

T. CRAWLEY DAVIS, having been sworn, was examined and testified as follows:

Direct-examination.

By Mr. Murdoch:

Q. Mr. Davis, will you state for the record your address and occupation?

A. Room 9016 DuPont Building; Vice-President, Member of the Board, Member of the Finance Committee, Member of the Executive Committee of DuPont, Du Pont Company.

Q. You are one of the two petitioners in this Court of [fol. 83] Plaintiff's proceedings, is that correct?

A. Yes.

Q. The stipulation that has been filed here recites that in 1941 you were married to Alice M. Davis; will you describe for us the situation which arose late in 1953 between you and Alice M. Davis?

A. Well, Mr. Murdoch, you say late in 1953. I think we better—

Q. Going back—

A. Near 1953.

Q. When your difficulties started?

A. Well in mid-1953 Mrs. Davis seemed to have a change of viewpoint toward our relationship and that was first evident by a request for me to—in casual terms—not be filled out for a division of property to the end that one half of my property would be in her name. She was more specifically at that time concerned with the shares of DuPont stock.

Q. Let me interrupt you there. At that time that demand was made by Mrs. Davis was anything said by her about a separation or a divorce?

A. No. As a matter of fact, Mrs. Davis said, "I would like to have the economic position that you can give me: I would like to have the social position that you can give me, but I insist on having one half of the DuPont stock." At that point she was specific as to the stock, being in my name. [fol. 84] I said, "I just cannot do that. I am an Officer of the Company; all the stock that I have received has been by way of bonus; we are expected to save our bonus stocks.

I would not be understood in transferring half of it to you. Moreover if I transferred half of it to you, I would have no—I would thereby lose that base for taking care of us in adversity and upon retirement. I would have no control over it. I cannot do that." The situation—

Q. Let me interrupt you again, Mr. Davis. Did Mrs. Davis consult an Attorney to your knowledge?

A. She consulted an Attorney, but the exact time I cannot say. She first engaged a Mr. Hitchens in Wilmington, Delaware who told her—well he told me later on after he had withdrawn from the case, that he felt he could not represent her any longer.

These requests of Mrs. Davis were presented not daily, but let's say weekly, and her attitude toward me became cold. I might say even hostile. And by Christmas time that year why our relations had become strained indeed.

Now in the meantime, I had attempted to persuade her that we had had a few years of happy life together and we could have some more years of happy life, and that my inability to meet her request was not—should not be construed as not properly taking care of her. Because I had made a proper will; she had seen it and she had approved it, and except for a reasonable percentage going to my son [fol. 85] by another marriage, she had control of the whole property and she knew that.

She said that that was not satisfactory to her. Now because of this, our continual friction and bickering, in September of 1953, I made a donation to Mrs. Davis, a gift to Mrs. Davis of 200 shares of DuPont stock. When I did that I had this kind of a conversation with her. "Now I can't meet your requirements or your request because it has a serious potential adverse effect on my position in the company. Now I am making you this gift of 200 shares of DuPont stock and in connection with this I will make this statement: that in the future I will be willing to make further gifts to you of stock to the end that shareholdings in my name do not move below 3,000 shares. She seemed to be considerably satisfied by that. But nonetheless that was, shall I say, either a momentary reaction or superficial. It did not hold, and by Christmas of that year our relations had become so strained that it was rather unhappy to be around the house.

Q. Let me interrupt there and ask you when you made the gift of 200 shares and when you made the statements to Mrs. Davis about your willingness to make future gifts; were you in any way indicating to her that you would do this in consideration of a legal separation or a divorce?

A. Oh no.

Q. Was that even mentioned at that time?

[fol. 86] A. No. No.

Q. Still no mention of divorce or separation?

A. That is right.

Q. Go ahead?

Mr. Donahue: Excuse me. What is the question?

Mr. Murdoch: I asked whether at the time the 200 shares of DuPont stock were given in the fall of 1953, and at the time Mr. Davis stated he would be willing to make future gifts, did Mr. Davis state that was in consideration of divorce and/or separation, and I understood the answer was no, it had not been mentioned yet.

Mr. Donahue: Well —

The Witness: Now what —

The Commissioner: What is the question you want?

Mr. Murdoch: I was asking Mr. Davis to state whether that was so that there was no —

Mr. Donahue: I want to know what the new question is, the next question is. You just nodded to Mr. Davis.

Mr. Murdoch: I am sorry, I misunderstood. I was suggesting to Mr. Davis to go ahead and recite what happened between Mr. Davis and Mrs. Davis.

The Witness: Well some time after Christmas of 1953 after the early part of 1954—the exact time—I probably [fol. 87] could find but I don't recall it—Mrs. Davis' demands became more insistent and when I brought to her the tax returns to be signed, I think this was in February of 1954 (they are due in March) but I had them a little early, she said to me that, "I will sign no further tax returns until you have met my demands." And of course that well—it was quite a shock. And it showed her determination to be unhappy, shall I say, was pretty well grown.

I hadn't realized it up to that point. I thought it was superficial. So I said to her that, "I just cannot see you

acting in that capacity. I just don't see that that gains anything for you or gains anything for me." And in a short while she came to me and said that, "I have engaged Mr. Morford." "I want you to engage an Attorney and I want a separation agreement to be worked out." And I said—I declined. "I have no interest in contributing to breaking up the family; I see no reason for it, no necessity for it, and therefore I am not going to be a willing participant in it."

And we grew further and further apart and she almost it was almost impossible for us to carry on a conversation. As a matter of fact I might put it this way: although it seemed awfully harsh, it seemed to me that Mrs. Davis had embarked on a program or a course of action which she thought would drive me from the home, and therefore would give her the position of being a deserted wife.

[fol. 88] Well I had no intention of leaving the home although it was an unhappy one, I had no intention of leaving my home. I also had no intention of engaging an Attorney. I had no intention of discussing a separation agreement or division of property. And it only became clear to me about September, 1954 that I had lost the battle. That I couldn't win a reconciliation. I couldn't bring the family back to a reasonable relation with each other and that her request for a separation agreement would—probably represented the only thing that was left for me. At that time I engaged Mr. Young. You heard Mr. Young this morning.

Now Mr. Young made a statement this morning that is not entirely correct. He said that at the time I came to him that we had practically worked out the agreement. My memory is better than his; as a matter of fact my notes are better than his; when I went to Mr. Young I was determined to do everything possible to see that there was no such agreement and I have made no mental, written, oral division of property, payments of sums or anything of the kind. The effort of Counsel failed as my efforts had failed and, well, at that point I had been confronted only with this general oral request, "I want one half of the property in my name."

Now at that point when I told Mrs. Davis under the cir-

cumstances I had engaged Mr. Young, the next situation that confronted me was a specific demand, that is, a demand [fol. 89] of—with specifications.

Q. Who made this demand?

A. It came through Mr. Morford to Mr. Young to me. And that demand was, the first one was "1,500 shares of DuPont stock in my name immediately," 3 one thousand dollar—3 fifty thousand dollar insurance policies, premiums paid up, loans there against to stand and interest to be paid by me, one half of the value of the house, one half of all the household goods, an Oldsmobile automobile—and may I refer to my notes here because I forget the exact amount. Is that satisfactory to you?

The Commissioner: Certainly, take your time.

The Witness: \$1,000 per month for life. Now those were the original demands. I told Mr. Young that they were absolutely impossible; I couldn't comply with them. One of the reasons I couldn't comply with them was that I could not stand the jeopardy to my position with the company by an out of hand transfer of 1,500 shares of stock at that time.

A little bit later without any further word from me, a little bit later—I am sorry. Would you change the \$1,000 to \$400?

A little bit later without any further effort on my part or action on my part, just waiting, a plan came through Mr. Morford to Mr. Young to me. And the plan was 1,500 [fol. 90] shares of DuPont common stock to be delivered free and clear upon my retirement from DuPont Company and \$1,000 per month for life, and 3 insurance policies, and everything else. I told Mr. Young that that was equally unacceptable, that I could not do it. The 1,500 shares transfer upon retirement had apparently been devised to meet my requirements that I could not divest myself of stock while a Director and Officer of the Company.

On the other hand it would have—it would have added financial burdens that I didn't see how I could carry.

Now I then offered a plan that I thought was adequate. Am I detailing this too much?

Q. No, you go ahead. That is fine.

A. I offered payments of \$18,000 per annum for ten years, a separate irrevocable trust for Steve, that is my

child, about \$2,800 for ten years, pay off the loan, and pay up the premiums on one \$50,000 insurance policy and deliver it to her, \$24,000 as a fixed payment on the—with respect to the house, one half of the house and the contents. It had a mortgage on it, therefore and of course the Oldsmobile car.

Well this was rejected out of hand. No opportunity to discuss it at all. It was rejected out of hand.

Then a third plan was presented through Morford through Young to me. And this plan was, annual payments for life amounting to the dividends on 3,000 shares of [fol. 91] DuPont stock. That was my total holdings at that time. A separate trust and a \$100,000 insurance policy rather than the \$50,000 she had requested for the 150; I had overruled 150; she had asked for 100. One half the value of the contents in the house and the Oldsmobile car remain the same. I told Mr. Young that was no improvement on the other, that I just could not undertake such—I could not sign myself to such an undertaking. I didn't see how I could carry it out.

Then I made a second plan and the second plan was similar to the first, \$18,000 per annum for ten years, separate trust for Steve ten years, \$50,000 insurance policy paid up, no loans against it, and \$30,000 as a fixed fee—a fixed payment in respect to the home and the contents.

Q. You say—when you stated this plan you stated that to Mr. Young?

A. Yes.

Q. With the idea that he would recite that back?

A. Oh yes, yes. This was not acceptable. And was rejected through the channels, Mr. Morford, Mr. Young to me. Then I told Mr. Young that I saw no way in the world to deal with this but all four of us to sit down (we were working in four different places at different times) and he arranged a conference at which Morford, the ex-Mrs. Davis, Mr. Young and myself were present. And at that conference we worked out what is contained in the settlement, [fol. 92] property settlement and separation agreement.

Now I don't know whether I am overextending myself or not, but at the outset and continuing even up to the time where I had engaged Mr. Young, there was no thought of a divorce. Mr. Young seemed to think otherwise. The mat-



ter of a divorce entered late, and it entered because of two very—two factors that were pressing on me. One, the very unreasonable treatment that I thought I had received, obviously I think I am the injured person, and the other—(received at the hands of Mrs. Davis) and the other was evidence that Mrs. Davis was intending to obtain her separation agreement and then retain my name.

Now I will give evidence of that. I don't know what time Mrs. Davis did it, but it was some time during the forepart of 1954 she went into town and bought a separate home. I didn't know that. That was probably one of the reasons why she was unable to contemplate any reconciliation or rebuilding of the family relationship. She had set her eyes and mind on this separate home of her own. And when she had the telephone listed she had it listed Mrs. T. Crawley Davis. And other things had occurred. So I went to see Mr. Young about this and I said, "I think that this situation is pressing in on me in such a way that in order to protect my name and in order not to have it bend around in a way that would be embarrassing from time to time and [fol. 93] matters that I can't now foresee, I think that some consideration should be given to finding a break of this by way of divorce." Now my recollection is that that was some time in November.

Q. Of 1954 that is?

A. Yes. Just about the same. Now I was quite ill about that time. I spent some time in the hospital and during the time that I was in the hospital this view of mine that perhaps the separation agreement was not going to be a happy situation for me, and that it should be followed at some time by a divorce, Mrs. Davis paid me a call at the hospital—the only call she paid me in the hospital—and she requested, she asked me why I had entered this divorce thought. And I told her and she said, "I have not intended a divorce." I said, "I know, we haven't talked about one but I feel that that is almost mandatory on me now. I don't feel that there is any opportunity for me to come out of this situation alive unless we make a complete break and separation."

And from that point on why the discussions about divorce were carried on between Young and Morford and Morford and Mrs. Davis, and characteristic of her, when it was de-

cided to be done, she decided to do it quickly. Now I think I am about at the end of—

Q. Yes, I would like to go back in time. Just a little bit here. In the stipulation that we filed there was a recital [fol. 94] of your various positions with DuPont Company, starting in November of 1934, when you were the Manager of the Tax Division of the Treasurer's Department, and carrying out—carrying up to the present time, and this recital indicates that from January of 1948 to December of 1953 you were the Treasurer of the Company. You have testified here that it was during the last part—latter half say—of 1953 that Mrs. Davis began to make demands upon you for delivery of half of your DuPont stock to her; could you tell us whether at any time during that period you were being considered for additional positions with the DuPont Company?

A. Yes, I was being considered for Board Membership, for Vice-President, and for Member of the Executive Committee.

Q. Did responsible Officers of the Company tell you this?

A. The Chairman of the Board and the President.

Q. And this was all known to you at the same time that Mrs. Davis was making her demands for stock?

A. Well we have to get it anchored I think in point of time. It was known I think after the first of November, 1953 let us say.

Q. And did Mrs. Davis at that time know any of what you have just stated about your post, promotions within the Company, additional responsibility?

A. I don't think that she did.

[fol. 95] Q. Let me say it this way: did you tell her about it?

A. No. Oh no. I don't see how she could have known because I did not tell her.

Q. You have been with the DuPont Company for 25 years now, nearly 25 years, at that time it was 20 years, did you during that tenure with the Company gain any knowledge about the Company's overall policy regarding stockholding by Executives of the Company?

Mr. Donahue: I object to that. It is not shown or the evidence or the records shows no evidence that there was

such an overall policy. You are assuming a fact not in evidence is the specific ground of my objection.

Mr. Murdoch: I think probably this objection is going to be important for a lot of things we are going to talk about here. I would like to address myself to that for a minute. We are not here to prove that the Company had a particular policy, although I think it can be proved. But that is not our burden. Our burden is to show that Mr. Davis honestly and with reasonable basis believed that the Company had a policy and that in attempting to comply with that policy he was protecting his position with the company; now there is no doubt, I believe, what the Company's was as Mr. Davis is prepared to testify it was. But whether it was or was not is not the question. The question is, did Mr. Davis honestly believe it was and therefore act on that belief.

[fol. 96] The Commissioner: Of course with his record of employment by this Company he is certainly in a position to know what the policy was. Why don't you hit right at it and ask him what the policy was?

Q. What was the DuPont Company's policy regarding stock ownership, ownership of the DuPont stock by Executives of the Company?

Mr. Donahue: I am going to object to that for the record, if it please the Court.

The Commissioner: Yes.

Mr. Donahue: That he is asking for a conclusion of the witness and an opinion of the witness.

The Commissioner: The objection is overruled.

Mr. Murdoch: You may answer.

A. Could I state the policy and then?—

Q. I am coming to it.

A. —And buttress it a little bit.

Q. Just state what you understood the Company's policy was?

A. The Company has a bonus plan; it has been in existence since 1902 I think; the primary objective of that bonus plan is to reward superior performance and particularly in those who show potential for top management. Now prior to 1943 these rewards were made all in stock. The objective as stated in the plan itself was to take— [fol. 97], these are my words as distinguished from the

exact language—to tie these bonus awardees to the Company in the position of a shareholder, and thus integrate their interest in the Company as a shareholder.

In 1943 there had to be a shift for the years 1943 and through 1946 it was all cash. The shift came about by the emergence of the Federal Withholding Tax and the heavy impact of the tax during the war. And back in 1947 we shifted to part cash and part stock, trying to serve both masters, one is the making of shareholders out of bonus awardees, and the other is the tax problem.

Now it is, it has long been—it is not written—except by those who have been willing to express it, and it is written in that form—it has long been the policy expectation of top management of the Company that these bonus awardees would save their stock. The only two exceptions that have ever been countenanced openly was recognition of the necessity to sell stock to pay tax of some kind, and the other was to buy a suitable home.

Therefore, the policy of this Company through its bonus plan is to make shareholders out of the bonus awardees and to expect those shareholders to hold that stock.

Q. And when were you first made aware of that policy?

A. Well I came with the Company in mid-1934, and from the very beginning I had close association with Mr. Emitt [fol. 98] DuPont, Lamont DuPont Copeland, Pierre DuPont, Walter Carpenter and since that time I have participated in every important discussion, policy discussion and decision concerning the bonus plan and its operation. It is just a part of me, as a result of that long indoctrination.

Now moreover I think maybe I might add a little something to that. When I came with the Company my department head, the Treasurer, was James B. Eliason. And Mr. Eliason used to—well he used to present to me on an average of once a week this thesis that bonus stock is to be saved, not squandered. And through the operation of making shareholder interest and employee interest, the potential, the future management of the Company can be assured to be on a higher level than would otherwise be the case. Because it comes from people who have both interests.

Now Mr. Eliason used to—well he somewhat boasted that

he never sold a share of bonus stock in his life and on occasion he would show you a listing of all his share certificates, all his bonus awards to prove that point.

That, coming from my department head, was of course, not a casual thing at all, but rather a daily way of life, let's put it. Now Mr. Eliason was elected to the Board from the office of Treasurer holding 28,000 plus shares of stock.

Q. And did you understand because of his attitude when you were initially with the Company that that was the [fol. 99] reflection of the attitude of the other officers of the Company?

A. Oh, there couldn't be any doubt about it.

Q. Between that time and 1953 was there anything to change your opinion about the Company policy?

A. Strengthen it. With the recognition that the income tax fight was getting so that it was often times hard.

Mr. Murdoch: I would like to have this marked for identification.

(The book, "The Uncommon Man," by Crawford H. Greenewalt was marked as Plaintiff's Exhibit No. 3 for identification.)

Q. Mr. Davis, I hand you Plaintiff's Exhibit No. 3, which is a book entitled, "The Uncommon Man," and the author is Crawford Greenewalt and it was published by McGraw-Hill Book Company in 1959 and I ask if you are familiar with this book?

A. Yes I am.

Q. You have read the book?

A. Yes.

Q. Is the author of this book the President of DuPont Company?

A. Yes.

Q. Was Mr. Greenewalt the President of the Company in 1953?

[fol. 100] A. Yes.

The Commissioner: And ever since that time?

The Witness: Yes.

[fol. 101] Q. Mr. Davis, at the time that Alice M. Davis was making demands upon you for delivery to her of one half of your DuPont Company stock, you testified that you were under consideration for election as a Director and Vice-President and as a Member of the Executive Committee of the DuPont Company; did you believe that compliance with Mrs. Davis' demands regarding your DuPont stock would jeopardize those promotions or promotion in the Company?

A. Yes. If these demands had been met at the first moment of their appearance it would have been necessary—the proper thing for me to do as an Officer of the Company or a potential Board Member—was to go to the Chairman [fol. 102] of the Board and the President and tell them that I had been divested of one half my share holdings. They would have been sympathetic to my plight, but I am quite sure that they would have had the same reaction that I have, and that is, that to show on a proxy statement immediately after election, the disposition of half of the share holdings is not a proper position for a Director, especially, or a poor one and replace him.

Q. And were you at that time dependent upon your salary from the DuPont Company and your dividends from the DuPont Company for your livelihood?

A. Entirely.

Q. Has there been any Company arrangement about revealing these divestitures of stock holdings which has confirmed your belief that this is taken as a very serious matter?

A. Once each year the Executive receives from the Secretary who is in charge of the stock record an analysis of the bonus shares that have been received; this analysis started in 1947—I have to make that clear—we didn't go back of that again, and the dispositions and the retention. Now on that analysis the President and the Vice-President are sent out as a separate group and we are expected, if any one of us have had any substantial significant dispositions of stock, we are expected to speak up and say why. Moreover, just prior to Board Meeting any Director who has [fol. 103] made substantial disposition of stock is reminded by the Chairman that he should look forward to questions



from shareholders from the floor at the shareholders meeting and should be prepared to meet those questions.

Is that responsive to your question?

Q. Yes it is. When you discussed with your lawyer, Mr. Young, the matter of these demands and counterdemands did you make known to Mr. Young what you have stated here today about your fears with respect to your position with the Company if you were divested of the stock?

A. I did.

Q. And did you instruct him to resist those demands with that in mind?

A. I did.

Q. And the agreement as finally executed prior for only 1,000 shares as opposed to 1,500 shares being delivered to Mrs. Davis, the agreement also provided that the delivery would be staggered, 500 shares one year and 500 the next; can you tell us why that was important to you that it be done that way?

A. Well the first delivery was to be made in April, 1955, that was after the 1954 proxy statement was out. By that means I would not show on the 1954 proxy statement as having diluted stock in the year of election. And [fol. 104] particularly to the Finance Committee I was elected that year. And then the other 500 shares would be delivered in 1956, after the 1955 proxy statement. Now by that device I was able to dilute this down trend in my shareholdings to keep it from being such a shock, pointed matter.

Q. And to your knowledge were a large part of the negotiations between the lawyers directed to that very point?

A. Mr. Murdoch, I wouldn't be able to answer that. You mean, let me see if I understand you correctly. You mean to the point of my desire for staggered delivery?

Q. Staggered delivery and to resist the demands for the 1,500 shares?

A. To resisting the demands absolutely. I told Mr. Young that I wouldn't deliver any under any circumstances, the situation got too warm and I couldn't live with that. As to the staggered delivery, it came out of this conference that I referred to, this four party conference at which we carved spelled out, what do you have before you, the separa-

tion and property settlement agreement, and I at that point put forward that I can make this delivery only in this way.

Q. I just have one more question, Mr. Davis, and that relates again to the separation agreement. In your discussion with Mr. Young and this conference with Mrs. Davis and Mr. Morford, did you at any time have in mind or state that you were delivering these DuPont shares [fol. 105] as a discharge of your alimony obligation?

A. Oh no.

Mr. Donahue: Objection. I think, your Honor, that this pertains to matters which are set out in the contract and or in the separation agreement. That agreement of course speaks for itself. And I don't think that Mr. Davis—his conclusions with regard to that agreement are relevant. As a matter of fact he is just giving an opinion as to that which is already in evidence.

Mr. Murdoch: Your Honor, first of all this isn't the situation where the agreement speaks for itself in this action which I always thought was synonymous of the proper rules that the rules are only applicable where the parties to the contract are disputing. Here is a dispute between Mr. Davis and the United States. The United States obviously is not a party to this agreement. I believe it is pertinent to ask Mr. Davis what was the background of this agreement. The purpose of showing what the real intent of the agreement was.

Mr. Donahue: The Government has no objection to the question as to the background. The question as to what this particular paragraph in essence that is what it is, what does this particular paragraph of the agreement means is improper. Mr. Davis isn't the lawyer.

The Commissioner: All right, very well.

[fol. 106] Mr. Murdoch: I will withdraw the question and state it this way:—

Q. In negotiating about this agreement, not in executing, but in negotiating about it, did you ever intend that you would discharge your support and alimony obligation by this delivery of the stock?

A. No.

Mr. Murdoch: That is all I have.

## Cross-examination.

By Mr. Donahue:

Q. Did you consider the delivery of the stock to be a gift to Mrs. Davis?

A. No. I considered it an exaction from me.

Q. And what do you mean by "an exaction"?

A. What do you mean by a "gift"?

Q. Did you receive any—did you receive anything in return for these—

A. No.

Q. —stocks?

A. No.

Q. Did she give up her rights to the remainder of your property?

A. Mr. Young read you the provisions in the agreement this morning which I believe is normal under such circumstances.

Mr. Murdoch: I think we are back now to Mr. Donahue's very objection which I think is very well taken. What [fol. 107] is the legal effect of this?

The Commissioner: What you are after is in the agreement itself.

Q. Let me put it like this: isn't it true, Mr. Davis, that in return for her separation you agreed to do certain things, one of which was the transfer of the stock?

A. No.

Q. How would you—

A. I have answered your question.

Q. I don't think you have, sir.

A. What I did was under duress, under pressure. The only way to continue to live.

Q. Did you not do it in return for her obtaining a divorce and agreeing to relinquish—

A. No.

Q. —her rights to your property?

A. The relinquishment has already been dealt with. I think that is not unusual at all.

The Commissioner: I think after all, you oughtn't to argue with this witness about the legal effect of this document, Mr. Donahue. I don't think we could change it.

Mr. Donahue: That is quite true; I am afraid, your Honor.

Q. Mr. Davis, what were your positions with the DuPont Company in November of 1954?

[fol. 108] A. It is in the stipulation.

The Commissioner: Do you want to address yourself to the matter contained in paragraph 12 of the stipulation?

Mr. Donahue: No, I restricted it to year 1954, your Honor.

The Commissioner: I see, all right.

A. Well in November 1954, I was a Member of the Board, a Member of the Executive Committee, Vice-President and was elected to the Finance Committee.

Mr. Donahue: Would you make this Defendant's Exhibit No. 1?

(Booklet entitled "By-Laws of E. I. du Pont de Nemours and Company July 20, 1953," was marked Defendant's Exhibit No. 1.)

Q. Were you also Treasurer of the Company in 1954?

A. No. I relinquished the Treasurership when I was elected to the Board and the Executive Committee and made Vice-President.

Q. Now I show you, Mr. Davis, what has been marked for identification as Defendant's Exhibit No. 1 and ask you whether you can identify that?

A. Well it certainly has a familiar appearance. In what way do you want me to identify it?

Q. What is it?

[fol. 109] A. It is the by-laws of the DuPont Company.

The Commissioner: What you want to know is if it is a true and correct copy of the by-laws of the E. I. du Pont de Nemours and Company as of the present time or as of?

Mr. Donahue: As of the year July 20, 1953 through July 18, 1955.

Mr. Murdoch: That is the one with the printed date on, July 20, 1953?



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Mr. Donahue: Yes.

Mr. Murdoch: Even without looking at it I am going to stipulate that that is the by-laws of the Company.

The Commissioner: That is satisfactory. If in any event, if you discover later, if you discover some error, you can—

Q. May I ask with regard to the by-laws, are the duties of the Treasurer of the DuPont Company listed in the by-laws?

A. Yes.

Q. Are those duties listed on page 11, sir of those by-laws?

A. Yes, running over into 12, yes.

Q. Were those the duties that you performed during the time that you were Treasurer of the Company?

A. Yes.

Q. Do those by-laws also contain the qualifications of [fol. 110] Directors and Officers of the Company?

A. Qualifications?

Q. Yes?

A. I don't understand your question.

Q. Well my question is specifically do the by-laws contain articles with regard to the Officers of the Corporation?

A. Well now, you have changed your question.

Q. And the Directors, I was going to ask you that?

A. The by-laws contain specific or general outline of the duties assigned to each Officer.

Q. Do they contain the same information with regard to the Directors?

A. No.

Q. What information, I refer you to Article II which refers to the Board of Directors; does that article contain various paragraphs with regard to the number of Directors and the manner of election and what their duties are?

A. It contains paragraphs with respect to the number of Directors, how vacancies be filled, places of meeting, regular meetings, special meetings with no reference at all to their duties.

Q. Is there any reference there as to the qualifications of the Directors?

A. No.

[fol. 111] Q. Is there any requirement in the by-laws that a Director own any stock in order to be a Director?

A. No. That is not usually contained in by-laws.

Q. It is not contained in those by-laws?

A. It is not usually contained in by-laws.

Q. It is not, however, contained in those by-laws?

A. That is right.

Q. Would you also—you also stated I believe, that you were a member of the Executive Committee and a Member of the Finance Committee; are the duties of those Committees or Members of those Committees also contained in the by-laws?

A. Yes. And with respect to the Committees there is a generalization as to their duties. A generalization in this way, the Executive Committee is charged with policy responsibility for the operations of the Company and the Finance Committee is charged with matters affecting the financial end of the Company.

Q. Would you characterize the Executive Committee as the top Committee in the DuPont Corporation or the leading Committee in the DuPont Corporation?

A. Mr. Donahue, we use the term for the Finance Committee as the Senior Committee.

Q. And the Executive Committee, how would you characterize that?

A. I can only characterize it as the Committee charged [fol. 112] by the Board with policy responsibility and direction with the operations of the Company as distinguished from Finance.

Q. How long have you been a Member of the Executive Committee, sir?

A. I was elected December 21, 1953.

Q. Have you been a Member of the Executive Committee continuously since that time?

A. Yes.

Q. When were you elected to the Finance Committee?

A. November 1—well at the meeting in October, effective November 1, 1954.

Q. Have you been a Member of the Finance Committee continuously since that time?

A. Yes.

Q. Isn't it true, Mr. Davis, that since 1948 when you became Treasurer of the Company that you have been one of the top Executives with the DuPont Corporation?

A. I think that is a proper statement, yes.

Q. As a matter of fact, is it not also true that you have been the one person with the DuPont Company who is most familiar with its financial situation?

A. No, that is not true. We had Angus Echols, Vice-President of Finance, to whom I reported during my tenure as Treasurer. We had by Eliason a former Treasurer, my predecessor or one time removed, who was an Officer of the [fol. 113] Finance Committee thoroughly familiar, we had Walter Carpenter, Chairman of the Board, one time Vice-President, Chairman of the Finance Committee and the President, not with details, not with how you make entries in a book, not about whether you run a calculating machine or an electronic machine but with finance, finance is something far more comprehensive than bookkeeping.

Q. At least you were one of the few who were most familiar with the financial situation of the DuPont Corporation on the policy making level?

A. I would—I am going to try to make a count but I don't see that it is worthwhile, I was one of let's say fifteen who had sufficient familiarity to be regarded as a top finance man.

Q. Since your election to the Finance Committee isn't it true that you have been the DuPont Officer who has been primarily responsible for the Government—for the Corporation financial policies?

A. No. The Committee as a whole. As a Member of the Finance Committee I have no voice as an individual; I can only act with the Committee.

Q. Does the Committee have a Chairman?

A. Yes.

Q. Who is the Chairman?

A. At the present time Walter S. Carpenter, Jr.

[fol. 114] Q. Have you been Chairman of that Committee?

A. No.

Q. Sir, I refer you to Exhibit A attached to the Stipulation of Facts and I ask you whether or not it is true that your stockholdings in the DuPont Corporation since the time of your first election to the Board of Directors has always been less than at the time of your first election?

A. No, it has not always been less.

Q. When was it greater?

A. It was greater up until March 3, 1955.

Q. How many shares did you have at the time of your election?

A. 2,842.

Q. What was the date of your election, sir?

A. December 21, 1953.

Q. And at that time you held 2,842 shares?

A. That's right.

Q. And then at the time of the election in 1955 how many shares did you own?

A. At the time of the election in 1955, 3,081 shown on the proxy statement. I think that is right.

Mr. Murdoch: Are we talking about the election or the annual stockholders' meeting?

Mr. Donahue: Excuse me, I am sorry, I meant the annual stockholders' meeting.

[fol. 115] The Witness: Was your question in 1955 or 19—

Q. I meant at the time of the annual stockholders' meeting?

A. In 1955?

Q. 1955?

A. 3,081 shares.

Q. What was your holding at the proxy time of the annual stockholders' meeting in 1956?

A. 2,618.

Q. And by the way, in what month is the annual stockholders' meeting?

A. April.

Q. In April?

A. The listed holdings are as of the end of the preceding year as required by the S.E.C.

Q. I see. But in April, 1956 your stockholdings would have been 2,081 shares, is that correct?

A. I mentioned in my testimony a while ago that I made that delivery of 500 shares to Mrs. Davis, the ex-Mrs. Davis, in order to avoid that showing.

Q. The showing in the proxy statement was as of the end of the previous calendar year?

A. That's right.

Q. Now as of the time of the stockholders' meeting in [fol. 116] 1957 what were your share holdings?

A. 2,304, that is as shown on the proxy.

Mr. Murdoch: I question the pertinency of these discussions about Mr. Davis, stockholdings after 1953, which is what we were talking about when the agreement was entered into, 1954.

Mr. Donahue: Mr. Davis, of course your Honor, has contended that he could not afford to lose stock in the Corporation and still maintain his position.

The Commissioner: Well the record may stand. You may proceed.

Q. Mr. Davis, again referring to Exhibit A, I note during the year 1954 under the column, "Shares Out," you apparently disposed of 400 shares of stock, is that correct, sir?

A. That is right.

Q. Can you state at this time what the purpose was or what was the occasion of that disposition of stock?

A. 200 shares were sold to pay income taxes and 200 shares were sold to meet the cash demands of the ex-Mrs.

A. M. Davis.

Q. Were you not afraid at that time that the stock which was sold to meet the demands of Mrs. Davis might affect your position with the Company?

A. Yes.

[fol. 117] Q. Nevertheless you sold the stock?

A. Yes. I had to. And the proportions are what we call sometimes the minimum. In other words I had no choice.

Q. In March 21, 1956 according to Exhibit A attached to the stipulation, you disposed of 100 shares of stock; if you can recall, sir, what was the occasion of that disposition?

A. To pay income taxes.

Q. The payment of your income taxes was considered by the Company to be a legal obligation which apparently had no effect on your position with the Company, is that true?

A. That explanation was always acceptable.

Q. Do you have any reason to think that the same explanation might not be acceptable in view of the fact that a divorce proceeding also presents one with a legal obligation?

A. It might have been acceptable to my colleagues in our

inner sactum sanitorium who understood me, but it would not be acceptable on the shareholders' floor.

Mr. Murdoch: I think you have assumed something that is not the fact. At the time this grant was made there was no divorce action pending. You are talking about the resistance.

Mr. Donahue: I am not assuming that at all.

Mr. Murdoch: It was a hypothetical?

Mr. Donahue: Certainly.

Q. Mr. Davis, your separation agreement was of course [fol. 118] incorporated into the divorce decree, was it not?

A. Yes.

Q. Is it true that this question of the disposition of your shares of stock was never presented to the stockholders?

A. Yes. And by virtue of the way I managed it.

Q. Would it not have been equally as possible to give Mrs. Davis another 500 shares a year later and still have had no effect on the position with your Company?

A. I don't think so.

Q. Did you not receive a stock bonus each year at the beginning of the year?

A. Well you have the instance there, they tell you what I receive.

Q. Are these various instances stock bonus?

A. All bonuses.

Q. Did you make any attempt to purchase any stock on your own?

A. I can't. I had no funds. May I make a parenthetical statement? I own no stock that did not come to me by way of bonus.

Q. Despite the fact that your stockholdings were somewhat reduced in the years 1955, 1956 and 1957 have you always been included upon the Company's proxy statement as a Director?

[fol. 119] A. Since election, yes.

Q. Since your first election?

A. Uhm hum. Now I want to—may I call your attention to the fact that the dispositions in 1957 are insignificant, they were contributed to a charitable institution by virtue of not having any funds. As you included in your question my dispositions in 1955, 1956 and 1957, those dis-



positions in 1957 are so minor as to hardly be included in your question.

Q. Nevertheless they did tend to reduce your overall stockholdings?

A. Thirty-two shares.

Q. For those years. Yes sir. Now Mr. Davis, isn't it true that there have been a number of other Directors of the DuPont Corporation that had stockholdings somewhat comparable to yours in amount?

A. Other Directors somewhat comparable, yes. On the order of 3,000 shares.

Mr. Donahue: Would you mark these for identification as Government Exhibits 2, 3, 4, 5, and 6, in that order?

(Photostat of 3-page paper headed "Shareholdings (of record and beneficial interest) of DuPont Company common stock by the Directors for selected years" was marked Defendant's Exhibit No. 2.)

[fol. 120] (Printed letter size booklet of E. I. du Pont de Nemours and Company notice of annual meeting and proxy statement etcetera, dated March 14, 1955 was marked Defendant's Exhibit No. 3.)

(Printed letter size booklet of E. I. du Pont de Nemours and Company notice of annual meeting and proxy statement etcetera, dated March 9, 1956 was marked Defendant's Exhibit No. 4.)

(Printed letter size booklet of E. I. du Pont de Nemours and Company notice of annual meeting and proxy statement etcetera dated March 8, 1957 was marked Defendant's Exhibit No. 5.)

(Printed letter size booklet of E. I. du Pont de Nemours and Company notice of annual meeting and proxy statement etcetera, dated March 14, 1958 was marked Defendant's Exhibit No. 6.)

Mr. Donahue: The proxy statements are from 1955 through 1958.

Mr. Murdoch: Dated March 14, 1955?

Mr. Donahue: Yes.

Q. Mr. Davis, I show you what has been marked for purposes of identification as Defendant's Exhibit No. 2, and ask you if you recognize that?

A. Yes.

Q. Would you state for the record, sir, what that is? [fol. 121] A. Well it is a compilation of the ownership of record—or beneficially of DuPont shares on the proxy statement for each of the years, 1952, 1953, 1954 and 1958.

Q. Now referring to Defendant's Exhibit 2 would you state the holdings of the following Directors, C. A. Cary?

Mr. Murdoch: Your Honor if we can shorten it I will stipulate that this can be admitted as an exhibit.

The Commissioner: That will be sufficient.

Mr. Murdoch: Get it on the record that way.

Mr. Donahue: That will be sufficient, yes sir.

The Commissioner: All right.

Mr. Donahue: Is that as to Defendant's Exhibit 3 through 6 which are the proxy statements?

Mr. Murdoch: I thought this was two.

Are you asking to read from the proxy statement?

Mr. Donahue: No, I asked him to read from Defendant's Exhibit 2.

Mr. Murdoch: I am stipulating that this can go into the record and save Mr. Davis' reading from it.

Mr. Donahue: That is agreeable. I also wanted to put into the record Defendant's Exhibit 3 and 6 and I was going to ask somewhat similar questions with regard to those of Mr. Davis.

[fol. 122] The Commissioner: All right, Defendant's Exhibits 2 through 6 are received in evidence.

(The photostat entitled "Shareholdings (of record and beneficial interest) of DuPont Company common stock by the Directors for selected years" was received in evidence as Defendant's Exhibit 2.)

(Printed letter size booklet of E. I. du Pont de Nemours and Company notice of annual meeting and proxy statement etcetera, dated March 14, 1955, one dated March 9, 1956, one dated March 8, 1957, and one dated March 14, 1958, were received in evidence as Defendant's Exhibits 3 through 6 respectively.)

Mr. Donahue: I forget whether I offered Defendant's Exhibit 1. If I haven't, I would like to offer it, that is the by-laws.

The Commissioner: I believe it was received. If there is any doubt, I will now indicate on the record that Defendant's Exhibit No. 1 is received in evidence.

(The printed booklet entitled "By-laws of E. L. du Pont de Nemours and Company dated July 20, 1953," was received in evidence as Defendant's Exhibit No. 1.)

Q. I would like to ask you a couple of questions: was Mr. C. A. Cary a Member of the Executive Committee in 1958?

A. Yes. He retired in that year I think.

Q. Was Mr. J. W. Kinsman a Member of the Executive [fol. 123] Committee in 1958?

A. No. He resigned before 1958. It must have been 1957.

Q. Was he a Member of the Executive Committee in 1957 or prior to that?

A. Yes.

Q. Was Mr. W. H. Ward a Member of the Executive Committee?

A. Yes.

Q. Mr. Roger Williams, was he a Member of the Executive Committee?

A. Yes.

Q. Would you state whether any of these gentlemen were Members of the Finance Committee?

A. No one of them were members of the Finance Committee.

Mr. Donahue: Would you mark these for identification as Government's Exhibits 7, 8, 9, 10, 11, 12 and 13, which purport to be income tax returns of the Plaintiff for the years 1949 through 1955.

(Photostats of income tax returns, Form 1040, for Thomas Crawley Davis and Alice M. Davis for the years 1949, 1950, 1951, 1952, 1953, 1954 were marked Defendant's Exhibits 7 through 12.)

(Photostat of income tax return, Form 1040, for Thomas [fol. 124] Crawley Davis and Grace Ethel Davis for the year 1955 was marked Defendant's Exhibit 13.)

Mr. Morford: I think they could be admitted without further identification.

The Commissioner: Defendant's Exhibits 7 through 13 are received in evidence.

(The Exhibits recited above were received in evidence as Defendant's Exhibits Nos. 7 through 13.)

Q. It is curious to me, Mr. Davis, I should have asked you one other question with regard to what has been marked for identification as Defendant's Exhibit 2—isn't it true that at least with respect to the year 1958 there were several Directors that had holdings substantially less than your own holdings of stock?

A. Two I think.

Q. Who were those two, sir?

A. D. H. Dawson and R. L. Hershey.

Q. And now I show you what has been—

A. No. Is it permissible for me to add to it that—

Mr. Murdoch: Certainly, give a complete answer.

The Witness: I want to remind you that neither were elected to the Finance Committee or slated to the Finance Committee. I also want to remind you that each are top flight scientists, Doctors in general engineering whose services the Executive Committee desperately needed.

[fol. 125] Q. Isn't it also true, Mr. Davis, that you are a top flight accountant and are completely familiar with corporate finances?

A. I cannot praise myself. I regard myself as completely familiar. I am told fifteen minutes ago that there are fifteen other persons in the Company completely familiar.

Q. However, you yourself are a C. P. A., are you not?

A. Yes.

Q. And you have taught accounting in college?

A. Yes.

Q. I show you what has been entered into evidence as Defendant's Exhibits 7 through 13, which purport to be, which are your income tax returns for the years 1949 through 1955; now is it not true that your income increased during each of those years?

A. I suppose that is true, yes.

Mr. Murdoch: Are you talking of the gross or net? What are we talking about when you say your income?

Mr. Donahue: Well we will say your gross income increased during those years.

The Commissioner: You don't have to ask him a question about what is obviously shown on there.

The Witness: I don't know that those are photostats. [fol. 126] I know that they purport to be. So I suggest that you not ask me questions of that kind.

Mr. Murdoch: We have agreed that he can admit them as copies. We assume they are.

Q. Would you care to examine them to determine whether there has been an increase in your income?

The Commissioner: Why don't you let me examine them. I mean when he case is submitted on the record. They are admitted to be copies of his returns.

Mr. Donahue: I was leading into another question.

The Commissioner: All right.

Q. Again we will assume that there was an increase, which the returns themselves show, to what was that increase attributable?

A. Increased responsibility. Some increase in salary, perhaps some increase in bonus.

Q. Is your bonus considered part of your salary, sir?

A. For this purpose it is (indicates). It is not in the Company.

Q. Now you were Treasurer of the Company until December 1953, is that correct?

A. That's right.

Q. Were you receiving a stock bonus until that time?

A. Yes.

Q. That was based on your work as Treasurer of the [fol. 127] Company?

A. That's right.

Q. And when you became a Director you do also receive a bonus?

A. Yes.

Q. As a Director?

A. No. As Vice-President and Member of the Executive Committee, not as a Director.

Q. How much do you receive as Director's fees?

A. \$100. a meeting.

Q. And how many meetings are held a year?

A. Fifty-two. No, no, no. Twelve. I have the Executive Committee meeting—

Q. Then your increases in salary over the years were attributable primarily to increase in salary, which of course includes bonus?

A. And increased responsibility. For instance in the office of Treasurer I received less than I received as the Vice-President.

Q. What was your salary as Treasurer?

A. Including—

Q. Including bonus?

Mr. Murdoch: I think that is obvious from the return.

Mr. Donahue: No, I don't believe it is.

[fol. 128] A. I wish you would get it from the return.

The Commissioner: It is obvious in the returns, isn't it?

Mr. Donahue: I don't believe it is broken down, your Honor, well between—

The Commissioners: Oh, I see.

Mr. Donahue: It isn't broken down as to the regular salary and the bonus. Maybe if I can clarify by this question—

Q. On your returns under wages or salary, do you include both, what we would term salary as well as your bonus payments?

A. Yes, you are supposed to.

Q. In 1949 you have a return, you have total wages \$86,117.43, that would include both?

A. That is right, bonus delivered that year and the salary.

Q. The one bonus varies in different years?

A. Yes, depending on the profits, depending on performance. Sometimes I am not as good as I was the year before.

Q. What is the difference between the bonus you receive as a Member of the Executive or Finance Committee and the bonus you receive as Treasurer of the Company?

Mr. Murdoch: You are asking dollar amounts or a different series?

Q. —different series and dollar amounts, if you will?

A. I can't give you dollar amounts because, as I have said, they vary from year to year depending on the fund. There has been another factor and that is that we have changed the bonus plan in the last two years, so that members of top management get some bonus in stock or cash, offhand cash and so much in dividends equivalents. Let me say this: that roughly twice my present position yield me an income, roughly twice what my Treasury position did.

Q. Is that as of this year?

A. Well I prefaced my statement by saying that I can't from memory dot each year, for instance, the bonus this year is much less because the bonus the preceding year—because 1958 was a dull year. What I have to say is that my present position and responsibility I will probably fetch about twice what I would in the Treasurer's position. If that is not satisfactory I will have to go back and look it up and I don't see what—

Mr. Murdoch: I am not clear on what we are leading to here. I think probably a lot of this is in the returns. Mr. Davis' income has steadily increased. I don't see what we are proving.

Mr. Donahue: I think I have exhausted what I wanted to on this particular line.

[fol. 130] The Commissioner: All right.

Q. Mr. Davis, you stated that you were expected to save the bonus stock, I would like to know by whom you were expected?

A. By a traditional policy of top management of the Company.

Q. Isn't that top management policy, as you say, directed more to the fact stock should be given to the various Company Executives to make them more interested in the Company rather than to the fact that they should retain such stock?

A. It is directed to both. I don't know whether you will permit me to read this or not, you probably won't, you will probably object to it.

Q. I probably will, but what are you referring to?

A. Crawford Greenewalt's statement at a speech in Co-

lumbia University a year ago, "Traditional Bonus awards were made in the form of common stock of the Company. It was presumed that the employee will use his salary for living expenses and accumulate his bonus stock or savings as a stake in the Company's future. Until recently this was the common practice among bonus recipients and I have heard many men say with some pride that they never sold a share of bonus stock."

Q. And of course he says "recently" that that was the Company policy?

A. Well—

[fol. 131] Q. The Company policy obviously has changed, is that correct?

A. No, the circumstances have changed by reason—virtue of the large tax bite. That is all in here. But I don't want to bore you with all that, and you won't let me anyhow.

Q. I asked you to explain the words "until recently"?

A. That has reference to the fact that only, and lately would be a decade, the tax bite is so large, you saw some of my dispositions, they wouldn't have been made except for the fact that I had to raise cash to pay the tax.

Q. You made a disposition of 1,000 shares of stock, yet you are still a Director of the Company, isn't that true, sir?

A. Yes.

Q. Yet you say you could not have made a disposition of 1,500 shares and remained a Director of the Company?

Mr. Murdoch: I am not sure that was his testimony.

Mr. Donahue: Well he can answer the question now.

The Commissioner: I don't think he has testified that he couldn't possibly remain.

Mr. Donahue: Let me rephrase it.

Q. Would you say then, that you could not have disposed [fol. 132] of 1,500 shares and still remained a Director?

A. No. I will say this, that I could not dispose of 1,000 shares or 1,500 shares all at one time and have remained a Director or been elected to the Finance Committee.

Q. But you could have disposed of 1,500 shares over a period and remained a Director or a Member of the Finance and/or a Member of the Finance Committee?



A. I can't say dogmatically no. I can say that I have grave doubts that I could.

Q. Was one of your reasons for hiring Counsel to represent you in this matter, the fact that you personally would experience adversity in meeting your payments in maintaining your customary style of living, whatever that might be?

A. I don't understand that question.

Q. Well I am merely trying to ascertain whether one of the reasons you hired Mr. Young was to protect your personal interests—in other words, in order to maintain your home in the way that you had been living; the customary way in which you had lived?

A. There was no other way to dispose of the problems before me except by a competent legal Counsel. My primary interest was the protection of my job, my position, and if that were done everything else would fall in place. If that were not done, my being a C. P. A. couldn't help me.

[fol. 133] Q. Now you stated that you consider that your wife's attitude was cold and hostile; did this cause you a great deal of personal discomfort?

A. I mentioned that I spent a good deal of time in the hospital. I was a wrecked man. I didn't want to dwell on that too long. But if you want to cross examine in detail.

Q. I don't care to dwell on it at length.

A. I have not yet recovered my health.

Q. That was due—

A. To the emotional upset caused by that very unhappy thing.

Q. Just one more question on that point, sir. Would you say that at the time of the separation agreement that your personal relations with your wife had become unbearable? That would be as of November, 1954?

A. They would have been borne, they were undignified. People cannot or should not, people of culture, of standing and reason and judgment should not live under those circumstances for any great length of time.

Q. Your testimony I believe, was to the effect that as of September, 1954 you had realized that you had lost the battle?

A. That's right. Lost the battle in terms of bringing

her to a reconciliation, which would accept the fact that I would have to keep stock in my name, 2-or-3,000 shares.

[fol. 134] Q. Now just to clarify that point for a moment. Was all of your DuPont stock in your name, sir?

A. Always.

Q. Is it true that your employment or part of your employment of Mr. Young was to arrange for a divorce?

A. No. Mr. Young—I could have gotten a divorce for \$600. Divorce is no problem.

Q. Isn't it true that Mr. Young made the arrangements for you to obtain Attorneys in Reno?

A. Well he did the telephoning and obtained the Attorney.

Q. Was there an agreement as to the grounds for divorce?

A. No.

Q. There was, however, an agreement that a divorce would be obtained, is that it?

A. I stated in my previous testimony that that situation was reached about November of 1954.

Q. You were present in the room here and you said that if this separation agreement would not have been, or you heard Mr. Young testify that the separation agreement would not have been entered into, if it had not been agreed that it would be incorporated in the divorce?

A. I think that was an act which strengthened it. I thought considerable about it. We had never talked about [fol. 135] it exactly in that light. And this is the reason: I owed Mrs. Davis nothing; I was maintaining a home for her on all proper standards, and she insisted on breaking it up. And I have related to you the manner in which she used me, which over a period of months, coming to a close or perhaps coming to a conclusion perhaps about the time of the signing of the agreement, I came to the conclusion that a divorce was the only way that I had of continuing to live. Therefore I think—I think it proper to say although we didn't talk about it, because we didn't have to, I left that to Young, it is proper to say that if she had dug her heels in, I would have dug my heels in. In other words, I did not feel that I could stand what I saw coming under a separation agreement without legal separation.

Q. Did you have any discussion at all with Mr. Young relative to the grounds for divorce?

A. No.

Q. As to the jurisdiction in which the divorce should be?—

A. Oh, no.

Q. —obtained. As to whom the moving party would be?

A. I think my recollection is dim but I think there was a few words exchanged between us that it would be quite embarrassing for me to leave the State and take residence in another State for that length of time, and therefore it [fol. 136] would seem reasonable in all the circumstances, that is to say I have been forced into things that I did not want, that Mrs. Davis should be the moving party.

Q. Did you pay for Mrs. Davis' stay in Reno?

A. Yes, Mr. Morford was able to get that from me.

Q. Well, bringing up the question of Mr. Morford's fees, what was the occasion of—strike that. Did you agree to pay your wife's fees to Mr. Morford?

A. I understood that I had to, so I did.

Q. By whom were you—

A. By Mr. Young and by Mr. Morford.

Q. As a result of their advice you paid the fees?

A. That's right.

Q. To Mr. Morford?

A. That's right.

Q. Mr. Morford, of course represented your wife?

A. Yes.

Q. What discussions, if any, did you have with Mr. Young relative to the custody and support of your son?

A. Not very much. It was perfectly clear to me that if the home was to be broken, that the child shouldn't be broken in half. Mrs. Davis wanted custody and support and I acquiesced with a heavy heart in consideration for the youngster. I don't think that there is anything more difficult for a youngster than to—

[fol. 137] Q. Would you—

A. —spend three months with Dad and three months with M. ma.

Q. Would your answer be the same sir, with regard to the education of your son?

A. Yes. But for a slightly different reason. I realize that if I had a hand, if I obtained a voice or a right to a voice in his education by a decree, by a written paper, that we would always be bickering about it and I wanted to remove bickering from the child's life.

Q. Did you have any discussion with Mr. Young relative to the retention by you of your home?

A. Why was there any necessity?

Q. As I understood from your testimony, Mr.—the former Mrs. Davis claimed half the value of—half the home?

A. Yes. But she wanted it in money. There was no question of me not retaining my home if I had the money. Does that answer your question?

Q. It was just a question of your raising the money to equal half the value of the home?

A. Yes.

Q. Was there any negotiation on your part as to the personal belongings, the furniture, silver, things of that sort?

A. Mr. Young stated it this morning.

[fol. 138] Q. Mr. Young's statement was to the effect that you were willing to—

A. That I said let her have what she wants. She made a list, I didn't even require that, but the Attorneys thought it best.

Q. Did you discuss with Mr. Young at any length the problem of the amount of support for your wife?

A. At some length, yes. But only a part of the negotiations. Part of his preparation for the negotiations, I will put it that way.

Q. When did the actual divorce take place approximately sir?

Mr. Morford: I believe that is in the stipulation. Paragraph 9 of the stipulation. January 5, 1955.

A. Uhm hnm.

[fol. 139] By Mr. Donahue:

Q. Now Mr. Davis, at the time you entered into the [fol. 140] separation agreement did you personally feel an obligation to support your wife?

A. No.

Q. You felt no obligation at that time?

A. No.

Q. Is it not true then that you entered into the separation agreement primarily to be rid or as the first step in getting rid of your wife and her demands?

A. No, I answered that before, I entered into it under duress.

Q. You wanted no part of entering into the separation agreement?

A. I did not.

Q. But you did enter into it?

A. I did.

Q. You entered into it as a means of getting out of a bad situation?

A. I entered into it upon the advice of Dr. Hughes and Hy Young after their discussions with Morford and Dr. Munson and I made every possible effort. I engaged the best Counsel I possibly could to help me to bring this thing around. I entered into it after I had been told that there is no way to save this marriage.

Q. At the time you decided there was no way to save this marriage, you also decided that you had to be divorced [fol. 141] from Mrs. Davis?

A. Mr. Donahue, I have gone through that. My answers were complete, I hope were complete. If they weren't you may pursue it further.

Q. Mr. Davis, in the normal course of corporation procedure, would you just describe briefly the method by which the Directors are elected?

A. Well I think first and foremost they are elected each year at the annual stockholders' meeting, having been proposed usually by the management; and vacancies on the Board between meetings, annual meetings of the shareholders, according to the by-laws can be filled by an election by the Directors.

Q. You state that the Directors are proposed by the management?

A. The proxy statement will give you that to you clearly.

Q. Since your first election have you always been proposed on the DuPont proxy statement?

A. Yes.

Q. Isn't it true that in the DuPont corporation merely if one is listed in the proxy solicitation or stipulation that it is paramount to election?

A. I don't know any exception to election, I wouldn't want to adopt your exact language.

[fol. 142] Q. However, you do know of no exception to that rule?

A. I know of no exception. I know of some adverse votes but they weren't enough to carry.

Mr. Donahue: I think that will be all.

Mr. Murdoch: I have a very few.

The Commissioner: All right.

[fol. 143] Mr. Murdoch: Your Honor, we have already introduced the bill of Mr. Young and I have with me copies of Mr. Morford's bill. I think I can include these bills and their payments through Mr. Davis as well as I can through Mr. Morford. Do you have any objection if we just submit these bills?

Mr. Donahue: I do. I object to the admission of these bills in evidence, your Honor, otherwise that actually the amounts themselves have been stipulated to in the stipulation, and that the characterization of the payments is made by Mr. Morford and I feel that he should be required to testify as to what the professional services consisted of.

Mr. Murdoch: I am not introducing them to prove that these were the correct descriptions. I am introducing them to prove that Mr. Davis got these bills and paid them.

The Commissioner: For that limited purpose then these exhibits will be received in evidence as what number? 5 and 6.

[fol. 144] (Copy of letter dated January 27, 1955 addressed to J. R. Morford Esq. and attached thereto a bill of Morford and Bennethum dated December 16, 1954 for professional services with tax matters was received in evidence as Plaintiff's Exhibit No. 5.)

(Copy of letter dated January 27, 1955 to J. R. Morford Esq. and attached bill of Morford and Bennethum dated December 16, 1954 to Mr. T. Crawley Davis for profes-

sional service in the matter of division of property and preparation of separation agreement was received in evidence as Plaintiff's Exhibit No. 6.)

Q. Mr. Davis, I show you Plaintiff's Exhibit 5; will you tell the Court what the purports to be?

A. Professional services rendered by Mr. Morford in connection with tax matters involved Alice M. Davis versus T. Crawley Davis.

Q. That is a bill received by you from Mr. Morford?

A. Yes, in my office at 9016 DuPont Building.

Q. Did you pay this bill?

A. Yes.

Q. Do you recall when you paid it?

A. Part in November and part in January. I was short of cash and I had begged these people to give me—

Q. November, 1954 and January, 1955?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 6. Will you state [fol. 145] what that bill is that Mr. Morford recites?

A. Morford, professional services in the matter of division of property and preparation of separation agreement between T. Crawley Davis and Alice M. Davis, \$5,000. Paid the same way.

Q. That bill was received by you from Mr. Morford?

A. Yes, 9016 DuPont Building.

Q. Was that paid by you?

A. Yes.

Q. When did you pay it?

A. November, 1954 and January, 1955.

Mr. Murdoch: Any other questions?

Mr. Donahue: I think that would be all.

The Commissioner: That is all, Mr. Davis. Now let's go off the record.

(Off the record.)

NICHOLAS J. BARTOLONE, having been sworn, was examined and testified as follows:

Direct examination.

By Mr. Donahue:

Q. Would you state your name and address, please?

A. Nicholas—my name is Nicholas J. Bartolone; I live at Lenni Mills, Pennsylvania.

Q. What is your employment?

A. I am employed as an Internal Revenue agent in the [fol. 146] Office of the District Director, Wilmington, Delaware.

Q. How long have you been so employed?

A. Approximately four years.

Q. During your work as Internal Revenue agent have you had or did you have occasion to audit the income tax return of the Plaintiff, Mr. Davis, for the calendar year ending 1955?

A. I did.

Q. As a result of your audit of that return did you determine or set up a deficiency?

A. I did.

Q. Would you state upon what grounds that deficiency was based?

A. I proposed that disallowance of certain legal expenses; in addition to that I applied—I proposed an application of capital gains tax on the appreciated value of securities over his cost basis that were transferred to Mrs. Alice M. Davis.

Mr. Donahue: Now would you mark this as Defendant's Nos. 16 and 17?

(Copy of letter and two-page statement dated September 27, 1957 from the Appellate Division of the Internal Revenue Service to Mr. Thomas Crawley Davis and Mrs. Grace Ethel Davis was marked Defendant's Exhibit 16.)

[fol. 147] (A typewritten letter size sheet with the figure 5 at the top and headed Thomas Crawley and Grace Ethel Davis Exhibit A, year ended 12/31/55 was marked Defendant's Exhibit No. 17.)