

[fols. 34-37] IN THE UNITED STATES COURT OF CLAIMS,
WASHINGTON, D. C.

Docket No. 516-58

THOMAS CRAWLEY DAVIS AND GRACE ETHEL DAVIS, Plaintiffs,
vs.

UNITED STATES OF AMERICA, Defendant

Wilmington, Delaware, April 30, 1959

Before: Honorable ROALD HOGENSON, Commissioner

Transcript of Testimony

APPEARANCES:

Barnes, Dechert, Price, Myers & Rhoads, of Counsel,
1600 Three Penn Center Plaza, Philadelphia 2, Pennsylv-
ania. Converse Murdoch Esq., for the Plaintiffs.

Peter Donahue, Assistant United States Attorney, De-
partment of Justice, Tax Division, Washington 25, D. C.
[fol. 38] Mr. Murdoch: Would it be helpful to you if I
made a preliminary statement as to what this case is about?

The Commissioner: It is not necessary. I read the plead-
ings very carefully and I think I have a pretty good idea
of them. If you wish to, you may do so however.

Before we begin the record we shall swear the Reporter.

(The Reporter, Miss Elizabeth M. Brady, was sworn.)

The Commissioner: Now you may proceed.

Mr. Murdoch: The first issue in this case is the issue of
whether Mr. Davis could deduct legal fees which he paid to
Mr. Young and to Mr. Morford in 1955 for various services
associated with a separation agreement between Mr. Davis
and Alice M. Davis.

And the second issue bears only on the capital gains of
the DuPont stock transferred for Mrs. Davis in connection
with that separation agreement.

Mr. Morford, one of the two Attorneys to whom these
fees were paid is not able to be here today. He is on trial

in an admiralty matter, but Mr. Young is here and I would
like to have Mr. Young called first as a witness so he can
get back to his office.

The Commissioner: All right, if you would like to,
[fol. 39] proceed with the testimony.

Mr. Murdoch: Mr. Young, will you take the stand.

H. ALBERT YOUNG Esq., having been sworn, was examined
and testified as follows:

Direct Examination.

By Mr. Murdoch:

Q. Mr. Young, will you state your address and occupa-
tion?

A. Bank of Delaware Building, Wilmington, Delaware;
practicing Attorney in the State of Delaware.

Q. How long have you practiced law in Delaware?

A. Thirty years.

Q. And during those thirty years practice have you had
experience in matters relating to marital separations and
property divisions and divorce?

A. Yes.

Q. Were you retained by Mr. T. C. Davis to represent
him in a marital matter in 1954?

A. Yes.

Q. Could you describe for us the nature of the con-
troversy between Mr. Davis and his then wife, Alice M.
Davis, and some of the problems you encountered in that?

A. Well I will try to be brief about it because in this case,
as in all marital cases, there are so many details that one
[fol. 40] ultimately forgets, that I can't recall all of the
controversies that existed. But I do know that the sub-
stance of it was, when Mr. Davis came to my office, that
there had been an agreement and that there was a consider-
ation of separation and possibly ultimate divorce. But
that Mr. Davis felt at that time that there may be some
chance at reconciliation between his former wife and him-
self.

And our attention, or my attention and our office's atten-

tion at that time was directed towards affecting, if possible, such a consideration. James R. Morford, who was on the opposite side, represented Mrs. Davis. I might add parenthetically that now he is a partner of mine. He joined forces as of this year, January.

In discussing the matter with Mr. Morford, who in turn took it up with Mrs. Davis, we concluded that it was impossible to affect a reconciliation, so we proceeded with respect to settlement. And in that connection we were met with what we usually meet with all separation agreements, the Attorney acting as advocate for the wife wanted all that he could get, and we, acting on behalf of the husband, felt that we were being fair in what we offered, but we wanted to minimize what we could. And at first the wife, through her Counsel, Mr. Morford, demanded one half of all of Mr. Davis' holdings and particularly his stock holdings in DuPont which we consistently and adamantly refused. [fol. 41] Finally, during the course of negotiations we agreed that Mr. Davis would transfer from his holdings 1,000 shares of DuPont common. But before we were going to make any offer with respect to the transfer of the 1,000 shares of common, we wanted to be sure about the tax consequences to Mr. Davis. That was one of the important features of this separation agreement.

In addition to that, Mr. Davis as I recall it and I may be incorrect, at that time I believe had just been elevated to the position of Vice-President. He had been Controller just before he came to my office. May I, off the record, ask—

The Commissioner: You are not sure about it?

Mr. Murdoch: We have a stipulation.

The Witness: At any rate, being a Director of the company, he was of the opinion that he should not transfer the substantial holdings in the DuPont Company, because every Director had at least some substantial holdings of the DuPont Company. And so we agreed, that is, unilaterally, that we would transfer 1,000 shares of DuPont, 500 at one time and 500 at another time. But it was all predicated upon the fact of how the tax impact would affect Mr. Davis.

And in that connection I want to say that this, unlike many other cases that I have handled in connecting with marital difficulties and separation agreements, either re- [fol. 42] sulting ultimately in divorce or no divorce, I have

never had the problems posed to me as emphatically and as clearly as this particular matter with respect to the tax consequences. As a matter of fact we did considerable in the office—we did considerable research, and at that time the 1954 Code came out and we were first talking about the interpretation and rulings under the 1939 Act and I think very few people knew what was the impact of the 1954 Code.

So we had to bear in mind what would be the effect insofar as taxable income was concerned, what would be the effect with respect to capital gains and other related tax matters. This was as important to us from our side of the picture as it was to Mrs. Davis from her side of the picture, represented by Mr. Morford at that time.

One of the first matters (well it wasn't the very first) but among the first matters was a matter that was brought to my attention by the firm of Covington and Burling as to the impact of Section 2516.

Q. Excuse me, is that Covington and Burling a law firm?

A. A law firm in Washington, D.C. As to the effects of Section 2516 on the income tax and also as to its effect on—as a gift—and after receiving—after rather after inspecting the report from that firm, we were in constant communication with Mr. T. C. Davis as well as Mr. Morford representing Mrs. Davis.

[fol. 43] We also had to consider not only the transfer of stock and the property settlement that was being made between Mr. Davis and Mrs. Davis, but he was establishing a living trust for his son. We wanted to know what the tax consequences were with respect to that. We also had to put up some insurance in connection with our separation agreement and we wanted to know what the tax consequences were there also.

Mr. Donahue: If it please the Court, I will object to the witness continuing to ramble at his own free will. I think he should be required to answer specific questions.

Mr. Murdoch: I have a couple of questions.

The Commissioner: Very well.

Q. Were you aware during the course of your representation of Mr. Davis, that he had any particular knowledge of tax law which kept you on your toes, shall we say?

A. Yes.

Q. As to the tax aspects?

A. Yes, I felt that I had a client that was not only conscious of tax matters, but aware of what the impact of the 1954 Code was on this present situation, that is the separation agreement. I recall that one of the reasons leading [fol. 44] up to the disagreement between Mrs. Davis and himself was the fact that he spent so much time on behalf of the DuPont Company when he was Controller of the company, in separating or investigating the interests of DuPont in the United States from the Canadian outfit, and that great reliance was placed upon him by the DuPont Company, on his understanding of the tax consequences, and while he didn't know this particular one, he knew what it was—he put up the signal to us and the red light that we better be on our guard.

Q. In your discussion with Mr. Morford were you aware that he was likewise spending considerable time on this very matter in terms of discussing it, would you—

Mr. Donahue: I object to this question. I don't think this witness is qualified to answer as to what Mr. Morford did. That is something, if you want to bring that out Mr. Morford is the person. That is the rankest type of hearsay. I will object on that ground.

Mr. Murdoch: I am not asking how much Mr. Morford put in, I am asking if Mr. Morford in Mr. Young's presence devoted time as to discussions of this.

The Commissioner: Yes. That question is proper, you may answer that question as limited. That is within your own knowledge.

A. Yes. In my discussions with Mr. Morford we continually discussed the tax consequences with respect to the [fol. 45] property division. He in turn wanting to know whether it was going to have some effect on his client, and I in turn wanting to know what effect it was going to have on my client. As a matter of fact, that took up most of our time because the substance of the separation agreement had practically been resolved between Mr. and Mrs. Davis before they came to our office.

Q. Mr. Young, was there any Court proceedings in Delaware which you handled in connection with this matter?

A. None whatever.

Q. There was no separation action, no divorce action brought or abandoned, no Court action at all?

A. When you say action, Court, you mean Court action? There was a separation, this all resolved itself and it was released in the separation agreement.

Q. All your work went around the negotiation of this agreement?

A. That is right. I might add there was an ultimate divorce but not in Delaware.

Q. That is correct. Your services were not in connection with any Court action in divorce?

A. No, Counsel was engaged in Rice Rhodés in Reno, Nevada; he prepared all the papers. He attended to all the work.

Q. Based upon your experience as an Attorney in Delaware [fol. 46] were for thirty years and experience in marital matters, would you express an opinion about the practice and law in Delaware regarding the husband's liability to pay a wife's Counsel fees?

Mr. Donahue: Objection to that opinion with respect to— with regard to the law because this Court can take judicial notice as to the law. The law speaks for itself. Objection to any opinion as to the custom in Delaware on the grounds it is a conclusion of the witness and we are after facts in this procedure, not conclusions.

The Commissioner: Would you concede that it is the general law that the husband in such circumstances pays the Attorney's fees for the wife's Attorney?

Mr. Donahue: No, your Honor, I would not concede that it is the law.

Mr. Murdoch: We are prepared to prove the law, and on argument, but I believe that it is proper for this witness to say on the basis of his experience what the practice has been in these matters.

Mr. Donahue: I still think that the witness in testifying as to what the practice is is giving his opinion, his conclusion as to what has been done. I don't think it is a fact.

Mr. Murdoch: I believe he can establish that the witness is an expert in this field, he is a practicing lawyer for thirty [fol. 47] years and I believe he is qualified to state.

The Commissioner: I have been a District Judge in the State and I know that there are numerous divorce cases

that never get beyond the trial stage, the trial Court stage. I know in my home State it was the common ordinary thing that the trial Judge awarded the wife's Attorney's fees for her representation in the divorce case. I don't think the reported decisions of the Appellate Courts would necessarily reflect such a practice. Therefore the objection is overruled and you may ask the question.

Q. You state what your knowledge is of the practice in Delaware in the husband's payment of Counsel fees?

A. The Court imposes a duty and obligation on the part of the husband to pay the wife's Counsel fees.

The Commissioner: I suppose you had many years of experience around the Courts of this State?

The Witness: Well I may say that I was Attorney General of the State of Delaware and tried many cases during that time. I have been a President of the Bar for the past two years and I have been in active litigation for thirty years.

The Commissioner: Yes, all right.

Q. Do you recall in the separation agreement, which was finally executed by Mr. and Mrs. Davis, whether there was a specific provision inserted to take care of Mr. Davis' [fol. 48] obligation for the support of his wife and son?

A. Yes, I am sure there was. I haven't read it prior to coming here, but you have the document before you, I am quite sure.

Mr. Murdoch: This is the exhibit. At this point, your Honor, we have a stipulation here in which it is agreed that the agreement as set forth in the petition is a statement of the pertinent parts of this separation agreement.

The Commissioner: Yes.

Mr. Donahue: Excuse me. As I stated earlier with regard to that stipulation that I would agree that the agreement could be made part of the record, but I felt that the entire agreement would go in as part of the record and not so-called pertinent parts.

Mr. Murdoch: I misunderstood you then. I thought you were going to present as your evidence all of the agreement.

Mr. Donahue: No. I stated that I thought the entire agreement should be made part of the stipulation, that I furnished you a copy of the entire agreement.

Mr. Murdoch: Can we take just a moment on that, your Honor?

The Commissioner: Certainly.

Mr. Murdoch: When I first talked to Mr. Donahue about this I showed him the whole agreement and told him that [fol. 49] we had taken from that agreement the parts we thought were pertinent and had put them in as an exhibit.

The Commissioner: Yes.

Mr. Murdoch: And that I would prefer that the whole agreement not be made part of this record, which would be a public record, which would be available to anyone who would be curious about Mr. Davis' affairs in Wilmington, to go down and look in the public record. I can't imagine what we have left out that has any pertinency here. I assume what Mr. Donahue is going to do is later submit the whole agreement if he thought it was all pertinent and at that time give us a chance to object on that ground.

Mr. Donahue: It is my feeling, your Honor, that the entire agreement is part of the same transaction and should go in, and at that time I told Mr. Murdoch that my first impression was that the pertinent parts, what he considered pertinent parts, would be sufficient. But again, one of the basic questions in this case is whether these expenses stemmed out of personal relationships or out of relationships or expenses that were incurred in the production of income. And we feel that the agreement itself shows that much of the services that were performed stemmed out of entirely personal relationships. For that reason the entire agreement should go in. And I advised Mr. Murdoch this morning that I would agree to the stipulation providing [fol. 50] that the entire agreement went in.

The Commissioner: I don't see why you would have any difficulty about this as part of a public record in the Court of Claims. I understand that the agreement was made a part of the decree in the State of Nevada, is that right?

Mr. Murdoch: Yes sir.

Mr. Donahue: Yes sir, that is right.

The Commissioner: If one was anxious to read it, they just as well could go to Reno and Washington. I can't see much reason for that. There are not many people that resort to the Court of Claims records anyhow, as a matter of curiosity. It is not like a local Court where people are

liable to drop in, knowing the local prominent people of the area. There is very little of that experience in connection with the Court. And in any event, in the course of time after this case is completed, you may be permitted to withdraw the exhibit permanently.

Mr. Murdoch: Well that I think would take care of my objections, if we could have the right to take out the agreement as a whole after it serves the purpose in this Court. I would have some concern if the entire agreement was to be picked up in a finding of fact which would be published and of course be available throughout the United States.

The Commissioner: It is too long an agreement to set [fol. 51] forth like that. The findings of fact would be too laborious to include so much material. I wouldn't take it that you would necessarily ask that the settlement agreement be set out word for word.

Mr. Donahue: I have no such intention, I can assure your Honor. But I think certain parts of it could be referred to as a due form of basis for certain findings of fact that the Government might wish to be made.

Mr. Murdoch: With that understanding, your Honor, that is agreeable to me.

The Commissioner: All right.

Mr. Murdoch: That was my only concern about it, the publicity.

Mr. Donahue: We will agree that the entire agreement be in as a part of the exhibit to the stipulation.

The Commissioner: You can be sure that discretion will be exercised in a matter of this kind. The Court has no desire to embarrass unnecessarily any person.

Mr. Murdoch: Thank you, your Honor.

Q. Mr. Young, in this agreement in paragraph 5 it is stated that the husband will pay to the wife for her maintenance and support \$2,500 on December 15, 1954 and in addition the sum of \$550. each month thereafter, until October, 1964; do you find that in your copy of the agreement?

A. Yes, I have an original before me.

[fol. 52] Q. I also call your attention to the fact that in this agreement Mr. Davis created a trust for the benefit of his son, and there is attached to the agreement a proposed irrevocable living trust agreement for that purpose?

A. Uhm hmm.

Q. I would like to ask, on the basis of your familiarity with Delaware practice in divorce matters, whether in your opinion those two provisions fully discharged Mr. Davis' obligation for the support of his wife and child in his separation of this type?

A. No question.

Mr. Donahue: I object to that as asking for a conclusion of the witness.

Mr. Murdoch: I am asking for the conclusion of the witness and I believe as an expert he is able to state a conclusion on that.

The Commissioner: There is a difficulty about that, Mr. Murdoch. And that is that I couldn't permit the Chief Justice of the United States to decide the law of a case before the Court, even though he might be considered the foremost expert of the United States. And even though he might be in a position, a strong position from the standpoint of review of the decisions of this Court. I don't think you can call an Attorney to testify as to what the law would be, sir. Isn't that what you are doing here?

[fol. 53] Mr. Murdoch: No, your Honor. I am asking the witness to state whether he believes as a matter of Delaware law, not Internal—the Federal Internal Revenue law—that whether he believes that this arrangement that Mr. Davis made for his wife and son, would under Delaware practice be upheld as a full discharge of Mr. Davis' obligation.

The Commissioner: You see the Court, the United States Court of Claim takes judicial knowledge of the law in the State of Delaware. If you have an Appellate decision of the highest Court of the State of Delaware then you will have no difficulty having the Court recognize the ruling of the State Courts of Delaware in that respect.

Mr. Murdoch: Our problem is, your Honor, to appear that the law of Delaware is like the law of most States, that the husband's duty for support is discharged if he has made a complete disclosure of his assets to his wife, and that a Court is satisfied, taking into account all the circumstances, that this is adequate, including her needs and the husband's assets.

The Commissioner: It is a matter to be represented in the brief anyway. I am not going to make a finding of fact that the law of Delaware is so and so because the

United States Court of Claims will be open to the respective arguments as to what is the law of Delaware. And you don't have to make any proof whatsoever. You have [fol. 54] got the authoritative decisions of the State of Delaware. You can cite them by volume and page.

Mr. Murdoch: All right, sir.

Mr. Donahue: Your Honor, may we have the witness' answer to that stricken? I don't know whether—

The Commissioner: Yes, it may be stricken.

Q. Mr. Young, in negotiating on behalf of Mr. Davis in this matter, was it understood, at least on your side, that there were two issues here: first, the matter of support payments for Mrs. Davis and their son; and a second matter, a division of property?

A. That is right.

Q. Was that separation of those two items reflected in your drafting of this agreement?

A. I believe an examination or an inspection of the agreement will show that it was.

Mr. Murdoch: Mr. Donahue, are you agreeable to introducing these bills of Mr. Young?

Mr. Donahue: No objection to Mr. Young's bills.

Mr. Murdoch: Mark this for identification.

The Commissioner: Let me ask you off the record—mark this as Plaintiff's Exhibit 1.

(Off the record.)

(Young & Woods bill to Mr. T. C. Davis of November 17, [fol. 55] 1954 was marked Plaintiff's Exhibit No. 1.)

Q. I show you Plaintiff's Exhibit 1 and ask you to state what that is?

A. That is a bill that I submitted on November 17, 1954.

Q. And will you state what this bill recites, the amount is a bill for?

A. Separation agreement and property division between T. C. Davis and Alice M. Davis \$7,500. Telephone charges \$6, making a total of \$7,506. Paid on account \$2,500, and the balance of \$5,006.

Q. And do you recall whether Mr. Davis paid the balance of this bill?

A. He did.

Q. Do you recall the date that was paid?

A. Well I don't recall it offhand. I think it was after January.

Q. Do you remember the year?

A. 1955. And that was pursuant to a covering letter that I had, that I submitted with that bill, and another bill, in which I agreed that I would be—it was perfectly satisfactory to me to receive the balance of the fee after the first of the year.

Mr. Murdoch: Your Honor, I would like to withdraw the original of this bill and substitute a photostatic copy of it.

[fol. 56] The Commissioner: Any objection?

Mr. Donahue: No objection.

The Commissioner: That may be done.

The Witness: The balance of that bill was paid on January 28, 1955.

The Commissioner: Any objection to Plaintiff's Exhibit No. 1?

Mr. Donahue: No objection.

The Commissioner: Plaintiff's Exhibit No. 1 is received in evidence.

(Photostat of Young and Woods bill to Mr. T. C. Davis dated November 17, 1954 was received in evidence as Plaintiff's Exhibit No. 1.)

(Young and Woods bill to Mr. T. C. Davis dated November 17, 1954 with balance due of \$2,500, was marked Plaintiff's Exhibit No. 2.)

Q. Mr. Young, I show you Plaintiff's Exhibit No. 2; will you state what that is?

A. This is a bill rendered for professional services in the matter of tax matters in the case of Davis versus Davis, at that time in the total sum of \$5,000, paid on account November 16, 1954 \$2,500, leaving a balance of \$2,500.

Q. Was the balance of \$2,500, paid by Mr. Davis?

A. Yes, it was on January 28, 1955.

[fol. 57] Mr. Murdoch: I have no further questions of Mr. Young.

(Photostat of Young and Woods bill to Mr. T. C. Davis dated November 17, 1954 with balance due \$2,500, was received in evidence as Plaintiff's Exhibit No. 2.)

The Commissioner: Do you have any questions, Mr. Donahue?

Mr. Donahue: Yes I do, sir.

The Commissioner: Very well.

Cross-examination.

By Mr. Donahue:

Q. Mr. Young, when were you first employed by Mr. Davis?

A. I would say around the middle of 1954. It may have been in June and it may have been some time prior to June of 1954.

Q. What specific instructions did you receive, if any, at the time of your first employment?

A. Well I received no instructions. I was consulted for advice. And as I stated previously, Mr. Davis told me that he had—there had been some disagreements between himself and Mrs. Davis and that it looks rather hopeless at the present time, but he still wanted to make an effort at reconciliation and perhaps resolve the difficulties in that way.

Q. Did you make any effort to reconcile the parties?

[fol. 58] A. I did.

Q. What efforts did you make along that line?

A. The effort merely consisted—a visit to Mr. Morford's office in the building across the street, the Delaware Trust Building. I was then at the Equitable Security Trust Building, which is now known as the Bank of Delaware Building. I discussed the matter with him, told him that I represented Mr. Davis; I knew that he was representing Mrs. Davis, and it was Mr. Davis' hope that there could be a reconciliation affected and did he think it was possible? I distinctly recall—well I distinctly recall his saying he didn't think it was possible, but he felt duty bound to convey that information to Mrs. Davis. He did. And subsequently he informed me that it was not possible, and I in turn transmitted that information to Mr. Davis.

Q. Over how long a period did your reconciliation efforts last?

A. In time?

Q. In time?

A. Not over two hours.

Q. Over what period of—I withdraw that. What lapse of time took place between your original efforts to make a reconciliation and your decision that such a reconciliation was not possible?

A. Well I would say—I can't specifically tell you the [fol. 59] time, but I can say that I made a telephone call, I discussed it on the telephone. I then made an appointment with Mr. Morford, came to his office, talked with Mr. Morford, he in turn talked with me again and that was the extent of the negotiations for reconciliation.

Q. After your final talk with Mr. Morford with regard to reconciliation, did you advise Mr. Davis of this fact?

A. No, I advised him only after Mr. Morford informed me that Mrs. Davis would not consider any reconciliation.

Q. What was Mr. Davis' reaction to that?

A. Well he appeared to me to be disappointed and recognized then that we had to go through with a separation agreement. As I recognized it.

Q. Was Mr. and Mrs. Davis at that time—or were they separated?

A. Yes, they were.

Q. Do you know how long they had been separated?

A. It was a matter of either weeks or a few months, not more than that.

Q. Now with reference to Plaintiff's Exhibit 2, which appears to be a bill, with regard to tax matters in the case of Davis versus Davis, specifically what tax matters were concerned in that case of Davis versus Davis?

Mr. Murdoch: If your Honor please, I believe the witness has stated all of this on direct; unless Mr. Donahue has some other witness—

[fol. 60] Mr. Donahue: Your Honor, it is my understanding that he stated that he considered certain tax matters in regard to the separation agreement. The bill says in the case of Davis versus Davis, excuse me. In case of Davis versus Davis, yes.

The Commissioner: Yes, the objection is overruled, you may proceed.

A. Why, as you know, there were very substantial amounts involved in this particular case and we had to consider the tax consequences to Mr. Davis insofar as taxable income was concerned, both with respect to him, and his to her, what capital gains would be involved as a result of the transfer of his stock, which most of—which he received by way of bonuses.

We also had to consider the impact of the tax on the living trust that he set up for the son and whether or not there was any tax consequences with respect to the insurance.

Q. What was the nature of the tax consequences with respect to the insurance?

A. Well there I took the matter up with Mr. Clever Bolton. He is in the Trust Department of the Bank of Delaware now. It was then the Equitable Security Trust Company, and consideration was given to Section 2503 (c) of the Internal Revenue Code of 1954 as it applies to gifts in trust for minors and apparently the Trust Officer in [fol. 61] consultation with me at the time, was of the opinion that our trust agreement was drafted to comply with that provision.

Q. You stated that you were considering the consequences relating to the insurance?

A. I am sorry. That was—I was talking about the—you have asked me about the insurance and I said that—let me go back.

The Commissioner: That is all right, take your time.

The Witness: We did assign the life insurance policy to the trust for a certain period. And I know that we had some discussion about it. Now whether the Section I am talking about, 2503(c), as well as Section 677(b) of the Internal Code had to do with the assignment of the insurance, I am not quite sure. But it had to do with the gift, with the trust for the son. I know we had some correspondence I recall, but I can't—

Q. The majority of the insurance however, went to the wife under the agreement?

A. That is right, yes.

Q. What is your answer that you considered the tax consequences upon the transfer of the insurance to the wife?

A. I know that we considered tax consequences with respect to every item or every item constituting an asset [fol. 62] of which Mr. Davis was divesting himself and transferring to his wife.

Q. With regard to the insurance transferred to the wife, what aspect did you consider there?

A. I don't recall that at this time.

Q. Now you mentioned on your direct examination, you considered the consequences of, the tax consequences of concerning the trust, concerning the transfer of shares and I quote, "other related tax matters;" now what were some of the other related matters?

A. Possible capital gains.

Q. You referred upon that upon the transfer of shares?

A. Offhand I don't recall. I know with Mr. Davis' knowledge about the matter, with the report from Covington and Burling and with conferences with Mr. Morford, everything that we thought might be—might have some impact and some affect on Mr. Davis was considered. And Mr. Davis from time to time kept consulting with us, with me, and in turn having me go over to Mr. Morford, because of the tax implications.

Q. You have mentioned two specific tax implications, one that depended upon the transfer of the shares of the DuPont stock to Mrs. Davis, and two, the setting up of the trust for the son?

A. Uhm hmm.

Q. Are those the only two that you can recall at this [fol. 63] time?

A. Well let me just say—may I?

Q. Yes sir.

A. I think what we considered was whether or not in the separation agreement first, was the wife—what were the benefits of the wife signing a joint tax return pending all this proceeding; that was an income tax return. Then in connection with the share of the DuPont stock, which the wife demanded be transferred to her under the property division, the question arose as to whether or not Mr. Davis

would be exposed to a capital gains tax. Then a further question arose as to whether or not the husband would be exposed to a gift tax liability with respect to any property he transferred to the wife.

Q. Did you consider this a gift?

A. Did I consider this a gift?

Q. Yes?

A. No.

Mr. Murdoch: I object to that. I think that that is a meaningless conclusion if the witness could state it.

The Commissioner: Well what difference would it make whether he considered it a gift or not.

Mr. Donahue: I am just trying to establish, your Honor, that the transfer of the property was an transaction for consideration on both sides, and it could in no way be considered a gift, and the parties never even thought of it being considered a gift.

Mr. Murdoch: All right, I think we are becoming confused here with terms. We have been talking about whether something is a gift for Federal gift tax purposes, which is not necessarily synonymous as to whether it is a gift in the giver's view, the matter of family relations.

Mr. Donahue: Excuse me. Mr. Young was talking about the gift tax consequences, which is, as I assume, the Federal gift tax consequences.

The Witness: Yes, that is correct. What I am trying to say is whether we came to that conclusion I can't say off hand. The point is we spent some time discussing it and considering it. Whether it was, I don't know at the present time. He also considered—again I come back to the irrevocable trust for the minor son, and there we considered whether the father's contribution was to be allowed as a deduction to the father and whether it would generate again a gift tax liability, whether it would be taxed as income to the mother, that is where Mr. Morford was very much concerned about it and would the trust constitute a taxable entity.

Those matters were taken up as I pointed out previously with the head of the Trust Department, with the Bank of Delaware.

Q. Those however, were the only tax matters that were [fol. 65] taken up?

A. I don't know whether I mentioned we also took up whether the monthly payments by the husband to the wife constitute a tax deduction to the husband and taxable income to the wife.

Q. What are you reading from?

A. I am reading from my notes of the letter that I addressed to Mr. Kenneth W. Gemmill, Esq. of Barnes, Dechert, Price, Myers & Rhoads, dated February 22, 1957.

Q. What was the occasion of your writing that letter?

A. I was requested to submit a letter to Mr. Gemmill stating what matters we had considered in connection with the tax phase of this problem involving Mr. Davis. We pointed out at that time that the 1954 Code became law in August 6, 1954 and all these questions that I just mentioned to you were intensified in importance because of the changes of the 1954 Code over the 1939 Code. And we had no rulings at that time to guide us and we were doing what we thought was the best we could under the circumstances.

Q. In Plaintiff's Exhibit 1 it is stated legal fees were for a separation and property division between T. C. Davis and Alice M. Davis; what property division, if any, took place?

A. In general I can tell you—I have to refer to the agreement (I have drawn literally hundreds, and I don't recall at all) I know there is a transfer of 1,000 shares of stock.

[fol. 66] Q. With regard to the transfer of the 1,000 shares of stock, can you describe that as a division of property?

A. Yes.

Q. Why?

A. I consider it pertinent property as being a division of property.

Q. In whose name was the stock listed?

A. Mr. Davis' name.

Q. It wasn't listed in Mrs. Davis'?

A. I just stated to you it was listed in Mr. Davis' name.

Q. Was any of Mr. Davis' DuPont stock also listed in Mrs. Davis' name to the best of your knowledge?

A. I don't recall any.

Q. What other property was divided?

A. I understand that \$30,000. was paid at the time of the agreement in cash.

Q. Did that money come from Mr. Davis?

A. Yes.

Q. Did Mrs. Davis have any title to that money?

A. None.

Q. What other property was divided?

A. The wife received an automobile.

Q. Was that automobile registered in Mr. Davis' name?

A. I can't recall. She also received all of the furniture [fol. 67] and furnishings listed in Exhibit A attached to the agreement.

Q. Who owned those personal effects?

A. I would say presumably Mr. Davis but sometimes there is a great deal of conflict as to who owns furniture. In other words to remove any cloud as to who owns furniture we transferred the furniture to Mrs. Davis. And we listed the items in an exhibit attached thereto.

Q. Mr. Young, did you have any discussion with Mr. Davis with regard to the question of divorce?

A. Yes.

Q. Did you perform any service for him or give him any advice with regard to that question?

A. Well I don't believe I gave him any advice. I told him that this would be consummated by a divorce, which she will obtain as I understood -he was prepared to do by going to Reno, Nevada.

Q. Did you attempt to determine what grounds were present for divorce?

A. Yes. I knew the grounds. And I knew that there were those grounds.

Q. What were those grounds?

A. Well I would say it would be incompatibility or mental cruelty which is sufficient grounds in a State such as Nevada, that recognizes those grounds providing bona fide residence [fol. 68] has been established.

Q. Did you also discuss with him the question of who would be the moving party in the divorce proceeding?

A. I don't know whether it was discussed, but it certainly was implicitly understood that she would be the moving party.

Q. Did you discuss with Mr. Davis at all the question of what jurisdiction the divorce would be obtained in?

A. No, as far as we were concerned, we were not—we didn't care whether she went to Reno, Alabama, Florida, or wherever she wanted to go.

Q. Were your services with regard to the divorce proceeding included in your bill as contained in Plaintiff's Exhibit 1?

A. One being the bill for the separation agreement.

Q. And property division, yes.

A. I would say yes, although it was a rather perfunctory duty I performed by merely engaging Counsel in Reno.

Q. Now you stated that Mr. Morford or that you engaged in various discussions with Mr. Morford, am I clear on this now, did he represent Mrs. Davis in this matter?

A. Yes.

Q. And at that time you and Mr. Morford were not partners and you represented Mr. Davis, while he represented [fol. 69] Mrs. Davis?

A. We were well known as frequent adversaries for close to thirty years.

Q. And you were definitely an adversary in this case?

A. I certainly was.

Q. Now Mr. Young, do you also consider tax consequences when drafting a contract?

A. You are talking about a commercial contract?

Q. Yes?

A. Ordinarily yes.

Q. Do you consider tax consequences when drafting a will?

A. Yes.

Q. When drafting a partnership agreement?

A. Yes.

Q. Articles of incorporation?

A. No.

Q. Do you not consider the franchise taxes or State taxes?

A. No, I know them pretty well. So I don't have to consider them too—are you talking about the organization of the corporation or the articles?

Q. Yes.

A. Or the articles of incorporation. You said articles of incorporation, we think of nothing but the articles of incorporation—the stock to be issued—

Q. Let's refer to the organization of the corporation; do you consider tax consequences when drafting a trust?

A. Yes. May I qualify that?

Q. Yes, certainly.

A. As far as trusts are concerned and wills are concerned, the department of the banks have been doing most of that and we refer the matter involved, and they usually consider it and develop it and then submit it to us.

Q. However, you do consider their opinion on it?

A. Yes. No question about that.

Q. Would you say, Mr. Young, that in most of the legal services which you performed for your client, you considered tax consequences of various sorts?

A. In commercial matters, yes.

Q. Even in private matters?

A. Well involving business, trusts, yes. I would say that.

Q. On behalf of Mr. Davis did you negotiate with regard to the support and maintenance for Mrs. Davis?

A. Will you—

Q. Well in your representations on behalf of Mr. Davis, did you negotiate with Mr. Morford with regard to the amount of support and maintenance Mrs. Davis should receive?

A. Yes.

[fol. 71] Q. Did you negotiate with Mr. Morford to permit Mr. Davis to continue in his customary way of living?

A. I don't understand that question. Will you repeat that again?

Q. Let me rephrase it this way: what was your primary purpose in your negotiations with Mr. Morford?

A. Well my—

Q. —or objective?

A. —Well the objective as I stated at the outset was to be fair in the first place, but to minimize as much as I could the obligation on the part of Mr. Davis.

Q. In order to permit Mr. Davis to maintain his usual manner of living?

A. I believe so, yes.

Q. Did you negotiate in any way to prevent the loss or sale of his personal property or home?

A. I don't know what you mean—the loss—or sale—I don't know what you mean by that.

Q. Did you attempt, was there ever any danger of Mr. Davis losing his home or being forced to sell his home as a result of these separation negotiations?

A. I don't recall that. I want to say this: that Mr. Davis, as far as I was concerned and as it ultimately proved in the consummation and formalization of this agreement, was so fair about the situation that we had very little difficulty [fol. 72] in our negotiations with respect to a property division and maintenance and support. In other words the area of discussion was such that there was no question that we could come to some agreement between Counsel with respect to husband and wife.

Q. And is it true to say that much of your negotiations centered around the personal rights of the parties?

A. I would say so and I do want to say this, without acting the party of the advocate in this particular proceeding, if you will accept it that way, that here was a total charge of \$15,000, two-thirds of it was charged for the services in connection with the negotiations and the separation agreement, and the other part was charged, the one-third for the other time that was consumed day in and day out, hour in and hour out, in connection with the tax consequences.

Q. Did you mean \$7,500, sir?

A. Yes.

Q. I believe you said \$1,500.

A. No, the total from the previous year. The entire figure was \$15,000.

Q. Did you spend substantial time concerning—with regard to the trust which was set up for Mr. Davis' son?

A. No.

Q. There was no disagreement as to that trust?

A. No. There was no disagreement. It was just a question [fol. 73] of having it worded properly, phrased properly, and the Trust Department drew the papers subject to my approval and that of Mr. Morford.

Q. Is that the Trust Department at the Bank you were referring to?

A. That is one of the reasons for some pending litigation between the Delaware Bar Association and the Bank as to who was to do that work. And what constitutes practice of law.

Q. What negotiations, if any, took place with regard to

the ownership of personal belongings such as silver, linen, etcetera, furniture?

A. Mr. Davis, if I may characterize him now, was very magnanimous about that. He said she could have whatever she wanted. She could go to the house and pick out what she wanted.

Q. As Mr. Davis' Attorney could you state whether at the time of the separation agreement Mr. Davis intended to obtain a divorce?

A. At the time of the separation agreement?

Q. Yes?

A. Yes.

Q. Mr. Young, what consideration, if any, did you give to the question of the effect a decree of divorce might have upon the separation agreement?

[fol. 74] A. That the separation—well under the law as I understand it, and in my experience, if you enter into a separation agreement the divorce will not affect it or destroy it, notwithstanding the decree. And in fact in Delaware notwithstanding the fact that it is not incorporated in the decree.

Q. Did you give any consideration to the question of whether the Court in divorce decree might have awarded all money in addition to the contractual obligation?

A. I didn't consider it because again drawing on my experience, if I may, I have never known where a Court will disregard an agreement entered into between the respective parties and enter a separate or different sort of an order, suo sponte—of its own volition.

Q. What agreement, if any were there between the parties to have the separation agreement incorporated in the divorce decree?

A. It was definitely understood that this separation would be made part of the decree.

Q. I believe it was your testimony, sir, that at first Mrs. the former Mrs. Davis, demanded one-half of Mr. Davis' DuPont stock holdings, is that correct, sir?

A. Yes.

Q. If you recall, what was your initial offer with regard to the stock holdings?

[fol. 75] A. I don't recall. But I think it was somewhat less than the amount we agreed upon, but I don't think too far below that.

Q. In other words slightly less than 1,000 shares?

A. It might be, yes. I might add one other point. I may clarify it for you, when you say what assurance or practically the implication of your question was what assurance did we have that this agreement would be incorporated in the decree, that stock would not have been delivered unless this agreement was incorporated in the decree.

Q. Now Mr. Young, I believe you also testified that it was a practice here in Delaware for the husband to pay Counsel fees in divorce proceedings, is that correct?

A. Oh yes.

Q. What was the occasion of Mr.—strike that. What was the specific reason for Mr. Davis to pay his wife's fees in this case?

A. Had he refused, Mr. Morford could have refused to accept the terms of the agreement, instituted proceedings, and have the Court allow him Counsel fees, as I have done on many occasions.

Q. In this case did the Court or did any Court impose an obligation upon Mr. Davis to pay Counsel fees?

A. No. No. Because we had entered into an amicable separation agreement. Had we failed in that, Mr. Morford [fol. 76] would have the right to go into Court, demand maintenance and support and property division and request for Counsel fees.

Q. That is your opinion, sir, is that right?

A. It is not only my opinion, it is a fact.

Q. Based upon your practice in Delaware law?

A. And the practice of other Attorneys that have handled similar cases in the State of Delaware.

Q. You know of no customs to the contrary?

A. Well I don't know what you mean by "customs to the contrary." You mean of a disallowance?

Q. I will rephrase. You know of no occasion when such fees have been disallowed?

A. That is a different point there. There might be—well I don't recall of any—it might have been disallowed where you got a husband almost in destitute circumstances. In any case, even where the husband earns a salary of \$50. to \$75. a week there has been allowances. And of course the amount allowed would be commensurate with the earnings and the assets of the husband. I can give you an example of just within the past two or three weeks.

Q. I don't think I care to go into it any further, thank you.

A. If you want something on the allowances.

Q. Mr. Young, would you say or can you state whether at the time of the separation agreement Mr. Davis' purpose [fol. 77] in employing you was to get rid of his wife with—at the least cost to him?

A. His purpose when he first engaged me?

Q. No, at the time of the separation agreement?

A. At the time of the—will you repeat that question?

Q. Would you say at the time of the separation agreement was entered into, that Mr. Davis's primary objective was to get rid of his wife at the least cost?

A. I wouldn't say that was his primary purpose.

Q. What would you say, sir?

A. I would say Mr. Davis was a very unhappy man, both prior to the execution of the agreement and at the time of the execution of the agreement and that he was very much concerned not only about the separation and the ultimate divorce, but also about the fact that he was being divested of a substantial holding of his stock and also of his property.

Q. You say that he was a very unhappy man; did he discuss these personal problems with you?

A. Yes he did.

Q. He had numerous personal problems, did he not?

A. Well the personal problems arose out of this separation, surely.

Q. As a matter of fact, all of his problems, personal and otherwise, arose out of the separation?

[fol. 78] A. That is true. His concern for the tax consequences, his concern about the separation, his concern about the payments that he had to make and about his divesting himself of his holdings, they were all of primary concern to him.

Q. One last question. Mr. Young, to the best of your recollection, what if anything did Mr. Davis tell you with regard to a possible intent to remarry subsequent to his divorce?

Mr. Murdoch: I object to that. I think that is entirely beside the point in this case, and just as a matter of satisfying curiosity as far as I know.

Mr. Donahue: Your Honor, I can assure you that it isn't

a matter of satisfying personal curiosity. The Government in this case obviously contends that the expenses arose out of purely—for purely personal reasons, whereas the Plaintiff obviously contends that these expenses were connected with an income producing motive. And I am just trying to ascertain whether in this respect the person's motive may have been behind the separation agreement.

The Commissioner: The objection is overruled.

A. Will you repeat that question?

Q. What, if anything, did Mr. Davis tell you with regard to a possible intent to remarry after his divorce?

A. Remarry Mrs. Davis?

Q. Well to remarry, period?

[fol. 79] A. I never heard of any remarrying of any—to anyone.

Q. Fine. Thank you, sir.

A. As a matter of fact, it came to me as a surprise when I later, at some time (and I don't know when) that I learned that he had remarried.

Mr. Donahue: That is all I have, your Honor.

Mr. Murdoch: Just a few questions.

Redirect examination.

By Mr. Murdoch:

Q. In your cross examination, Mr. Donahue mentioned the fact, and I think you confirmed it, that the DuPont stock was registered in Mr. Davis' name alone; is it not a fact that in Delaware a wife, even though she does not have title to certain property, has rights in her husband's property or in-co-ent?

A. That is right.

Mr. Donahue: Objection. Again we are asking for a question of Delaware law.

Mr. Murdoch: On that I want to press that. This is merely following up something that Mr. Donahue opened up as to where the title is.

The Commissioner: I will take it for classification purpose but not to establish the law.

The Witness: My answer is yes.

Q. In this matter of various tax matters you considered, is it not, sir, so that Delaware has a tax income tax law [fol. 80] very much like the Federal tax law, generally speaking.

Mr. Donahue: Objection again, your Honor. I think that this is going into legal matters and not factual, and certainly the Court, as your Honor has pointed out, can take judicial notice of this.

The Commissioner: That is right.

Mr. Murdoch: I will withdraw that.

Q. And ask you whether the concern you had over Federal tax matters would also have a bearing on Mr. Davis' Delaware tax liability?

A. Yes.

Mr. Murdoch: I have no further questions.

The Commissioner: Any other questions?

Mr. Donahue: Just one question please, sir.

Recross-examination.

By Mr. Donahue:

Q. Mr. Young, did Mrs. Alice Davis give up any rights to dower, inheritance and the like at the time of the separation agreement?

A. Yes. Oh yes.

Q. And that is contained in the agreement, is that right?

A. May I have a moment? I am quite sure because that is one.

Q. Yes.

[fol. 81] A. Paragraph 7 provision that "the wife accepts the division of property as herein provided in full settlement and satisfaction of any and all claims and rights against the husband whatsoever (including but not by way of limitation, dower and all rights of testacy and intestacy), which she ever had, now has, or might ever have against the husband by reason of their relationship as husband and wife or otherwise."

Q. I think that would be sufficient?

A. Yes, it is part of it.

Mr. Donahue: That is all I have.

The Commissioner: Any other questions? Can Mr. Young be excused from further attendance at the Court room?

Mr. Donahue: It is quite agreeable to me.

Mr. Murdoch: That is all right.

The Commissioner: We will stand recessed for five minutes at this time.

(Short recess.)

The Commissioner: Let's go ahead.

Mr. Murdoch: Your Honor, I would like at this time to submit the stipulation of facts.

The Commissioner: All right, very well. I think that you have been supplied a copy of this?

Mr. Donahue: Yes sir, I have. It is my understanding that we should have connected with that stipulation, the [fol. 82] agreement as an exhibit to the stipulation. Isn't that what we discussed before? I don't believe we—

Mr. Murdoch: We can do it either way. Either agree that it be made an exhibit or agree that it is in the record to get it in the record.

Mr. Donahue: Couldn't we just have it marked for an exhibit?

The Commissioner: Very well.

Mr. Donahue: Let's mark it as Exhibit B to the stipulation.

Would you make this Exhibit B to the stipulation of facts?

(The agreement between T. Crawley Davis and Alice M. Davis dated the 4th of November, 1954 was received in evidence as Exhibit B to the Stipulation of Facts.)