is an affidavit on which I think Mr. Morrison brought the suit, and I think it is admissible.

MR. CHICHESTER: If your Honor please, let us find out. Do you contend if suit was brought on it it is admissible and if not, it is not admissible?

THE COURT: The suit papers are right there. Where is the file? I think the affidavit is admissible. I will admit it. Do you offer it?

MR. BUTZNER: Yes, sir.

MR. CHICHESTER: I object to its introduction at this time and except to the Court's ruling.

MR. BUTZNER: I also move that this be admitted on the ground that --

MR. CHICHESTER: It is admitted now.

MR. BUTZNER: On the ground it was previously referred to by the Attorney for the Commonwealth of King George County.

At that time, it should have gone in.

MR. CHICHESTER: And I submit it should have gone in at that time, but you did not require it.

THE COURT: It is admitted as D-3.

(Said affidavit was received in evidence and marked "D-3.")

BY MR. BILLINGSLEY:

Q Is that your signature, Sheriff?

A Yes, sir.

Q Now, we will go back to this matter. The sheriff had reports of criminal activities in a house near Potomac Church then owned by Missouri Berry and occupied by Pearl Brown and others. Nevertheless, the sheriff did nothing to properly investigate these alleged violations, and finally the Attorney for the Commonwealth and the state police got sufficient evidence to obtain an injunction closing the house in 1952 after a fight there.

What do you have to say about that?

A I do not know. I had so many calls and went there so many times and carried warrants and they were withdrawn. I do not know what to say.

Q Did you hear Trooper Layne testify about going there and the parties refusing to swear out warrants?

A They would get peaceful and quiet as soon as we went inside the gate.

Q You would be called and when you got there there would not be anything?

A We could not find anything. Everything was peaceful and quiet.

Q The next charge, in the latter part of 1951, Henry S. Fitzhugh of Owens reported to the sheriff that he had some valuable 1812 cannonballs, heirlooms, which had been stolen from his home. The sheriff made a very incomplete investigation and found nothing.

Later, the Attorney for the Commonwealth, with the assistance of the Washington, D. C., Police, developed strong evidence as to the guilty party and the sheriff was requested to go with the victim and the Commonwealth Attorney to Washington to assist the District of Columbia Police in further investigation.

The sheriff refused to go and took no interest in the case. The accused was indicted March 14, 1952, and the jury acquitted him later.

What have you to say about that, Sheriff?

A Mr. Butler from Hillcrest called me and said that Mr. Fitzhugh had some other property and wanted me to come assist. I went immediately to Trooper Estes' home. He was not working that day. He was in civilian clothes, and we went straight down and met that Mr. Fitzhugh and went over the situation and Mr. Fitzhugh give us the license number of a

truck from Washington that he thought had gotten those cannon-balls, and I requested Trooper Estes to radio into Washington Police Headquarters to have this truck searched when it came in.

Trooper Estes called and contacted the police and the police checked on the truck and informed him and Trooper Estes and Fitzhugh was the first two to get there after this thing happened, and later Mr. Fitzhugh offered a reward -- I have forgotten how much; I think it was \$100 -- and it was put in pamphlet form. It was distributed among all officers.

I drove to Maryland and contacted Sheriff Cooksey of Charles County, Maryland, and give him a number of those rewards for him to distribute among his officers, and the trip to Washington, I knew nothing about that trip to Washington until Mr. Morrison came back and told me.

Q Mr. Morrison did not ask you about it before he left?

A He said something about going, but he never said nothing to me about going. He told me about it when he came back.

Q The next charge, that you made an incomplete and poor investigation in the Webber store break-in in November or December of 1953.

What have you to say about that?

A Mrs. Webber called me very early one morning and said her store had been broken in. I called Trooper Estes at once and asked for assistance. He said, "I will be down in a

few minutes," and I told him I would be at my house, to pick me up.

In a very few minutes, Trooper Estes and Trooper Layne came. We went down there together and we all went over the whole situation together and done all we could.

Later on, Trooper Estes got the information that caused the man to be arrested in Florida. The man was brought to court, convicted, and is in the penitentiary now.

Q The next charge, that you made an incomplete and poor investigation in the case of Commonwealth versus James Porter, in which Porter was charged with assault upon his wife in March of 1952 and tried in April, 1952, in the Trial Justice Court, that you refused to investigate.

36 A I was called to the Circle Market one night. When I got up there, I found Margaret Porter up there. She said her husband struck her and knocked her down and she said she wanted to swear out a warrant. She swore out a warrant. James Porter was not there. She swore the warrant out and I arrested James Porter and put him under bond.

Q And he was later convicted, was he not?

A Yes, sir.

Q Did you ever refuse to investigate that case?

A No. I had no investigation to make that I could see, when she told me what happened or she swore out the warrant and I found him in the court.

THE COURT: That is the case that George Mason helped Morrison prosecute?

THE WITNESS: The same one, yes.

THE COURT: A \$50 fine?

MR. BILLINGSLEY: Yes, sir. I believe it was later tried in your court; I am not sure.

BY MR. BILLINGSLEY:

Q The next charge, that you made an incomplete and poor investigation of the Harry Long and Horace Long misdemeanors, and felonies; in late 1953 or 1954, that you turned the matter over to the state police, saying that you were busy on something else.

What have you to say about that?

A On arriving at the courthouse here that morning, about 10:00 o'clock, I heard that the Long children had got in trouble and were in Mr. Morrison's office. I went immediately over there and the principal of the school was in Mr. Morrison's office. He was in the next room, and the principal of the school told me what had happened, so I asked him, "Do you want to take the boys?" And he said, no, Mr. Morrison had called the state trooper to do that.

I went out and met the trooper coming in and I told him any assistance I could give him, I would be glad to do it.

Q Mr. Morrison had called the state trooper. He had the boys?

A That is what the principal of the school told me.

Q Now, the next charge in which you made an incomplete and poor investigation, that on or about September 17, 1952, James Thomas Merritt, who was then residing in a house near Dahlgren, died. That you were called in, that you had a private physician from Stafford pronounce the death, and our coroner made no investigation.

There is evidence that the deceased may have been poisoned, and that you made no report to the Commonwealth Attorney.

What about that?

A I was called to investigate late in the night, and I went immediately, and the information I got that he was found in a crumpled way in a restroom in a restaurant section of there, and the ambulance took him into the dispensary inside the station and he was dead.

So I called Dr. Harris, got in contact with Dr. Harris immediately. He is the coroner of King George County, and Dr. Harris told me he was sick, unable to come, and asked me to contact Dr. Lee.

Q He asked you to contact Dr. Lee?

A He did, and I contacted Dr. Lee, told him the situation and he told me to turn the body over to undertaker Kay, that he would take care of the body, which I did.

Q Now, the next charge, that in the case of Commonwealth

versus Earl Thomas Cliff, charged with grand larceny, at a preliminary hearing in the Trial Justice Court on the 25th day of March, 1952, that you persistently evaded simple questions as to statements made by the accused in his presence and in the presence of a state trooper and the Attorney for the Commonwealth.

The transcript of this testimony was made by V. R. Stevens of Richmond, and the record clearly shows that the sheriff was not freely and frankly testifying, which naturally weakened the case.

What have you to say about that?

A I believe I told all I knew about it and may have been a little rusty on some things at times because I have so much of that stuff, but I always testified all I know.

Q That was a preliminary hearing. Was that case sent on to the grand jury?

A It was.

Q Was it ever tried?

A No, sir.

Q So the only time you testified was in the preliminary hearing, and the case was sent on to the grand jury?

A That is right.

THE COURT: That is the case we have the record on?

MR. BILLINGSLEY: Yes, sir.

BY MR. BILLINGSLEY:

Q Now, in the case of the Commonwealth versus the 1954 Plymouth automobile and \$478.96 in money, on information filed by the Commonwealth Attorney in re car and money seized in a lottery arrest made on April 30, 1954, Sheriff Dishman has been telling many people in the county, including the Commonwealth Attorney, that the state cannot confiscate the car, and that the car is not in his custody.

In other statements he states that he has seized the car, et cetera. His statements to the Commonwealth Attorney are contradictory as to how he will testify and his remarks about the state's rights in the matter are prejudicial and improper.

What have you to say about that?

A When I arrested Larrain Thomas, I asked to get the trooper from the scales to get the car over to the scales and keep it. He came and got it and we brought Lorraine Thomas to Mr. Morrison's office and we put her in jail, and when I go back after the car, the car was gone and I made inquiry where it was at and they said Mr. Morrison had put it over to Mr. Hogg's service station.

I questioned Mr. Morrison about it and he said that he had a right to hold the car for evidence as Commonwealth Attorney for the county, so I told him it was in his hands.

THE COURT: What did you say telling him he cannot confiscate the car?

THE WITNESS: I never said that. I read the contract in the car. I looked over all the papers in the car and this contract read there about the lien on it, and my statement was to Trooper Layne that in my opinion that lien would have to be paid off.

I never said that about confiscating the car.

BY MR. BILLINGSLEY:

Q Did you make any contradictory statements to the Commonwealth Attorney as to how you would testify in the case?

A No, sir.

Q Do you know where the car is?

A Yes, sir. The last I saw it, it was at Randall Hogg's and he said he was going to keep it for further orders.

Q The next charge in the case of Commonwealth versus Porter, tried in the Trial Justice Court on March 29, 1952, Dishman kept testifying, "I cannot remember," to important questions from the Commonwealth. He admitted on the stand that he had made no investigation of this assault.

What about that, Sheriff?

A You mean the assault at the grocery store?

Q Yes, sir.

A I got what information I could there and it was very limited, and I had the man arrested and bonded for the court. That is all I knew.

Q Did you testify in the case as to everything that you

knew?

A I did.

Q And where you could not remember something, you said so?

A I did.

MR. CHICHESTER: Mr. Billingsley, I am objecting again to leading questions.

THE COURT: Do not lead him.

BY MR. BILLINGSLEY:

Q On April 30, 1954, the next charge reads, the Attorney for the Commonwealth could not locate the sheriff. His office door was open and he did not answer loud calls. We were ready for a search pursuant to a warrant.

He was later found in his office asleep.

What about that, Sheriff?

A That is true.

Q You were in your office asleep, you say?

A Yes, I was.

THE COURT: Did they have any trouble waking you up?

THE WITNESS: I do not think so. Mrs. Morrison is the one that called me and she said to meet him in Dahlgren at once, and I went immediately.

Q Sheriff, the next charge, about one week or ten days -- the exact date unknown -- prior to May 13, 1954, the Attorney for the Commonwealth wanted to reach the sheriff re the report

of liquor complaints. He was not at home that night and his wife said she had no idea where he was.

He said he had gone to Wyland's store. He was not at Wyland's store and not at many other places called by the Commonwealth Attorney.

Mrs. Dishman took the telephone number of the Commonwealth Attorney. He asked her to have him call when he came home. He has not called yet.

What do you have to say regarding that?

A When I got home, I keep a pad by the phone and I saw this number there to call. I did not see whose number it was, so I tried to call and the line was busy and I went to bed.

Q Did you ask your wife about it?

A No.

Q Why?

A She was sleeping and I did not want to disturb her. I thought if it was important somebody would call up and I found out later it was Mr. Morrison. I came to the courthouse the next day and saw him and saw him every day. I never heard any more about the call until this came up.

Q Sheriff, do you have a telephone in your office?

A No.

Q What do you do when you want to make a telephone call?

A I use all of them around here, including yours.

Q It has been charged that you go to the superintendent

of public welfare's office. Do you use the phone up there?

A Sometimes.

MR. BILLINGSLEY: The witness is with you.

CROSS EXAMINATION

BY MR. CHICHESTER:

Q Sheriff, this case of Commonwealth versus Hundley, did you investigate that case?

A That night, yes.

Q Did anyone assist you in the investigation?

A Yes.

Q Did you have any conversation with the mother or father of the victim at a later time, after the offense was committed?

A I do not think so.

Q Are you positive?

A I cannot say.

Q You do not know?

A No.

THE COURT: Was the mother or father present at the school when the attack took place?

THE WITNESS: I do not think so. I never heard it.

BY MR. CHICHESTER:

Q Did you have occasion to go to their home after that?

A No, sir. I have never been to their home.

THE COURT: How badly was this man beaten up?

THE WITNESS: He was just struck one time on the cheek.

THE COURT: Was the eye closed?

THE WITNESS: No, it was not then. I do not know what it did later on. You see, I do not know exactly where he was struck, to tell you the truth. He was struck. I know it was bleeding.

MR. BILLINGSLEY: Mr. Mottley is here. We can get him back.

MR. CHICHESTER: I do not care especially how badly he was struck.

MR. BILLINGSLEY: He was about the third witness we put on.

MR. CHICHESTER: I do not think it is material.

THE COURT: He is the one who pled guilty?

MR. BILLINGSLEY: No, sir. He was the one that was struck.

THE COURT: Hundley pleaded guilty, did he not?

MR. BILLINGSLEY: Yes, sir.

THE COURT: All right. I just want to know how serious it was.

BY MR. CHICHESTER:

Q Sheriff, did you ever make any offer to have this warrant withdrawn against Hundley?

A Indeed, I did not.

MR. BUTZNER: If your Honor please, I object to the

question. I think the question is irrelevant, it is not charged in this specification.

THE COURT: He is under cross examination.

MR. BUTZNER: No. They are asking him about an entirely new charge.

THE COURT: Anyway, he says he did not do it and the proof of it is the man pled guilty and was convicted.

BY MR. CHICHESTER:

Q Sheriff, in this Thomas case where it is charged, I believe, if I recall, that you failed to summons this fellow Crusoe, you summonsed two witnesses in the case, did you not, Sheriff?

A That is right.

Q Why did you not summons Crusoe?

A I cannot tell you, just oversight.

Q That was an oversight?

A I failed to summons him.

Q You admit that?

A Yes, sir.

THE COURT: You later had him in court when you needed him, did you not?

THE WITNESS: Yes, sir. I was willing to get him that day, but Judge Triplett told me the case had been continued and did not need him.

BY MR. CHICHESTER:

Q Going back to our good old friend, Mr. H. T. Berry, I believe you testified that you went up there at the time there was the shooting of the dog?

A I did what?

Q You went up there at the time Mr. Morrison's dog was shot?

A No, I did not go.

Q You did not go that day?

A No, sir.

Q Why did you not go?

A I was not called.

Q You did not know anything about it?

A Yes. Berry reported it to me, called me over the phone and reported on it, that he had killed Mr. Morrison's dog, and asked me to inform the game warden, which I did.

Q What time was this that you said you would not go up any more unless you put a warrant in there?

A I do not know. The heat of the day, the argument between Mr. Morrison with me, one night, it was ten minutes to 12:00 and there was Berry over there whooping, "Please come over."

I told him I would go over at once and I did, and I got over there and found everything quiet and peaceful and Mr. Berry was out dressing his lambs, and Mr. Morrison's house was dark and everything else was dark and I come home and told

him I was not going to answer no calls unless he would get a warrant or paper, I would take care of it.

Q Was that not shortly after they had had some cases and his Honor here had told you to be sure to keep Mr. Berry quiet and to go up there at any time of night on any complaint?

THE COURT: I did not tell him that. I told him --

MR. CHICHESTER: Wait a minute, Judge. I do not want you to get in this. I am asking him a question.

MR. BUTZNER: First of all, I object to that unless the record is brought in where that was told him and it was in those words.

MR. CHICHESTER: He can testify. I am just asking him a question. He can deny that.

THE COURT: Mr. Chichester, you will recall --

MR. CHICHESTER: I do not recall anything, sir. No, sir, I do not.

THE COURT: You were in the case and I issued an injunction against Mr. Berry against disturbing Mr. Morrison's rest.

MR. CHICHESTER: I am not concerned, your Honor, with what you told the sheriff or not.

THE COURT: And I told him to go up there and told Harry Berry to keep quiet and not disturb Mr. Morrison, and he was told not by way of a legal order but was asked to on a call, to go up there and pacify him.

MR. CHICHESTER: I just asked the question. Let him testify.

THE COURT: The Berry case has given me more trouble and worry --

MR. BUTZNER: It is plain, if your Honor please, what has happened. In the bill of particulars signed by Mr. Morrison and vouched for by him, he sets forth the date of February 11. When he gets into trial, he changes the date to November 11, 1954, and then when that was pointed out to him by me he changed it to November 11, 1953.

Possibly what the sheriff is doing is answering his bill of particulars. He called for a date of February 11, but I do not see why he should be belabored over the head because he is not now testifying about something that occurred on the date Mr. Morrison now put in and then said his secretary was at fault.

THE COURT: Of course, he was prepared to meet the bill.

MR. BUTZNER: The February date, that is right.

BY MR. CHICHESTER:

Q Sheriff, the time you were waiting at the Circle, I believe you referred to it as, and Mr. Wyland, the ABC inspector, came by there to ask you to go on this raid with him, who was this drunk driver you were looking for, or alleged drunk driver?

THE COURT: If you do not know who the man was, did you just have a description of his car?

39

THE WITNESS: I had a call of a car that was being operated and I was watching for it.

BY MR. CHICHESTER:

Q You did not answer my question, Sheriff. I said, who was it?

A I do not know.

Q Sheriff, generally speaking, I am not going to cover any specific case any more than this, sir. This Staples, what did you do to aid the investigation in that case, sir?

A Say that again.

Q I say, the Staples case, that was a break-in, I believe, in the daytime, what did you do to aid in the investigation of that case?

A Offer my services to Trooper Layne.

Q Offer your services to Trooper Layne?

A Yes, sir.

Q Who was called first, you or Trooper Layne?

A We were called at the same time, both in court when the message came.

Q You did not take charge of the investigation?

A No, I did not.

Q Take the Darby case, the case of the automobile tires, I believe, what did you do toward that investigation?

A I did all I could do. There was nothing I could do.

Q Were you present when the investigation was made?

A Was I?

Q Yes.

A I made the investigation.

Q You did do something, did you not?

A I did all I could, yes.

Q What was that, just briefly.

A Well, he showed me where the window was broken in the rear of the building, and the tires were taken out, and he said it was 16 tires when I asked him for the serial numbers and description and he had no serial numbers and I did not have anything. I looked outside. Everything around there is hard surfaced road. We could not see a track or anything. We did see prints of tracks made at the window.

Q Did you attempt to get any fingerprints?

A No, I could not find anything to get no fingerprints of. I do not take fingerprints.

Q You have facilities through which you have the prints taken, do you not?

A Whenever there is any chance of getting any, I call the state troopers, anything like that I call them.

Q But you did not think it necessary in this case?

A I could not see where there was any sign of getting in.

Q This Colonel Cralle case. I believe you investigated. I believe you were called by a fellow named Bland, who was the caretaker there?

A No. I was called by Mr. Morrison.

Q Mr. Morrison called you and what did you do pursuant to that call?

A I went immediately.

Q Did you make an investigation?

A No. The gate was locked and I could not get in.

Q Did you at a later date return?

A I did.

Q In company with whom?

A Trooper Layne and Joe Bland.

Q What did you do then?

A We got to the first house. He unlocked the door and we found where a window had been jimmied, as I call it, and it looked like it was a heavy screwdriver or a cold chisel. The window was raised and we saw some of the things disturbed in the room and we questioned Joe Bland about what was missing. He did not know, and we looked around, could not get any tracks and he did not know when it was broken into. We questioned him and he said he did not know.

Q Is it not true you went there and the first time you went to the house you could not find where they had gotten in the house?

A We found where they went into the out-building.

Q But not the main building?

A The main building, we could not find where anybody went in, although the inside showed somebody had been in.

Q But anyway, this fellow Bland pointed it out to you?

A On the second trip, he called us on the second trip and we went there and it was very plain on the roof of the house.

Q Did anybody ever tell you on your first trip that you could gain entrance by getting hold of Bland, who was the caretaker out there?

A The second trip.

Q On the first trip, the time you went to the gate?

A No. I never heard anything about Bland until after I had made the first trip.

Q Then what did you hear?

A We went and picked up Bland and went to the two houses.

Q The reason you picked him up, somebody had told you you could pick him up?

A No. We had a date with him. He said he would be out on the road waiting for me. We came up the road and picked him up and went back.

Q How many times did Mr. Morrison ask you to go to that place?

A Three times.

Q Before you went?

A The first time he asked me, I went and failed to get in there. The second time we picked up Joe Bland and went in, and the third time we picked up Joe Bland and went in.

Q Have you continued to investigate this case? It has never been solved, has it?

A No, sir.

Q When did it happen, if you recall?

A When did it happen?

Q Yes, sir.

A I do not recall the date.

THE COURT: Nobody knows when it happened. They discovered it some time in March, 1954, but Bland could not tell when the house was broken into.

Q Did you make an investigation in the Fitzhugh cannon-ball case?

A Yes, sir.

Q What did you do in that case?

A Mr. Butler, who runs the Hillcrest Inn, called me and I went immediately and picked up Trooper Estes. Estes was not working, but he went with me. We went down and met Mr. Fitzhugh and he showed us the situation. He showed us everything, and Mr. Fitzhugh told us who took them, a Washington truck that he met coming out of there, and he give us the

license number and I asked Trooper Estes to contact the Washington Police to check on that truck, which they did, but they found nothing.

Later, Fitzhugh offered a reward. I think it was \$100, and we had pamphlets formed, distributed them, and I went to Maryland and contacted the sheriff there and give him the description and give him the pamphlets with the reward and he said he would do everything he could.

Q Did not Mr. Morrison request that you go to Washington with him?

A No, sir.

Q You deny that?

A I deny it.

Q You said on direct examination that he said something to you about it?

A He did.

Q What did you mean by that?

A He might have said something beforehand about going, but he never asked me to go. I did not know anything about him going until he came back.

Q If he said something about going, Sheriff, it must have been an indication that he wanted you to go, was it not?

A I do not know anything about that.

Q He could have told you and you have forgotten, is that not true?

A It could be.

40 THE COURT: You know, I have always thought about that cannonball case, that after that truck met Mr. Fitzhugh coming in, he dumped those cannonballs in the Potomac River when he went across, and that is why you never found them. You see, they caught the truck as soon as they got to Washington and they never found the cannonballs, and I think he got scared when Mr. Fitzhugh got his number and dumped them in the river.

Q Sheriff, in this Harry and Harris Long case, these boys, did Mr. Morrison ask you to go with him and continue investigation in that case?

A No, sir.

Q He never asked you?

A No, sir.

Q I believe Mr. Morrison testified that he asked you to go and you refused to go.

A Not true.

Q You deny that?

A I deny it.

Q Sheriff, speaking generally, now, you have been sheriff how long?

A I am in my 13th year.

Q Do you recall when Mr. Morrison first came to King George and was appointed Commonwealth Attorney?

A Yes.

Q Your relations at that time were reasonably congenial, were they not?

A Yes.

Q And he has written you on numerous occasions requesting that you make certain reports to him, has he not?

MR. BUTZNER: If your Honor please, unless they are within the specifications, they are cross examining on something that is not here.

THE COURT: Keep your cross examination within the specifications or his direct testimony.

MR. CHICHESTER: If your Honor please, I think I am entitled to show that the sheriff has had notice that is his legal duty. I think I am entitled to inform him that the Commonwealth Attorney is charging that he has failed to do it.

THE COURT: All right. What is it you have asked him? What is it he asked him to do?

BY MR. CHICHESTER:

Q I will ask you this. Sheriff Dishman, has Mr. Morrison called to your attention since your term of office, since 1951, I believe it is, is that not right, that the law required you to report violations of the law to the Commonwealth Attorney?

A I do not recall.

MR. CHICHESTER: That is all.

MR. BUTZNER: We rest.

MR. CHICHESTER: If your Honor please, I have about three character witnesses and then I will be through.

THE COURT: All right, sir.

(Discussion off the record.)

Thereupon

G. D. RICHARDSON

was called as a witness by counsel for the Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name?

A G. D. Richardson.

Q Where do you live?

A Weedonville, Virginia.

Q Are you acquainted with Mr. Horace T. Morrison?

A Yes, sir.

Q How long have you known him?

A Ever since he has been in the county.

Q Do you know his reputation for truth and veracity in the vicinity where he lives and moves?

A Yes, sir.

Q Is it good or bad?

A Good.

Q Would you believe him under oath?

A Yes, sir.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BUTZNER:

Q Mr. Richardson, you have heard right many people talk about his truth and veracity?

A Sure, yes, sir.

Q You have heard it, then, have you not?

A I cannot recall ever hearing it.

Q Never heard anybody else talk about his truth and veracity before?

A I cannot recall it.

MR. BUTZNER: Then I ask that this testimony be stricken. He has never heard the reputation discussed.

BY THE COURT:

Q You have never heard his reputation discussed?

A No, sir.

Q You are only giving your opinion?

A That is right.

THE COURT: I will have to strike that.

MR. CHICHESTER: Let me ask one question.

REDIRECT EXAMINATION

BY MR. CHICHESTER:

Q Have you ever heard anything derogatory as to his

reputation?

A No, sir.

THE COURT: I will let that last statement stay in and strike out the balance.

Thereupon.

W. A. SPILLMAN

was called as a witness by counsel for Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name, sir?

A W. A. Spillman.

Q Where do you live?

A King George County.

Q Your postoffice?

A Index.

Q Are you acquainted with Horace T. Morrison?

A Yes, sir.

Q How long have you known him?

A I do not know. It has not been too long. I reckon five or six years, something like that.

Q Are you acquainted with his general reputation for truth and veracity in the community in which he lives and moves?

A In the county?

Q In the community in which he lives and moves. If he

moves all over the county, that is all right.

A For the veracity and reputation in the community in which I live in or in which he lives in?

THE COURT: In which he lives.

THE WITNESS: I reckon so.

BY MR. CHICHESTER:

Q Is it good or bad?

A From the veracity standpoint?

Q Yes, sir.

A Well, I will have to say it is bad. I am an unwilling witness.

Q I understand that, sir, and I suggested Mr. Morrison talk to you before he put you on the stand.

A You did?

Q Yes, sir.

A He would have got the same answer. If he asked me the same thing, I would have told him.

MR. CHICHESTER: All right, sir.

Thereupon

THELMA CLOEK

was called as a witness by counsel for Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Please state your name?

A Thelma Cloek, Mrs. Wilbur Cloek.

Q Where do you live?

A Edge Hill.

Q That is the postoffice?

A Yes.

Q Mrs. Cloek, are you acquainted with Horace T.

Morrison?

A I am.

Q How long have you known him?

A I would say five years.

Q Do you know his general reputation for truth and veracity in the community in which he lives and moves?

A No, sir. I only know him as a business acquaintance. I do not know nothing about the community in which he lives.

MR. CHICHESTER: Thank you, ma'am.

MR. BUTZNER: We have no questions.

Thereupon

W. A. GRIGSBY

was called as a witness by counsel for Commonwealth and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name?

A W. A. Grigsby.

Q Where do you live?

A I live right near the village.

Q What is your occupation?

A I am a justice of the peace.

Q Are you acquainted with Horace T. Morrison?

A Yes.

Q How long have you known him?

A About six years.

Q Do you know his general reputation for truth and veracity in the community in which he lives and moves?

A Well, I do not think I can say it is bad.

MR. BUTZNER: I object to that.

Q I asked you first, if you knew it.

A Well, I know it in this immediate vicinity. That is, the reputation. That is my thought.

THE COURT: Not thought. What you know about it. Reputation, Mr. Grigsby, is what people say about another person.

THE WITNESS: All right. In this immediate neighborhood?

THE COURT: No, in the neighborhood in which he lives.

THE WITNESS: I could not answer that. I seldom see people in that neighborhood. I have not heard anything to the contrary and I would have to answer yes.

MR. BUTZNER: I object.

MR. CHICHESTER: The question is --

THE WITNESS: I understand, but I do not get over the county too much; I see people here and I do not contact people in his immediate neighborhood, I think, enough to answer the question.

BY MR. CHICHESTER:

Q I am not sure you understand it, but if you do, just tell me so. It is whether or not you know his reputation in the community in which he lives and moves, for truth and veracity.

41

A Of course, that includes all the county. I will just say yes.

Q Is it good or bad?

A Well, I think it is good.

Q Would you believe him under oath? Based on that answer, would you believe him on oath?

A Yes, I would.

MR. CHICHESTER: That is all.

CROSS EXAMINATION

BY MR. BUTZNER:

Q Mr. Grigsby, I notice you hesitated quite some time before you said that you thought it was good. You have heard it discussed right much?

A No. Before I came to the stand, I wanted to be sure just what that meant, the scope of it.

Q You have heard his reputation discussed a great deal,

have you not?

A No. I will admit I have heard criticism, but I don't consider it reputation as to veracity, as the question was put.

Q You have heard his general reputation for truth and veracity discussed, have you not?

A No. I do not think I have.

Q Never heard that discussed?

A No.

MR. BUTZNER: Then I ask that the man's testimony be stricken.

MR. CHICHESTER: The very fact you do not hear a person's reputation discussed is a sign that he has a good reputation, because people do not talk about you unless you have a bad one.

THE WITNESS: I am basing this on constructive criticism as to veracity.

THE COURT: He says he has never heard it discussed, so strike it out.

MR. CHICHESTER: We rest, sir.

(Closing arguments were made by counsel.)

- - - - -