In the Privy Council.

No. 44 of 1950.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN

MARK T. McKEE (Defendant) - - - - - *Appellant*

AND

EVELYN McKEE (Plaintiff) - - - - - *Respondent.*

Record of Proceedings – Vol. 4

Pages 601–800

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I

IN THE SUPREME COURT OF CANADA

APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE HABEAS CORPUS ACT, REVISED STATUTES OF ONTARIO 1937, Chapter 129 and amendments thereto, and

IN THE MATTER OF AN APPLICATION OF EVELYN McKEE as next friend and legal guardian for possession of her son Terry Alexander McKee.

BETWEEN: EVELYN McKEE,
(Plaintiff) Appellant,
-and-

MARK T. McKEE,
(Defendant) Respondent.

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COMMISSION EVIDENCE
(printed at request of Respondent)

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PART V

the City of Los Angeles?
A I do.
Q Do you know the petitioner, Evelyn McKee?
A I do.
Q When did you first meet her?
A Approximately 1941, I believe it was, if I recall correctly.
Q Where?
A Azusa, California.
Q Did you have an office at that place at that time?
A I had a branch office at Azusa at that time.
Q Was it at your branch office that that meeting occurred?
A No, it was not.
Q Did Mrs. McKee live in Azusa at that time?
A She did.
Q Was it at her home that the meeting occurred?
A It was.
Q Who were present?
A Now, at this point, Mr. Rose, for the purpose of the record I would like to inquire as to the reason for this particular deposition, and who the party is taking this deposition.
Q This deposition is taken at the instance of Mark T. McKee in a habeas corpus proceeding instituted against him by Evelyn McKee In the Matter of an Application of Evelyn McKee as next friend and legal guardian for possession of her son Terry Alexander McKee, in the Supreme Court of Ontario.
A That being the case, Mr. Rose, I believe that as to any testimony I might give in this case I would have to stand on the ground that it is a privileged communication between counsel and client, and therefore I would be unable to give any testimony respecting this case unless Mrs. McKee has signed a waiver, or that her counsel is authorized to sign a waiver, due to the fact of having been her counsel at that time, and that the matter of privileged communication in the former case having been waived by Mrs. McKee in the taking of a deposition would not continue or have any effect as to her waiving the privileged communication rule in another and entirely different action. That is my opinion of the law.
MR. CLOUD: For the purpose of the record, let it be shown that I am not in position to waive any rights or

privileges of Mrs. McKee, and she does not so waive any rights or privileges, nor has she given her consent to Mr. Haumesch testifying at this time.

MR. ROSE: Q Mr. Haumesch, I have not asked you for any communication between yourself and anyone as yet. I have merely asked you who were present - pernaps people who were not your clients at all - on the occasion when you first met Evelyn McKee in her home in Azusa in 1941.

MR. CLOUD: May I state, for the purpose of the record, that the answer to that question may be a breach of the relationship between attorney and client. I wish to ask the witness whether Mrs. McKee was present at the time referred to by Mr. Rose?

MR. ROSE: He so stated. I say at that time when he said Mrs. McKee was present, when he first met her, and my question is who else was present. I am not asking for any communication at this time.

MR. CLOUD: Let the record show Mrs. McKee does not grant the witness the privilege to testify as to who was present or what was said.

THE WITNESS: For the purpose of the record, I will have to stand on the ground of privilege and confidential communication between counsel and client.

MR. ROSE: Q At that time were you Mrs. McKee's attorney, when you first met her?

A No.

Q At that time did you know a Mr. Max de la Fuente?

MR. CLOUD: Let the record show that the meeting of the parties referred to, between the witness Mr. Haumesch and Mrs. McKee, at that time, may have been a preliminary step in the employment of Mr. Haumesch as her counsel, and for that reason, in behalf of Mrs. McKee, I wish to stress again that she does not waive her right to refuse to permit Mr. Haumesch to so testify.

THE WITNESS: Mrs. McKee not having waived her right, in the manner stated by her attorney, Mr. Cloud, I therefore stand on the ground of privileged communication and confidential relationship between counsel and client.

MR. ROSE Q: You understand, Mr. Haumesch, I am not asking you at this time for any kind of communication; I am merely asking you whether you knew Max de la Fuente.

MR. CLOUD: Let the record show that I again state the grounds I have heretofore recited, and the further

reason that the meeting may have been one which culminated in the employment of Mr. Haumesch as counsel for Mrs. McKee, and therefore I do not waive the right of Mrs. McKee to refuse to permit him to testify.

THE WITNESS: I renew my refusal to answer the question, upon the ground that I deem it a privileged communication between counsel and client.

MR. ROSE Q: At that time did you know a Mrs. Hart?

MR. CLOUD: Let the record show that I interpose this special objection already stated to each and every question asked at this time.

THE WITNESS: As to this line of questioning by Mr. Rose, let the record show that I maintain the same position or privilege and confidential relationship as between counsel and client.

MR. ROSE Q: At that time did you know a Mr. Reese?

MR. CLOUD: I take it the same objection is noted, and I also take it the witness refuses to answer on the same grounds.

THE WITNESS: That is correct.

MR. ROSE Q: Mr. Haumesch, did you ever represent Mrs. Hart as an attorney?

MR. CLOUD: The same objection. Is there any necessity for going through all this each time?

MR. ROSE: Yes, there is.

THE WITNESS A: No.

MR. ROSE Q: Dod you ever represent Mr. Reese as an attorney?

A I did.

Q You did?

A I did.

Q During what period of time?

A From approximately 1939 until 1943.

Q At that time - that is, the time when you first met Mrs. McKee - did you know Jo Ann McKee?

A I did.

Q Did you ever represent her as an attorney?

A In a sense I might say yes.

Q When?

A I believe it was in 1941.

Q You say that in a sense you might say yes. Do you mean because she was a witness in a case in which Mrs. McKee was a party?

A No, not necessarily in the sense that she was a witness in the case, but in the sense of advising her as an attorney as to matters.

Q Mr. Haumesch, on or about September 5, 1944, before the present Commissioner, P. S. Noon, then acting as a notary public in Los Angeles County, State of California, in an action then pending in the Circuit Court of the State of Wisconsin, in and for Milwaukee County, entitled Evelyn McKee, plaintiff, versus Mark T. McKee, defendant, being case No. 189287, did you give your deposition?

A I did, in behalf of Mrs. McKee.

Q In behalf of Mrs. Evelyn McKee?

A That is correct.

Q As a witness in that action?

A Yes.

Q In that proceeding did Mrs. McKee appear by Jefferson K. Stickney, attorney?

A I do not recall the attorneys who were present, that is, the names of the attorneys who were present. However, I did give a deposition on behalf of Mrs. McKee about that time, as nearly as I can recall.

Q While giving that deposition were certain interrogatories propounded to you by Mrs. McKee's attorney, and certain answers made by you to those interrogatories?

A There were.

Q I show you, Mr. Haumesch, a copy of this deposition, and refer you to page 4 thereof, and call your attention to the following questions and answers, as a preliminary to the question I am about to propound; the questions being propounded by attorney for plaintiff, that is, Mrs. McKee's attorney:

"Q. When you arrived at her home who was there?"

MR. CLOUD: I wish to interpose an objection there. Let the record show that this witness is not called in this present proceeding on behalf of Mrs. McKee, and if there were a waiver of Mrs. McKee's right to decline to have this witness testify in the Wisconsin action referred to by Mr. Rose, such privilege or waiver does not extend to or give him a right to testify in the present proceeding at bar, it not being the same action; therefore I advise the witness that Mrs. McKee does not give him the right to so testify at this time.

MR. ROSE: Let me finish my question. I have not yet propounded it.

Q I first wish to call your attention to the questions and answers, then I will propound my question. Going back now to page 3 of this deposition, line 25:

"Q. Where did you first meet her?"
That has reference to Evelyn McKee.
"A. At her home.
Q. Where?
A. At Azusa, California.
Q. How did you happen to go there?
A. I was called by Mrs. McKee.
Q. She telephoned you?
A. She left word at the office in Azusa for me to call her.
Q. Did you have an office in Azusa?
A. I had a branch office in Azusa at the time.
Q. And an office here in Los Angeles?
A. That is correct.
Q. When you arrived at her home who was there?
A. Mrs. McKee, Cynthia McKee, Jo Ann McKee, Mr. Reese and Mrs. Hart and Mr. de la Fuente."

Q Did you make those answers to those questions, Mr. Haumesch?

MR. CLOUD: Let the record show that I again caution the witness and advise him that he has not been granted the privilege by Mrs. McKee to testify in this matter.

THE WITNESS: Let the record show that the deposition having been given in an entirely different action, and on behalf of Mrs. McKee, wherein Mrs. McKee waived the privilege of confidential communication between counsel and client, it has no application to a subsequent action, and an entirely different action, brought in behalf of Mr. McKee; therefore the witness - myself - refuses to answer the question on the ground that it is a matter of privilege and a confidential communication between attorney and client. May it be understood that statement continues on as to all questions hereinafter propounded by counsel from the deposition taken as of the date of September 5, 1944.

MR. ROSE Q: I will continue reading the questions and answers from a copy of this same deposition, at page 4:

"Q. Did you know anything about the case at the time you had this talk with Mrs. McKee?
A. I never knew anything about it until I had that conversation with Mrs. McKee.
Q. Who took part in this conversation?
A. Mrs. McKee and Mrs. Hart and Mr. de la Fuente.
Q. Who is Mr. de la Fuente - or Mrs. Hart, rather?
A. A friend of Mrs. McKee's, staying there at the

place.
Q. Who is Mr. de la Fuente?
A. Mr. de la Funete was the Peruvian consul here in Los Angeles at the time.
Q. The four of you took part in this conversation?
A. That is correct."

Q Did you make those answers to those questions?

A My former statement ---

Q I wish to call your attention, Mr. Haumesch, to the fact that there is no such thing as a privileged communication of a client to an attorney when made in the presence of people who are not clients, that the privilege is waived if the communication is uttered in the presence of others. Are you familiar with that?

A I am familiar with it, Mr. Rose. However, in so far as I did represent Mr. de la Fuente and Mrs. McKee, I will still stand on my former statement as to it being a privileged communication between counsel and client.

Q Did you represent Mr. de la Fuente at that time, when you first met Mrs. McKee?

A In a sense, yes, and subsequently too.

Q When for the first time did you represent Mr. de la Fuente as an attorney?

A Just about that same time.

Q Now, I will continue to read from the copy of your deposition, at page 18, the questions being put by Mr. Stickney in behalf of Mrs. McKee:

"Q. Everything else you had was turned over to Mr. Connell?
A. To Mr. Connell. May I state for the purpose of the record at this time that I understand Mrs. McKee is taking this deposition, and that she waived all rights to any privileged communication between counsel and client.
MR. STICKNEY: That is correct. Mr. Solomon made the same inquiry this morning."

Were those questions asked and were those statements made at that time?

MR. CLOUD: Let the record show that the witness does not have permission of Mrs. McKee to testify in this proceeding.

MR. ROSE Q: Mr. Haumesch, before you answer that, I call your attention to the fact that this is not a communication between you and Mrs. McKee at all; this is testimony which you gave in answer to questions of an

attorney. Mrs. McKee was not even present.

A It applies to the same case which we were trying at that time, had reference to the same case, and Mr. Connell was likewise Mrs. McKee's attorney. Therefore I consider that privileged communication between counsel and client.

Q So you refuse to testify to what answers you gave to Mr. Stickney's questions?

A I do.

Q I will continue to read from the copy of your deposition, page 42, line 1:

"Q. And one check for half of that, or $650.00, was made out to you?

A. Some amount like that, yes. If you are referring to the $650.00 that Mrs. McKee paid me, that was paid on account for other work than this divorce action that I handled for Mrs. McKee.

Q. What did that cover?

A. That covered the dissolution and adjustment of creditors of a hat shop that Mrs. McKee had out here with Mrs. Vanderbilt, in partnership with Mrs. Vanderbilt; it covered the adjustment of two automobile accidents; it covered a matter which I took care of for Mr. de la Fuente with reference to a narcotic case, which Mrs. McKee asked me to put on her bill, and also additional matters which I took care of for Mrs. McKee in Azusa, in the adjustment with some creditors and with the holder of the note as to the payments on her premises and the sale of her premises, and all of that."

Q Did you make those answers to those questions?

MR. CLOUD: Let the record show that Mrs. McKee does not grant the witness the privilege of testifying in this proceeding.

THE WITNESS: May the record show that I refuse to answer this question on the same ground as heretofore stated - a privileged communication between counsel and client.

MR. ROSE: Q I am now quoting from page 43, line 13:

"Q. What is this de la Fuente matter you mentioned?

A. That was a matter in which Mrs. McKee called me over to her home when she was living on El Molino Street, and Mr. de la Fuente was there, and he was quite perturbed because the secretary in his office - I believe it was his secretary in the consulate office - was implicated in a narcotic

matter, and there was a doctor involved in the narcotic matter due to the fact that this secretary had misrepresented to the doctor that he had migraine headaches and needed some narcotics in order to take care of it, and I went over there and we worked on that matter in order to adjust things and clear the doctor and clear Mr. de la Fuente from any stigma on his office. That was from around 6:00 o'clock that evening until 2:00 o'clock Sunday morning.

Q. How much did you charge for that?
A. $75.00.
Q. Did you charge the doctor anything?
A. Yes, I did.
Q. Did you charge the secretary anything?
A. No.
Q. Did you charge Mr. de la Fuente anything?
A. That was the $75.00 which I charged Mr. de la Fuente, and Mrs. McKee told me to put it on her bill.
Q. To put it on her bill?
A. Yes.
Q. Who were present at the time she told you that?
A. Mrs. McKee, Mr. de la Fuente, and myself.
Q. When was that?
A. I couldn't recall the exact date when that was."

Q Did you make those answers to those questions?

MR. CLOUD: Let the record show Mrs. McKee does not grant the witness the privilege to testify.

THE WITNESS: Let the record further show that I stand upon the right of privileged communication between counsel and client, and refuse to answer.

MR. ROSE: Q Do you recall, Mr. Haumesch, that a piece of property, real estate, which Mrs. McKee owned was sold at public auction?

MR. CLOUD: Let the record show Mrs. McKee does not grant the witness the privilege to testify.

THE WITNESS: I stand on the same right of privileged communication between counsel and client.

MR. ROSE Q: Was not this sale at public auction in 1942 a public event?

A It was a matter of public event, perhaps, counsel, but still would be a privileged communication between counsel and client.

Q As to whether you remember the sale?

A As to the results of the sale.

Q I did not ask you the results; I asked you do you remember the sale?
A Yes, I recall the sale of property.
Q Do you remember how much it was sold for at public auction?
A The exact amount I cannot recall.
Q Was it about $13,000?
A As to that I will stand on my previous statement, and deem that a privileged communication between counsel and client.
Q Do you recall, Mr. Haumesch, whether you received any offer from Mr. McKee for that same property, either directly from Mr. McKee or through his counsel, Joseph Scott, at that time? Do you remember that?
MR. CLOUD: Let the record show Mrs. McKee does not grant the witness the privilege to testify.
THE WITNESS: I stand on the same ground of privileged communication between counsel and client.
MR. ROSE: Q You understand, Mr. Haumesch, that I am not asking you now for any communication between you and Mrs. McKee, but for a communication between you and Mr. McKee. He was not your client, was he?
A No, he was not.
Q Do you still refuse to answer that question?
A I might state I never received, to my knowledge, a direct offer from Mr. McKee.
Q Did you receive an indirect offer from Mr. McKee?
A As to that I will stand on the grounds of privileged communication between counsel and client.
Q Did you receive an offer through Mr. McKee's attorney, Joseph Scott, of $17,500 for the same property at the same time?
MR. CLOUD: Let the record show that Mrs. McKee does not grant the witness the privilege to testify, and that it appears from the questions asked by Mr. Rose that at the time to which he refers the witness was the attorney for Mrs. McKee and Mr. Scott was the attorney for Mr. McKee.
THE WITNESS: On that same ground, and the question involved being a part of the case, I therefore deem that a privileged communication between counsel and client, and refuse to answer.
MR. ROSE Q: In that same deposition, Mr. Haumesch, were you cross-examined by Joseph Scott?
A I believe I was.
Q I read from page 62 of that copy of your deposition

cross-examination by Mr. Scott, line 7:

"Q. In regard to the sale of the house in Azusa, do you recall a conversation with me and discussing the question as to what Mr. McKee was willing to take it off of Mrs. McKee's hands for?

A. I do.

Q. Do you remember what that figure was?

A. $17,500."

Did you so testify?

MR. CLOUD: Let the record show that Mrs. McKee does not grant the witness the privilege to testify. Let it further show as to the questions being asked in connection with cross-examination of the witness in the previous matter, the witness would not have testified at that time had not the privilege been granted, but that the privilege does not extend to the present proceeding; therefore the witness is advised that Mrs. McKee does not grant him the privilege of testifying as to those matters at this time, or any other matter.

THE WITNESS: Let the record show that as to the testimony given in this transcript, it is my understanding that the privilege was waived by Mrs. McKee only as to that particular action, and that this is a new and entirely different action, in which Mrs. McKee or her counsel do not waive any of their rights; therefore in my opinion, and under the laws of the State of California, any testimony which might have been given in that previous case, which has no connection with this matter, would constitute a privileged communication between counsel and client in this matter, and I therefore stand upon that ground, and refuse to testify.

MR. ROSE: Q After I call your attention, Mr. Haumesch, to the fact that this question does not involve any communication between you and Mrs. McKee at all, but a communication between you and Mr. Joseph Scott, as to what Joseph Scott told you, and as to what you you testified respecting what he had told you, do you still still insist upon that position?

A I insist upon it, upon the ground that Joseph Scott, attorney for Mr. McKee, and myself as attorney for for Mrs. McKee, were negotiating or attempting to negotiate a deal in a former matter, litigation pending at that time between the two, and this being an entirely different matter in litigation any waiver of Mrs. McKee at that time would not extend to this.

Q If I should show you California Supreme Court

authority holding that a communication between two opposing counsel is not privileged, would that make any difference to you?

A Mr. Rose, if the matter is certified and if the Superior Court directs me to testify as to these questions you have propounded, I would have no choice in the matter.

Q I will continue reading from the copy of your deposition, page 62, line 16, being a part of the cross-examination:

"Q. Did Mr. de la Fuente have anything to do or say in connection with the offer of Mr. McKee to Mrs. McKee to take that property off her hands?
A. On the day of the sale, when the auction was had, when we first started out we couldn't get a bid on it, and after some other stuff was sold then the property was put up again and we got a bid on the place - the highest bid was $13,000.00. I went to Mrs. McKee and I told Mrs. McKee not to permit the property to be sold for that figure, because we could get that amount of $17,500.00 for it, and Mr. de la Fuente spoke up and said 'We will give it away before we will let Mr. McKee buy it.'"

Q Did you make those answers to those questions?

A I will stand on the same ground of privileged communication between counsel and client.

Q I will continue reading from that deposition, page 63, line 14, this being redirect examination by Mrs. McKee's counsel:

"Q. You did not have an offer from Mr. McKee of $17,500.00 for the house at that time, did you?
A. I had an offer from Mr. Scott's office, which presumably came from Mr. McKee, and which I conveyed to Mrs. McKee, in the sum of $17,500.00.
Q. When did that offer come in?
A. About a week before the sale, then on the day of the sale, I believe, we received a telegram - no, it wasn't a telegram we received, but I believe I had my secretary call Mr. Scott's office, and the message was conveyed that the offer was still good."

Then continuing on page 64:

"Q. Did you advise her what to do, or did you just leave it up to her to make a decision?
A. I advised her what to do.
Q. What did you tell her?

A. I advised her to sell the property for the highest figure she could get, which was $17,500.00.
Q. What did she say?
A. She conferred with Mr. de la Fuente, and Mr. de la Fuente made the remark I have just related."

Q Did you make those answers to those questions?

MR. CLOUD: Let the record show that the witness does not have the consent or permission of Mrs. McKee to testify, and let the record also show that an objection is interposed to all of these questions upon the ground that they are asked concerning matters which are too remote, are immaterial to the issues raised, that they have been adjudicated, and the subject is res adjudicata.

THE WITNESS: Let the record show that the witness stands on the ground of privileged communication between counsel and client.

MR. ROSE Q: Continuing now with the deposition, page 66, re-cross examination by Mr. Scott, line 12:

"Q. You are familiar with values out in that section?
A. At that time I was fairly familiar with values out there, because of my association with other groves out there, estates that I was probating.
Q. You think $13,000.00 was not a good sale for Mrs. McKee?
A. I do not think it was."

Q Mr. Haumesch, were you fairly familiar with values at that time in that section where that house was located?

A I was familiar with land values in that section, yes.

Q Did you at that time think that $13,000.00 was a fair price for that property?

MR. CLOUD: Let the record show Mrs. McKee does not grant the witness the privilege to testify, and let the record further show an objection is interposed on the ground of being a too remote matter, that it is immaterial, the issues have been adjudicated, and that the subject of the controversy is res adjudicata.

THE WITNESS: Let the record show that the witness was then counsel for Mrs. McKee, therefore he stands on the ground of privileged communication between counsel and client.

MR. ROSE Q: Continuing with your deposition at page 66, redirect examination by Mr. Stickney, at line 23:

"Q. You advised her to auction it off, didn't you?
A. That's right, I advised Mrs. McKee to auction it off. She wanted to sell the property, we couldn't get any buyers for it, and I advised her to auction it off, and we had set a figure which the place had to bring before it could be sold by the auctioneer.
Q. What was that figure which was set?
A. I believe $16,000.00.
Q. Why did you take the bid of $13,000.00?
A. Mrs. McKee also authorized it."

Did you make those answers to those questions?

MR. CLOUD: Let the record show the witness does not have the consent of Mrs. McKee to testify in this proceeding.

THE WITNESS: Let the record show that the witness was then counsel for Mrs. McKee, and that he deems this a privileged communication between counsel and client.

MR. ROSE Q: Mr. Haumesch, I assume you are, of course, an officer of the courts of the State of California?

A That is correct.

Q You are refusing to answer these questions because you believe that under the law these are privileged communications, and it would not be proper for you to answer the questions?

A As an officer of the courts of the State of California I believe that all of these questions which have been propounded, and in my opinion of the law, where a former client grants counsel the privilege of testifying in the giving of a deposition, or any other manner of giving testimony, in one case, does not apply in a new and entirely different action, which has nothing to do with the issues involved at the time of her her waiving her rights, and that the privileged communication rule between counsel and client continues to prevail as to any different and subsequent matter.

Q You have made your position clear. I will ask you this: you will, of course, abide by the decision of the Court as to the propriety of your answering these questions?

A I shall, if I stand certified, and if the Court so directs.

MR. CLOUD: May the record show, if we are going to argue this matter after certification, an objection to all of these questions on the grounds of remoteness

and immateriality and adjudication, and that such objection goes to all of the questions? May it be so understood?

MR. ROSE: Yes, you may make any objections you like.

ARCH. H. VERNON

DIRECT EXAMINATION

BY MR. ROSE:

Q What is you name?

A Arch H. Vernon.

Q Mr. Vernon, are you an attorney and counselor and lawyer in the State of California?

A I am.

Q How long have you been practicing law in all?

A In all, since 1907.

Q And how long have you been practicing in the State of California?

A Since the spring of 1924. I think it was March, it might have been April.

Q And you were then duly licensed to practice law in all the courts of the State of California?

A I was.

Q And are now?

A And am now.

Q Are you identified with any corporate institution?

A Yes, I am associate counsel of the Title Insurance & Trust Company.

Q Located in the city of Los Angeles?

A Located in the city of Los Angeles at 433 South Spring.

Q State of California?

A California.

Q And do you live in the city of Los Angeles?

A I do.

Q State of California?

A Yes.

MR. ROSE Q: Is it a fact, Mr. Vernon, that the Legislature of this state some time about 1872 duly enacted two codes, one known as the Code of Civil Procedure, and the other as the Civil Code, and that they are both published as the Deering's Code by Bancroft-Whitney Company of California?

A Yes.

MR. ROSE: Is it so stipulated?

MR. CLOUD: So stipulated.

MR. ROSE Q: And those Codes and that publication of the Codes is recognized by all the courts of the state, and used by the lawyers, and cited by the court and the lawyers?

A It is.

Q Will you state whether or not the official reports and decisions of the courts are known as the California Appellate Courts and the California Reports?

A That is correct.

Q The California Appellate Courts being an intermediate appellate ---

A Being an intermediate.

Q --- court, the District Court of Appeals. The highest appellate court of the state is the Supreme Court, and their decisions are published in the California Reports.

A In the California Reports.

Q Are those the official reports recognized by the courts, and used by the lawyers?

A They are. Those are the official reports of the state, and are generally cited and recognized.

Q And they are also published by Bancroft-Whitney Company, San Francisco, California?

A I believe they are at this time, under contract.

MR. ROSE: Is it so stipulated?

MR. CLOUD: So stipulated.

MR. ROSE Q: Are those reports also published in the Pacific Reporters?

A Yes, the Pacific Reporters carry all of the decision of both courts, both the District Court of Appeals and the Supreme Court.

Q Mr. Vernon, what is the effect of the perfecting of an appeal from an order or judgment of the Superior Court of the State of California awarding a parent the custody of a minor child, in so far as whether or not it stays proceedings in the lower court on the judgment or order appealed from?

A It would stay proceedings in the lower court upon the perfection of the appeal under the provisions of, I think it is 949 of the Code of Civil Procedure.

Q That is Section 949?

A Section 949.

Q Does the perfecting of the appeal stay all proceedings in the trial court on the judgment or order appealed from upon matters embraced in the custody judgment?

A It does.

Q Are you familiar with the case of Vosburg vs. Vosburg, decided by the Supreme Court of the State of California in 1902, and published in 137 California 493?
A I am.
Q And was the principle as to the effect of the perfection of an appeal from a custody award with regard to staying all proceedings in the trial court ruled upon in that case?
A It was, and it was the vital issue presented in that case.
Q And was it there held in accordance with what you have testified?
A It was.
Q And what would be the remedy if a trial court undertook to enforce its order awarding the custody of a child while the appeal from the order was pending? What would be the remedy?
A The remedy would be a writ of supersedeas.
Q The Appellate Court would issue a writ of supersedeas to prevent the enforcement of the order in the lower court?
A That is correct.
Q Can you state whether or not the case of Moon vs. Superior Court, decided in 1943, by the California District Court of Appeal, and published in 59 California Appellate Reports, Second Series, 447, so held?
A That case so holds. I am referring to a memorandum to be certain of the pages.
Q Now, what is the rule in California, Mr. Vernon, with regard to the stay of proceedings pending appeal having the effect of keeping the judgment appealed from in the condition in which it was in when the stay of proceedings took effect?
A That is the effect of the appeal, keeps the whole case in statu quo.
Q As it was before the appeal was taken?
A Before the appeal was taken.
Q Would you say that the case of Vosburg vs. Vosburg that you have referred to, published in 137 California 493, and the cases of Schwartz vs. Superior Court 111 California 113 and Merced Mining Company vs. Fremont, 7 California 132, all lay down that same principlex
A They all lay down that rule.
Q Now, when, Mr. Vernon, under the law of the State of California, does the jurisdiction of the trial court from whose judgment an appeal has been taken re-attach?
A When the remittitur comes down from the Appellate

Court.

Q It is then filed by the clerk of the trial court?

A Correct.

Q And upon the filing of the remittitur the jurisdiction of the trial court re-attaches?

A That is correct.

Q Are you familiar with the case of Nuckolls vs. Bank of California, decided by the California Supreme Court in 1937, and published in 10 California Reports, Second Series, 266?

A I am.

Q And did that case lay down that rule?

A That case laid down, or stated that rule.

Q Under the law of the State of California, Mr. Vernon, has a judgment of a trial court from which an appeal is pending such force, or sufficient force to be res adjudicata on the issues of the case?

A It has not, until it is final.

Q While an appeal from a judgment is pending, or when the time to appeal therefrom has not yet expired, may the judgment under the California law be pleaded as a bar to a cause of action between the same parties in another action?

CROSS EXAMINATION

MR. ROSE: I will stipulate as to the date of the filing of the remittitur. I know that.

MR. CLOUD: What was the date?

MR. ROSE: January 13, 1946

MR. CLOUD: Q Now, what is the effect of the aggrieved party filing a petition for a re-hearing before the District Court of Appeal with respect to the judgment of the trial court?

A None. It simply delays the going down of the remittitur if the re-hearing is granted.

Q In other words, the judgment of the Superior Court being affirmed on appeal, all proceedings are stayed until the remittitur comes down from the Supreme Court, if further proceedings are had?

A Correct, and until the remittitur is filed with the clerk of the trial court. There are certain exceptions that wouldn't be involved in a divorce action.

Q But you know, as a matter of law, Mr. Vernon, that the effect of an appeal in a custody matter is to permit

the minor to stay with the party who had custody previous to the order or decree or change of award.

DISCUSSION

MR. ROSE: At the last two sessions Mr. Cloud excluded from the examination room all of Mr. McKee's witnesses except the witness testifying. That rule should apply equally to both sides. Miss Cynthia McKee was present throughout the examination of each and every one of the last seven witnesses so far examined, making numerous notes, about twenty or more, which Mr. Cloud used in his cross-examination of the witnesses. The presence of Miss McKee may be justified by associating her on the record with Mr. Cloud as associate barrister or associate agent. If the purpose of her activity is to show the influence of her ex-stepmother, Mrs. McKee, on Miss Cynthia McKee's filial sense of loyalty to her father, that purpose has already been achieved. I object to the continuous presence of Miss Cynthia McKee unless she appears on the record as Mr. Cloud's associate agent or barrister.

MR. CLOUD: My only purpose in having her present is to familiarize myself with the location of buildings, dates, names and events, which may or may not be material. She is not associated in the case in any respect, and it is my understanding that she does not propose to testify by deposition. Let the record further show that when the depositions were taken in San Bernardino the detective for Mr. McKee, who worked up the case, was also present, and assisted Mr. Rose.

MR. ROSE: Mr. Cloud, is the object of the presence of Miss McKee to give you her knowledge of the facts, the benefit of her knowledge of the facts, for the purpose of cross-examination?

MR. CLOUD: The purpose of Miss McKee being present is to apprise me of places, dates, times and events that may or may not be important.

MR. ROSE: So I say - her knowledge of the facts.

MR. CLOUD: Not particularly her knowledge, but any knowledge she might have as to dates and places.

MR. ROSE: I submit that in view of the fact that you are enforcing a rule excluding all witnesses or persons not parties against Mr. McKee, and she is not a party, she should be excluded. You have been the at-

torney of record for Mrs. McKee, as appears from this record which you seek to introduce in evidence in the divorce case, and presumptively are familiar with the facts. Miss McKee may possess peculiar knowledge of the particular incidents testified to by the four witnesses in San Bernardino, and I did not object to her presence then. Mr. Cunningham, who is one of the witnesses to come later, testified as a witness in the divorce case, and you were attorney for Mrs. McKee in the divorce case.

MR. CLOUD: I was not at that time.

MR. ROSE: You were at one time.

MR. CLOUD: I did not come into the case until after the divorce proceeding.

MR. ROSE: I have been instructed to object to her presence, because she is not a party to the case and she is not entitled to be present.

MR. CLOUD: Mr. Rose, it probably would not have been necessary at all to have her present if I had the five days notice as to who was going to testify, and it was only in a spirit of cooperation that I asked her to be present.

MR. ROSE: You had notice, oral notice, of the four witnesses who were going to testify in San Bernardino more than five days before the examination. You said no formal notice would be necessary, yet I did send you formal notice. Then you had notice of the examination taking place the other day, and this hearing was adjourned and you had notice of the adjournment, which was made on the record the last time, and I am willing to give you all the notice you want.

MR. CLOUD: I never received any formal notice from you, Mr. Rose, regarding the taking of any depositions, except the notice you handed me in the city of Arcadia when we were on our way to San Bernardino. I did not know how many witnesses were going to testify in San Bernardino until that day.

MR. ROSE: I told you orally there would be four or five. I am willing to give you all the notice you require. As a matter of fact, it is my understanding under the order that the notice should be 48 hours, but I am willing to give you more notice than 48 hours if you feel that you require it. I gave you notice before when you asked what further witnesses were going to be examined, and I mentioned Mr. Cunningham, Mrs. Cunningham and Mr. Davidson. I will give you all the notice you feel you should have, but that is quite another matter

from having Miss McKee present. Would that make any difference, if you had five days notice instead of two days notice?

MR. CLOUD: If I had five days notice I could find out, if there was any possiblility of finding out, what the witnesses were going to testify concerning. I feel like you do, Mr. Rose - I think we ought to proceed and get the matter terminated, get the evidence gathered as soon as possible, and I am not standing on any five days notice. Is it my understanding, Mr. Rose, that you are willing to proceed if your witnesses are present and she is present?

MR. ROSE: I am telling you, Mr. Cloud, I was instructed to object to her presence.

MR. CLOUD: Are you willing to withdraw your objection if your witnesses are present?

MR. ROSE: No, because I have no particular interest in having the witnesses hear each other testify. I would just as soon have them not present, so that the court can see there is no collaboration between the witnesses.

MR. CLOUD: How many more witnesses are you going to have?

MR. ROSE: So far as I know now I have named them to you - Mr. Davidson, Mrs. Cunningham and Mr. Cunningham.

MR. CLOUD: Who is Mr. Davidson?

MR. ROSE: He was then an investigator associated with Mr. Cunningham, and Mrs. Cunningham was an investigator associated with Mr. Cunningham.

MR. CLOUD: Those two men and one woman constitute three detectives who are out of Mr. Scott's office?

MR. ROSE: I don't know that they are out of Mr. Scott's office. I had nothing to do with all this matter and never heard of the case until I was appointed to act as agent.

MR. CLOUD: Mr. Leahan, the detective who was present at the proceedings in San Bernardino, was out of Jerry Giesler's office, was he not?

MR. ROSE: I don't know if he was out of Jerry Giesler's office. I think he does work for Jerry Giesler.

MR. CLOUD: Isn't it true that Mr. and Mrs. Cunningham and Mr. Davidson do work for Joseph Scott?

MR. ROSE: I don't know. You can ask them that when you cross-examine them as witnesses. The question now is whether Cynthia McKee should be present.

MR. CLOUD: We will excuse Cynthia. Let the record show that if Mr. McKee desires Cynthia to be absent I have no objection.

(At this point Cynthia McKee left the hearing.)

REDIRECT EXAMINATION

Q I call your attention to Section 213 of the California Civil Code, reading as follows:

"Right of a parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child."

Is that the law in the State of California?

A That is.

Q Has that section of the Civil Code been force and effect for many years past?

A Yes, I think that was enacted with the codes in 1872, and Deering's does not seem to show any amendment.

Q According to the California law, where both parents lived in the State of California, and the father, having the right to do so - I am assuming for the purpose of the case that he has the right to do so - takes the child out of the state to live in the State of Texas, so that the parents continue to live in the State of California while the child resides in Texas, where, according to the California law, is the legal residence of the child?

A In Texas.

Q According to the law of California, would the courts of Texas in such case have jurisdiction to determine who should have custody of the child, in the child's best interests?

A They would.

Q And in such case, according to the law of California, where both parents are within the state, the child being in the State of Texas, resident in the State of Texas, and assume that the parents litigate within the State of California their own rights as to the custody of the child, would the court interfere with any authority of the courts of Texas to adjudicate as to the best interests of the child?

A Not if the proceedings were begun in California after the child became a resident of Texas.

Q Generally speaking, Mr. Vernon, what is the time

of a situation which fixes whether the court has or has not jurisdiction? Is it at the time when the complaint is filed, when suit is instituted, or is it after suit has been tried and judgment is being issued?

A I think it is at the time the suit is commenced.

RE-CROSS EXAMINATION

Q Mr. Vernon, what is the difference between domicile and residence in so far as a divorce action is concerned?

A The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning. The term "residence" variously used. It sometimes means permanency of abode more marked than mere lodging or boarding, yet not fixed and final; and again, the legal place of residence means the place where one's home or family is, one's permanent abode or domicile. In the sense in which used in the divorce statutes of the State of California, the term "residence" is a synonym of "domicile," one's permanent home.

Q So then it is possible, Mr. Vernon, that a person can intend to remain in California and be here for more than a year, and by so doing that person establishes the requirement of residence in California as to divorce actions?

A I think it would be possible for him to be a resident. I think that's what the code requires, isn't it? Section 128 of the Civil Code reads:

"A divorce must not be granted unless the plaintiff has been a resident of the state one year, and of the county in which the action is brought three months, next preceding the commencement of the action."

Then the provision that a cross-complainant in an action need not be or have been a resident of the state in which the action is brought, but that a cross-complainant must personally verify the cross-complaint.

Q Is it not true, Mr. Vernon, that a wife can establish residence in California and reside here continuously for a year in the state and 90 days in the county and file an action for divorce, irrespective of the fact that her husband might be a resident of Florida?

A Yes, for the purposes of divorce the husband does

not control the residence; the wife can establish a separate residence.

Q Is it not true, Mr. Vernon, that in all divorce actions where there is no contest it must be affirmatively established that the plaintiff is a resident of the State of California, as required by the Code?

A It would have to be in order to give the court jurisdiction, and they always require it; that's one of the first questions usually the court asks.

Q And in actions that are contested between husband and wife in the State of California is it not also true that the question of residence has to be proven and established by one or the other of the parties?

A It is.

Q And isn't it true that the question of residence is a matter to be determined in the divorce action, just in the same way that you have to determine the question of alimony and property rights?

A It is, but our court holds that a determination as to residence can always be inquired into, if I understand it correctly. That seems to be unreasonable, but as I understand it that's the holding.

REDIRECT EXAMINATION

Q You were asked to define the antonyms or synonyms domicile and residence, and as to the meaning of the term residence in the California statute. Assume that a person had a permanent home in a neighboring state, let us say Texas, and came here, retaining his permanent home and his intention to remain in Texas permanently as a domiciliary of Texas, but came to California for a vacation temporarily, and extended that vacation over a year, all the time intending to return to his home in Texas; would that party be a domiciliary or resident of the State of California within the meaning of the divorce statute that he must be a resident of this state?

A I do not think he would be a resident, although he would be domiciled here.

Q Then a person can have only one permanent residence?

A He can have one residence.

Q Although he may be physically sojourning in different places throughout the year?

A That is right.

Q And for the purpose of establishing jurisdiction of the court the residence must be such as is permanent, meaning where his established home is; is that right?
A Well, I don't know as his presence has to be there permanently, but it must be what you would say is a permanent base, where he holds his citizenship and votes and intends to be a part of the community.
Q The place where he regards as his home?
A As his permanent home.

RE-CROSS EXAMINATION

BY MR. CLOUD:
Q Isn't residence a matter of intention coupled with the physical presence in the jurisdiction?
A It is, but the physical presence does not have to be continuous. A man may be temporarily domiciled somewhere else. For instance, many people in the District of Columbia are residents of their home states.
Q Residence is established by the fact that they go somewhere and have a present intention of staying, without an intention to return to the point they left?
A That is correct, then they change their residence; if they go somewhere and start living there, with the present intention to stay there and not to return to their old place, they have established a new residence.
Q That is the kind of residence we talk about when we speak of residence for the purpose of a divorce action in California?
A That is correct.

L.D. HEFLIN

DIRECT EXAMINATION

BY MR. ROSE:
Q What is your address, your residence?
A 1228 West 51st Place.
Q Los Angeles, California?
A Los Angeles, California.
Q What is your vocation?
A I am a court reporter, official court reporter of the Superior Court.
Q Of the State of California?
A Yes, sir.
Q In and for the County of Los Angeles?

A Yes, sir.
Q How long have you held that position?
A About 20 years.
Q And did you hold that position on February 25, 1947?
A Yes, sir, I did.
Q On that date, in the Superior Court of the State of California, in and for the County of Los Angeles, in a proceeding in Department 8 of that court, before the Honorable Fred Miller, Judge, entitled Evelyn McKee, plaintiff, versus Mark T. McKee, defendant, No. D-211536, did you act as the official court reporter, and take all the oral proceedings in that matter on that day?
A Yes, sir, I did.
Q And did you reduce all the oral proceedings to writing?
A Yes, sir, I did.
Q Did you thereupon under date of February 26, 1947, certify the transcript of the oral proceedings to be full, true and correct?
A Yes, sir, I did.
MR. ROSE: And what I show you now may the Commissioner mark it, please, as Respondent's Exhibit 2.
(The instrument in question is annexed hereto, marked Respondent's Exhibit 2 by the Commissioner.)
MR. ROSE: Q Is that the transcript of proceedings which you transcribed from your stenographic notes of the oral proceedings of that day in that case?
A Yes, sir.
Q And is it a fact or not that this respondent's Exhibit 2 for identification represents a full, true and correct transcript of all the proceedings had on the order to show cause in the matter of costs and attorneys' fees in that case which occurred on that day?
A Yes, sir, it does. I would like to make one slight correction, and that is, on page 8, line 12, there is an unanswered question, but that question is repeated on page 9, line 1.
Q The question should be put but once?
A Should be eliminated on page 8.
Q Otherwise it is correct?
A Yes, sir.
MR. ROSE: That is all. May the record show that

Miss Cynthia McKee was present with Mr. Cloud throughout the entire hearing.

BERNARD J. CUNNINGHAM

DIRECT EXAMINATION

BY MR. ROSE:

Q Will you state your full name?
A Bernard J. Cunningham.
Q Where do you live?
A 4905 Wilton Place.
Q Los Angeles, California?
A Yes, sir.
Q What is your vocation?
A Investigator, licensed and bonded by the State of California; office at 610 South Broadway.
Q Los Angeles, California?
A Yes; phone Mutual 2161.
Q How long have you been a licensed investigator in the State of California?
A I have been a licensed investigator in the State of California, in partnership with Louis A. Duni, in the Washington Building, for a period of 19 years.
Q Do you know Mrs. Evelyn McKee, formerly the wife of Mark T. McKee?
A Yes, sir.
Q When did you first see her?
MR. CLOUD: Let the record show the witness is referring to certain notes.
THE WITNESS A: On Saturday, April 11th, at 1350 South El Molino. That was the residence at that time, and the home, of Mrs. Evelyn McKee.
MR. ROSE Q: What year was that?
A That was in 1942.
Q Mr. Cloud has stated you are referring to certain notes, and were those notes made by you at the time of the occurrences?
A Yes.
Q Are they in your own handwriting?
A Yes, these are reports or notes made each day, and these are the same notes or reports that were used in the case before Thurmond Clarke, and counsel stipulated that these notes could be used at that time.
Q Do you refer to Judge Clarke?
A Judge Thurmond Clarke.

Q You say you saw Mrs. Evelyn McKee first at 1350 South El Molino Avenue. Was that in South Pasadena?
A Well, that's Pasadena. I wouldn't call it South Pasadena.
Q What were the circumstances which brought you out to that house?
A My instructions from the client was to place that house under surveillance.
Q Those were Mr. McKee's instructions?
A Yes.
Q Then in pursuance to those instructions you went out to that house on April 11, 1942; is that correct?
A Yes.
Q What did you observe, if anything?
MR. CLOUD: I presume the record may show the same stipulation?
MR. ROSE: Yes, all these depositions are taken pursuant to the same stipulation.
MR. CLOUD: Reserving objections?
MR. ROSE: Yes.
Q What did you observe then?
A On April 11th, pursuant to my instructions from Mr. McKee I went to 1350 South El Molino, and arrived there at approximately 7:15 a. m.
MR. CLOUD: Let the record show the witness is reading from a statement.
THE WITNESS: I couldn't remember five years back.
MR. ROSE Q: Is you memory refreshed by your notes?
A My memory is refreshed by my notes. These incidents occurred five years ago.
Q What did you observe, if anything, at that time and place?
A I observed when I arrived at 1350 South El Molino Drive, the residence of Mrs. Mark T. McKee, that the shades were drawn.
Q Mrs. who?
A Mrs. Mark T. McKee.
Q That is, Evelyn McKee?
A That's Evelyn McKee. I observed that the shades were drawn on the windows in the house, and at 8:45 a. m. the colored maid arrived. Then at 9:45 a. m. Max de la Fuente drove out in a red Chrysler convertible sport coupe, license plates 129 Consular Service. He was alone in this Chrysler coupe convertible, which he drove out of Mrs. McKee's garage. At the head of the

driveway there are three garages to that house. This red convertible coupe was in one of those garages, and the convertible coupe was the property of Max de la Fuente.

Q Was there anybody else in the car, this Chrysler coupe?

A No, Max de la Fuente was alone. He drove down the Arroyo Seco to his office at 1031 South Broadway, Los Angeles, and parked his car on Hill Street in a lot back of his office building.

Q Had you ever seen Max de la Fuente before?

A Yes, I saw Max de la Fuente on April 10th, which was Friday, at 1031 South Broadway, Los Angeles, at approximately 5:14 in the afternoon. He came down from his office, went down in the elevator. He was wearing a light cream colored suit, no hat. He went through the restaurant in the rear of the building into the rear parking lot on Hill Street, and he got into an Oldsmobile sedan with Wisconsin license plates 107150. He was alone. He drove out to the Arroyo Seco, and to 1350 South El Molino Avenue, Pasadena, the residence of Mrs. Evelyn McKee.

Q You saw him drive out to Mrs. McKee's home?

A I followed him out, yes.

Q What time did he arrive there at the residence?

A He left at approximately 5:14 there at the office, and I didn't note what time he arrived out there, but I believe it was within 30 minutes.

Q Do you know what Mr. de la Fuente's vocation was?

A Max de la Fuente was Peruvian Consul in Los Angeles.

Q Where was his office?

A 1031 South Broadway.

Q That was where he started in his automobile with the Wisconsin license number?

A From that building, yes, with the car having the Wisconsin license plates. That was Mr. and Mrs. McKee's automobile, Mr. McKee's car. That wasn't his car, de la Fuente's car.

Q Then he drove to Mr. and Mrs. McKee's home from his office, or to Mrs. McKee's home?

A That's correct.

Q How did you know that was Mr. and Mrs. McKee's car?

A We checked on it.

Q What do you mean when you say "We checked on it?"
A With Mr. McKee.
Q Did you have the license number?
A He had the record of it. It was the McKee car.
Q Then you followed that car to Mrs. McKee's home, where Mr. de la Fuente entered the house?
A Max de la Fuente drove the car up the driveway and stopped close to the garage, and he went into the house. Later he came out; he came out at approximately 7:18. He drove down the driveway and entered El Molino and turned north and drove over again to the Arroyo Seco.
Q You are now talking about his leaving the house?
A He is leaving now, yes.
Q One thing at a time, please, Mr. Cunningham. He was in the house for how long before he came out?
A Well, approximately an hour and a half or less.
Q Then did he come out alone or was he accompanied by anyone?
A He came out alone.
Q Then did you follow him as he left in that car?
A I followed him as far as the Arroyo Seco, and then I let him go, and I returned to 1350 South El Molino and took up a position where I could observe the house.
Q That is, Mrs. McKee's house?
A Mrs. McKee's home.
Q That was the same night?
A That same night. Then at approximately 9:15 p.m. Max de la Fuente returned in the McKee Oldsmobile sedan, and there were other persons in the car.
Q Who were they?
A I couldn't say who they were on account of the darkness.
Q How many were there?
A I don't know. There were two possibly, but I don't know who they were. There were people in the car. Mr. de la Fuente put the Oldsmobile into the McKee garage. The lights were on in the house, and Max de la Fuente didn't leave that house.
Q Well, where did he go after he put the car in the garage?
A They went into the house.
Q All the company, whoever they were?
A I could say who I believe it was, but of course I wasn't so sure. I made no note of it except a question mark.

Q Well, then Mr. de la Fuente and the people who were with him went into the McKee house?
A Yes.
Q After he had placed the car in the McKee garage?
A That's right.
Q Did you say that was a three car garage?
A Yes.
Q Was this three car garage all part of the McKee home?
A Yes.
Q Were there other cars in the garage?
A I made no note of it, and I don't remember now.
Q What sort of a house was this?
A Well, this was a large stucco house up on the hillside off of South El Molino, approximately possibly ten rooms.
Q How many floors?
A Two floors. Ten rooms at least, I would say, with spacious ground in the rear, a driveway on the north side heading into the three garages, and shrubbery around. On one wing there was a porch. That would describe it enough to identify it.
Q How long did you remain in surveillance of that house that night?
A At 11:25 p. m. I discontinued.
Q From the time that Mr. de la Fuente entered the house with the other parties until you discontinued did you see anything while you were observing the house?
A No, I did not. The shades were drawn, and you could not look into the house from any position.
Q Do you know who, if anyone, was living in that house at the time?
A At that time the only people I saw, on the 10th - I did not see the children.
Q Well, do you know who was living there?
A Somebody told me. That's hearsay.
Q You did not know at the time who was living there?
A I was told who lived there, but I had to find out.
Q Did you find out?
A Yes, I did.
Q Who was living there?
A Cynthia McKee, Jo Ann McKee, the two daughters of Mark T. McKee, then Mrs. Mark T. McKee, her son, a

boy about 15 years of age at that time, Jerry Alexander, and Terry McKee - that's the three year old boy, or four years old at that time - and Max de la Fuente.

Q He lived there too?

A He lived there during the period of time of over a month that I had that home under surveillance. He went there each night and he came out each morning, generally. A few mornings I missed him, or a few nights I missed him.

Q Well, you have testified that you left that night, and you returned the following morning?

A I did, on April 11th.

Q What time was it when you say Mr. de la Fuente came out of the house that next morning, on the 11th?

A Well, I have already testified he came out at 9:45 a. m., driving his red Chrysler convertible sport coupe.

Q Where was his sport coupe?

A In the garage.

Q In this same three car garage you have mentioned?

A That's right.

Q Was he wearing the same suit of clothes as he left the house on the morning of the 11th that he wore when you saw him in following him out to the house that evening before?

A Yes, I believe he was wearing the same suit of clothes. I have no notes that he was not. Other times he changed clothes there, but not on that occasion, so far as my notes show.

Q Did anyone accompany Max de la Fuente on the morning of the 11th when he left the house?

A No, Mr. de la Fuente was alone.

Q Where did you follow him to, if any place?

A 1031 South Broadway, and he parked his car in the lot on Hill Street to the rear of the building.

Q That is, near his office?

A That's just in the back of his office.

Q What did you do then?

A On this occasion we waited for de la Fuente to leave the office building, which he did at 1:45 p. m.

Q You say "we?"

A Yes.

Q Who was with you?

A Kenneth Davidson.

Q Who was Kenneth Davidson?

A An employee of our office, a private detective,

at that time.

Q He is not in your employ now?

A No, he is not.

Q What did you do when Mr. de la Fuente came out at the hour you gave me, that midday hour?

A He drove out of the parking lot to the Jonathan Club, made a stop at the Jonathan Club; he went into the Jonathan Club on Figueroa Street.

Q When did you next see him?

A He started out Figueroa Street.

Q From the Jonathan Club?

A Yes.

Q After he came out of the Jonathan Club?

A Yes. He was making time. That zone I believe is a 25 mile zone, and out beyond Sunset two motorcycle officers took after him, and when they got behind him and saw his license plates of the Consular Service they stopped and turned around, and he continued on to the Arroyo Seco, and to 1350 El Molino.

Q That is, the McKee home?

A The residence of Mrs. Mark T. McKee.

Q What time was it when he arrived there?

A Well, I would say it was possibly half past 2:00.

Q What did you next observe, if anything?

A Shortly after he arrived there he came out again with Mrs. McKee in the car.

Q In which car?

A In the red Chrysler convertible.

Q Was that his own car?

A That's his own car. He had Terry McKee with him.

Q Terry was at that time a child of about three years of age?

A About three years of age. There was Mrs. McKee and the little boy with him.

Q This is on the 12th of April, 1942?

A At the same time they left Cynthia drove out in the Oldsmobile sedan.

Q That is, the McKee car?

A Yes.

Q Did they leave together, that is, the two cars leave together?

A Both went away, yes, and when they left Cynthia was in the Oldsmobile, and Mrs. McKee and de la Fuente and the boy were in the red Chrysler coupe, but when the they came back - I let them go then, and when they came back Mrs. McKee, de la Fuente and the baby had switched

around into the Oldsmobile sedan, and what became of the red Chrysler coupe that night, which was his car, I don't know.

Q What time did de la Fuente and Mrs. McKee and Terry return in the Oldsmobile?

A Well, it wasn't shortly after. Maybe an hour or so - I didn't put the time down. De la Fuente put the car in the garage, and they went into the house.

Q Did you see Cynthia McKee return at all that night?

A No, I did not.

Q You did not see her come home that night?

A No, I did not.

Q What time did you leave?

A 10:55 p. m. Up to that time de la Fuente had not left the house.

Q This was 10:55 p. m. on April 12th?

A April 11th.

Q Was that April 11th?

A Yes. Davidson was with me.

Q Davidson was with you that night?

A Yes, on this occasion.

Q Well, what did you do after the 11th of April?

A On Sunday morning, the 12th of April, we arrived - Kenneth Davidson and myself - at approximately 7:25 a. m.

Q At the McKee home?

A Yes. The shades were pulled back at 8:35 a. m.

Q Which shades?

A The shades in the windows in that house.

Q All through the house?

A Yes. Most of the time the shades were drawn.

Q Then what happened?

A Max de la Fuente at 9:40 a. m. drove out of the garage in his red Chrysler coupe; Mrs. McKee joined him and she put the little boy in the car with Max de la Fuente, and then Max de la Fuente drove out alone with the McKee boy; he drove to the market - they called this market the Market Basket, near the corner of Fair Oaks and El Centro.

Q Where he did some marketing?

A He went into the market and made some purchases, then de la Fuente and the baby McKee drove back to the residence at 1350 South El Molino.

Q What was this - a vegetable market?

A A general market - everything.

Q Fruits and vegetables?

A Yes. I didn't go to see what he bought.
Q Did you observe anything else on that Sunday, April 12, 1942?
A Yes, I saw the colored maid drive away at approximately 12:15 p. m. It was a sedan, with license plate 8J1556.
Q Was that car also kept in the three car garage?
A No. She came there to work in it and she went home in it, and it was her own car, a brown sedan. She was a colored woman.
Q Was there anything else you observed on that Sunday?
A Yes, at approximately 4:40 p. m. in the afternoon Max de la Fuente, Mrs. Mark T. McKee and Cynthia McKee left in the red Chrysler - that was approximately 4:40 p. m. - and they drove to the Arroyo Seco. Mrs. McKee sat in the front seat between Max de la Fuente and Cynthia McKee. Max de la Fuente driving down the Arroyo Seco had his arm, one arm, around Mrs. McKee's waist, and he would drive the car with the other hand.
Q Where were you?
A Directly behind him.
Q Was anyone with you?
A Yes, Davidson, agent Davidson. During this drive down the Arroyo Seco ---
Q By the way, was that a highway?
A This is a state highway.
Q About how wide?
A It has three lane traffic on both sides, east and west, which would make it about 75 feet across.
Q It is a fast boulevard?
A It's a fast boulevard, yes, between Pasadena and Los Angeles. During this drive down the Arroyo Seco Max de la Fuente and Mrs. Mark T. McKee kissed one another on the lips, in the presence of Cynthia McKee, who was seated with Max de la Fuente and her stepmother, Mrs. Evelyn McKee, in the front seat. Now, that wasn't the the only occasion when they kissed going down the Arroyo Seco. As they got toward the end to turn up the tunnel they kissed again.
Q By "they" you mean whom?
A Mrs. Mark T. McKee kissed Max de la Fuente, and Max de la Fuente kissed Mrs. Mark T. McKee.
Q Was Cynthia McKee present?
A Cynthia was sitting right there, looking on.

Q Around Santa Barbara?
A Up in that section. All three, Mrs. Mark T. McKee, Max de la Fuente and Cynthia McKee went into the cocktail lounge. I don't know what they had to drink or what they did, because I didn't go in. They came out of the Marmonte Hotel at 9:45 p. m., and they continued driving north until they arrived at Buellton. Here Max de la Fuente stopped the car, and Mrs. Mark T. McKee, Max de la Fuente and Cynthia McKee went into Skinner's Cafe. They sat at a table, Max de la Fuente and Mrs. Mark T. McKee drank beer, and they also had some food. They left Skinner's Cafe at 11:05 p. m., and they drove to San Luis Obispo, and they stopped at the Anderson Hotel.
Q How far is San Luis Obispo from Los Angeles?
A About 325 miles.
Q Still within the State of California?
A Within the State of California, north of Los Angeles. Mrs. Mark T. McKee, Max de la Fuente and Cynthia McKee entered the hotel together. Cynthia McKee signed a registration card, and the clerk gave her key No. 344. The time now is 12:35 a.m. That would be on the morning of the 13th of April, 1942. Then the clerk handed Max de la Fuente key No. 305, a bell boy took the keys from both Max de la Fuente and Cynthia McKee, collected the baggage, and they went up on the elevator.
Q Who were they?
A Mrs. Mark T. McKee, Cynthia McKee and Max de la Fuente.
Q Mr. Cunningham, did anyone else register in that hotel on that occasion besides Cynthia McKee, that you saw?
A No, I wasn't certain. Someone did register, but which one I don't know, because there were only at that time the clerk, the bell boy, Max de la Fuente, Mrs. Mark T. McKee and Cynthia McKee there in the lobby, and after Cynthia McKee registered I moved some distance away, because I was right out in the open where all could observe me standing, doing nothing, in the middle of the floor. I don't know whether de la Fuente registered or Mrs. McKee registered.
Q Did you have anyone accompany you on that trip?
A My man Davidson was in the automobile outside.
Q Do you know where those two rooms were which you gave the key numbers?
A Those two rooms were on the third floor, because

at 3:00 a. m. I registered in room 346 on the same floor, I insisted on getting on that same floor, then I had Davidson register in room 328 on that same floor.

Q Referring to the two rooms of which Cynthia got one key and de la Fuente got a key, where were those rooms in relation to your room and Davidson's room?

A I was directly across.

Q From both rooms?

A No, I was directly across from Cynthia's room. I was in 346 and Cynthia in 344; Cynthia's room was there and my room here (indicating).

Q Immediately opposite?

A They were.

Q Your door faced her door?

A Right.

Q Then what about the others?

A I got Davidson room 328, and he wasn't far from 305, where de la Fuente was.

Q Do you know what room Mrs. McKee was in?

A No, I don't. I didn't see her go in or out of either of those rooms that night or the next morning, but I went to room 305, de la Fuente's room - I knew he had the key for that, and that was his room - and listened. I don't know who else was in there, but I listened at his door at 7:50 a. m., in the morning - I was up at 7:00 o'clock - and I heard de la Fuente talking at that time in his room, but I didn't hear anybody talking with him. I only stayed there a matter of a few minutes, because people were walking up and down the hallways then, and I didn't go back to listen any more.

Q Were you in position to observe whether or not the clerk delivered any more than the two keys you referred to as having been delivered to this party of three?

A That's all. The clerk delivered a key to Cynthia and a key to de la Fuente, then the bell boy took the keys from both and escorted them over to the elevator, with the baggage, and they went up.

Q Did you see any of the party of three, de la Fuente or Mrs. McKee or Cynthia, that night again?

A No.

Q Did you see them the next morning?

A Yes.

Q When I say that night I mean the night of the arrival, which time I believe you stated was sometime

after midnight. I mean early in that same morning.
A After Max de la Fuente and Mrs. Mark T. McKee and Cynthia McKee went up on the elevator I saw them no more that night.
Q Until when?
A Not until the next morning.
Q At what time?
A I saw Mrs. Mark T. McKee and Cynthia McKee at approximately 10:30 a. m.
Q What date was that?
A This is April 13th, on Monday. They came down in the elevator.
MR. CLOUD: Fix the year on that.
THE WITNESS: 1942. They came down in the elevator, and they were dressed in slacks, both of them.
MR. ROSE: Q: They had not been dressed in slacks the night before?
A No, they had changed to slacks. Max de la Fuente was in the lobby, walking around, at that time. They did not speak to one another. He was being introduced around by a fellow named Ira, and he was bowing here and there to the various people he was being introduced to as the Peruvian Consul, and the guest speaker at the Rotary Club meeting.
Q Situated where?
A In the dining room there. There was a meeting of the Rotary Club for lunch.
Q He was the guest speaker?
A The guest speaker that day. He had a book under his arm called La Mochias, and he was bowing left and right, with great dignity.
Q You mean the printed title on the book?
A Yes. He was making those long extended bows, away down deep - a la Peru, and he was shaking hands with everybody. I decided to leave Max de la Fuente at the hotel with his guests, and I went along with Mrs. Mark T. McKee and Cynthia McKee.
Q What do you mean when you say you went along with them?
A In behind them, in another car.
Q Did they leave?
A They went for a trip in Max de la Fuente's Chrysler.
Q Leaving Max de la Fuente to be the guest speaker?
A Leaving Max de la Fuente at the hotel. A boy had put the baggage back in the car out of their rooms, out

of de la Fuente's room and out of the other room, all the baggage came down together from both rooms, and was put in the car. They attended to that - Mrs. McKee did and then they drove to the Army camp some miles away, and they finally returned to the hotel at approximately 1:55 p. m. The meeting of the Rotary Club was over, and Max de la Fuente came out of the hotel and got into the car and took the wheel, Mrs. McKee moved over and remained seated in the middle, and Cynthia McKee at the outside seat, at the door, all seated in front. They started south on Highway 101 towards Los Angeles, and when approximately 10 miles out Max de la Fuente sudenly turned the Chrysler convertible coupe around and he drove back to the hotel, parked in front of the hotel, he got out of the car and he went into the hotel, and came out with his brief case. He had forgotten it, and he turned around and came back to pick it up. Then they drove south again on 101. I drove out of traffic ahead of them - we were not very far south of San Luis Obispo - and I continued on to Santa Maria, then I pulled up and waited for their arrival there. The reason I did that was I had been in behind them quite a lot, and thought it was a good plan to go on some miles ahead of them and wait for them. I then got in behind them again at Santa Maria, and drove into Santa Barbara behind them. They drove around quite a little, and then finally stopped at the Top Hat Cocktail Lounge. This was approximately 5:15 p. m. They remained in the cocktail lounge, Max de la Fuente, Mrs. Mark T. McKee and Cynthia McKee, until approximately 6:45 p. m., approximately an hour and a half. When they came out of the Top Hat Cocktail Lounge it was observed by myself that Mrs. Mark T. McKee and Max de la Fuente appeared to be under the influence of liquor.

Q What in that connection did you observe which caused you to come to that conclusion?

A They gesticulated, talked loud and argued - similar to what people do when they have been drinking too much.

Q Was Cynthia McKee with them?

A Cynthia McKee was there, but at no time did I go into that cafe, nor did my associate go into that cafe, to see if they drank anything or not. That I don't know. They then started south again toward Los Angeles, and when we were getting near Ventura the Daylight hove in sight.

Q That is a train coming from San Francisco?

A A train coming from San Francisco, and it was making approximately 65 miles an hour, according to my speedometer on my Plymouth, and picking up speed. De la Fuente at the wheel appeared to enjoy the sight of the train, and from observation it appeared to be a race, he kept up with the train, then he started to go faster than the train, and my speedometer got up to 75 miles, so I let him go, I wouldn't follow him any more. I continued on, though, through Ventura, and when I got to a place called The Forks of the Road down below Ventura, where there is an inland route and then there is the shore route, I took the inland route, and what route they took I don't know. The last I saw of them was just before coming into Ventura.

Q Is that the last time you saw them that day or night?

A At 10:40 p. m. that night we got there to Mrs. McKee's home - just about that time - and the de la Fuente car was there.

Q That is, the one he had been driving?

A That he had been using, yes. I have a note here, and there was some testimony ---

Q Never mind the testimony. You saw the car you had been following in front of the McKee home?

A No, it was up at the end of the driveway, in the garage.

Q What else, if anything, did you observe then?

A That's all.

Q You left that night at what time?

A Shortly after 10:40 p. m. The lights were on in the house, and the shades drawn. That stands for every night; at no time could you see in that house after darkness because all the shades were always drawn at night.

Q Then when, if at all, did you see any of these persons - de la Fuente, Mrs. McKee or Cynthia McKee - next?

A Tuesday, April 14, 1942, with Kenneth Davidson present, we drove to 1350 South El Molino, the residence of Mrs. Mark T. McKee, and we arrived at 7:30 a. m. Max de la Fuente drove out in his red Chrysler coupe at approximately 8:25 a. m.

Q Was he wearing the same suit that he had been wearing on the tour the day before?

A I see no note on it, and I don't remember.

Q Did he come out alone?

A Yes.

Q What did you do - follow him?
A Yes, we followed him to the Arroyo Seco, and when he turned into the Arroyo Seco we let him go.
Q Then what, if anything, did you do?
A Generally in these intermissions you find here we went to my office, made our reports and notes, and reported to the other office. At 2:25 p. m. we picked up de la Fuente again at his office, in the parking lot, and he had some other South American fellow with him, a dark, swarthy individual, talking a foreign language. They drove to a parking lot at Second and Spring Streets, and they went into the California Bank Building, then de la Fuente came down out of that building, and at 3:35 p. m. he drove back to his own office, parked on Hill Street in the rear of his office building at 1031 South Broadway, and he went in there. Then at 5:15 p. m. - we were parked in the parking lot on Hill Street directly across from his parking lot - we saw Mrs. McKee on foot in the parking lot, and she got into Max de la Fuente's Chrysler coupe and sat in there. At 5:40 p. m. Max de la Fuente came out of his office building and got into his car with Mrs. Mark T. McKee, and they both drove out to Pasadena through the Arroyo Seco, to 1350 South El Molino. This was approximately 6:05 p. m. De la Fuente on this occasion after he arrived at the home of Mrs. Mark T. McKee put the car into the garage. This was 7:00 p. m. when he put the car in, although he arrived there at 6:05.
Q Had he gone up to the house before?
A Yes, they went into the house, then he came out and put the car in the garage. We remained there until 10:15 p. m., and up to that time Max de la Fuente was not observed to leave Mrs. Mark T. McKee's home. On these occasions, when I testified that I discontinued at a certain time, like 10:15, or any time, I had to report ---
Q You made reports in the meantime?
A Well, right after I got through, on the telephone.
Q You left there that night about when?
A 10:15 p. m.
Q Did you return to the premises?
A No, not that night.
Q Did you at any time?
A No, sir.
Q You did not go back any more?
A It was 10:15, you see.

Q I mean at any time.
A Oh, yes, I returned the next day, April 15th.
Q At what time?
A We arrived - Davidson was still working with me - approximately 8:10 a. m. at 1350 South El Molino, the residence of Mrs. Mark T. McKee.
Q What, if anything, did you observe?
A We did not see de la Fuente that morning, did not see him come out of the house.
Q Were the cars in the garage?
A His car was not in the garage.
Q Did you see any car in the garage?
A I don't recall. I made no note of it. We drove then to the parking lot at 1031 South Broadway. At 5:00 o'clock in the afternoon the red Chrysler coupe was parked in the lot behind the office building in which Max de la Fuente had his office. At approximately 6:15 p. m. Max de la Fuente came out of his office, got into his car, the red Chrysler coupe, and he drove to 1350 South El Molino, the residence of Mrs. Mark T. McKee, and he went in. This was 6:40 p. m. Davidson and I remained at Mrs. Mark T. McKee's residence until approximately 9:10 p. m. Up to that time Max de la Fuente was not observed to leave the premises, and we discontinued for the night. In other words, I never stayed there all night at any time.
Q When did you go back to the premises, if at all?
A On April 16th.
Q At what time?
A Davidson was still working with me, and we arrived at 7:20 a. m. at the residence of Mrs. Mark T. McKee, 1350 South El Molino, Pasadena. At 9:05 a. m. Max de la Fuente drove out in his red Chrysler coupe. He was alone. We followed him to the Arroyo Seco, and left him.
Q On that morning when you arrived there - what time did you say that was?
A 7:20 a. m.
Q Was de la Fuente's car in the garage then?
A Yes.
Q Did you observe when you saw de la Fuente leave the house on these mornings that he had changed his clothes at all?
A Yes, on numerous occasions Max de la Fuente changed his clothes overnight; from the time he would go in in the evening until he came out in the morning

he would have on many occasions changed his clothes.
Q Well, on this day you last referred to you saw him leave ---
A I last saw him when he was Los Angeles bound, going through the Arroyo Seco, that morning.
Q When did you see him next?
A At approximately 5:00 p. m. we picked up Max de la Fuente as he left his office and got into his Chrysler coupe in the parking lot in the rear of his office building on Hill Street. He drove directly to 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee, and put his red Chrysler coupe in the garage.
Q Did you see him that night again?
A We discontinued at 7:50 p. m. that evening, and did not see Max de la Fuente leave the premises up to the time we discontinued.
Q Did you go back there the next morning?
A Yes, April 17, 1942.
Q What time did you arrive?
A I was alone then.
Q What time did you arrive?
A I arrived at 1350 South El Molino at 7:15 a. m.
Q Did you see any car in the garage?
A Max de la Fuente's car was in the garage of the residence at 1350 South El molino, Pasadena.
Q Did you see de la Fuente that morning?
A De la Fuente came out that morning at 11:40 a. m., and he drove to the Arroyo Seco in the red Chrysler coupe. I left him at the Arroyo Seco, and did not follow him. That day I was alone; Kenneth Davidson was not with me.
Q Did you see that car again that day?
A I went to de la Fuente's office at approximately 4:15 p. m., remained there until 5:30 p. m., and I did not see Max de la Fuente or his red Chrysler coupe. I then drove to 1350 South El Molino, and I arrived there at 6:22 p. m.
Q Did you see any car in the garage?
A I saw Max de la Fuente's red Chrysler in the garage, but I did not see Max de la Fuente nor Mrs. McKee up until the time I discontinued, 8:05 p. m.; I never saw either one of them, although the car was in the garage.
Q Did you continue your investigation?
A April 18, Saturday, I drove to 1350 South El

Molino at 6:45 a. m.
Q Was the car in the garage then, that is, the de la Fuente car?
A Max de la Fuente's car was in the garage.
Q Was Mrs. McKee's car also in the garage?
A That I don't recall.
Q What did you observe, if anything?
A At approximately 9:00 a. m. on the morning Max de la Fuente and Mrs. McKee were observed ---
Q Did you see them?
A Yes walking around the grounds in the rear of the house, near the garages, strolling about together. Ten minutes later - that would be 9:10 a. m. - I left and drove down town for a conference. They were there when I left.
Q When did you next see them or either of them?
A I returned to 1350 South El Molino at approximately 4:30 p. m., and at 6:45 p. m. Max de la Fuente in his red Chrysler coupe drove in and put the car in the garage. Thirty minutes later I discontinued, at 7:15 p. m. I did not see Max de la Fuente leave the premises up until the time I discontinued.
Q Were you alone on that occasion?
A No, Mrs. Cunningham was with me.
Q Beginning from what date was Mrs. Cunningham with you?
A This was the first day.
Q How many days before that were you alone, that is, for how many days?
A Just that one day.
Q One day you were alone?
A Yes.
Q Then Mrs. Cunningham took the place of Mr. Davidson?
A That's right. She was not an employee, not in the detective business, but she just came along to keep me company, in view of the fact that Davidson had to take on some other work he had been doing, and left me alone, so Mrs. Cunningham came along, but in no official capacity.
Q What further investigation, if any, did you make after that?
A On the 19th of April, 1942, I arrived at 1350 South El Molino at approximately 8:00 a. m. The colored maid arrived at approximately 8:50 a. m.

Cynthia McKee and Terry McKee, the little boy, were together around the grounds at 10:40 a. m. At approximately 2:50 p. m. in the afternoon Mrs. Mark T. McKee had her son Jerry Alexander - this young man is a son by her first husband, and not to be connected with this other boy. One is Terry and one Jerry. Jerry was about 15 years old at that time. They then drove to California Street and stopped at a drug store.

Q Jerry and his mother?

A Jerry and his mother, and the boy bought cigarettes, and they returned to the house. I observed at this time all doors in the garages were open - three. It was then 4:40 p. m. I saw the Ford in there, besides Max de la Fuente's Chrysler and the McKee Oldsmobile. I did not see Max de la Fuente at all that day. We discontinued at 7:10 p. m.

(A discussion was had off the record.)

MR. ROSE: Can you come here in the morning, if necessary, Mr. Cunningham?

THE WITNESS: If necessary I will come.

MR. CLOUD: I cannot be here in the morning.

MR. ROSE: Then at the suggestion of Mr. Cloud, the earliest date at which we can continue is tomorrow at 2:00 p. m., to which I agree.

(Whereupon, by stipulation and agreement of counsel, the taking of the depositions was adjourned and continued to the same place, at the hour of 2:00 p. m., June 11, 1947; at which time and place the taking of the depositions was resumed, the same parties appearing.)

DIRECT EXAMINATION (Resumed)

BY MR. ROSE:

Q What date did you continue your investigation, if at all, Mr. Cunningham?

A Monday, April 20, 1942.

Q What did you do and observe at that time, if anything?

A I drove to 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee.

Q At what time?

A 8:40 a. m. At 8:50 a. m. Jo Ann McKee drove out in the Ford touring car. She went to the Arroyo Seco and was headed toward Los Angeles, and I left her there, and turned back and went to 1350 South El Molino. I observed at 9:15 a. m. that the McKee Oldsmobile was in the garage and that Max de la Fuente's Chrysler was in the garage. At 9:25 a. m. Cynthia McKee and Terry McKee drove out in Max de la Fuente's Chrysler. They drove to the San Marino Market. Terry McKee was left sitting in the car and Cynthia McKee went into the market and made some purchases, and drove back to the house at 1350 South El Molino. At approximately 11:30 a. m. Max de la Fuente drove out in the Chrysler coupe.

Q That is, he came out of Mrs. McKee's home?

A Max de la Fuente came out of Mrs. McKee's home and drove to the Arroyo Seco and into Los Angeles and to his office. We left him there. We returned to 1350 South El Molino, arriving at approximately 6:15 p. m., and at this time we saw Max de la Fuente's Chrysler coupe in the garage. The McKee Oldsmobile was also in the garage, and the Ford car was in the garage. I did not see Max de la Fuente. We discontinued at 7:00 p. m.

Q On the following day did you resume your investigation?

A Yes.

Q What occurred then?

A On April 21, 1942, Tuesday, we drove to 1350 South El Molino in Pasadena, the residence of Mrs. Mark T. McKee.

Q At what time?

A Arriving at 7:30 a. m.

Q When you say "we," who was with you?

A Mrs. Cunningham. The colored maid arrived at the house at approximately 8:35 a. m. At approximately 10:00 a. m. we observed Cynthia McKee and Terry McKee walking around the premises and looking in the mail box. At approximately 12:45 p. m. Max de la Fuente drove out of the McKee residence in the Chrysler coupe.

Q Did you observe where he had come from?

A He came from the house, and he drove to the Arroyo Seco.

Q Did you see him enter the house that morning?

A I saw him come out of the house. This is 12:45 p. m.
Q Did you see him enter it since the time you had arrived at 7:30 in the morning?
A No. It was raining hard this afternoon.
Q Did you observe anything else on that day, April 21st?
A The Chrysler drove in at 6:20 p. m.
Q Drove in to the house?
A In to Mrs. McKee's residence.
Q Who was in it?
A We could not see on account of the rainy condition. He drove into the garage.
Q That was Mr. de la Fuente's car?
A Mr. de la Fuente's car. We circled the block several times, and found that the garage door was closed, and we discontinued at 7:00 p. m. It was raining.
Q When next did you take up the investigation?
A On April 22, 1942, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at 7:40 a. m. Between 10:00 a. m. and 11:00 a. m. Cynthia McKee had Terry McKee out for a walk. She also had Terry McKee in the play pen in the rear yard. Cynthia McKee drove out of the McKee garage in Max de la Fuente's Chrysler, backed it around, and headed the car out. At approximately 11:15 a. m. Cynthia McKee had Terry McKee in the Taylor Tot kiddie car around the yard. At 12:15 p. m. Max de la Fuente and Mrs. Mark T. McKee and Terry McKee got into the Chrysler coupe.
Q Had you seen Max de la Fuente enter the house that morning?
A No.
MR. CLOUD: Let the record show that the witness is reading from his written memoranda.
MR. ROSE Q: Those memoranda were made by you at the time when these incidents occurred?
A This record was made at the time as these incidents occurred.
Q In your own handwriting?
A In my own handwriting.
Q And it is correct?
A This is correct information.
Q You say you had arrived at the premises at 7:40 a. m.; is that right?

A Yes.
Q That is, on that day?
A Yes.
Q And that you did not see Mr. de la Fuente enter the premises from 7:40 until he left the premises at 12:15 on that day?
A Yes, sir, that's correct.
Q Did you follow the car of Mr. de la Fuente, with Mrs. McKee and Terry?
A Yes.
Q They left in Mr. de la Fuente's car?
A Yes.
Q Where did they go?
A They drove to Jerry's Drive-In Stand on Green Street, Pasadena. They sat in the car and had something to eat, and Mr. de la Fuente paid the bill. They then drove to the Boys Market on Lake Avenue in Pasadena. Mrs. Mark T. McKee, Max de la Fuente and Terry McKee went into the market. Mrs. McKee made purchases of vegetables, fruit, groceries and meat. Max de la Fuente wrote out a check and paid the bill. Terry McKee tipped over a crate of eggs, and Max de la Fuente caught the baby and the crate of eggs in time, without any damage.
Q Was Mrs. Cunningham with you on that occasion?
A Mrs. Cunningham was with me, yes. Max de la Fuente and Mrs. McKee and Terry McKee then drove back to 1350 South El Molino, arriving at approximately 1:10 p. m. The purchases were left at the house, and Max de la Fuente and Mrs. McKee were standing at the door of the Chrysler, and Mrs. McKee kissed Max de la Fuente before he got into the car and drove out alone.
Q Was this place of the kissing in the public view?
A This kissing took place outside of the house, in front of the garage, at the head of the driveway, in public view. We did not follow Max de la Fuente. We remained there, and at 6:45 p. m. Max de la Fuente returned in the Chrysler coupe, and he put the car in the McKee garage. Fifteen minutes later, 7:00 p. m., I discontinued, and left Pasadena.
Q When did you next resume the investigation?
A On April 23, 1942, Thursday.
Q What did you observe?
A I arrived at 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee, at approximately

7:30 a. m. At approximately 10:40 a. m. Max de la Fuente drove out of the McKee premises to the Arroyo Seco, and headed toward Los Angeles.

Q Had you seen Mr. de la Fuente enter the premises that morning?

A No, sir. We let him go then. We returned to 1350 South El Molino, Pasadena, and during the day we saw the colored maid, Mrs. Mark T. McKee, Cynthia McKee and Terry McKee, Cynthia McKee and Terry McKee about the premises. At 6:10 p. m. Max de la Fuente arrived at the McKee residence and drove his Chrysler coupe into the garage. On this night we remained until 11:15 p. m., when all lights were out. We did not see any of the subjects leave the premises during the evening.

Q When you refer to subjects you mean whom?

A All of them, including Max de la Fuente, Mrs. McKee, Jo Ann McKee, Cynthia McKee, Terry McKee and Jerry Alexander.

Q You did not see any of these persons leave the house that night after the lights went out, or before?

A Not after 6:10 p. m., and until the lights went out.

Q Then did you continue your observations?

A On April 24, 1942, Friday, I arrived at 1350 South El Molino at approximately 7:25 a. m. The colored maid arrived at 8:35 a. m. Cynthia McKee and Terry McKee came out around the grounds at 10:15 a. m. At 10:30 a. m. Max de la Fuente drove out of the McKee premises in the Chrysler coupe, alone. He drove to the Arroyo Seco, headed toward Los Angeles, and we left him. We returned some time prior to 7:15 p. m. to the McKee residence in Pasadena, and at approximately 7:15 p. m. that night Mrs. Mark T. McKee and Max de la Fuente arrived at the house in Max de la Fuente's red Chrysler. Fifteen minutes later we discontinued, at 7:30 p. m.

Q What was done with the red Chrysler on their arrival?

A It doesn't show whether he put it in the garage or left it on the grounds.

Q What was the next day of your investigation? Was that April 25th, Saturday?

A April 25, 1942, on Saturday.

Q What occurred then?

A We arrived at 1350 South El Molino at approxi-

mately 7:45 a. m. At approximately 8:15 a. m. Max de la Fuente drove out in the Chrysler coupe from the McKee premises. He drove to the Arroyo Seco, toward Los Angeles, and we left him. We returned to the house. At approximately 10:37 a. m. Cynthia McKee and Terry McKee were together around the grounds. At approximately 1:00 p. m. Mrs. Mark T. McKee was walking around the grounds. At approximately 1:50 p. m. Jerry Alexander drove to the San Marino Market and bought some groceries and some cake, and he returned to the house. He used the Ford. At approximately 2:20 p. m. Max de la Fuente returned to the McKee residence in the Chrysler coupe. He was alone. At approximately 2:45 p. m. Cynthia McKee and Terry McKee were out on the lawn in front of the house, sunning.

Q Where, if any place, did Max de la Fuente go on his arrival that afternoon at 2:20?

A He went into the house. He left his car there, and between 3:45 p. m. and 4:30 p. m. Jerry Alexander cleaned, washed and cleaned, Max de la Fuente's Chrysler coupe. Then at approximately 4:45 p. m. Jerry Alexander drove away in the Ford, and he returned at 6:00 p. m. Then at 7:40 p. m. Jerry Alexander drove away again. At this time Mrs. Mark T. McKee and Max de la Fuente were still in the house; they had not left. We discontinued at 8:30 p. m.

Q On the following day, Sunday, April 26th, did you make any investigation?

A Yes.

Q What did you observe?

A April 26, 1942 Sunday, we arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 8:00 a. m.

Q Who are "we?"

A Mrs. Cunningham and myself. The shades were drawn. At approximately 12:15 p. m. Max de la Fuente opened the garage and drove his Chrysler coupe out, but he did not leave.

Q From the time you arrived at 8:00 a. m. that Sunday morning until 12:15, when Mr. de la Fuente came out, did you see Mr. de la Fuente enter the House?

A No.

Q What did you see after that time, then?

A At approximately 12:05 p. m. a tan coupe arrived, with Jo Ann McKee and a young man. They took Terry

McKee into the car with them for a ride, drove to the Boys Market on Lake Street in Pasadena, and they purchased some food, and they then returned to the McKee residence. At approximately 1:15 p. m. Max de la Fuente and Mrs. Mark T. McKee, with Jerry Alexander, drove out in the Chrysler coupe. They stopped at Cloke's Beverage Store on Lake Avenue, where they purchased a large box of beer, canned beer, and Coca Cola. The clerk put the box of beverages into the car.

Q Where is this place on Lake Avenue - in Pasadena?

A Lake Avenue, Pasadena. They then drove to the Stuffed Shirt Cocktail Lounge, address 1000 Green Street.

Q Pasadena?

A Pasadena. Mrs. Mark T. McKee and Max de la Fuente sat in the car, and Jerry Alexander tried the door, and the door was closed.

Q Which door?

A The door of the cocktail lounge. I noticed there was a sign on the building "Open later. Too early." That's what it read. They then returned to the McKee residence.

Q About what time?

A Well, about half past 2:00. Max de la Fuente and Mrs. Mark T. McKee were still in the house when we left at 6:35 p. m.

Q On the following day, Monday, April 27th, did you or did you not continue your investigation?

A Yes.

Q What did you do?

A On April 27, 1942, Monday, we arrived at 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee, at 7:55 a. m. At 9:25 a. m. Max de la Fuente drove out of the McKee residence in the McKee Oldsmobile sedan, license plates 107150, State of Wisconsin. We followed de la Fuente as far as Figueroa Street, and left him. He was alone. We returned to 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee, at approximately 3:00 p. m. At approximately 6:20 p.m. Mrs. Mark T. McKee and Max de la Fuente arrived at the McKee residence in Max de la Fuente's red Chrysler coupe. Both subjects were still in the McKee residence at approximately 7:00 p.m., when we discontinued.

Q On that afternoon had you seen Mrs. McKee leave the McKee residence, her residence?

A No, sir.

Q You had seen Max de la Fuente leave the McKee

residence in the Oldsmobile?
A Yes.
Q And when you first saw Mrs. McKee she was in Mr. de la Fuente's car with him?
A Yes, sir. I don't know what became of the Oldsmobile that Max de la Fuente left in in the morning. He did not return in that car, but he returned in his own car, although he had left in the Oldsmobile, and when he returned Mrs. McKee was with him in the Chrysler coupe.
Q On these various occasions when you observed Mr. de la Fuente arrive in the house and then leave the next day from the same house - referring to Mrs. McKee's house did Mr. de la Fuente always wear the same suit of clothes?
A No, Mr. de la Fuente had changed his clothes from time to time during all that period; he would go in with a suit on in the evening and come out dressed differently the next morning, in sport coat and pants. He would have changed his wearing apparel.
Q What, if anything, did you do on April 28, 1942?
A On April 28, 1942, Tuesday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:50 a. m.
Q Were you accompanied by anyone?
A Mrs. Cunningham was with me. At approximately 10:25 a. m. Max de la Fuente drove out of the McKee residence in his Chrysler coupe.
Q Had you seen him enter that morning?
A No. He drove to the Arroyo Seco, headed toward Los Angeles, and we left him. During that day there was a long lapse of time before I returned to the McKee residence. It was late.
Q What time did you return?
A Shortly before 9:20 p. m. The garage doors were closed. We did not see any cars, and the lights were on in the house.
Q In Mrs. McKee's house?
A Yes, and we then discontinued.
Q Did you continue your investigation on April 29, 1942, Wednesday?
A Wednesday, April 29, 1942, I arrived at 1350 South El Molino Avenue at approximately 8:00 a. m.
Q Alone?
A Mrs. Cunningham was with me. Max de la Fuente drove out at approximately 8:45 a. m. in his Chrysler coupe. He was alone, and we did not follow him. We

left and went elsewhere, and returned at approximately 4:55 p. m., and I saw Max de la Fuente and Mrs. Mark T. McKee and Terry McKee strolling around in the grounds. All cars were on the premises at this time, the Ford, the Chrysler and the Oldsmobile. We discontinued at 6:50 p. m. Mrs. Mark T. McKee was still there, also Max de la Fuente.

Q How about the following day, Thursday?

A On April 30, 1942, Thursday, we arrived at 1350 South El Molino at approximately 7:45 a. m. At approximately 10:30 a. m. I saw Mrs. Mark T. McKee, Cynthia McKee and Terry McKee on the grounds. At approximately 11:00 a. m. Max de la Fuente drove out of the McKee residence in his Chrysler coupe.

Q From the time of your arrival at the McKee house, 7:45 a. m., until you saw him leave at 11:00 a. m., had you seen Max de la Fuente enter the house?

A No. We followed Max de la Fuente to his office that morning, and we left him there.

Q Where did you go then?

A We returned to 1350 South El Molino, the residence of Mrs. Mark T. McKee, at 4:00 p.m., and at approximately 6:10 p.m. Max de la Fuente arrived in his red Chrysler coupe.

Q What, if anything, did he do with it?

A I don't know.

Q When you say he arrived, where did he go?

A He arrived on the grounds, drove up the driveway to the house.

Q The McKee house?

A The McKee house. Between 6:30 p. m. and 6:50 p. m. Max de la Fuente and Mrs. Mark T. McKee took a stroll up and down the sidewalk in the vicinity of the McKee residence. They had a very earnest conversation as they walked around, then they returned to the grounds and continued their conversation. They went into the house at approximately 7:00 o'clock. Their stroll and talk consumed approximately 30 minutes. At this time I discontinued. Mrs. Mark T. McKee and Max de la Fuente were still at the McKee residence.

Q How about the following day, May 1, 1942?

A Friday, May 1, 1942, I arrived at 1350 South El Molino at approximately 7:45 a. m. At approximately 8:50 a. m. Max de la Fuente drove out in the Chrysler with Mrs. Mark T. McKee. They drove in the direction

of the Arroyo Seco, and I lost them. We returned to the McKee residence at approximately 6:30 p. m., and I saw Max de la Fuente and Mrs. Mark T. McKee on the grounds walking around together. All the cars were in the garage at this time, the Ford, de la Fuente's Chrysler, and the McKee Oldsmobile. I discontinued at 7:00 p. m. and left Pasadena.

Q Were de la Fuente and Mrs. McKee still in the McKee home when you left?

A Yes.

Q What, if anything, did you do on the following day, May 2, 1942?

A On May 2, 1942, Saturday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:55 a. m.

Q Were you alone?

A Mrs. Cunningham was with me. At approximately 8:15 a. m. Max de la Fuente drove out of the McKee residence in his Chrysler coupe, drove to the Arroyo Seco, and I left him.

Q Did you see anything further that day?

A I returned to the McKee residence at approximately 5:10 p. m., I saw Max de la Fuente on the grounds and in the driveway of the McKee residence, and also saw his Chrysler coupe.

Q Where was that?

A On the grounds. It could have been in the garage - I didn't note - but it was on the grounds, the car was there. Then between 5:40 p. m. and 6:10 p. m. Mrs. Mark T. McKee and Max de la Fuente were walking around the grounds and the driveway, engaged in conversation. They went into the house, and at approximately 7:00 o'clock I discontinued.

Q The following day did you observe anything?

A May 3, 1942, Sunday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 8:05 a. m. At approximately 10:15 a. m. I observed Max de la Fuente and Mrs. Mark T. McKee walking around the grounds. Then at approximately 11:00 o'clock Terry McKee and Cynthia McKee were walking around the grounds. Then at approximately 11:50 a. m. I saw Jerry Alexander walking around the grounds. At approximately 12:00 noon the colored maid left and drove away. At approximately 1:15 a. m. a blue Pontiac sedan, license plates 98-U-713, arrived. The driver of this car, a man, did considerable talking to Mrs. McKee and Max de

la Fuente around the grounds. He drove away at 4:55 p. m. I think that was Mr. Haumesch; I am not sure.

Q Do you remember Manuel Avila?

A That was Manuel, I guess - that could have been Manuel Avila.

Q An attorney?

A Yes.

Q What time did you discontinue that evening?

A I discontinued at 7:15 p. m. At the time I discontinued Mrs. McKee and Max de la Fuente were still on the premises at the house; they had not left.

Q The following day, Monday, May 4, 1942, did you observe anything further?

A Yes, on May 4, 1942, Monday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:30 a. m. At approximately 9:40 a.m. Max de la Fuente drove out in the Chrysler coupe from the McKee premises, and we followed him to his office. He was alone.

Q Had you seen him enter the premises that morning before he left?

A No. I returned to 1350 South El Molino, the McKee residence, at approximately 5:10 p. m. At approximately 5:40 p.m. Max de la Fuente drove into the McKee residence in his red Chrysler coupe. He was alone. He put the car in the McKee garage. Max de la Fuente was still in the McKee residence when I discontinued at 7:00 p. m.

Q When, if at all, did you continue your investigation?

A May 5, 1942, Tuesday, at approximately 8:00 a. m. I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee. At approximately 8:50 a. m. Cynthia McKee drove away in the Ford. At approximately 9:00 a. m. the colored maid arrived. At approximately 9:45 a. m. Mrs. Mark T. McKee and Terry McKee were out around the grounds together. At 9:55 a. m. Max de la Fuente drove out in his Chrysler coupe from the McKee premises. He drove to the Arroyo Seco, as far as the tunnel at Figueroa Street. At this point we left him.

Q Who were the "we?"

A Mrs. Cunningham and myself. I returned to 1350 South El Molino, the residence of Mrs. Mark T. McKee, at 1:45 p. m.

Q With your wife?

A Mrs. Cunningham was with me, yes.

Q Did you observe anything further that afternoon

or evening?

A At 6:45 p. m. Max de la Fuente's red Chrysler coupe was in the garage, and the McKee Oldsmobile was in the garage, and the Ford was in the garage, but I not see Max de la Fuente arrive in his red Chrysler coupe. However, the car was in the garage, all cars were, and I discontinued at 7:00 o'clock.

Q The following day did you continue your observations?

A May 6, 1942, Wednesday, I arrived at 1350 South El Molino, Pasadena, the residence of Mrs. Mark T. McKee, at 7:40 a. m.

Q On all of these trips you had Mrs. Cunningham with you?

A Yes. Max de la Fuente drove out in his Chrysler coupe from the McKee residence at approximately 9:55 a. m., and he was alone. We did not follow him. At approximately 3:15 p. m. I returned to 1350 South El Molino, the residence of Mrs. Mark T. McKee, and took up surveillance. Max de la Fuente arrived alone in his red Chrysler coupe at approximately 6:35 p. m., and he put the red Chrysler coupe in the McKee garage, and I discontinued.

Q Where was Mr. de la Fuente when you quit?

A He was still at the McKee residence.

Q On the following day did you and Mrs. Cunningham resume?

A On May 7, 1942, on Thursday, I arrived at the McKee residence at 7:45 a. m., 1350 South El Molino, Pasadena, and at approximately 8:20 a. m. Max de la Fuente drove out in his red Chrysler coupe. He did not go to the Arroyo Seco, but he went out El Molino, and I lost him. He was alone.

Q Did you see him again that day?

A At approximately 6:45 p. m. I saw Max de la Fuente walking around the premises of the McKee residence in Pasadena,and his Chrysler red coupe was in the garage. I discontinued at 7:30 p. m. Max de la Fuente was still at the McKee residence then.

Q How about the following day, Friday, May 8, 1942?

A On Friday, May 8, 1942, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 8:00 a. m. At approximately 8:50 a. m. Max de la Fuente drove out in the red Chrysler coupe from the McKee residence. He was alone. I did not follow him. I returned to the McKee residence in Pasadena at approximately 4:00 p. m. At approximately 6:05

p.m. Max de la Fuente drove in to the McKee residence, he put his Chrysler coupe in the McKee garage, and I discontinued at 6:45 p. m., and up to this time Max de la Fuente was still at the McKee residence.

Q The following day what observations, if any, did you make?

A On May 9, 1942, Saturday, I arrived at the McKee residence at approximately 7:30 a. m., at 1350 South El Molino, Pasadena, California. At approximately 9:30 a.m. Cynthia McKee and Terry McKee left the McKee residence. Cynthia McKee had Terry McKee in the Taylor Tot. They walked as far as San Marino, and returned at 11:10 p. m.

Q P. M.?

A I mean a. m. They were out for an hour and a half, approximately. At 12:30 p. m. Jo Ann McKee and Cynthia McKee drove out of the McKee residence in the McKee Oldsmobile. They drove to the Broadway Department Store in Pasadena. We left them, and returned to the McKee residence. At approximately 1:45 p. m. Mrs. McKee and Max de la Fuente drove out together in the red Chrysler coupe from the McKee residence.

Q Had you seen Mr. de la Fuente enter that house that day from the time you had arrived at 7:30 a. m.?

A No, sir. Mrs. Mark T. McKee and Max de la Fuente returned to the McKee residence at approximately 2:55 p. m., and they had the car full of provisions, food. We discontinued that day at 5:30 p. m. Up until that time I did not see Max de la Fuente leave the McKee premises.

Q On the following day, Sunday, May 10, 1942, what did you and Mrs. Cunningham do, if anything?

A We arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 8:00 a. m. The collored maid arrived at approximately 8:50 a. m., and left at approximately 12:40 p. m. Jerry Alexander washed de la Fuente's red Chrysler, also the Oldsmobile, during the morning. Mrs. Mark T. McKee and Max de la Fuente were observed walking around the grounds of the McKee residence at approximately 2:40 p. m. I discontinued that day at 4:00 o'clock, 4:00 p. m.

Q Where were Mrs. McKee and Mr. de la Fuente when you left that place on that day?

A They were still at the McKee residence.

Q On the following day, Monday, May 11, 1942, did you and Mrs. Cunningham continue your observations?

A Yes.
Q What did you do?
A We arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:35 a. m. Max de la Fuente drove out in the red Chrysler coupe from the McKee residence - no, correction - Max de la Fuente drove out in the Oldsmobile, the McKee Oldsmobile, license plates 107150 Wisconsin, at approximately 8:30 a. m., and Max de la Fuente was alone. We followed him as far as the Arroyo Seco and Avenue 43, and left him. We returned to 1350 South El Molino at approximately 2:00 p. m. and saw Mrs. Mark T. McKee, Terry McKee, Jo Ann McKee, Cynthia McKee and Jerry Alexander, also the maid, about the premises from then on during the afternoon.
Q What else did you observe, if anything?
A Later in the afternoon Jerry Alexander drove out in Max de la Fuente's Chrysler coupe. He was alone. Then at approximately 5:50 p. m. Max de la Fuente arrived back at the McKee residence in the Oldsmobile sedan. Then at approximately 5:55 p. m. Jerry Alexander arrived back at the McKee residence in Max de la Fuente's red Chrysler. That day Max de la Fuente was dressed up in a brand new suit of clothes, which he had on when he came out of the McKee residence. He was not wearing that suit of clothes the previous day when he went into the McKee residence. Max de la Fuente was still at the McKee residence when I discontinued at 7:20 p. m.
Q What was the next date when you continued your observations with Mrs. Cunningham?
A May 12, 1942, Tuesday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:40 a. m. At this time all cars were in the garage, the Oldsmobile, the Chrysler and the Ford. The colored maid arrived at approximately 8:45 a. m. Cynthia McKee and Terry McKee were observed on the grounds walking around.
Q You say were observed. Who observed them?
A I observed them walking around the grounds.
Q You observed them?
A Yes, at approximately 10:20 a. m. At approximately 12:10 p. m. Mrs. Mark T. McKee and Max de la Fuente came out of the house and were walking around the grounds, and Cynthia McKee and Terry McKee joined them. Then Max de la Fuente drove out in the Chrysler convertible coupe alone. We left him at the Arroyo Seco, Los Angeles

bound.

Q On that date did you observe any activity on the part of the maid?

A On this day the maid put out three large pasteboard cartons, three large cans, for the garbage pick-up man. They were all full of empty beer cans.- Pabst, Milwaukee, East Side, Lucky Lager cans. I counted over 100 cans.

Q Beer cans?

A Beer cans; also some whiskey bottles and Scotch bottles. Max de la Fuente arrived back at the McKee residence at 7:20 p. m., and he did not leave up until the time we discontinued, approximately five minutes later, or 7:25 p. m.

Q On the next day, May 13, 1942, Wednesday, did you and Mrs. Cunningham continue your investigation?

A Yes.

Q What did you observe?

A On may 13, 1942, Wednesday, I arrived at 1350 South El Molino Avenue, Pasadena, the residence of Mrs. Mark T. McKee, at approximately 7:45 a. m. At approximately 9:25 a. m. Max de la Fuente drove out in his Chrysler coupe from the McKee residence. We did not follow him. We returned to the McKee residence at 11:30 a. m., and we observed the McKee oldsmobile at the head of the driveway. We circled the block, and when we came back the Oldsmobile had left. At approximately 7:40 p. m. that night Mrs. Mark T. McKee and Max de la Fuente arrived at the McKee residence together in the McKee Oldsmobile. We remained until 8:00 p. m., and up to that time Max de la Fuente had not left the McKee residence.

Q On Thursday, May 14, 1942, did you and Mrs. Cunningham resume your investigation?

A Yes.

Q What did you do?

A On may 14, 1942, Thursday, I arrived at 1350 South El Molino, the residence of Mrs. Mark T. McKee, at approximately 7:25 a. m. At approximately 10:25 a. m. Mrs. Mark T. McKee, Terry McKee and Max de la Fuente drove out of the McKee residence in the McKee Oldsmobile, all three seated in the front seat, with Terry McKee in the middle.

Q Just a moment. From the time you had arrived at the McKee residence at 7:25 a. m. that morning until 10:25 a. m., when you observed de la Fuente leave, had

you seen him enter the premises?
A No.
Q Then what did you see as they left?
A The three were seated in the front seat, with the baby in the middle. They drove to the Arroyo Seco, and Mrs. Mark T. McKee and Max de la Fuente appeared to be arguing, and Mrs. McKee was jumping up and down, and Max de la Fuente was shaking his finger at her.
Q Doing what?
A He was shaking his finger at her.
Q At whom?
A Mrs. McKee.
Q When you say she was jumping up and down, you mean in her seat?
A In her seat, the front seat of the car. Mrs. Mark T. McKee kept pushing her hair back and swinging around and facing him as she argued. They stopped at a parking lot behind de la Fuente's office at 1031 South Broadway in Los Angeles, they argued here considerably, and suddenly Max de la Fuente abruptly left her.
Q Left whom?
A Mrs. Mark T. McKee.
Q Where was the child, Terry?
A In the car.
Q Where was Mrs. McKee when de la Fuente left her?
A Mrs. McKee got out of the car and paced up and down the sidewalk for approximately ten minutes, she would walk up and walk back, up and down, then Mrs. McKee took the baby out of the car and went into the building where de la Fuente had his office.
Q What time was that, about?
A She appeared very excited. I did not note the time. Then at approximately 11:25 a. m. Mrs. Mark T. McKee, with the baby, came out of the building where de la Fuente's office was, and she seemed very excited, and sat in the car for ten minutes, approximately. I then observed that Max de la Fuente's red Chrysler car was also in the parking lot.
Q That is, behind Mr. de la Fuente's office?
A That's right. That was the reason we didn't see it the night before, you see. It apparently had been there all night.
Q What else did you see after Mrs. McKee with the child left the office building?
A Suddenly Mrs. McKee drove away in the Oldsmobile, with the boy. They drove back to the McKee residence

in the Oldsmobile, leaving de la Fuente's red Chrysler coupe there behind the building.

Q Have you any note about the Pasadena Senior High School?

A At approximately 4:15 p. m. Mrs. McKee and Terry McKee drove out of the residence again in the Oldsmobile, and they drove to the Pasadena Senior High School, where she picked up Jerry Alexander, her son, and they drove home, back to the house, and then at approximately 6:10 p. m. Max de la Fuente arrived at the McKee residence in his red Chrysler coupe, and he was still there when I discontinued at 6:15 p. m., five minutes later.

Q You were there with Mrs. Cunningham?

A Yes.

(A discussion was had off the record.)

MR. ROSE Q: Mr. Cunningham, do you know where Mrs. McKee lived on or about September 1, 1944?

A With Mrs. Butterly, 438 North Maple Drive, Beverly Hills.

MR. CLOUD: September 1, 1944?

MR. ROSE: That's right.

MR. CLOUD: Mrs. McKee lived there at that time?

THE WITNESS: Maybe only for a day or two. I don't know how long. She was stopping there overnight.

MR. ROSE Q: Were you employed on or about September 1, 1944, by Mr. McKee to make further investigations?

A Yes.

Q Did you make any at that time?

A Yes.

Q What was the first date in September, 1944?

A On September 1, 1944, I went to the residence of Mrs. Butterly, 438 North Maple Drive, Beverly Hills. I placed the apartment house under surveillance. At approximately 8:05 p. m. that night I observed Mrs. Mark T. McKee, Terry McKee and Mrs. Butterly leaving the apartment house and get into a Mercury automobile. Mrs. McKee had overnight baggage, and the three drove to Wilshire Boulevard. They started east, then they cut across to Hollywood Boulevard, then they drove east on Hollywood Boulevard until they came to a point near Western Avenue, where they parked at the curb. They then turned north ---

Q How long did they park?

A Approximately five or ten minutes they sat at the curb.

Q Are you positive this was September 1st, or was

it September 2nd?
A It was September 2nd.
Q 1944?
A Yes, That's the date.
Q You say they parked there five or ten minutes?
A Yes. This was on Saturday.
Q Did you observe them doing anything while they were driving or parking?
A Mrs. McKee during this trip did considerable looking around. She would put her head out of the door window and look to the back and in different directions.
Q The door of what?
A Of the automobile.
Q While it was in motion?
A Yes, she put her head out of the window and looked around.
Q Who was driving the car?
A Mrs. Butterly.
Q Then after they had parked for five or ten minutes at the curb what happened?
A They then turned north, drove north to Franklin Avenue. On reaching Franklin Avenue ---
Q Just a moment. How far from Franklin Avenue had they stood for five or ten minutes parked at the curb?
A Well Hollywood Boulevard and Franklin Avenue - that's a matter of a few blocks apart.
Q Did you observe Mrs. McKee doing anything while they were parking?
A Mrs. McKee was looking around in back and in different directions. I am assuming she was watching to see whether she was followed.
Q What did you do?
A We were not behind them; we were a block ahead of them, looking on; we went on ahead of them and parked. Then when they turned off we in turn made a U turn and turned north and followed them to Franklin Avenue. When they reached Franklin Avenue they turned back west again.
Q They went back in the other direction?
A Yes, they went west. They had been coming east, and they turned back and went west again many blocks, until they reached 6141 Franklin Avenue.
Q How many blocks did they reverse before they got to 6141 Franklin?
A From Western Avenue to that point on Franklin Avenue must be 15 or 20 blocks, something like that.

It's quite a distance.

Q After you saw them reverse directions some 15 blocks, what did you then see?

A Mrs. Butterly pulled into the curbing in front of the Hollywood Franklin Hotel. Mrs. Butterly did not get out of the car. Mrs. McKee got out of the car with Terry McKee and got her baggage out, a couple of bags.

Q Out of what?

A Out of the Mercury automobile. Then Mrs. McKee and Terry McKee went into the Hollywood Franklin Hotel, and there was a man who greeted her.

Q Where was the man?

A Inside the lobby, looking out. He did not come out to help her with her baggage or to greet her on the sidewalk, nor did he come out and meet Mrs. Butterly.

Q Will you please describe that man?

A The man wore a Navy uniform. He was tall, five foot ten up, in his 30's as far as age was concerned, and appeared to have dark hair.

Q About how much would you say he weighed?

A He must have weighed 170 or 180 pounds, apparently.

Q Would you please describe Mr. de la Fuente?

A Max de la Fuente is a man over six feet, weighing around 180 pounds at that time, with dark hair and dark eyes, very swarthy complesion, Indian type, high cheekbones.

Q What was his age, about?

A His age would be 37 or 38 years old, apparently, at that time.

Q Was he smooth shaven?

A Yes.

Q Was this man that you saw greet Mrs. McKee in the hotel, who was dressed in a Naval uniform, smooth shaven?

A Yes.

Q What did you observe this man in the uniform do?

A He greeted Mrs. McKee by putting his arm around her.

Q Was Terry there?

A Terry was there. Then he escorted her and the boy with the baggage to the elevator and they all went up.

Q Did Mrs. McKee register there?

A I did not see Mrs. McKee register.

Q How long did you remain at that hotel?

A We remained until 12:15 a. m. Sunday morning, waiting for Mrs. McKee to come out.

Q By the way, what happened to Mrs. Butterly?
A As soon as Mrs. McKee got out of the car with the boy and the baggage she shot away, drove right away. She did not meet this man. He did not come out of the sidewalk. He remained inside, looking out.
Q Then you remained there from about what time?
A I remained there that night.
Q From what hour to what hour?
A From approximately 9:00 o'clock, when she arrived there, or thereabouts, until 12:15 a. m., Sunday morning.
Q September 3, 1944?
A Yes.
Q Then what happened?
A Then we came back Sunday morning at approximately half past 6:00 a. m., 6:30 a. m.
Q Who were "we?"
A Kenneth Davidson, my employee, and myself.
Q Was Kenneth Davidson along the evening before?
A Yes, he was present. We waited there.
Q Where?
A At the Hollywood Franklin Hotel.
Q In Los Angeles?
A Yes, until approximately 10:00 o'clock, when Mrs. McKee came out of the hotel with Terry McKee and her baggage. There was a young man with a coupe there; he put the baggage in the coupe, the back of the coupe. This was not the same man of the night before. The three got in the car and drove approximately two blocks away.
Q Who were the three?
A Mrs. McKee, Terry McKee, and this unknown young man who was driving them. They drove to the Lido Apartment House, close by, and there the baggage was left, and Mrs. McKee and Terry McKee and this young man drove away.
Q Where was the baggage left?
A At the Lido.
Q At the Lido Apartments?
A Yes.
Q Do you know whether from that time on Mrs. McKee lived at the Lido Apartments?
A Yes, she lived at the Lido Apartments from then on for some time.
Q Having lived first at 438 North Maple Drive with Mrs. Butterly, she moved to the Lido-Apartments on the

morning of September 3rd?
A After stopping apparently one night at the Hollywood Franklin Hotel.
Q Now, on July 28, 1945, did you see Mrs. McKee?
MR. CLOUD: We are jumping from 1944 to 1945?
MR. ROSE: Yes.
THE WITNESS A: Yes.
MR. ROSE Q: Where?
A At the Elks Club.
Q You were at the Elks Club on that date?
A Yes.
Q About what time?
A In the evening, possibly around 7:00 or 8:00 o'clock.
Q Did you see Mrs. Evelyn McKee there?
A I saw Mrs. Mark T. McKee there that night with William Miller. William Miller is a man in the mattress business here in Los Angeles. He is married.
Q Where was he living at that time?
A I have forgotten. It was southwest.
Q Was it 4154 South Harvard Boulevard, Los Angeles?
A Yes, that's the address. His wife was living at that time up here on Rosewood or Rosemont, over in the Hollywood section somewhere.
Q Then Mr. Miller was not living at that time with his wife?
A They were living in two different places.
MR. CLOUD: Where was Mrs. Miller living at that time?
THE WITNESS: I don't recall the address. I have been to the house, and I have it somewhere.
MR. CLOUD: Roughly?
THE WITNESS: Around the 5500 block - I guess it's Oakmont or Oakwood - Oakwood or Rosewood.
MR. ROSE Q: Had you visited Mrs. Miller there at her home during that time?
A I had visited with Mrs. Miller in her home, in her apartment, yes.
Q Was that during that same period?
A During the same period of time.
Q In 1945?
A Yes.
Q When she was living separate from her husband?
A Separate from her husband. He was not living with her, but he did visit her.
Q On or about September 1, 1945, were you engaged by

Mr. McKee to continue your investigation?
A Yes.
Q What, if anything, did you do on September 1, 1945?
A Based on information supplied by Mrs. Miller I drove to Big Bear Lake.
Q Where is that?
A That's up in the San Bernardino Mountains. It's some 130 or 140 miles from Los Angeles.
Q Do you know where the McCarthy Guest Ranch is?
A I know where the McCarthy Guest Ranch is, but this was not the McCarthy Guest Ranch.
Q I know, but about how far from the McCarthy Guest Ranch is Big Bear?
A Coming back down from the mountains to get down there I suppose it would be about 35 miles. I don't know. I have driven it, but I am not sure.
Q Is it in Riverside County?
A San Bernardino County.
Q Is Big Bear in the San Bernardino Mountains in Riverside County?
A It may be Riverside County. I don't know what county it's in.
Q You say you went up there on September 1, 1945?
A Yes.
Q How did you go?
A I drove my automobile.
Q Was anybody with you?
A No, sir, I was alone.
Q When did you arrive and what did you observe?
A I arrived at the William Miller cabin at No. 41 Keystone Point at approximately 12:45 p. m. This is a house situated on the hillside by the lake. It's a private, exclusive residential property, with a road running down from the main highway. I found there on the premises William Miller, the husband of Mrs. Miller whom we referred to here, with Mrs. Mark T. McKee, Terry McKee, Cynthia McKee, and Diana Miller, the grandchild of William Miller, a little girl around seven years of age. I saw this group from time to time that afternoon on the grounds and on the porch and on the roads.
Q Were there woods there?
A Yes - and also in the woods around the premises. It is well wooded, and on the lake, near the bridge.
Q Did you see Mr. Miller do anything there?
A I saw Mr. Miller leave at approximately 3:00 p. m. that afternoon, and he drove to Big Bear. That's the town.

Q In his car?
A In his car, a Chevrolet Roadmaster.
Q About how far was his cabin from the town of Big Bear?
A About a couple of miles.
Q Then what happened?
A He drove to the Navajo Liquor Store and he purchased two large bottles of whiskey, some ginger ale, carbonated water, and he bought Time Magazine, then he drove back to the cabin.
Q What did he do with the liquor and these other things?
A He took the packages into the cabin.
Q What time was that?
A That was approximately 4:00 o'clock. I remained on the highway, up on the road, until approximately 8:15, and I saw no more of Mr. Miller or Mrs. McKee that evening.
Q Did they come out at all?
A No, I didn't see them if they did.
Q Was the cottage lighted?
A Yes, I saw lights in the cottage in the evening.
Q Did you continue your investigation in Big Bear the following day, September 2, 1945?
A Yes. On September 2, 1945, down in front of the cabin, on the shore of the lake, I saw Terry McKee and Diana Miller playing together, the two children, and I saw Cynthia McKee with Mr. Miller at 10:45 a. m., walking around the grounds. I saw Mrs. McKee, Mrs. Mark T. McKee, around the cabin about 11:30 a. m., and at that time Mrs. McKee was calling the children back to the cabin, and it started to rain, and there was a terrific thunderstorm, it poured all afternoon and into the evening, and I left around 12:00 o'clock and discontinued for the day, went into the city to keep out of the rain.
Q The following day, if you recall, was Labor Day, Monday, September 3, 1945.
A Yes.
Q Did you continue your investigation on that day?
A I did. I saw around on the grounds about 10:45 Terry McKee and Diana Miller, then I saw Cynthia McKee and Mr. Miller, I saw people whom I believed to Mr. and Mrs. Cloud. Pictures were taken along the shore.
Q Mr. Cloud, the well known Los Angeles attorney?
A At that time I didn't know. I was told it was him and his wife. I saw them there. There was a car with

license plate 4-M-7923. It was registered to Alice Bonne, 6561 Normandie Avenue. That's across the way from Mr. Cloud's office.

Q What else did you observe that day?

A The children were playing, the children had bathing suits on, and Cynthia McKee and Terry McKee and Diana Miller and an unknown girl went boating. I saw this man who was driving this car with plates 4-M-7923 with a paper carton of bottles, and he drove to Big Bear.

Q Was that Mr. Cloud?

A I believe it was. I left there at 6:15 p. m.

Q Where was Mr. Miller?

A Mr. Miller and Mrs. McKee were strolling at times on the grounds and under the trees along the shore and by the cabin.

Q Did you continue your investigation in Big Bear September 4, 1945?

A Yes. On September 4, 1945, Mr. Miller locked the cabin up at approximately 11:45 a. m., and Mr. Miller and Mrs. McKee and Cynthia McKee and Diana Miller drove into the town.

Q Of Big Bear?

A Big Bear, and then they left the town at approximately 1:25 p. m. and they drove out of the mountains; that is, they were out of the mountains by 1:25 p. m.

Q Had they had lunch in Big Bear?

A Yes, and bought postal cards and went around the town.

Q Who, if you know, paid for lunch at Big Bear?

A I don't know. I stayed too far away to get any line on what they were doing.

Q Had Mr. and Mrs. Cloud left before this morning?

A Yes, they left on Monday. Monday was Labor Day. I believe they arrived the day before and stayed one night.

Q Did they stay at the same Miller cabin?

A Yes, as far as my observations went. I saw the car the day before and I lost it the next day, it disappeared, leading me to believe they had left.

Q This car that you saw Mr. Cloud in you say was licensed in the name of Alice Bonne?

A Yes, Alice Bonne.

Q She is at 6561 South Normandie Avenue?

A Yes.

Q That's across the street from where?

A From Mr. Cloud's office. It's an apartment house there.

Q Has Mr. Cloud an office in an apartment house?
A His office is across the street from the apartment house on Normandie Avenue, in the 60-odd hundred block.
MR. ROSE: You may examine.
MR. CLOUD: May the record show that Miss Alice Bonne is my trusted secretary; that she has been with me eight years, and is still my trusted secretary.

CROSS - EXAMINATION

Q Mr. Cunningham, you testified to numerous incidents that occurred, you claim, during the year 1942 in connection with the case of McKee against McKee, and you read from certain longhand notes you had. Did you testify to the same incidents and the same facts, as you claim they are facts, in the case of McKee against McKee which was tried in the fall of 1942?
A Approximately.
MR. ROSE: You mean of course to exclude the events after 1942.
MR. CLOUD: I am just talking about 1942 now.
MR. ROSE: He testified to certain events in 1944 and 1945.
MR. CLOUD Q: I am talking about events you claim to have occurred in 1942. Those were the same notes you testified from in 1942 at the trial of the action of McKee against McKee in the Superior Court of this county; is that correct?
A The testimony is practically the same, as far as I know, because I testified from the same notes.
Q Do you remember when the trial of McKee against McKee was had in this county in 1942?
A I was a witness.
Q Well, you have before you many sheets of paper, which we ordinarily call, I would say, foolscap yellow?
A Yes.
Q On which you have made pencil notations?
A Yes.
Q And all during this examination you have been reading from those reports or memoranda?
A Yes.
Q It is my understanding from your testimony that after each day's investigation was completed you wrote down what you claimed you saw and heard on sheets of paper in longhand?

A Yes.
Q You were called to testify in the fall of 1942, and at that time you gave a full statement covering what you have given here today?
A As far as I remember.
Q From the time these yellow sheets were written up by you - you stated they were written on the day or days on which you claim the events occurred - have you made any corrections therein?
A No, sir.
Q Have you made any alterations?
A No, sir.
Q Have you made any erasures?
A No, sir.
Q Have you made any additions?
A No, sir.
Q So these penciled memoranda which you have before you, and from which you have testified with respect to the claimed incidents in 1942, are in the same condition now as they were when they were written by you?
A Yes, sir.
Q Did you make a report of what you claimed you saw on September 3, 1944, to Mr. McKee or Mr. Scott?
A I gave Mr. McKee the report at the Biltmore Hotel, in the lounge.
Q When did you give him the report?
A I gave him the report on Monday morning, and that would be - that would be the 4th.
Q The 4th of September, 1944?
Q With respect to this alleged incident of September 3, 1944, where you claim you saw a man in Naval uniform, did you report that to Mr. McKee?
A Yes.
Q Did you recognize that man?
A No, I was out on the sidewalk and it was at night. I don't know who he was,
Q Are you implying that that man was Max de la Fuente?
A No, he wasn't Max de la Fuente at all.
Q You are positive about that?
A Yes, that was not Max de la Fuente.
Q What was the first thing you observed after Mrs. McKee got out of the car?
A Mrs. McKee got out of the car with Terry McKee and two pieces of baggage.
Q Two pieces of baggage?
A It appeared to be two pieces of baggage. Mrs.

Butterly remained in the car.
Q How long did Mrs. Butterly remain there?
A A matter of several minutes.
Q Was she talking to Mrs. McKee?
A They had some conversation, but very short.
Q Then what happened?
A Mrs. McKee and Terry McKee and the baggage went into the hotel.
Q Did you see into the lobby from the street?
A I could see into the lobby from the large window through the Venetian blinds, which were open.
Q What did you see there?
A I saw her meet this man with the military uniform, Naval uniform.
Q What did you see take place, if anything?
A I saw him put his arm around her shoulder.
Q Did he pat her on the shoulder?
A Well, I wouldn't call it patting, but he put his arm around her shoulder. He may have patted her.
Q They walked somewhere then?
A To the elevator.
Q They went right to the elevator?
A Yes.
Q Was Terry with them?
A Terry was with them, and the baggage.
Q What kind of a looking man was this, as to his weight and height?
A A big fellow, well proportioned, quite tall, head and shoulders over Mrs. McKee.
Q What rank did he hold?
A I couldn't tell.
Q Did he have gold braid on his sleeves?
A I didn't notice. I know it was a Naval uniform of some character of officer. It wasn't a sailor.
Q Did he have a hat on?
A My recollection is that he held his hat in his hand.
Q Was it an officer's hat?
A Well, it seemed to be.
Q Either a hat or cap?
A It was something above the rank of a sailor; he was an officer of some kind.
Q Where did you go the next morning, or this morning, after this occurred?
A We went back to the hotel.
Q What time did you get there?

A Half past 6:00.
Q Who went with you?
A Kenneth Davidson.
Q Where did you stop at that time?
A We stayed on the street, on Franklin Avenue.
Q Did you see Mrs. McKee that day?
A I did.
Q At what time?
A Around 10:00 o'clock.
Q Where did you first see her?
A Coming out of the hotel with the boy and baggage, and a young man who lived at the hotel, with a coupe, a small car. They got into this small car and they drove to the Lido, three blocks away, and the baggage went in there.
Q What kind of a small car was this?
A I forget now.
Q Did you get the license number of it?
A I gave them the license number, yes.
Q Do you know whose car it was?
A No, not now.
Q Did you check it at the time?
A I did check it at the time, and I knew who the man was, knew his name.
Q Was it a man or a boy?
A It was a young fellow; could have been a boy of 20 to 25, something like that.
Q He stayed there at the hotel, did he?
A That was my opinion, that he did.
Q You don't know for sure?
A No.
Q Did you see the car drive up, or didn't you?
A The car pulled up at the door for Mrs. McKee.
Q And the young man went into the hotel?
A As far as I recollect.
Q Then he came out later with Mrs. McKee and the baggage?
A And the boy.
Q And Terry?
A Yes, that's right.
Q What happened to this man in Naval uniform? Was he around?
A No, I never saw him again.
Q Did you ever see him again at all?
A No, not to my knowledge.
Q Had you ever seen him before that time?

A Not to my knowledge.
Q So that morning about 10:00 o'clock they then went to the Lido?
A Yes, I believe about 10:00.
Q Mrs. McKee and Terry?
A Yes.
Q And the young man helped Mrs. McKee out, carried the baggage?
A Yes.
Q Into the lobby?
A Yes, he helped her in the lobby with the baggage.
Q Then what did Mrs. McKee do?
A She stayed there, as far as I know.
Q Did the boy leave?
A Yes, he drove away, back toward the Franklin Hollywood.
Q The boy was alone after he left Mrs. McKee and Terry?
A He was alone.
Q Have you seen that boy since?
A No, sir.
Q Do you know Jerry McKee?
A Yes.
Q When was the last time you saw Jerry McKee?
A In 1942, when he lived over in Pasadena.
Q Well, have you done any investigating for Mr. McKee in 1947?
A Yes, sir.
Q In this particular matter?
A Yes.
Q You were at the hearing had in Superior Court here about two months ago when an award was made of $10,000 for attorneys' fees?
A Yes.
Q You were present at that hearing?
A Yes.
Q You went there at the request of Mr. McKee?
A Yes.
Q In any event, you went to Big Bear Lake in September of 1945?
A Yes.
Q You arrived there when, Mr. Cunningham?
A September 1st.
Q About what time of day?
A Around 10:00 o'clock.
Q I believe you testified that Mr. Millar of Mrs. Millar

Miller, or the Millers, have cottage 41 Keystone Point; is that the address?
A Yes, that's the address I have.
Q Did you check that with the cottage you looked at?
A I believe I did. That was the address Mr. Miller gave me.
Q There are numerous other cottages in that near vicinity, are there not?
A Yes.
Q They being as an approximation probably 50 or 75 feet apart?
A About that.
Q How far is that Miller cottage from the lake?
A Approximately 250 yards.
Q When you went there who did you first observe around the cottage or around the lake?
A During that afternoon I saw Mr. Miller, Terry McKee - I will go back to my notes - I saw Terry McKee first and Cynthia McKee, then I saw Diana Miller on the grounds, around the trees.
Q That is, down near the lake or near the cottage?
A Near the cottage.
Q Between the cottage and the lake?
A In that vicinity.
Q Did you see Mr. Miller?
A Yes, I saw Mr. Miller some time after 3:00 p. m., when he drove to Big Bear, to the Navajo Liquor Store.
Q Did you follow him?
A Yes. He went to the Navajo Liquor Store and purchased liquor.
Q Did you go into the store with him?
A I stood outside and watched what he purchased.
Q Did you see Mrs. McKee around the grounds?
A No, not that I recall, or my notes show.
Q What day was that?
A Saturday, September 1st.
Q Where did you stay that night?
A I stopped at a cottage down in Big Bear, in the town.
Q What was the name of the cottage?
A I have forgotten.
Q You did not make a memorandum of that?
A There is a receipt for it in the possession of Mr. McKee or Mr. Scott for $25. I had it for three days and three nights.

Q You stayed for three days and three nights?
A Into the fourth day; three nights and into the fourth day.
Q Who did you see around the grounds on the 2nd of September?
A Diana, Terry, Cynthia, Mr. Miller and Mrs. McKee, then this strange car arrived; I noticed this strange car that I later took the number of.
Q What time did the strange car arrive?
A I don't know. A thunderstorm came up, and I left.
Q Did you get the number of this strange car?
A Yes, the number of the strange car was 4-M-7923; the name was Alice Bonne, 6561 Normandie Avenue.
Q That was on September 2nd?
A That was on Sunday, yes.
Q Who did you see on September 3rd, if anyone, around there?
A Terry McKee, Diana Miller, Cynthia McKee, the occupants of this car, the car with plates 4-M-7923, a man and woman, and an unknown girl, who went boating. The children were in bathing suits. The party that went boating was Cynthia, Terry, Diana and the unknown girl. These two people arriving in this car registered to Alice Bonne took pictures with a camera of the folks under the trees and along the lake shore.
Q You testified on direct examination that was on September 2nd?
A No, September 3rd.
Q September 3rd?
A Yes.
Q When was Labor Day?
A Labor Day was Monday.
Q What date was that?
A September 3rd.
Q I believe on direct examination you testified that Mr. and Mrs. Cloud left on Labor Day, September 3rd?
A They disappeared, the car disappeared, and I didn't see it any more. That was a conclusion on my part. The car was gone, and I didn't see it any more.
Q That is, after Labor Day?
A That's right.
Q What kind of a car was it?
A I made a check on it. It was a sedan, and my recollection is it was a sort of a brown car.
Q Did you see me there, Mr. Cunningham?
A I think it was you. I didn't know you at the

time, and I didn't know your wife. It looked like you, and after I described you I was told then it was you by Mrs. Miller herself; she said "That's Mr. Cloud and his wife." I saw her afterward.

Q Who was this strange girl?

A She lives around there.

Q Somebody in a nearby cottage?

A In my opinion, yes.

Q Did you see Cynthia and the children do anything that day? I mean Cynthia and this other girl, and Terry.

A They went out boating.

Q Did anybody else go boating?

A No. I followed them in my boat.

Q I believe on direct examination you testified Mr. Cunningham, that Mr. Cloud and Mr. Miller went to Big Bear with some kind of paper carton?

A No, I said this man that was driving the brown car had a paper carton and drove away toward Big Bear, went up the road. I believe it was a carton with bottles in it, a paper carton.

Q What time of day was that, Mr. Cunningham?

A I didn't put the time down.

Q Did you follow the car?

A No. It went toward Big Bear, and I didn't follow it.

Q How long was it gone?

A I was in a boat when I saw this happen, close to the shore, fishing, and I didn't pay any attention to when it came back.

Q So you do not know what was in the paper carton, if anything?

A I beg your pardon?

Q I say, you do not know what was in the paper carton, if anything, do you?

A No.

Q You testified, I believe, that you saw Mrs. McKee and Mr. Miller in the Elks Club in Los Angeles?

A Yes.

Q When was that?

A That was approximately a week prior to going up to the mountains.

Q That would be sometime in August, 1945?

A Yes.

Q Where were you at the time?

A I was in the Elks Club with them.

Q Are you an Elk?
A No. It's a public place.
Q You say you saw Mr. Miller and you saw Mrs. McKee, and where did you see them?
A In the lobby.
Q Was anyone else with them?
A No, sir.
Q Mr. Cunningham, you testified about people having stopped in numerous cocktail rooms, and I believe you referred to the Stuffed Shirt in Pasadena as a cocktail bar. Have you ever been in there?
A No.
Q Then you do not know that it is one of Pasadena's better eating houses, do you?
A No.

P. S. NOON - Defendant's Witness - Dir. Examination

BY MR. ROSE:
Q Mr. Noon, are you the acting Commissioner in this proceeding?
A I am.
Q Will you please give us your address?
A Business address, 477 I. W. Hellman Building, Los Angeles, California.
Q In the case entitled State of Wisconsin, Circuit Court, Milwaukee County, Evelyn McKee, plaintiff, versus Mark T. McKee, defendant, index No. 189-287, were depositions taken before you at your office in Los Angeles on behalf of the plaintiff in that action, Evelyn McKee?
A They were.
Q And at that time the taking of the depositions were noticed before you as a notary public in and for the County of Los Angeles, State of California?
A They were, to the best of my recollection, yes.
Q And among those depositions was one given by E. G. Haumesch on September 5th, 11:25 a. m., 1944?
A Yes. It commenced at that time.
Q Did Jefferson K. Stickney, Esq., appear as attorney for the plaintiff, Evelyn McKee, and Joseph Scott, Esq., and J. Howard Ziemann, Esq., appear as attorneys for the defendant, Mark T. McKee, on the taking of that deposition before you?
A They did.

Q Before Mr. Haumesch was examined before you did you administer to him the oath?
A I did.
Q And after the oath was administered to him did Mr. Haumesch make answer to certain questions on direct examination, cross-examination, redirect, and so forth?
A Yes.
Q Did you at the time take the deposition in shorthand?
A I did.
Q Have you your shorthand notes of the testimony given by Mr. E. G. Haumesch on that occasion?
A I have.
Q Was the deposition completed on September 5, 1944?
A My notes indicate it was started in the morning, was continued in the afternoon at 3:30. It went over until the 6th.
Q Was it completed on the date the deposition was started?
A No, it was not.
Q When was it resumed?
A The following day, September 6th.
Q Was it then completed on September 6th?
A Yes.
Q After you took your shorthand notes of the testimony on that occasion, was the testimony transcribed in typewritten form?
A Yes.
Q Under your supervision?
A Yes.
Q Have you a copy of the transcription of that testimony before you now?
A Yes.
Q Is that copy a correct transcript of the shorthand notes that you took?
A It is.
Q Is this an accurate, full, complete copy of the testimony given by Mr. Haumesch in his deposition on that occasion, to the best of your knowledge, information and belief?
A Yes.
MR. ROSE: May it be marked, please.
(The instrument in question is annexed hereto, marked Respondent's Exhibit 3

by the Clerk, James P. Pino.)
MR. ROSE: You May examine, Mr. Cloud.
MR. CLOUD: It is my understanding that the record with respect to this deposition shows the same stipulation as to the right of counsel in Canada to object.
MR. ROSE: On all grounds except the form of the question.
MR. CLOUD: No examination.

KENNETH JAMES DAVIDSON - Defendant's Witness - Dir. Exam.

BY MR. ROSE:
Q Your full name?
A Kenneth James Davidson.
Q Where do you live?
A I reside at 1915 Longwood Avenue. That is Los Angeles. Telephone No. ---
Q You don't need that. How long have you lived in Los Angeles?
A On or about 16 years.
Q What is your vocation?
A I have been an investigator a good part of my life, Sheriff's Department, District Attorney's Investigator.
Q In Los Angeles?
A That's right.
Q For how long were you a Sheriff's deputy?
A Sheriff deputy in San Bernardino County.
Q During what period?
A For a period of '42, '43, under Sheriff Emmett.
Q How long were you an investigator for the District Attorney?
A That is in Fresno County under District Attorney Lovejoy.
Q That is in California?
A That is in California.
Q During what period did you say?
A That was in '26 and '27, part of '27; Sheriff's deputy in Fresno County, California, from '27 until '29.
Q Were you for a time associated with an investigating agency of which Bernard J. Cunningham was a member?
A I was.
Q What was the name of the agency?
A Louis A. Duni, Los Angeles, California.

Q For how long were you associated with that office?
A Off and on for four or five years.
Q Doing what, during what period?
A I would say from probably '38 on till the decease of Mr. Duni.
Q Until the decease of Mr. Duni?
A That is correct.
Q Did you continue your association with Mr. Cunningham?
A I have on several occasions, yes.
Q But not daily, in general, but just on specific investigations?
A Just at times.
Q Do you know the petitioner, Evelyn McKee?
A By sight, yes.
Q When did you first see her?
A To the best of my knowledge, it was on April 9, 1942.
Q Had you been engaged to make any investigation concerning Mrs. Evelyn McKee?
A Yes, I was engaged to make it.
Q The first investigation you made on April 9th, was it?
A That's right, April 9th.
Q 1942?
A 1942.
Q Have you ever testified as a witness in any proceeding between Mr. McKee and Mrs. McKee?
A I have not.
Q Do you recall there was a divorce case instituted in the Superior Court of the State of California, in and for the County of Los Angeles between Mr. and Mrs. McKee in 1942?
A I have heard of it, yes.
Q Where were you at the time?
A At the time I was in San Francisco.
Q On the 9th of April, 1942, that was the date you gave of your first investigation?
A That's right.
Q Just state what occurred on that day.
Q Do you want everything covering that case?
Q On that day.
A On that day?
Q Yes.
A As I recall, on April 9, on the morning of April 9 - this is something that isn't in my notes but I

remember the date very well because I called on Mr. de la Fuente, Counsul for Chile, to look him over, to see him so I would recognize him. I went into his office, sat down and had a little chat with him.

Q Where was that?

A In the Western Pacific Building, I believe 1031 South Broadway, Los Angeles.

Q What sort of a looking man was he?

A He was a tall fellow, six foot or better, I would say.

Q About how old, would you say?

A I would judge him to be about 30, in his 30's, 35, I would say.

Q Was he smooth shaven?

A He was.

Q What was his complexion?

A Rather olive complexion, dark, dark-haired.

Q Was his name on the office door?

A Oh, yes. He was Consul for, I believe, Peru at that time.

Q And you had a conversation with him on that morning?

A Yes, a conversation.

Q After the conversation what did you do, if anything?

A I left the building and returned to the street.

Q And then what?

A And then shortly after I left the building and was on the street, I met Mr. Cunningham. And Mr. de la Fuente came out the elevator and went out the back way, toward the Broadway entrance, in the rear of this office building at 1031 South Broadway. He came out and I observed him and he got in his car, a coupe, Chrysler coupe, a red Chrysler coupe, and drove out to Pasadena.

Q He drove out to Pasadena?

A Yes.

Q What did you and Cunningham do?

A We followed him out there.

Q Were you in another car?

A We were.

Q In whose car?

A Mr. Cunningham's car.

Q When you got to Pasadena what happened, if anything?

A We parked in the vicinity of - I will give you the address here - of 1350 South El Molino, the residential district.

Q Do you know who lived there?
A Mrs. McKee.
Q Do you know whether anybody else lived there besided Mrs. McKee?
A Yes, there were several in and out of the house as we observed at later dates.
Q Who were they?
A There was Miss McKee.
Q Cynthia?
A No; a Miss McKee. It was an older daughter, I believe, or something; a younger girl. This other one appeared to be about 19 years old. There was a Jerry McKee, a young boy, that lived at this address, the young baby McKee.
Q Terry.
A Yes, Terry. There was a maid, Mrs. Baker.
Q What did you observe when you got out to the house?
A We parked in that vicinity of that place and, as I recall, I believe on that date at the time we followed this man out, de la Fuente out of there that he didn't come out of the house.
Q Did you see him go in?
A We saw him go in, yes.
Q What time did you see him go into the house?
A It was in the afternoon some time.
Q How long did you remain observing the house?
A Not very long that day.
Q About how long?
A Maybe two or three hours.
Q During that time you saw no one leave the house?
A Oh, yes, several people who we later identified as the names that I have just given you that were stopping at that residence. Several of those people were in and out.
Q Did you see Mr. de la Fuente again after he entered?
A Not that day.
Q What, if anything, did you again do on the following day?
A This has been quite some time ago, 1942, and that has been a long time, you understand, Mr. Rose, and I will do my best to recall all of these things from my notes.
MR. CLOUD: Do you have any independent recollection

of these events you are testifying to other than your notes?

THE WITNESS: Well, I have, yes. I have a very good recollection of what took place. Only in regard to the dates I have to be careful about that because that has been a long time ago, and I would like the privilege at this time of studying my notes as I answer the question.

MR. ROSE Q: You remember the occurrences but not the dates?

A Yes, I do, definitely.

Q When you read the notes is your recollection refreshed?

A Yes.

Q What was the next date when you made any further observations in the case?

A On April 11, 1942.

Q What if anything did you do or observe on that day?

A The next I recall is on April 10th. We arrived in the vicinity of - Mr. J. D. Cunningham and myself arrived in the vicinity of 1350 South El Molino around 7:15 a. m. in the morning.

Q What did you observe?

A We observed the shades drawn down on the house at that time of day. A colored maid arrived about 8:45 a. m. that morning.

A Did you see Mr. de la Fuente?

A At 9:45 Mr. de la Fuente drove out in a red Chrysler convertible sport coupe.

Q Drove out of where?

A Drove out of the driveway of the garage, backed his car out the driveway of the garage located at 1350 South El Molino.

Q Where had the car been?

A In the garage.

Q What kind of a garage was it?

A It looked like a two-car garage.

Q What time did you say he drove out?

A At 9:45.

Q Had you seen him enter that house that morning?

A I had not.

Q The car that he drove out in, had you seen it before?

A Yes, I had seen it before.

Q Where?

A Parked in the rear of 1031 South Broadway, the

rear of the Western Pacific Building.
Q Is that the car that you followed?
A That is correct.
Q When you first made your investigation, when you spoke to Mr. de la Fuente in his office?
A Yes, the same car.
Q And then after he left in that car, left the McKee home, did you see him again that day?
A Well, he drove to the Consular Service and he was alone that morning. He went to his office at 1031 South Broadway, parked his car in a lot on Hill Street back of 1031 South Broadway.
Q Did you see him again that day?
A Yes. At 1:45 Mr. de la Fuente drove out of the parking lot to the Jonathan Club and made a stop, went into the club, came out and went down, drove out Figueroa Street, After passing Figueroa and Sunset, de la Fuente was making about 45 miles an hour. Two motorcycle officers took after him and they saw his license plate, Consular Service on the plates. After observing them the two officers swung away and didn't follow him any further.
Q Was that the same car, the Chrysler coupe?
A That is correct. We were driving slightly on the rear of him and we observed all that at the time.
Q After the officers left what, if anything, did de la Fuente do?
A De la Fuente drove to 1350 South El Molino, the residence of Mrs. McKee.
Q And then what?
A Shortly after that - it couldn't have been long - but shortly after that that same day Mr. de la Fuente drove out with Mrs. McKee and the little boy, Terry, I believe it is.
Q Did he drive in the red Chrysler in which he arrived?
A They were in the red Chrysler, Mrs. McKee and Terry and de la Fuente.
Q They used the red Chrysler?
A They did.
Q Where did they go?
A Well, we don't know. We let them go at that time. Cynthia drove out about the same time in the Oldsmobile car that was parked there. I understand it was Mrs. McKee's sedan.
Q Did you see Mr. de la Fuente or Mrs. McKee or the

child after that, that night or day?
A Just a minute. Pardon me. No. At 6:45 of that same day, 6:45 p. m., Mrs. McKee and the baby arrived in the Oldsmobile sedan. During the meantime, de la Fuente and Mrs. McKee and Terry left in the red Chrysler coupe. During that time we didn't follow them. Shortly after, one of the girls, the McKee girls, Cynthia, got out in the Oldsmobile sedan. We let her go also.
Q Did you see de la Fuente, Mrs. McKee and Terry come back?
A Yes.
Q In what car?
A They came back in the Oldsmobile.
Q And you didn't see what became of the Chrysler coupe?
A No, we don't know what became of it at the time.
Q When did you leave the McKee residence for the night?
A At 10:50 p. m. that night.
Q And you didn't see Mr. de la Fuente and Mrs. McKee and the child return to the house that night?
A Not after they arrived home in the Oldsmobile.
Q I see. They didn't come out?
A They didn't come out. At that time we discontinued.
Q The next day was Sunday, April 12th?
A That's right.
Q Did you go to the McKee residence?
A Yes, we were in the vicinity.
Q What time?
A 7:25 a. m. The shades were down at that time.
Q Did you see anything of Mr. de la Fuente that morning?
A Yes. At 9:40 a. m. Max de la Fuente came out with the McKee baby in the red Chrysler and he drove to the Market Basket near the corner of Fair Oaks and El Centro. De la Fuente left the car and went into the market. De la Fuente made some purchases of groceries in the market and then he entered the car with the baby and drove back to the McKee residence.
Q Did you see the colored maid that day?
A Yes, I did see the colored maid that day.
Q Where did you see her?
A She drove away in a brown sedan.
Q About what time?
A Well, about 12:15, I would say.

Q Did you take her license plate number?
A Yes, 8-J-1556.
Q Did you see de la Fuente later that afternoon?
A Yes. At 4:40 p. m. de la Fuente - of the same day - de la Fuente and Miss McKee, that is, Cynthia, and Mrs. McKee all entered the red Chrysler sedan.
Q Was Terry there?
A Terry? No, I don't recall of the boy being there at that time.
Q Was the Chrysler a sedan or a coupe?
A Well, it was one of those convertibles, convertible.
Q Where did they drive?
A They drove to Arroyo Seco. Mrs. McKee sat in the center between Miss McKee and de la Fuente.
Q Did you and Mr. Cunningham follow?
A We did.
Q In a car?
A Yes, we were in a car.
Q What did you observe, if anything?
A Well, he was driving with one arm - if I recall right - and he had his arm around Mrs. McKee's shoulder. They were affectionate and kissed each other, I recall. Mrs. McKee reached over and kissed him and they were very affectionate back and forth.
Q What else, if anything, did you observe on that trip?
A They drove to 1031 South Broadway, the offices of de la Fuente, and parked the car in the rear of the building in the parking lot. De la Fuente went into his office building and Mrs. McKee and Miss McKee remained in the car at that time. At 5:00 - do you wish me to continue?
Q Yes, please.
A At 5:20 p. m. of that date de la Fuente came out, got into his car and drove to the Los Angeles Athletic Club.
MR. CLOUD: Let the record show the witness is reading from the report.
MR. ROSE Q: You are reading from the same memorandum that you testified to before, concerning which you testified before, the same notes?
A Oh, yes, the same notes.
Q You testified a moment ago that Mrs. McKee and Miss McKee were in the car and then Mr. de la Fuente went upstairs into the office building?
A Yes.

Q Then you say he came out of the office building and drove to the Los Angeles Athletic Club?

A That's right, at 5:20 p. m. de la Fuente came out of his office building.

Q What became of Mrs. McKee and Miss McKee?

A They were waiting in the car.

Q Did de la Fuente drive the car when they went to the Athletic Club?

A That's right.

Q Then what, if anything, did you observe?

A He came out of the Athletic Club - stayed in there around about ten minutes, came out and drove down Sunset Boulevard, west on Sunset to near the Beverly Hills Hotel. Mrs. McKee and he were very affectionate on this drive, as I recall.

Q What did they do?

A I think he had his arm around her and she would reach over and kiss him. We observed that. Very often it happened.

Q After they passed the Beverly Hills Hotel what happened?

A They drove on to the Roosevelt Highway and on from ther to Malibu Beach. They stopped at Muldrin's Cafe and Cocktail Lounge and had a bottle of beer there. If I recall, they were drinking beer. That was around about 6:45 that they were in this place.

Q After they came out of ---

A At the time they were eating in the cafe, just before they came out, we looked into their car. It was parked close by in an open lot and saw some overnight bags. I believe there was three overnight bags and a suit of men's clothing and brief case in the car. That was an open car. Do you want a description of those clothes?

Q If you please.

A Mrs. McKee's blue coat. I later saw her wear it; and a brown dress. Miss McKee had a red coat and a blue suit.

Q Was that what Miss McKee was wearing or what you saw in the car?

A No, what she was wearing that day. De la Fuente was wearing a sport coat and brown trousers and no hat. At 7:35 they left the cafe and proceeded north on Highway 101. We followed them, Mr. de la Fuente, Mrs. McKee and Miss McKee. At 9:30 p. m. they stopped at the Mar-

monte Hotel down the highway. All three went in the cocktail lounge and all had a drink and they came out at 9:45 and drove to Buellton. All went into Skinner's Cafe at this place and sat at a table.

Q Is that in Santa Barbara?

A Near Santa Barbara, I believe, to the best of my recollection. They drank beer at that time, as I recall. I see I made a note of it, too. And they also had something to eat. They left there at 11:05 p. m., they left Skinner's Cafe. They drove on into San Luis Obispo without any further stops. They drove up in front of the Anderson Hotel at San Luis Obispo.

Q That is in California?

A That is California.

Q About how many miles from Los Angeles?

A I don't know the exact distance. I don't recall at this time but it was, say, around 125 miles, I would say, as guessing, although I am not sure of the distance, probably further.

Q Would you say it is near halfway between Los Angeles and San Francisco?

A Yes, it could be.

Q About how far is San Francisco from Los Angeles?

A About 445 miles.

Q All right, then what happened when you saw de la Fuente park ---

A They all three got out and went into the hotel. Miss McKee stepped up to the clerk's desk there and signed a card and was given key 344.

Q Did you see either Mr. de la Fuente or Mrs. McKee register?

A Yes, they all three signed cards, as I recall.

Q Then what happened? Do you know if any one key was ---

A Yes, there was more than one key handed out. The clerk handed out a key to 305 to de la Fuente. I was standing right close and observed this at the end of the desk.

Q Then what did you observe?

A The bell boy took the keys and went up with Miss and Mrs. McKee. De la Fuente didn't go up at that time, as I recall. He went back into the bar and sat down. There is a bar in the rear of the hotel building. That was about 12:35 a. m. in the morning.

Q What morning would that be?

A We got it dated April 12th but that would probably

fall on April 13th. It would be on a Monday morning, the following day. Well, at 3:00 o'clock ---

Q Just a moment, before you get to 3:00 o'clock. Did you register, you or Mr. Cunningham?

A Yes, we did.

Q What rooms did you get?

A I got room 328 and Mr. Cunningham was given 346.

Q On what floor were these rooms?

A On the third floor.

Q All four of them?

A That's correct.

Q Where was room 344 in relation to 305 on the third floor? Those were the two rooms that were given to Mr. de la Fuente ---

A It was kind of right around the corner. If I remember right, 344 faced the main street in the front part of the hotel. It faced the front of the building and there was a turn in the hall. Facing the front of the building would be facing the right hand hall going down. 344 faced the street and 305 was just around the corner about two or three rooms and on the right hand side of the hall.

Q 305 and 344 were not on the same side of the hall?

A 305 and 344 - yes, they were on the same side, as I recall.

Q Only they went around the corner?

A Went around the corner.

Q How many rooms were between them?

A I would say a couple of rooms, possibly three.

Q What was your room number, did you say?

A My room number was 328.

Q Where was that room located in relation to these other two, 344 and 305?

A My room was located close to 305, just across the hall and toward the front of the building, about two rooms, kind of cater-corner across the hall from 305.

Q Where was Mr. Cunningham's room with relation to 305?

A I think he was around on another wing of the building.

Q Was he closer to 344?

A I believe that he was, yes.

Q Where was his room in relation to yours?

A He was clear down around the corner, the L from me.

Q He was farther away from either of these rooms,

344 and 305, than you were?
A Yes. I believe I was approximately closer than Mr. Cunningham, approximately, to 305.
Q Now, you said you observed something at 3:00 o'clock in the morning?
A I was going to say at 3:00 o'clock in the morning we registered, Mr. Cunningham registered at 3:00 o'clock and I registered and received a key for 328.
Q That was at 3:00 o'clock in the morning?
A Along about 3:00 o'clock, yes.
Q What time did you say it was that Mrs. McKee and Cynthia went up?
A After they arrived, and they went right on upstairs.
Q What time was it when they registered?
A After 12:00 o'clock.
Q After 12:00, you said?
A About 12:35, I believe.
Q And then you said that Mr. de la Fuente went into the bar?
A Yes, I believe he went in the back of the bar there.
Q From 12:35 when he went into the bar did you see Mr. de la Fuente again up to 3:00 o'clock when you got your rooms, you and Mr. Cunningham?
A Yes. Mr. de la Fuente - I didn't observe him after he left the bar, but I did see him come down in the elevator early that morning and he came out with the bell boy and took his baggage. This all happened within a few minutes.
Q What time did you see him come down in the elevator?
A Shortly after 3:00 o'clock in the morning.
Q Was that after you had your room assigned to you?
A I believe it was, yes, as I recall.
Q Then you say Mr. de la Fuente, after he came down, took his bags upstairs?
A Yes, with the bell boy, took his bags - no, he went out and took his bags out of the car and then went back in the elevator.
Q When he went back on the elevator was anybody with him?
A No, I don't think there was. I think he went up by himself. The bell boy took his car for him and put it in the garage somewhere, if I remember right. He drove the car off and de la Fuente went on upstairs.
Q Where were you and Mr. Cunningham when Mr. de la Fuente went upstairs with the bags?

A I was in the front part of the lobby at that time.
Q Where was Cunningham?
A He was inside the building close by.
Q After de la Fuente went up in the elevator with his bags what, if anything, did you do?
A I went on outside. Mr. Cunningham had to put in a call to Los Angeles, called the attorneys, I believe, in regard to this matter. I stayed and he went down looking for a phone. I could observe the room that - I think it was room No. - I will give it to you. I could observe room 344 from the street as it faced the front of the hotel.
Q Whose room was that; do you know?
A That was Mrs. McKee's room.
Q What did you observe?
A I observed them going back and forth.
Q Who were "they"?
A Well, I would say the daughter and de la Fuente were the stiletto. For a while the blind was up that far (indicating).
Q How far was indicated?
A Probably eight or ten inches, probably more. I could observe her because I was down below.
Q Who?
A Mrs. McKee. Shortly after they pulled the blind down. Of course, I was still outside and I could see the stilletto coming and going in and out of that room. That was when Mr. Cunningham was away. He was using the telephone.
Q How long was Mr. Cunningham telephoning?
A As I recall, he was gone 25, 30 minutes.
Q And you were observing the window of 344?
A I was at that time.
Q When Mr. Cunningham came out of the booth, telephone booth, was it?
A I don't know where it was.
Q When he came back what did you do?
A I called his attention to this and told him about it.
Q Then what did you do?
A I believe at that time I went up and went to the room at that time, as I recall it.
Q Your room?
A My room, yes.

Q Did Mr. Cunningham go up in the elevator with you?
A Yes, I believe that he did at that time.
Q When you went up to your room did you observe anything with respect to room 344 or 305?
A I could hear at room 305 talking and the door kept opening and closing. I knew that de la Fuente was going back and forth.
Q Back and forth where?
A Down the hall to the front of the hotel.
Q Did you see him do that?
A Yes, I did; on one occasion I did. I had my door a little open. They were flittering back and forth between the rooms, see.
Q What time was it when you saw de la Fuente going between 305 and 344?
A That must be 3:30 in the morning, maybe a little later. I don't recall now, but I think around that time, about 3:30.
Q What time was it when you heard them walking back and forth between the rooms?
A Around 3:30.
Q What time was the last that you heard anything or saw anything that night or morning with respect to those rooms? Was that the conclusion, 3:30 a. m.?
A At that time - I would like to state this: at the time that I observed the occupants of room 344, I knew it to be Mrs. McKee's room. And when I could see the stiletto with their arms around each other.
Q Whose arms were around who?
A The lady - the man's arms were around the woman. They were very close together.
Q Did you observe what Mr. de la Fuente was wearing at 3:30 in the morning when he went from room 305 to 344?
A What she was wearing?
Q What he was wearing.
A If I remember right, he was fully dressed.
Q Could you observe through this silhouette when you say you saw de la Fuente have his arms around Mrs. McKee what she was wearing, whether she was fully dressed or not?
A I couldn't determine at that time.
Q What, if anything, did you observe at 3:30 that morning?
A After 3:30 that morning I didn't observe anything.

I went to bed.
Q What time did you get up?
A At 7:00 in the morning, the next morning.
Q What did you observe then, if anything?
A Well, I could hear some talking in room 305. I don't know just who was in there but I could hear some talking in there.
Q Could you tell from the voices whether it was a male ---
A Yes, it was male, and I could hear a woman's voice occasionally. The man's voice had a foreign accent. I would say Spaniard.
Q You had heard Mr. de la Fuente speak before?
A Oh, yes. I had had a conversation with him before.
Q Could you identify it?
A I would say it was Mr. de la Fuente's voice that I heard, although I didn't see him at the time. The door was closed.
Q Have you heard Mrs. McKee talk?
A Only at that time.
MR. CLOUD: What do you mean, "at that time"?
MR. ROSE Q: At the time you say you heard the man talk with the woman?
A Yes. That was the next morning.
Q About 7:00 o'clock?
A Yes, about 7:00 o'clock in the morning I heard the conversation between a man and a woman. I could recognize his but I didn't know who the woman was.
Q Could you make out what was being said?
A No, I couldn't.
Q All you did was hear the voices?
A That's all.
Q On that Monday morning did you see de la Fuente?
A Yes. At 10:30 that morning, that is, on April 13th, Monday, Mrs. McKee and Miss McKee, Cynthia, left the hotel and took a walk. They were dressed in slacks.
Q Had they been dressed in slacks the night before?
A No, they had not. They put on slacks.
Q Did you follow them?
A They walked around there just looking around the windows of this little town, a very small place.
Q Was anyone with you?
A Mr. Cunningham was with me at that time.
Q Then what happened?
A Well, they were on the street for a short time, probably this being 20, 30 minutes, I don't recall at

this time, but they came back to the hotel and my next - the next time I observed anything was at 11:30 a. m. De la Fuente was in the lobby with a man named Ira.

Q A man named what? I-r-a?

A Yes. I heard him call him Ira, anyway.

Q They were talking?

A Yes.

Q All right.

A At that time he introduced de la Fuente to members of the Rotary Club. The lobby was filled up pretty well, a convention or something. The lobby was filling up with people at that time.

Q What then happened?

A He was introduced as Consul from Peru.

Q Who was introduced?

A De la Fuente.

Q He was introduced to whom?

A To several there.

Q As the Consul from Peru?

A That is correct.

Q Who introduced him?

A This fellow Ira he was with.

Q Then what did you observe?

A He seemed to be a local man, I would say. What was your next question?

Q Then what did you observe, if anything?

A Well, de la Fuente made lots of bows and a lot of shaking hands, and he carried a folder at that time under his arm.

Q Did you observe any label on this folder or any print?

A Yes, there was A-m-o-c-h-i-e-s, I believe, on it.

Q And then what happened after that; after all of these introductions what happened?

A He was introduced as a speaker. The next I observed was Mrs. McKee and Miss McKee. Of course, they were back at that time.

Q Yes.

A That was about 11:55, I would say, in the morning. They got in the car at that time, Miss McKee and Mrs. McKee, and they drove away, just the two of them in the Chrysler.

Q Yes.

A The baggage had been put back in the car at that time.

Q Who put the baggage back in?

A I think he brought it out. The bell boy had some. There was a couple of three bags - three bags, I believe.
Q Where was de la Fuente?
A I believe at that time he was tied up with a lot of speakers and lots of people there in the lobby.
Q Then what happened?
A Mrs. McKee and Miss McKee got in the car and drove to an Army camp near there; as I recall, about 8 miles out of town. They couldn't go into the camp and they returned to the hotel. De la Fuente came out and got in the car. When he came out he took the wheel.
Q Did Mrs. McKee take the same seat between Cynthia ---
A Yes.
Q Then what happened?
A He drove out on Highway 101 towards Los Angeles.
About 10 minutes out, traveling south on Highway 101, he all of a sudden started to turn around and turned around and drove back to San Luis Obispo.
Q To the starting point?
A Yes. That was about ten minutes out then. He drove back to the hotel. He came out and went in and came out with a brief case.
Q Probably forgotten it. Was that the same one he had before?
A Yes, I believe it was the same one. They then drove south on Highway 101.
Q Were the three of them in the same car at the time in the same position?
A Yes, Mrs. McKee in the center and Cynthia on the right and de la Fuente under the wheel.
Q Then what happened?
A They started south on 101. We would catch up with them once in a while. We knew they were headed back to Los Angeles and weren't concerned about staying too close. He was a fast driver, as I recall, hard to keep up with. They stopped at Santa Barbara. It was the first time we contacted them. They went in the Top Hat Cocktail Lounge and Cafe. It was about 5:15 p. m. and they left at 6:45. De la Fuente and Mrs. McKee appeared to be feeling pretty good. They appeared to be having a little argument before they got in the car. It seemed like Mrs. McKee wanted to go back in the cocktail lounge and he didn't want to. He got her by the arm and got in the car and everything was rosy again.
Q You said somebody was feeling pretty good?

A I say, Mrs. McKee, from my observation, more so than he.

Q What did you observe?

A They got outside by the car and she wanted to go back in the cocktail room. It seems like they had a hard time persuading her to come out in the first place. They were by the car and she started back in and finally they started to get back in the car and away they went. They left at 6:45. De la Fuente sure burned the road up after leaving this Top Hat Cocktail Lounge. We just simply lost contact with him. But when we arrived at El Molino Street, the address of Mrs. McKee, they were home. The car was there.

Q You saw the car in which they were driving? That was the Chrysler?

A Yes, I believe I saw the Chrysler. It hadn't been put up yet.

Q How long did you remain at Mrs. McKee's residence?

A Around about 10:40.

Q Did you see anyone come out of the house?

A Nobody at all.

Q When did you next make any investigation?

A On September 2, 1944. I was called back on this case and Mr. Cunningham and I observed Mrs. McKee and the young lad, boy.

Q Terry?

A Terry McKee and Mrs. McKee, and they were stopping at a hotel on Franklin. I will give you the name of it, near Franklin.

MR. CLOUD: Where was that stop?

THE WITNESS: I will give you the name of that place in a minute.

MR. ROSE Q: Hollywood?

A It was the Hollywood Franklin, I believe is the name of it. That is at Hollywood.

Q Where was Mrs. McKee when you first saw her on September 2nd, 1944? Is that the date?

A Yes, that is correct. I saw her leaving the building.

Q Which building?

A The hotel building in the morning, in a cab at that time. She left in a cab at that time.

Q You were not with Mr. Cunningham?

A At that time I was alone.

Q You were not with Mr. Cunningham when Mrs. McKeee

went into the hotel?
A No, no.
Q You didn't observe what happened on September 1st?
A No, I didn't. I was called on September 2nd.
Q I see. And you were working on it that day alone?
A I was.
Q What year was that?
A September 2, 1944.
Q What did you observe?
A I observed Mrs. McKee leave in the morning.
Q With whom?
A By herself at that time, came back toward the evening. During that day, though, while in the absence of Mrs. McKee, Miss McKee came out with Terry and they would be around the neighborhood. I think there is a drug store a couple of blocks down the street. They would be down there for ice cream sodas. On September 3rd Mrs. McKee, however, arrived home that night. I understood she was on some litigation, some deposition taken at that time, and she was down town busy with her lawyers but I was put on the job out there to observe the movement of the boy and Miss McKee to see what happened. September 3rd, the next day - let's see. Let's finish on September 2nd. Here I have a note on September 2nd. September 2nd there is a Mrs. Butterfield called there, picked up Mrs. McKee - Butterly is the person. She also lived at that hotel. They drove a Mercury car, a sedan, and they left and drove out Wilshire to Hollywood Boulevard, on Western Avenue, to the Franklin, 6141 Franklin Avenue. That's Hollywood.
MR. CLOUD: That is, September 2nd?
THE WITNESS: September the 2nd.
MR. ROSE Q: What was this place that they drove to?
A They drove on Wilshire to the Hollywood Bowl.
MR. CLOUD: Hollywood Bowl?
THE WITNESS: No, no, no. Just a moment. I will give it to you.
MR. ROSE Q: What notes are you looking at now?
A Some notes that I made in regard to September 2nd.
Q Are those in your own handwriting?
A Yes.
Q Will you please refer to the notes in Mr.

Cunningham's handwriting and see if he has anything on that date.

A He has nothing on that date, I don't think. He has nothing on that date. These are my notes of a later date, September 2nd and September 3rd. It was my observation at that time - all I observed was - I didn't see Mrs. McKee - whether it was on the 2nd or 3rd, she left with a coupe, with a lady by the name of Mrs. Butterfield. On September 3rd they drove to the Lido, parked about two blocks away from the Franklin. A young man drove them over. They proceeded to the Lido apartments. They had the baggage at that time and they went into the Lido. A young man came out, got in the car and drove away. It seemed she was moving at that time.

Q Do you know where she had been living before she went into this Hollywood hotel?

A Yes. It was the Franklin Hotel, I believe, Hollywood Franklin, a hotel at ---

Q Where she had been living?

A Yes, a hotel apartment.

Q Did Mrs. Butterly have anything to do with the hotel apartment?

A I believe she lived there.

Q Do you know whether or not she lived with Mrs. Butterly?

A I don't know that, although I saw them together in the car on one occasion.

Q Was the hotel that you say the boy drove out of to the Lido - was there an intermediate place she lived at?

A She moved to the Lido. At the time she moved she was moved with her baggage.

Q I want to know, are there three places here that you testified to?

A No, only two.

Q Did she stop at any place intermediate, between the time she moved out of the Butterly place and then to the Lido place; was there an intermediate place where she stopped overnight?

MR. CLOUD: The witness testified she stopped at two places.

THE WITNESS: At this time I don't recall that movement. I know it was close by, the hotel that she moved, the Lido was close by her residence when I came on the

job there to observe her.
MR. ROSE Q: Did you observe anything further?
A Nothing further. At that time I waited around there, and, as I recall, at that time Mr. Cunningham was with me. This has been a long time ago and it is hard to recall that particular phase of the case.
Q After September 3rd did you make any further observations?
A No.
Q Did you say Mr. Cunningham was with you on your operation on September 1st, 2nd and 3rd?
A I believe he was there on one or two occasions, came down and then left. I was permanently there all the time, from morning to evening.
Q You knew at the time, didn't you, and now know that the place where Mrs. McKee lived before she went to the Lido was where Mrs. Butterly lived?
A That's right, they were stopping at the same place, that's right.
Q Mrs. Butterly didn't live at the Lido Apartments, did she?
A No; she lived at the same place that Mrs. McKee lived, the same hotel apartment.
Q You don't know whether before Mrs. McKee went into the Lido Apartments she was in another hotel overnight?
A I don't recall it.
MR. ROSE: All right, you may examine.

CROSS-EXAMINATION

BY MR. CLOUD:

Q Mr. Davidson, you have testified to some incidents which you claim occurred on September 1st, 2nd and 3rd of 1944, or was that September 2nd and 3rd?
A That is September 2nd and 3rd, from my notes.
Q You were on the job from morning until evening?
A That's right, from morning until evening.
Q Did you have a car or were you stationed there?
A No, I was afoot at that time. Mr. Cunningham was in the car. If I remember right, he dropped me off there.
Q He came and picked you up at night?
A No. He called back several times during the day

to see if anything had resulted of any consequence.
Q Where did you stay the night of September 2nd?
A Where did who stay?
Q Where did you stay on September 2nd, the night of September 2nd, 1944?
A Where I stayed?
Q Yes.
A Well, to the best of my knowledge, I stayed at my home, I guess.
Q Where is your home?
A 1915 Longwood.
Q Where was it on that date?
A As I recall, I was staying there. I worked around in various places and I would be around.
Q How far is that from the Hollywood Franklin Hotel?
A Where I stay, where my home is?
Q Where you stayed on the night of September 2, 1944.
A Well, I imagine about four or five miles.
Q Who took you home?
A I don't recall at this time.
Q You didn't have your car?
A No, I did not.
Q What time did you go to work on September 2, 1944?
A In the morning around about 7:30.
Q Where did you start your operation that day?
A In the vicinity of this hotel.
Q The Hollywood Franklin Hotel?
A That's right, near the corner there, close around the corner, moved up and down. I was afoot at the time, as I recall.
MR. CLOUD: Let the record show that counsel, Mr. Rose, is taking a few minutes recess.
(A short recess was taken.)
MR. CLOUD Q: Mr. Davidson, you were put on the job there by Mr. Cunningham about 7:30 in the morning on September 2nd?
A Around about that, as I recall it.
Q When did you leave there?
A In the evening.
Q What time?
A If I remember right, right around about 6:00 o'clock in the evening, 5:00 or ---
Q Did you go back in the evening?
A No.
Q What time were you left there on the job on September 3rd?

A I don't recall that time, I am sorry to say. I can't recall it at this time.
Q What time did you leave your job there on September 3rd, if you recall?
A If I remember right, it was in the evening.
Q Would it be late in the evening or early evening?
A I would say 5:30, 6:00 o'clock.
Q Where did you stay on the night of September 3rd?
A Well, as I remember it, probably stayed home.
Q Did Mr. Cunningham come and get you or did you go home on the street car?
A I don't recall that.
Q You recited everything that you recall about the incidents on September 2nd and 3rd, 1944?
A Everything that I can recall at this time.
Q You have known for some time you were going to be called as a witness; is that right?
A Yes, I knew that. Mr. Cunningham called me and told me that.
Q How long ago did he call you?
A Oh, several days ago.
MR. CLOUD: Let the record show that the witness is reading from some affidavit, some paper handed him by Mr. Rose.
Q Now, Mr. Davidson, did you make a report on September 2nd and September 3, 1944, to Mr. Scott?
A To Mr. Scott?
Q Yes.
A I am reading from --
Q Just answer the question, please.
A Yes, go ahead.
MR. CLOUD: Read it again, Mr. Reporter.
(The question was read by the reporter.)
MR. CLOUD Q: Did you, Mr. Davidson?
A Just a minute. I would like to have a few minutes at this time to refresh my memory. I've depended on these notes of Mr. Cunningham and myself and I haven't got those original notes in front of me and I would like to refresh my memory in this matter, this September 2nd and September 3rd of 1944.
MR. CLOUD: Let the record show that the witness is reading from two typewritten sheets of paper handed him by Mr. Rose.
THE WITNESS: After refreshing my memory I will make you a statement in regard to what occurred on that date.

This has refreshed my memory as to what did occur on that date.

MR. CLOUD: Q May I conduct my cross-examination before we get through with your statement, Mr. Davidson?

A This is part of your cross-examination?

Q This is my cross-examination. If you wish to make any statement, you can make it in direct response to Mr. Rose's questions on redirect.

A You want to cross-examine in regards to the dates of September 2nd ---

Q If the witness will just put the paper down, I will examine the witness.

A If you will let me finish this, I will be glad to answer your questions. Well, I am a little confused on these two dates, but from what I am reading now, these notes bring these things back to my memory, what occurred that date, and I would like to be allowed at this time to testify as to those two dates, September 2nd and September 3rd.

MR. ROSE: You want to correct your testimony?

THE WITNESS: That's correct.

MR. ROSE: You want the record to show what ---

MR. CLOUD: Wait until I finish. If the witness will put down the sheet of paper.

MR. ROSE: Are you through reading?

THE WITNESS: I am referring to it. No, I didn't. I have been interrupted too many times. I haven't had a chance to.

MR. ROSE: Have you finished reading it?

THE WITNESS: Yes, I have finished reading it.

MR. ROSE: Have you finished reading the other side?

THE WITNESS: No.

MR. ROSE: Why don't you finish it?

THE WITNESS: All right.

MR. CLOUD Q: Are you ready to continue?

A Yes, go ahead.

Q Mr. Davidson, did you make a report of what you saw or claim to have seen on September 2, 1944, and September 3, 1944, to Mr. Joseph Scott?

A We made a joint report at that time, Mr. Cunningham and myself, as I recall.

Q To whom?

A The attorneys we were employed by.

Q Who were they?

A I believe Mr. Risse and Mr. Scott.

Q Was that a typewritten report?

A I don't recall at this time whether it was or not.
Q Did Mr. Cunningham keep a separate report, distinct and separate from the one you made?
A He may have.
Q Do you know whether or not he did?
A He may have.
Q You testified he made a joint report.
A We made joint reports, that's right.
Q Did you see his?
A On September 3rd and September 4th, I don't recall. As I say, it is hard to remember those dates.
MR. CLOUD: The witness has in his hands two sheets of paper on which are apparently longhand notations in pencil.
Q Now, Mr. Davidson, are those notations in your own handwriting?
A These are in my handwriting, yes.
Q So far on cross-examination you have testified in response to my questions from the notes you made in longhand in your own handwriting?
A Yes. These notes are made in my own handwriting. I might say that I was trying to bring ---
Q Those notes were made on September 2, 1944?
A They were not.
Q When were they made?
A A day or two ago.
Q After Mr. Cunningham called you?
A Yes, they were.
Q Did you discuss the matter with Mr. Cunningham?
A I didn't go into it very much, no. He asked me to recall if he called me on that particular day. He asked me to recall ---
Q When was the first time you talked with Mr. Cunningham since January 1st of this year?
A I talked to Mr. Cunningham regarding the case, I think it has been ten days ago.
Q He told you that you were going to be called as a witness to testify here, did he?
A That's right, a telephone conversation.
Q Did you talk to him personally since that telephone conversation?
A I have.
Q Where at?
A Downstairs before coming up to this office.
Q How many times, if any, more than once?

A I think I met him on one occasion.
Q How long did that conversation take?
A Not long, a matter of a few minutes.
Q Five minutes or fifteen?
A It might have been five minutes.
Q Did he have his notes with him?
A If he did, I didn't see them at that time.
Q Did you discuss the September 2nd and September 3rd matters?
A He asked me if I remembered that and I said I would try to recall to my memory just what took place at that time.
Q You did so and you made these notes that you have in your hands?
A Partly so here, just partly so. It doesn't cover the whole situation, but after reading the affidavit that has been placed in front of me by Mr. Rose I can recall the things a little more fully that took place on those two days.
Q Now, on September 2, 1944, did you go into the lobby of the hotel, the Hollywood Franklin?
A I was in the lobby of that hotel.
Q Did you go in there alone?
A Mr. Cunningham was there, I believe. We went in a few minutes apart.
Q Sometimes you went in together?
A If I remember right, when I made a trip in there I saw Mrs. McKee eating.
Q Did Mr. Cunningham go in with you at any time?
A He may have. I don't recall at this time.
Q Did you ever register in that hotel?
A I did not.
Q Did you examine the register?
A I was upstairs with Mr. Cunningham and I think he made some sort of an examination.
Q The clerk's office is on the second floor; is that right?
A That's right. We went upstairs and he made some inquiry. If he registered I don't recall. I don't think he did.
Q Did you examine the register to see whether or not Mrs. McKee was staying there?
A Yes, I think that he did. The fact was that she was staying there because I have seen her there and the little boy came downstairs with the daughter on several occasions.

Q The boy you speak of is Terry?
A Terry, the son.
Q And you saw Mrs. Butterly there?
A Yes.
Q That is the woman that you sometimes referred to as Butterfield?
A Butterly or Butterfield.
Q But is just the same person, whether it is Butterly or Butterfield?
A I imagine it is the same person.
Q You stated that Mrs. McKee left the hotel several times on September 2nd and 3rd in a taxi or sedan?
A I remember of her going down town and she arrived once in the taxi and on one occasion she had been down town. I understand there was litigation going on down there, or some affidavit being taken, or some court action, or ---
Q Who told you that?
A I think Mr. Cunningham told me that.
Q What time of day was it when Mrs. McKee left the Hollywood Franklin Hotel and went to the Lido?
A Well, it was early in the morning sometime.
Q Was it before 8:00 o'clock?
A Yes, I believe it was, yes. I recall it was fairly early.
Q Were you there when she left?
A As I recall it, yes, I was there; yes, I was there.
Q And Mr. Cunningham was there with you?
A Yes, Mr. Cunningham was there too.
Q How did you go? Did you follow her from the Hollywood Franklin to the Lido?
A Yes, I believe we did.
Q Did you walk or did you go in a car?
A We went in a car, if I remember right.
Q Who transported her from the Hollywood Franklin Hotel to the Lido?
A There was some young boy drove her in a car.
Q Taxi?
A No, it wasn't a cab. As I remember, it was a coupe.
Q A coupe?
A Yes. Some young boy about 15, some young fellow.
Q Do you know a boy by the name of Terry Alexander?
A No, I don't recall anyone by that name.
Q Did you know that Mrs. McKee had a son by a former marriage about 17 years old at that time?
A No, I wasn't aware of it.

Q You made these reports to Mr. Scott and Mr. Risse either jointly or separately on September 2nd and 3rd or a day or two thereafter, did you?
A Jointly with Mr. Cunningham. We would talk it over and discuss the case and the developments for that day and that evening, why, we would make the report from the notes.
Q And room 344 is on the west side of the hotel, being an outside room?
A Yes, that's right.
Q Were you with Mr. Cunningham all the time while you were in the Anderson Hotel?
A A good part of the time except when I was laying down getting a little rest.
Q Did you observe where Mr. Cunningham went to telephone?
A No, I didn't, because I was standing in the front of the hotel across the street looking up at that window when he went to telephone.
Q Did he tell you he was going to telephone?
A Yes, he did.
Q Where were you at the time he told you he was going to telephone?
A Across the street from the hotel.
Q Were you looking across the street when he said he was going to telephone?
A That's right.
Q And were you across the street watching room 344?
A That's right.
Q And the shades were up?
A They were up for a little while but they were drawn down.
Q How long were they up?
A A few minutes, maybe 15 or 20 minutes.
Q When they were pulled down they were pulled clear down?
A Yes.
Q Were the lights on or off?
A On.
Q How long were the lights on?
A Well, I couldn't say because I went to bed.
Q What time of night or morning was this?
A After 3:00 o'clock in the morning.
Q And you saw ---
A Wait a minute. That was earlier. It wasn't 3:oo o'clock. It was before 3:00 o'clock, after we arrived

and they registered and the women went on up and we came outside and Cunningham left me outside and he went down to use the phone, so it couldn't - it was about 1:00 o'clock in the morning.

Q 1:00 o'clock in the morning?

A Or a little after 1:00.

Q You stayed there until the lights went out?

A I don't remember at this time.

Q When Mr. Cunningham came back did he stop there and talk with you?

A He did.

Q And you told him about it?

A I told him what I had seen.

Q Did he observe anything?

A I believe he did.

Q He could see the same thing?

A With the blind down.

Q He could see a silhouette of a man and a woman with their arms around each other?

A They were in and out of the room, several people going in and out.

Q Could you tell who they were?

A No. You could see the stiletto of a man and a woman.

Q Could you identify the man from the silhouette?

A Not definitely, no.

Q Could you identify the woman from the silhouette?

A I can identify her only as a woman.

Q What is that?

A I can identify her as a woman only.

Q Was there more than one woman?

A There could have been.

Q You don't know?

A It seems like there was several going in and out.

Q Several women?

A Two women going in and out.

Q What do you mean, "two women"? They would go up and stand by the window?

A By the window. I could observe them as they were going back and forth by the window. Sometimes the man and woman would stop in front of the window and he would put his arms around her. That was early in the evening.

Q Shortly after 1:00?

A I believe a little after 1:00 o'clock by that

time.

Q Did you see the man kiss the woman?

A They had their arms around each other, standing up pretty close to each other.

REDIRECT EXAMINATION

Q All right. Now, as respects the investigation on September 2nd and September 3, 1944, you did not have before you any notes that were made on the nights of those occurrences?

A Nothing to refresh my memory.

Q You had these two sheets that you told Mr. Cloud that you made two days ago?

A That's right.

MR. ROSE: These may be marked as Respondent's Exhibit 4 for identification, consisting of two small sheets.

(The instruments in question are annexed hereto, marked Respondent's Exhibit 4 by the Clerk, James P. Pino.)

MR. ROSE Q: When you made these notes in your own handwriting, just marked Respondent's Exhibit 4, did you have before you the notes that were made on September 2nd and September 3, 1944?

A No, I didn't have anything at that time, at the time that I made those two notes. I was trying to recall to my memory the events of September 2nd and 3rd.

Q And you noted what you recalled out of your own memory?

A That's right. I had no notes to refer to on those two particular dates.

Q Now, Mr. Cloud has made note in the record that you were reading from two pages. Did you make an affidavit of the facts that occurred on September 2, 1944, and September 3, 1944?

A I may have at that. I just don't recall it at this time. I don't recall it.

Q Do you recall that the two pages that Mr. Cloud referred to is a copy of an affidavit you signed in March, 1947?

A March, 1947 yes, I do. Now I recall it. I recall this affidavit.

Q Now, at that time were the incidents of September 2nd and 3rd, 1944, clear in your mind?

A Yes, they are clearer now that I have read these particular notes.
Q When you made the affidavit did you have before you the notes that were made on September 2 and 3, 1944?
A Yes. We had the sheets of notes at that time, if I remember. I had entirely forgotten about this thing.
Q And you referred to those notes when you made that affidavit?
A Yes.
Q Now that you have read the affidavit have you refreshed your recollection as to what happened?
A Somewhat. I was a little bit interrupted here a while ago when I was trying to read it.
Q Can you state on September 2, 1944, where you first took up the investigation?
A Yes, I can by referring to this affidavit.
Q Where was it?
A We took up surveillance on apartment residence at 438 North Maple Drive, Beverly Hills.
Q Is that where Mrs. McKee and Mrs. Butterly lived at that time?
A Yes. Her son Terry was also there.
Q That was an apartment residence; is that right?
A As I remember, it was.
Q At what time did you take up yo ur surveillance?
A Around 5:00 o'clock.
Q In the evening?
A In the evening, yes.
Q Whom did you observe leaving that apartment residence on September 2, 1944?
A Mrs. Butterly and Mrs. Evelyn McKee and her minor son Terry.
Q Cynthia wasn't there at all?
A No.
Q And they left in what, a car?
A In an automobile, a Ford or Mercury car. I believe it is a Mercury.
Q Whose Mercury was that; do you know?
A I believe it was Mrs. Butterly's car.
Q Did they drive away in that Mercury from the apartment residence?
A They did, yes.
Q What did you and Mr. Cunningham do?
A Well ---
MR. CLOUD: Let the record show that the witness is

reading from the document handed him by Mr. Rose.
THE WITNESS - Well, the car was driven east on Wilshire Boulevard.
MR. ROSE Q: What did you and Mr. Cunningham do?
A We followed.
Q Then what happened?
A The car finally turned on Hollywood Boulevard to a point near Western.
Q After driving east on Wilshire Boulevard; is that right?
A It turned north to Hollywood Boulevard and then east on Hollywood.
Q After going east on Hollywood Boulevard and having parked and waiting for five minutes, what did that car do?
A The occupants sat there in the car looking around.
Q And then what did they do? Where did they drive?
A They drove ahead a short distance and proceeded west on Hollywood Boulevard.
Q After having gone east they went back west?
A That's right.
Q Reversed their direction, did they?
A Yes.
Q That was after they had parked the car for five minutes and were looking out the window?
A Yes.
Q Had you observed anything when they were driving and you were behind them?
A It seemed like they were looking back out of the car.
Q Through the window?
A Through the window, yes.
Q After they drove west on Hollywood Boulevard, what happened?
A They turned north to Franklin.
Q Yes.
A And then west on Franklin until they reached the Hollywood Franklin Hotel.
Q That was the first time you followed Mrs. McKee to the Franklin Hotel, was it not?
A Yes, I recall that now.
Q Then what did Mrs. McKee do, if anything?
A Stopped at the entrance to the hotel and stopped at the door with her baggage.
Q Did she have baggage with her?
A Yes.

Q How many bags?
A I don't recall. I recall them taking baggage out of the car.
Q Then what did she do with the child and the baggage?
A Mrs. McKee and Terry got out of the car and stopped in front of the entrance to the hotel and Mrs. Butterly drove away right away.
Q She left the child?
A Yes.
Q Then what happened to Mrs. McKee and the child?
A They went into the hotel.
Q Where were you when Mrs. McKee went into the hotel with the child Terry?
A We were parked near the hotel entrance, as I recall it.
Q Did anyone help Mrs. McKee with the baggage?
A I don't recall that they did.
Q When you were parked where were you parked in the car when Mrs. McKee went into the hotel?
A Well, we were right there close by. At this time, Mr. Rose, I don't recall.
Q But you were in a car?
A Yes.
Q That you had driven in when you were following?
A Yes.
Q What, if anything, did Mr. Cunningham do after Mrs. McKee went into the hotel?
A What did he do?
Q Yes.
A If I remember right, he was there in the car with me, stayed in the car with me. He might have left the car. I don't remember just now just what he did do, whether he drove on or ---
MR. CLOUD: Let the record show that Mr. Rose is pointing to certain paragraphs in the affidavit in the presence of the witness, calling the witness' attention to ---
THE WITNESS: Mr. Cunningham did get out of the car and followed them to the hotel.
MR. ROSE Q: After looking at the copy of your affidavit you remember distinctly that Cunningham got out of the car and followed?
A Yes, he did at that time. I remember now that he did.
Q He followed Mrs. McKee and the child into the hotel?

A He did.
Q After that happened what did you do, if anything, what further observation did you make that night, if any?
A Well, we stayed near the hotel until around 12:15 a. m.
Q Until that time what did you observe?
A We left then. We discontinued our operation at that time.
Q After 12:15 when you left did you observe whether or not Mrs. McKee had come out of the hotel at all?
A She had not. I remember we discontinued operations as we waited and no one showed.
Q Later that morning did you go back? After 12:15 a. m. did you go back? That would be September 3rd.
A Yes, September 3rd, about 6:00 a. m. in the morning.
Q What did you do?
A We proceeded to the Hollywood Franklin Hotel.
Q That was the same hotel where you saw Mrs. McKee with her child?
A That's right.
Q At 12:15 when you were waiting around did you see Mrs. Butterly again after she had left Mrs. McKee?
A No, I didn't see Mrs. Butterly any more. Mrs. McKee came out of the place with a boy around 10:00 o'clock.
Q On September 3rd?
A Yes, on September 3rd.
Q Did she have anything with her?
A Yes, they had their baggage with them.
Q Did anyone carry the baggage?
A Yes, a young man was with them to help with the baggage.
Q Then what happened?
A The young man got in the car and drove Mrs. McKee and Terry to the Lido. This affidavit brings it back to my memory now.
Q That was the first time that you had followed Mrs. McKee to the Lido Apartments?
A That's right.
Q And the only time you saw her in the hotel was the night before when she entered and the following day when she left?
A That's right.
Q And you didn't see Cynthia there at all?

A No, just Mrs. McKee and the boy.
Q Are you clear on the incidents that happened on September 2nd and September 3rd?
A Yes.
MR. ROSE: Mr. Cloud, we already have a stipulation in the record that, subject to objection as to materiality, either side may use on the trial herein and introduce in evidence the Code of Civil Procedure, the Civil Code and shall we also add the Probate Code?
MR. CLOUD: Yes, that is satisfactory.
MR. ROSE: Which are published under the title of Deering's Codes, by Bancroft-Whitney of San Francisco, California; also the California Appellate Court Reports, the California Supreme Court Reports, and the Pacific Reports.
MR. CLOUD: That's right.
MR. ROSE: May we add to that also the Pacific California Reports? They have a special publication referring to California Reports, as distinguished from the reports of numerous other states. And may we also include the United States Supreme Court Reports, appearing in the United States Supreme Court Lawyers Edition published by the Lawyers Cooperative Publishing Company, Rochester, New York, and may it be stipulated that all these reports of decisions are commonly used by the courts and by lawyers throughout the country, that they are true and correct transcripts of the decisions of the several courts, and are used in courts, and may be used in this case by either side, if material.
MR. CLOUD: Yes.
MR. ROSE: Furthermore, at the suggestion of Mr. Cloud, we wish to also stipulate so as to include what we call Advance Sheets, sometimes known as ACA, meaning Advance California Appellate Reports, or AC, meaning Advance California Supreme Court Reports. These advance sheets are pamphlet editions of the decisions of the courts distributed in advance of the bound volume. It is stipulated that these may be used, if material. United States Supreme Court Opinions are also published in Advance Sheets known as the Supreme Court Lawyer Edition Advance Opinions, published by the Lawyers Cooperative Publishing Company of Rochester, New York, and these too may be included in the stipulation.
MR. CLOUD: So stipulated.
MR. ROSE: It is stipulated that any exemplified

record of the proceedings in the case between the parties in the Superior Court of the State of California or in the District Court of Appeal or in the Supreme Court of the State of California may, if otherwise admissible on the ground of materiality, be received, and no objection will be made thereto because they are only exemplified; no point will be made that the record is incompetent because not otherwise authenticated.

MR. CLOUD: They may be received subject only to objections of materiality and relevancy.

MR. ROSE: That is correct.

MARY VERONICA CUNNINGHAM - Defendant's Witness - Dir. Exam.

BY MR. ROSE:

Q Will you state your full name?
A Mrs. Mary Veronica Cunningham.
Q Where do you reside?
A 4905 South Wilton Place, Los Angeles.
Q California?
A California.
Q You are the wife of Bernard J. Cunningham?
A Yes, I am.
Q How long have you been such, Mrs. Cunningham?
A 38 years the 2nd of June this year.
Q What is your vocation?
A Housewife.
Q Has that been your vocation ever since your marriage?
A Yes, it has.
Q You have never been an investigator?
A No, I have not.
Q Do you know the petitioner Evelyn McKee?
A Yes, I do.
Q When did you first see her?
A April 18, 1942.
Q Where?
A At 1350 South El Molino Drive.
Q In what city and state?
A Pasadena, California.
Q You say the first time you saw Mrs. McKee was at the residence of Mrs. McKee in Pasadena?
A Yes, that's right.
Q How did you get there?
A In a car.

Q With whom?
A With Mr. Cunningham.
Q What time did you arrive there?
A 6:45 a. m.
Q What did you observe, if anything, after you arrived?
A We sat around, and around 9:00 o'clock Mrs. McKee and Mr. Fuente, if that's the way you pronounce it - I just don't know how to pronounce that word - they were in the rear of the house.
Q Had you seen Mr. de la Fuente before that time, 9:00 a. m.?
A No, I never did see him.
Q Do you know where he came from?
A Well, Mr. Cunningham told me, but I don't remember.
Q I mean do you know where he came from on that occasion, whether he came from the garage or from the street or house?
A He was in the house, and he came from the house.
Q You saw him come out of the house?
A Yes.
Q With whom?
A With Mrs. McKee.
Q Had you seen him enter that house that morning?
A No, I had not.
Q Were you in front of the house, or near the front of it, in the car?
A No, we were in the rear of the house when we saw this.
Q Were you observing the house?
A Yes.
Q Then when you saw Mr. de la Fuente and Mrs. McKee in the rear of the house what did they do, if anything?
A They just walked around. They just didn't seem to do anything but just walked around, and went right back in the house again. It was only for about 10 minutes they did that.
Q Did you see anything else that morning?
A No, I didn't. I don't remember it.
Q How long did you remain there?
A We left there about 9:15 a. m., in the morning.
Q When did you next see either Mr. de la Fuente or Mrs. McKee?
A We returned at 4:30 p. m., and then at approximately 6:45 de la Fuente drove in in his red Chrysler.
Q Drove in where?

A In the garage, right in the front entrance.
Q Then what did he do, if anything?
A He went right in the house.
Q Leaving the Chrysler inside of the garage?
A He put the Chrysler in the garage, yes.
Q Did the garage have a door?
A Yes, it did.
Q When he put the Chrysler in the garage had the door been closed?
A No, the door was open.
Q After he put it in?
A Then he closed the door.
Q Then he closed the door?
A He closed the door, and he went in the house.
Q What else did you observe, if anything?
A Then we left, we didn't stay any longer. It was 7:15 when we left the place.
Q That was the first day of your observation?
A Yes, that was the first day.
Q What was the next occasion, if any, of your observations, on what date?
A It was April 19, 1942.
Q Whom did you see on that day?
A We saw the maid arrive in the morning, 8:50 a. m.
Q What time had you arrived?
A We arrived at 8:00 a. m.
Q Was that at the same residence, that of Mrs. McKee?
A Yes, 1350 South El Molino.
Q Then you saw the maid arrive when?
A At 8:50 a. m.
Q What next did you see if anything?
A We saw Baby McKee and Cynthia McKee at 10:40 a. m.
Q When you say the baby, how old a child was that?
A It seemed to be about two and a half years old.
Q That was Terry McKee?
A Terry, yes.
Q Then what did they do, Cynthia and Terry?
A They were just walking around on the grounds. She was amusing the baby.
Q For how long, about?
A Well, maybe about half an hour - giving the baby a sun bath, I guess, and then she took him in the house.
Q Did you see anthing else that morning?
A No, nothing else in the morning, not until about 2:50 p. m.
Q Did you remain there all that time?

A Yes, we did.
Q Did you go to lunch?
A We went to lunch and then we came right back; we were only gone about half an hour.
Q Then you say at 2:50 p. m. you observed something further?
A Mrs. McKee and her son Jerry drove to California Street, to the drug store.
Q Jerry Alexander?
A I don't know his second name. That's all I know him by, is Jerry. Mr. Cunningham told me.
Q Just Jerry?
A Yes.
Q Did you follow him to the drug store?
A Yes, we did, and he bought some cigarettes.
Q The boy did?
A Yes, he did.
Q How old a boy was he, about?
A He looked to me to be about 17.
Q After he bought cigarettes what happened?
A Then they returned right back to the house again.
Q Then what did you next observe if anything?
A Well, we stayed around there, and at 4:40 p. m. all the garages were open, and we could see three cars, we saw a Ford, the Chrysler and an Oldsmobile. We didn't see Mr. Fuente that day, and we discontinued at 7:10 p. m.
Q When did you next come back?
A The next was April 20, 1942.
Q What happened then?
A Then Mrs. McKee was in the Ford touring car.
Q Where did you see her in the Ford?
A Right in front, where the garages are, the three garages.
Q What time had you arrived there that day?
A 8:40. I could see from where we were sitting.
Q 8:40 a. m.?
A Yes, a. m.
Q You say Mrs. McKee came out and got in the Ford?
A No, it wasn't Mrs. McKee, not Mrs. McKee; I meant Miss Jo Ann McKee.
Q She got in the Ford?
A Yes.
Q She drove away?
A Yes, she drove out.
Q Did you follow her?

A We followed her to the Arroyo Seco, and left her at 8:50.
Q Then what did you do?
A Then we returned to 1350 South El Molino, at 9:15 a. m., and we saw the Oldsmobile and Chrysler in the garages. They were open.
Q They were still open?
A Yes, they were.
Q Then what did you next observe?
A At 9:25 a. m. Cynthia McKee and Baby McKee.
Q Terry?
A Terry, I mean. They drove out in de la Fuente's Chrysler, and they drove to the San Marino Market, and Baby McKee, Terry McKee, was left in the car alone, and Cynthia made purchases in the market, and then she drove back to the house.
Q Then did you follow her back to the house?
A Yes, we went right back to the house.
Q What did you next observe?
A Then at 11:30 a. m. de la Fuente drove out in the Chrysler to the Arroyo Seco, and to his office, and we left him here.
Q You left him where?
A I just don't know, I don't remember the address, but I know it's some place here in Los Angeles.
Q You followed him to Los Angeles?
A Yes.
Q To where his office was?
A To where his office was, yes. I just don't remember now where it was.
Q Was it a down town building?
A Yes, it was a tall building. We saw him drive in the rear and park his car, and he went in the side door.
Q Was that a parking lot?
A Yes, a parking lot.
Q Attached to the building, or near the building?
A It was right alongside of the building.
Q You followed him to where he parked his car, and he went up in the building?
A Yes, he went up in the building.
Q That was about what time?
A That was 11:30 when he drove out.
Q Out of the house?
A Out of the house, as I said before.

Q What time did he arrive at the building?
A I don't remember that.
Q Do you know how long a ride that is?
A I imagine about 20 or 25 minutes, something like that.
Q After Mr. de la Fuente went up in the office building what did you and Mr. Cunningham do?
A Then we drove back to the house on South El Molino.
Q Mrs. McKee's residence?
A That's right, to Mrs. McKee's residence.
Q What if anything, did you then observe?
A We got there - we arrived there about 6:15 p. m., and we saw the Chrysler coupe in the garage.
Q That is the car that Mr. de la Fuente had driven in when he left the house to go to his office building, which you now found back in the garage of the McKee residence, Mrs. McKee's residence?
A Yes, he had returned, but we didn't see him, though.
Q You just saw his car?
A Just the car, and the other two cars were there too, the Oldsmobile and the Ford.
Q Did you observe anything else besides the cars that evening?
A Well, no. We couldn't see very much there; they always put the shades down in the house.
Q What time did you leave?
A We left at 7:00 p. m.
Q You saw no one leave the house then?
A No. The three cars were in the garage.
Q When did you next make any observations?
A It was April 21, 1942 at 7:30 a. m., that we went out to Mrs. McKee's home, and the maid arrived at 8:35 a. m., and at 10:00 a. m. we saw Cynthia McKee and the baby walking around the premises and in the driveway, looking for mail.
Q Did she take anything out of the box?
A No, the mailman came later, as I remember.
Q Did you see the mailman come there afterward on that date?
A No, I didn't. I saw him on other days.
Q You saw him there on other days at later hours?
A On other days at later hours.
Q What observation further did you make on that day?
A At 12:45 p. m. Max de la Fuente drove out in his

Chrysler coupe.
Q Drove out of the garage?
A Out of the garage.
Q Where did he come from?
A Out of the house.
Q Had you seen him enter the house during the morning while you were there?
A No, that was the first time he came out from the time we were there.
Q Then what next did you observe?
A He got in the car and he drove away, and we left him at the Arroyo Seco. It was raining very hard that day.
Q Did you make any other observations on that day?
A The Chrysler returned at 6:20 p. m.
Q Where were you when it returned?
A We were right there watching the house. I was with Mr. Cunningham.
Q You were standing there near the house when he came back after 6:00 o'clock?
A Yes, about 6:20.
Q What did he do when he arrived?
A It was raining so hard we could hardly see anything. He went right in the house.
Q What did he do with the car?
A He put the car in the garage.
Q What happened to the door of the garage?
A The doors were all put down, closed up.
Q. You mean they were closed?
A Yes.
Q He went in the house?
A Yes.
Q What time did you leave the premises that evening?
A 7:00 p. m.
Q Had you seen anyone leaving the house from the time Mr. de la Fuente entered it that evening?
A No.
Q When did you next make any observations?
A This is April 22, 1942.
Q What happened on that date?
A We arrived at Mrs. McKee's home at 7:40 a. m., and between 10:00 and 11:00 a. m. Cynthia McKee had Baby McKee out for a walk; she took him for a small walk, then took him back in the yard and put him in the play pen, and there he stayed for about half an hour, and she took him back in the house again, then Cynthia drove

out de la Fuente's car, she backed around, headed the car out. At 11:15 a. m. Cynthia had Baby McKee in the Taylor Tot, and she was walking around the yard with him. At 12:15 p. m. de la Fuente and Mrs. McKee and Baby McKee got in the Chrysler coupe, and they drove to Jerry's Drive-In Stand on Green Street in Pasadena. They sat in the car and ate, and de la Fuente paid the bill, and then they drove to the Boys Market on Lake Avenue, Pasadena, they all went in the market and Mrs. McKee made purchases of vegetables, fruits, groceries and meats, and Mr. de la Fuente wrote out a check and paid the bill. Then they all drove back to the residence of Mrs. McKee, arriving 1:10 p. m., with the purchases, and left the baby at the house, and Mrs. McKee kissed Mr. de la Fuente before he got in the car, and drove out alone.

Q You say before he got in the car. Who drove out alone?

A Mr. de la Fuente. He got in his car, and she kissed him goodbye, and then he drove out alone. She wasn't in the car after they had done the shopping.

Q Did you follow Mr. de la Fuente?

A No, we didn't follow him when Mr. de la Fuente drove out. Then at 6:45 p. m. Mr. de la Fuente returned in the Chrysler and put the car in the garage, and we discontinued at 7:00 p. m.

Q When Mr. de la Fuente put the car in the garage on this occasion was the door closed; that is, did he shut the door of the garage?

A Yes, he closed the door after he put the car in.

Q Then he went in the house?

A He went in the house, yes.

Q When did you next make any observations?

A This was April 23, 1942. We arrived at Mrs. McKee's home at 7:30 a. m. Mr. de la Fuente came out at 10:40 a. m. and drove to the Arroyo Seco, and headed toward Los Angeles. We left him, and we returned to Mrs. McKee's home. During the day we saw the maid and Mrs. McKee and Cynthia and Baby McKee, that is, Terry McKee. At 6:10 p. m. Mr. de la Fuente arrived and put the car in the garage, and returned to the house. We remained there until 11:15 p. m. All lights were out. The subject did not leave the house.

Q Who did not leave the house?

A De la Fuente.

MR. CLOUD: May the record show that the witness is

reading from a memorandum.

MR. ROSE Q: You are referring to the same memoranda you testified from before?

A I never testified before.

Q I mean testified here. From the beginning you have testified by refreshing your memory from memoranda made at the time?

A Yes.

Q Those are the same memoranda?

A Yes, that's the same memorandums. Then the next day was April 24, 1942, and we arrived at Mrs. McKee's home at 7:25 a. m. We saw the colored maid at 8:35 a. m. We saw Baby McKee, Terry McKee, and Cynthia, at 10:15 a. m. They were just standing in the front of the house. At 10:30 a. m. Mr. de la Fuente drove out alone in the Chrysler coupe.

Q Had you seen him enter the house that morning?

A Not that morning, no. He just came out. We had seen him enter the night before.

Q But you did not see him enter the house that morning?

A No, we did not. We had been there since 7:25, and we didn't see him.

Q After he left that morning did you observe anything else?

A I will just have to look at this to see. Pardon me a moment. That's five years ago, and I don't remember so well. At 10:30 he drove out alone in the Chrysler coupe, he drove into the Arroyo Seco, going toward Los Angeles, and we left him there. Then at 7:15 p. m. Mrs. McKee and Mr. de la Fuente arrived at the house in the red Chrysler. We didn't get back there until late, I guess, and we didn't see her go out, or him come back either. That was at 7:15, so we discontinued at 7:30 p. m.

Q Mrs. Cunningham, as you refresh your recollection by looking at these memoranda, do you recall the events?

A Yes, I do, I certainly do; I was right there and I saw all this I am telling you about.

Q What further investigation did you make?

A Then we were out there on April 25, 1942. We arrived at Mrs. McKee's home at 7:45 a. m. Then at 8:50 a. m. Mr. de la Fuente drove out in his Chrysler coupe. He drove to the Arroyo Seco, toward Los Angeles, and we left him; he went on his way. At 10:37 Cynthia was about the grounds. We had returned to Mrs. McKee's home.

She was with the baby, Terry. At 1:00 p. m. Mrs. McKee - we saw her around the grounds, she was walking around the grounds with Cynthia and the baby. At 1:50 Jerry drove to San Marino, the market there, and bought some groceries and cake, and returned to the house. He used the Ford car. At 2:20 p. m. Mr. de la Fuente returned to the house with the Chrysler, alone. At 2:45 p. m. Cynthia McKee and Baby McKee were sunning on the lawn in front of the house. Between 3:45 and 4:30 - wait a minute - yes, between 3:45 and 4: 30 p. m. Jerry McKee washed and cleaned de la Fuente's Chrysler, and Jerry drove away in his Ford at 4:45, and returned at 6:00 p.m., and Jerry drove away again at 7:40 p. m. The subjects Mrs. McKee and Mr. de la Fuente were still in the house when we discontinued at 8:30 p. m.

Q You had not seen Mrs. McKee or Mr. de la Fuente leave the house that evening?

A No.

Q When did you next make any observation?

A That was April 26th. We arrived out there at 8:00 a. m., and the shades were drawn. There was no activity, and all the shades were down. Then at 12:15 p. m. Mr. de la Fuente opened the garage door.

Q Where did he come from?

A From the house. He drove his car out, but he didn't leave. Then at 12:05 p. m. a tan coupe arrived with JO Ann and a young man, and they took Baby McKee for a ride to the Boys Market on Lake Street, purchased food, and returned to the house. At 1:15 p. m. Mr. de la Fuente and Mrs. McKee, with Jerry McKee, drove out in the Chrysler coupe, and they stopped at Cloke's Beverage Store on Lake Avenue, where they purchased beer and Coca Cola, a large box, and the clerk put it in the car. They then drove to the Stuffed Shirt Cocktail Lounge, 1000 Green Street, and the place was closed, and on the door it said "Open later." They then returned to the house. They all stayed in, and we left at 6: 35 p. m.

Q The next day did you go back and make further observations?

A Yes, I did.

Q What date was the next day?

A April 27th.

Q What did you then see?

A We arrived there at 7:55 a. m. At 9:25 a. m. Mr. de la Fuente drove out in the Oldsmobile sedan, plates 107150 Wisconsin. We left Mr. de la Fuente at Figueroa

Street, and we returned to Mrs. McKee's residence at 3:00 p. m. At 6:20 p. m. Mrs. McKee and Max de la Fuente arrived in the red Chrysler coupe.

Q What did he do with it, if anything?

A What is that?

Q What did he do with the Chrysler coupe, if anything?

A He drove up into the grounds, and I don't remember whether he put the car in the garage or not now. They didn't come out, so at 7:00 p. m. we discontinued. On April 28th we arrived there at 7:50 a. m. At 10:25 a.m. Mr. de la Fuente drove out in the Chrysler coupe, and he went to the Arroyo Seco, toward Los Angeles, and we left him.

Q Had you seen him enter the house that morning?

A No, I just saw him come out.

Q On these occasions when you saw Mr. de la Fuente enter the house one evening and then leave the house the next morning, or at noon, did he always wear the same clothing?

A No, he didn't; he had different clothes that he wore.

Q He left in different suits from those he wore when he entered?

A Well, I couldn't say that for sure, but he looked to me like he had new clothes on at one time, a new suit.

Q A brand new suit?

A Yes.

Q I mean generally, not as to whether the suit was new, but was it different?

A It was different, yes, different clothes he wore.

Q You may continue as to what you observed on the last mentioned date.

A At 9:20 p. m. we left, because we didn't see him return. The garage doors were closed and the lights were on in the house.

Q The following day did you go back?

A Yes, we went back on the 29th of April.

Q What did you see then?

A We arrived at 8:00 a. m., and Mr. de la Fuente drove out at 8:45 in his red Chrysler, alone. We didn't follow him. At 4:55 p. m. we saw Mr. de la Fuente and Mrs. McKee and Baby McKee on the grounds. All cars were on the premises. We discontinued at 6:50 p. m.

Q Where were Mrs. McKee and Mr. de la Fuente when you discontinued?

A They were on the premises.

Q Were they inside or outside of the house?
A Outside of the house.
Q On the following day did you make any observations?
A We went out there at 7:45 a. m., and we saw Mrs. McKee and Cynthia and the baby, Terry McKee, on the grounds at 10:30 a. m. At 11:00 a. m. Mr. de la Fuente drove out in the red Chrysler coupe, and we followed him to his office in Los Angeles.
Q Then what happened?
A Then we returned to Mrs. McKee's residence at 4:00 p. m., and at 6:10 p. m. Mr. de la Fuente arrived in the red Chrysler. Between 6:30 and 6:55 Mr. de la Fuente and Mrs. McKee were walking up and down the sidewalk in front of the house, in earnest conversation, it seemed. They walked around the grounds of the house, and then they went in, and at 7:00 p. m. we discontinued.
Q What happened, if anything, the next day?
A Friday was the next day, and that was the 1st of May. We arrived there at 7:45 a. m. At 8:50 a. m. de la Fuente drove the Chrysler out of the garage. Mrs McKee was with him. We circled to head the car off in the Arroyo Seco, and lost them. At 6:30 p. m. we saw Mr. de la Fuente and Mrs. McKee on the grounds, walking around.
Q Which grounds?
A At Mrs. McKee's residence. All the cars were in the garage. We discontinued at 7:00 p. m.
Q The following day did you resume?
A The following day, May 2nd, yes.
Q What did you observe?
A We arrived there at 7:55 a. m. at the house, and at 8:15 a. m. Mr. de la Fuente left and went to the Arroyo Seco.
Q He went in what?
A In the Chrysler. At 5:10 p. m. Mr. de la Fuente was seen in the driveway, also in the Chrysler coupe, and between 5:40 and 6:10 p. m. Mrs. McKee and de la Fuente walked around the grounds. We discontinued at 7:00 p. m. On May 3rd we were out there at 8:05 a. m., and Mr. de la Fuente and Mrs. McKee were walking around the grounds at 10:15 a. m. The baby, Terry McKee, and Cynthia McKee, were seen at 11:00 a. m. The son Jerry came out of the house at 11:15 a. m., and the colored maid left at 12:00 noon. At 1:15 p. m. a blue Pontiac sedan drove in, and the driver talked to Mrs. McKee and Mr. de la Fuente. Those plates were 98-U713. That car

left at 4:55 p. m. We discontinued at 7:15 p. m. The subjects were all in the house.

Q When you say subjects you mean whom?

A Well, Mrs. McKee, the baby, Terry, and Cynthia, and de la Fuente, were all there when we left.

Q The next day did you resume your investigation?

A Yes, on May 4th.

Q What did you see?

A We arrived at Mrs. McKee's home at 7:30 a. m., and Mr. de la Fuente drove out in his Chrysler at 9:40 a. m. to his office. We returned to Mrs. McKee's residence at 5:10 p. m. Mr. de la Fuente drove in to 1350 South El Molino at 4:45 p. m., alone, in the red Chrysler, and put the car in the garage, and we discontinued at 7:00 p. m. The subject was still in the house.

Q What time did you say you returned to the premises?

A 5:10 p. m.

Q What time do you say you saw Mr. de la Fuente?

A 5:45 p. m.

Q You said before 4:45, and you meant 5:45?

A Yes.

Q That was a mistake?

A Yes.

Q What was the next date of your observations?

A May 5th. At 8:00 a. m. we arrived at Mrs. McKee's residence. At 8:50 a. m. Cynthia drove away in the Ford, and the colored maid arrived at 9:00 a. m. Mrs. McKee and the baby, Terry, were on the grounds around 9:45 a. m. At 9:55 a. m. de la Fuente drove out in the red Chrysler. He drove in the direction of Los Angeles, and we left him, and we returned to Mrs. McKee's residence at 1:45 p. m., and the subject's red Chrysler - we could see it in the garage. At 6:45 p. m. we observed the Ford and Oldsmobile - they were all in the garage. We discontinued at 7:00 p. m.

Q Did you resume the next day?

A Wednesday, May 6, 1942, yes. We arrived at Mrs. McKee's residence at 7:40 a. m. Mr. de la Fuente drove out in the red Chrysler coupe at 9:55 a. m.

Q Drove out of where?

A Out of the garage.

Q Of the McKee residence?

A On Mrs. McKee's home, yes. We didn't follow. At 3:15 p. m. we returned to Mrs. McKee's residence, and Mr. de la Fuente arrived at 6:35 p. m. in the red Chrysler. He put his car in the garage, and he entered the

house, and we didn't see him after that.
Q Did he leave the garage open or closed?
A He closed the garage door, and he went in the house. Now, this is May 7, 1942.
Q What happened then?
A We arrived out there at 7:45 a. m. At 8:20 a. m. de la Fuente drove his car out of the garage, and we lost him on El Molino Street. He did not go through the Arroyo Seco this day. Then we returned to the premises.
Q Which premises?
A Mrs. McKee's premises, her home. At 6:45 p. m. de la Fuente's car was in the garage, and we discontinued at 7:30 p. m. Now, this is May 8, 1942. We arrived at Mrs. McKee's home at 8:00 a. m., and de la Fuente drove out in his Chrysler at 8:50 a. m. He was alone, and we didn't follow him. At 4:00 p. m. we arrived at Mrs. McKee's residence, and Mr. de la Fuente drove in at 6:05 p. m. in his Chrysler coupe, and we discontinued at 6:45 p. m.
Q Then did Mr. de la Fuente leave the premises?
A No, he did not, not up until the time we left. We didn't see him any more after he went in the house. Now, this is May 9th. We arrived out there at 7:30 a. m., and Cynthia and the baby, Terry McKee, left the house at 9:30 a. m. The baby was in the Taylor Tot. They went towards San Marino, and they returned at 11:10 a. m. At 12:30 p. m. Jo Ann and Cynthia drove out in the McKee's Oldsmobile, and they went to the Broadway Department Store in Pasadena. At 1:45 p. m. Mrs. McKee and de la Fuente drove out in the red Chrysler. They returned at 2:55 p. m., with the car full of provisions.
Q They drove out of the McKee home and returned to the McKee home?
A While we were there, yes.
Q Then they returned?
A Yes, they returned. We discontinued at 5:30 p. m.
Q What about the next day?
A This is May 10th now.
Q What did you observe then?
A We arrived at Mrs. McKee's home at 8:00 a. m. The colored maid arrived at 8:50 a. m., and she left at 12:40 p. m., the maid did. Jerry McKee washed the red Chrysler and the Oldsmobile during the morning. Mrs. McKee and Mr. de la Fuente were seen walking around the grounds at 2:40 p. m. We discontinued at

4:00 p. m.

Q When you discontinued where was de la Fuente and where was Mrs. McKee?

A They must have went in the house. They were not on the grounds when we discontinued.

Q Did you see them leave the grounds, or leave the house?

A No, they didn't leave the house.

Q The next day did you resume your investigation?

A Yes, just keeping my husband company more than anything. It wasn't that I was being paid for it, but I just helped him out. The next day, May 11th, we went out there at 7:35 a. m.

Q What did you observe?

A Mr. de la Fuente drove out in the Oldsmobile, plates 107150 Wisconsin.

Q What time did he drive out?

A About 8:30 a. m. We left him at the Arroyo Seco, and then we went back to Mrs. McKee's residence at 2:00 p. m. During the afternoon we saw Mrs. McKee, the baby, Terry McKee, and Jo Ann McKee, Cynthia McKee and the maid, as well as Jerry. Jerry drove out in the red Chrysler, Mr. de la Fuente's car, alone, late in the afternoon. I don't remember the time, and it isn't down here. Mr. de la Fuente arrived in the Oldsmobile sedan at 5:50 p. m., and then Jerry came back at 5:55 p. m. in the Chrysler, and the cars were put in the garage, and we discontinued at 7:20 p. m.

Q When the cars were put in the garage were the doors to the garage left open or closed?

A They were closed.

Q Did you resume the next day?

A Yes, this was May 12th, Tuesday.

Q What did you see?

A We arrived at Mrs. McKee's residence at 7:40 a. m., and all the cars were there, the Oldsmobile, the Chrysler and the Ford. The maid arrived at 8:45 a. m. Cynthia and the baby, Terry McKee, came out on the grounds about 10:20 a. m., and played around a while, then went back in the house. Then Mrs. McKee and Mr. de la Fuente came out on the grounds at 12:10 p. m., and Cynthia and the baby McKee joined them. Mr. de la Fuente drove out in the Chrysler alone, and we left him at the Arroyo Seco. We returned to the house, and then the maid put out three large paper cartons and three large cans, all full of empty beer bottles.

Q Where did she put them?
A Right in front of the house. They were all different brands, like Lager, Eastside, Pabst and Milwaukee, and there was also whiskey and Scotch bottles. Mr. de la Fuente arrived back at 7:20 p. m., and we discontinued.
Q What happened to Mr. de la Fuente when you last saw him?
A He put his car in the garage and entered the house and we left.
Q What was the next date, if any, when you made observations?
A This is May 13th.
Q What did you see?
A We arrived at Mrs. McKee's residence at 7:45 a. m. At 9:25 a. m. Mr. de la Fuente drove out in his red Chrysler sedan. We didn't follow him. We returned to Mrs. McKee's residence at 11:30 a. m., and the Wisconsin Oldsmobile was at the head of the driveway.
Q This was the Oldsmobile?
A Yes, the Oldsmobile. We circled the block, and when we came back the Oldsmobile had left, and at 7:40 p. m. Mrs. McKee and Mr. de la Fuente arrived at the house in the McKee Oldsmobile. We discontinued at 8:00 p. m.
Q Did you see either Mrs. McKee or Mr. de la Fuente leave the house before you discontinued?
A Well, he left the house at 9:25.
Q In the morning?
A In the morning.
Q I mean after he returned that evening.
A No.
Q The next day did you continue your observations?
A Yes, and this is the last day.
Q What did you do then?
A That was May 14th. We arrived at Mr. McKee's residence at 7:25 a. m. At 10:25 a. m. Mrs. McKee and the baby, Terry McKee, and Mr. de la Fuente, drove out in the Oldsmobile, all sitting in the front seat, and the baby, Terry McKee, was in the center; they drove to the Arroyo Seco, and they seemed to be arguing, Mrs. McKee seemed very upset, and Mr. de la Fuente was shaking his finger at her, and Mrs. McKee kept pushing her hair back, and she was kind of nervous; then they stopped at the parking lot behind his office in Los Angeles, and they argued there, and suddenly Mr. de la

Fuente left her abrupt.
Q Where did he go?
A He went into his office building. That was 10:50 a. m. Then Mrs. McKee got out of the car and paced up and down the sidewalk for about ten minutes, then she took the baby out of the car and went into the building where Mr. de la Fuente was. She appeared very excited. She came out at 11:25 a. m., with the baby, and sat in the car for ten minutes. The red Chrysler apparently was left in his parking lot all night, because it was there when we arrived there, and apparently had been there all night.
Q In what car had they driven there?
A The Oldsmobile.
Q When they arrived you following them, you saw the red Chrysler in the parking lot?
A Yes it was in the parking lot.
Q You did not see when or how it got there?
A No.
Q You testified you saw Mrs. McKee outside of the car, and she went up in the office building with the child, did you say?
A Yes.
Q Do you remember whether you followed them after they left the place, or did you see them leave the place?
A Well, then, Mrs. McKee drove back to her residence in the Oldsmobile, and she arrived at 12:00 o'clock noon.
Q Did you follow her?
A Yes, we did.
Q Who, if anyone, was with Mrs. McKee?
A She was alone, just with the baby.
Q Just with the child?
A Yes.
Q She went home alone, without Mr. de la Fuente?
A Yes.
Q Then after you saw her arrive at home what, if anthing, did you do?
A Then at 4:15 p. m. Mrs. McKee and the baby, Terry, drove out in the Oldsmobile to the Pasadena High School and picked up Jerry, and drove home. At 6:10 p. m. Mr. de la Fuente arrived in the Chrysler. We discontinued at 6:15. He arrived in the Chrysler and put his car in the garage.
Q Was that the last observation you made?
A Yes, that was the last one I made.

Q Mrs. Cunningham, on one occasion you testified that as Mr. de la Fuente was about to enter his car to leave Mrs. McKee kissed him goodbye?
A Yes.
Q Was that the only occasion on which you saw any exhibition of affection between Mrs. McKee and Mr. de la Fuente?
A I did see them kiss at different times, but I don't remember the dates. That's the reason I had to have this to refresh my mind, because I wouldn't want to say what dates they were, when I don't remember.
Q But you did see them kissing each other on various occasions when you made these observations?
A Yes, I did.
Q When, in a general way, did they kiss each other?
A It seemed like in the morning when he would be going away she would always come out to the car and she would kiss him goodbye.
Q Have you ever testified before in this case?
A No, I haven't.
Q Or in any proceeding between Mr. and Mrs. McKee?
A No, I haven't.
MR. ROSE: You may examine.

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PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 4th day of September, 1941, by and between EVELYN ALEXANDER McKEE, Party of the First Part, and MARK T. McKEE, Party of the Second Part,

W I T N E S S E T H:

WHEREAS, the parties hereto are now and have been since the 18th day of July, 1933, husband and wife; and

WHEREAS, unhappy differences have arisen between them and they are now living separate and apart, and a reconciliation appears improbable, and

WHEREAS, there is one child as issue of said marriage, to-wit:

TERRY ALEXANDER McKEE

who was born July 14, 1940;

NOW, THEREFORE, in consideration of the premises, representations, covenants and conditions herein agreed to be kept and performed, it is agreed as follows:

(1) It is understood and agreed that this agreement constitutes a full and complete statement of all rights which either of said parties may have against the other by way of alimony, maintenance or support in any and all financial or pecuniary rights or obligations of any kind or nature, and each of said parties hereby agrees to execute and deliver to the other of said parties any and all agreements which may be necessary to carry into effect the intent and purpose of this agreement without consideration other than herein provided.

(2) It is further understood and agreed between the parties hereto that upon the performance of this agreement each of the parties hereto absolutely and forever releases and relinquishes unto the other all and every right and claim which either now has, or claims to have, or which may hereafter accrue for maintenance, support, alimony,

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costs or attorney's fees in any divorce action, or in any other transaction or proceeding involving the marriage state, or any of the obligations thereof, and any and all financial and pecuniary rights or claims of any kind or nature, and the parties agree that any property, real or personal, hereafter acquired by either shall be sole and separate property of the party acquiring the same, and each of them hereby does absolutely and forever release and relinquish any and all rights and claims they or either of them may have or claim, or which may hereafter accrue arising out of the marriage relations between the said parties, and each of them shall, and does hereby absolutely and forever waive, release and relinquish any and all rights or claims of or representing administration, succession, allowance, support or homestead, which either of them may now have or hereafter have or claim, or which may now or hereafter accrue, and any and every right or interest which either may have or claim to have hereafter by virtue of the laws of any state of the United States of America, relating to the estates of deceased persons, in and to any and all property of any nature or character, whatsoever, wheresoever situated, now owned and held by either of said parties, or which may hereafter be acquired by them.

(3) The Party of the Second Part agrees to pay or cause to be paid to the Party of the First Part, as and for care, maintenance and support of the Party of the First Part, the sum of Three Hundred ($300.00) Dollars per month, commencing with the 1st day of September, 1941, and continuing thereafter until the said Party of the First Part shall remarry or die.

(4) The Party of the Second Part agrees to pay or cause to be paid to the Party of the First Part, for the use and benefit of GERALD BERRY McKEE, son of the Party of the First Part, the sum of One Hundred ($100.00) Dollars per month, commencing with the 1st day of September, 1941, and continuing until the said GERALD BERRY McKEE shall reach his majority. In the event, however, that

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the said Party of the Second Part shall be called to active duty in the United States Army, then in that event, said payments as aforesaid shall be suspended during the time that said Party of the Second Part shall be in the Army in active duty, and he will not be required to make any payments whatsoever during said time.

It is also understood and agreed between the parties hereto that in the event the said GERALD BERRY McKEE does not continue to use and go by the name of GERALD BERRY McKEE, then in that event said payments as aforesaid shall immediately terminate and cease, and there shall be no further liability on the part of the Party of the Second Part to make any further payments under this paragraph of this agreement.

(5) It is further understood and agreed that neither of the parties hereto shall remove TERRY ALEXANDER McKEE, son of the parties hereto, from or out of the United States of America without the written permission of the Party not so removing, or wishing to remove said boy from the United States of America.

(6) It is further understood and agreed that the home place of the parties hereto, which is located in Azusa, California, stands in the name of the Party of the First Part; and that the Party of the Second Part purchased said aforementioned home for the purchase price of Twenty-two thousand ($22,000.00) Dollars; that thereafter the said Party of the Second Part had said home place remodeled, repaired, altered and additions placed thereon at a cost of Fourteen Thousand ($14,000.00) Dollars; that said Party of the Second Part purchased furniture, furnishings, silverware, linens, draperies and all incidentals in connection with said home and paid therefor the sum of Fifteen Thousand ($15,000.00) Dollars.

That at the present time there is now unpaid the sum of Seven Thousand Seven Hundred Seventy-seven and 40/100 ($7,777.40) Dollars upon a Trust Deed, the beneficiary being CRYSTAL LINDLEY, and the

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payments thereon are One Hundred Fifty ($150.00) Dollars per month, including principal and interest.

The Party of the Second Part hereby sells, assigns, transfers and delivers to the Party of the First Part all of his right, title and interest in and to the aforementioned Azusa home, and all furniture, furnishings, silverware, linens, draperies and all incidentals in connection with said home that were situated therein during the time said home was occupied by the parties hereto, excepting therefrom, however, all personal effects, books and pictures belonging to the Party of the Second Part.

As of September 1, 1941, there is due, owing and unpaid the sum of $800.00 on said aforementioned note and trust deed in favor of Crystal Lindley, and the Party of the Second Part agrees to pay, or cause to be paid to Crystal Lindley the sum of $800.00 upon the signing of this agreement thereby bringing said note and trust deed up to date as of September 1, 1941.

That said Party of the First Part agrees to save harmless and relieve the Party of the Second Part of any and all liability or responsibility in connection with the said aforementioned note and deed of trust in favor of said Crystal Lindley.

(7) It is further understood and agreed that the Party of the Second Part, as Trustee for TERRY ALEXANDER McKEE, agreed to pay or cause to be paid to the Party of the First Part the sum of One Hundred Twenty-five ($125.00) Dollars on the 1st day of September, 1941, and One Hundred Twenty-five ($125.00) Dollars on the first day of each and every month thereafter until the said TERRY ALEXANDER McKEE reaches his twenty-first (21) birthday, for his use and benefit; said payments shall be made out of the Trust heretofore created on December 16, 1940 for the said TERRY ALEXANDER McKEE.

It is further understood and agreed, however, that

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in no event shall the Party of the Second Part be personally responsible for the payments mentioned in this paragraph.

(8) It is further understood and agreed that the Party of the Second Part is insured by the AMERICAN MUTUAL LIFE INSURANCE COMPANY OF DES MOINES, IOWA, and the COLUMBIA NATIONAL LIFE INSURANCE COMPANY of BOSTON, MASSACHUSETTS, in the total sum of Fifty Thousand ($50,000.00) Dollars.

That upon the signing of this agreement the Party of the First Part and MILES F. McKEE, eldest son of the Party of the Second Part, or in the event of his death or inability to act, HUGH McKEE, second son of the Party of the Second Part, or in the event of his death or inability to act, MARK McKEE II, third son, shall agree upon a responsible Band or Trust Company to form a Trust for the purpose of being named as beneficiary of the aforementioned policies of insurance; that said named Trustees shall be entitled to receive upon the death of the Party of the Second Part the full proceeds of said insurance policies for the benefit of said Trust to be created for and on behalf of TERRY ALEXANDER McKEE, and the premiums on said insurance policies shall be paid out of that certain Trust heretofore created for and on behalf of TERRY ALEXANDER McKEE on December 16, 1940.

A copy of this Agreement shall constitute sufficient authority for changing said beneficiary to such nominated company, and the present trustee therein mentioned shall notify the Party of the First Part forthwith of his acceptance of said agreement to pay said premiums.

(9) This agreement shall be binding upon and between the heirs, executors, or administrators of both parties hereto. If, however, either party to this agreement is in default, then in that event each of the said parties hereto reserves the right and privilege to levy/or execute against the estate of the party who is in default.

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(10) It is further understood and agreed that this agreement shall not be considered as a waiver of any grounds of divorce by either party hereto, and this agreement shall not be considered as, or amount to condonation of any of such grounds, of divorce, heretofore existing between said parties, but each party hereby agrees in any action of divorce which may be brought by either party against the other, not to seek any decree or order of court with respect to the subject matter of this agreement which is not in accord with the provisions of the same.

(11) The Party of the Second Part further agrees to pay all outstanding bills to the date of the signing of this agreement, and the Party of the First Part agrees to provide a list of all outstanding bills for the approval of said Party of the Second Part.

It is understood and agreed that neither of said parties will hereafter incur or cause to be created any indebtedness or obligation upon the credit of the other, or attempt in any way to pledge the credit of the other, and that each of said parties will indemnify and save harmless the other from any and all loss or liability by reason of any indebtedness or obligation hereafter created by him or her, as the case may be.

(12) It is further understood and agreed that the parties hereto have made a full and complete disclosure of all assets which either of them now own, or in which either of them have any interest. The Party of the Second Part at the present time is employed as Executive Vice-President of the Wisconsin-Michigan Steamship Company, Milwaukee, Wisconsin, at a salary of One Hundred Seventy ($170.00) Dollars per month; and as Director of Pan-American Airways, New York City, at a stipulated monthly compensation of One Thousand ($1,000.00) Dollars for special services, and $50.00 for attending meetings of the Board of Directors. It is agreed that there is no community property of the parties hereto.

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The Party of the First Part relies upon the representations of the Party of the Second Part as to his present financial condition, and this agreement is predicated thereon, and the Party of the Second Part warrants that he has no other salaries or regular monthly income except as specified in this paragraph.

(13) It is expressly understood and agreed that ample opportunity has been afforded to each of the parties hereto to consult independent legal counsel to advise each of them as to the terms of this agreement and its legal consequences, and responsibilities, and the parties hereto have had full advice in the premises, and have acted under the advice of their respective legal counsel, and adequate knowledge has been obtained and sufficient investigation made on behalf of each party to fully and advisedly act in the execution of this agreement.

(14) The Party of the Second Part further agrees to deliver, or cause to be delivered, to the Party of the First Part that certain Black, Oldsmobile Four-door Sedan, which is now in the possession of the Party of the Second Part, and the First Party agrees that upon the signing of this agreement she will forthwith pay off, or cause to be paid off, the balance of Five Hundred ($500.00) Dollars which is now due and unpaid on said automobile herein described. Said aforementioned Five Hundred ($500.00) Dollars due on said automobile is evidenced by a promissory note signed by the Party of the Second Part in favor of the Port Austin State Bank, Port Austin, Michigan, and the First Party agrees to relieve and save harmless the Party of the Second Part of any liability or responsibility in connection with the encumbrance and/or promissory note against said automobile.

(15) The Party of the Second Part agrees to pay or cause to be paid unto the said Party of the First Part the sum of One Thousand Two Hundred ($1200.00) Dollars for counsel fees and costs of court, payable upon the signing of this agreement.

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It is further understood and agreed that the Party of the Second Part shall not be liable for any further costs of court or attorney's fees in any action that may be brought by the Party of the First Part, save and except, however, that said Party of the Second Part shall hold himself liable for any attorney's fees or costs of court, should it be necessary for the Party of the First Part to employ counsel to enforce the terms of this agreement.

It is further understood and agreed that said payments mentioned in this paragraph are to be made directly to the attorney of the Party of the First Part, namely, E.G. HAUMESCH, ESQ., who has been employed by said Party of the First Part to represent her in all proceedings necessary in this action.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year in this Agreement first hereinabove written.

_____

Evelyn Alexander McKee
PARTY OF THE FIRST PART.

_____

Mark T. McKee
PARTY OF THE SECOND PART.

PART OF EXHIBIT 23 AT TRIAL
EXHIBIT "D" TO AFFIDAVIT OF MARK T. McKEE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES.

EVELYN McKEE Plaintiff and Cross Defendant v. MARK T. McKEE Defendant and Cross Complainant	No. D-211536 CROSS COMPLAINT FOR DIVORCE (EXTREME CRUELTY)

Comes now the defendant and cross complainant, Mark T. McKee and for cause of action against plaintiff and cross defendant, Evelyn McKee, alleges as follows:

I.

That at all times herein mentioned defendant and cross complainant and plaintiff and cross defendant have been and now are husband and wife.

II.

That defendant and cross complainant is a resident of the State of Michigan, and the plaintiff and cross defendant is now a resident of the County of Los Angeles, State of California.

III.

Defendant and cross complainant alleges for the statistical purposes required by Section 426-a of the Code of Civil Procedure of the State of California, the following facts, to wit:

(a) That plaintiff and defendant were married at St. Albans, Vermont.

(b) That the date of said marriage was the 19th day of July 1933.

(c) That the date of separation of the parties was the 22nd day of December 1940.

(d) That the time elapsing from the date of said marriage to the date of separation was seven years, five months and three days.

(e) That there is one minor child the issue of said marriage, to wit, Terry Alexander McKee of the age of two years and two months or thereabouts.

IV.

That there is no community property belonging to the parties hereto, as on the 1st day of September 1941, the parties hereto made and entered into a Property Settlement Agreement settling their property rights.

V.

That the defendant and cross complainant is a fit and proper person to have the care, custody and control of the minor child of the parties hereto, to wit, Terry Alexander McKee.

VI.

That for more than one year last past and immediately preceding the filing of this action said plaintiff and cross defendant has treated said defendant and cross complainant in a cruel and inhuman manner and has wrongfully inflicted upon him great grievous mental suffering and anguish; that all of said acts have been without justification or provocation and have thereby caused said defendant and cross complainant to suffer great mental anguish and pain.

WHEREFORE, defendant and cross complainant prays that he be given a Judgment against the said plaintiff and cross defendant as follows:

1. That an interlocutory decree of divorce be granted to defendant and cross complainant; that when one year shall have elapsed after the entry thereof, a final decree of divorce be entered.

2. That permanent custody and control of said minor child, Terry Alexander McKee be awarded to the defendant and cross complainant.

3. That the property settlement agreement heretofore entered into by and between the parties hereto be approved.

4. And for such other and further relief as may be meet and proper in the premises.

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

JOSEPH SCOTT
Attorney for defendant and cross complainant.

A.H. Risse, being first duly sworn, deposes and says:

That he is an attorney at law admitted to practice before all courts of the State of California and has his office in Los Angeles, California, and is associated with Joseph Scott, Esq., the attorney of record in the above entitled action for the defendant and cross complainant; that the defendant and cross complainant is unable to make the verification because he is absent from said county, and for that reason affiant makes this verification on defendant and cross complainant's behalf; that he has read the foregoing cross complaint and knows the contents thereof, and the same is true as to his own knowledge, except as to those matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

A.H. RISSE
A.H. Risse

Subscribed and sworn to before me this 28th day of September 1942

(Seal) M. W. PURCELL
Notary Public in and for said County and State.

Filed

July 7, 1944

Fred J Jaeger,

Clerk.

PART OF EXHIBITS 22 AND 23

742

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

EVELYN McKEE		MARK T. McKEE
Plaintiff and Cross Defendant	-vs-	Defendant and Cross Complainant
	)	No. D-211536
	)	
	)	FINDINGS OF FACT
	)	AND CONCLUSIONS
	)	OF LAW

This cause came on regularly for trial on the 28th day of October, 1942 in the Calendar Department of the above entitled Court, and was thereupon transferred to Department 6 of the above entitled Court before Honorable Thurmond Clarke, Judge Presiding therein for trial; said cause was tried on October 28, 29, 30, November 2, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19 and 20.

Plaintiff and cross defendant appearing in person and by her attorneys E. G. Haumesch and Lee A. Solomon from the commencement of said trial until the 6th day of November, 1942, when Joseph L. Fainer and Thomas Connell, by Thomas Connell, were associated with E. G. Haumesch and Lee A. Solomon as attorneys for plaintiff and cross defendant; that E. G. Haumesch and Lee A. Solomon, Joseph L. Fainer and Thomas Connell appeared as attorneys for said plaintiff and cross defendant until November 10, 1942, when said E. G. Haumesch and Lee A. Solomon, Joseph L. Fainer and Thomas Connell by Thomas Connell, and said Joseph L. Fainer and Thomas Connell appeared for plaintiff and cross defendant until the conclusion of said trial; and defendant and cross complainant appearing in person and by his attorneys Messrs. Joseph Scott and A. H. Risse.

Evidence both oral and documentary having been introduced on behalf of all the parties to said action, both upon the second amended complaint of plaintiff herein, and the cross complaint of defendant herein, and the respective answers of the parties thereto, and said cause thereupon having been argued to the Court and submitted to the Court for its consideration and determination, and

the Court having considered the matter and being fully advised in the premises and having ordered judgment in favor of the defendant and cross complainant for divorce,

NOW, THEREFORE, the Court renders its decision in writing and makes its Findings of Fact and Conclusions of Law, to wit:

I.

That it is true that the Plaintiff and cross defendant and the defendant and cross complainant intermarried on or about the 19th day of July, 1933, and ever since said time have been and now are husband and wife.

II.

That it is true that the plaintiff and cross defendant and defendant and cross complainant since on or about the 22nd day of December, 1940, have not been living together as husband and wife.

III.

That it is true that plaintiff and cross defendant is now a resident of the State of California, and that for more than one year immediately preceding the commencement of this action she has been a resident of the County of Los Angeles, State of California.

IV.

That it is true that the defendant and cross complainant is a resident of the State of Michigan, and that at all times during the married life of the parties hereto he was a resident of the State of Michigan, and has never during said period of time been a resident of the State of California.

V.

That it is true that there is no community property belonging to the defendant and cross complainant and plaintiff and cross defendant.

VI.

That it is true that on or about the 4th day of September, 1941, plaintiff and cross defendant and defendant and cross defendant entered into a written agreement with respect to their property rights, both real and personal, which, among other things, provided for a payment of Three Hundred Dollars ($300.00) per month as and for said plaintiff and cross defendant's care, maintenance and support.

VII.

That it is true that there is one minor child the issue of said marriage between plaintiff and cross defendant and defendant and cross complainant, to wit, TERRY ALEXANDER McKEE of the age of two years and four months or thereabouts.

VIII.

That it is true that the defendant and cross complainant is a fit and proper person to have the care, custody and control of the minor child of the defendant and cross complainant and the plaintiff and cross defendant, to wit, TERRY ALEXANDER McKEE.

IX.

That it is true that for more than one year prior to the commencement of this action said plaintiff and cross defendant has treated said defendant and cross complainant in a cruel and inhuman manner, and has wrongfully inflicted upon him great, grievous mental suffering and anguish; that all of said acts have been without justification or provocation and have thereby caused said defendant and cross complainant to suffer great mental anguish and pain.

That it is true that during the month of May, 1941, plaintiff and cross defendant told Charles Watt that she never wanted the baby TERRY ALEXANDER McKEE to know his father.

That it is true that during the month of May, 1941, plaintiff and cross defendant advised Charles Watt that

she was going to Peru with Max de la Fuente and take the baby, Terry Alexander McKee with them and that plaintiff and cross defendant hoped to get her divorce soon so that she could get out of this County.

That it is true that in May, 1941, Max de la Fuente moved his clothes into the home place of plaintiff and cross defendant and stayed there constantly and lived there until September, 1941 occupying the room of defendant and cross complainant.

That it is true that plaintiff and cross defendant was seen kissing Max de la Fuente on many occasions.

That it is true that plaintiff and cross defendant stated to Joan McKee that she loved Max de la Fuente and would always love him and that she hoped to marry him and to go to South America and take Terry Alexander McKee with them.

That it is true that since the birth of Terry Alexander McKee, minor child of the parties hereto, Cynthia McKee daughter of defendant and cross complainant took care of him in general.

That it is true that plaintiff and cross defendant stated to Joan McKee that defendant and cross complainant would never see Terry Alexander McKee again.

That it is true that during the month of June, 1941, at the home of plaintiff and cross defendant and defendant and cross complainant, located at Azusa, California, the plaintiff and cross defendant was seen in bed with one Max de la Fuente by Julian McKee a minor child of the defendant and cross complainant; that at said time and place said Julian McKee brought tomato juice with Lea and Perrins sauce to the said plaintiff and cross defendant and Max de la Fuente while they were in bed; that at said time and place said Max de la Fuente was a married man.

That it is true that during the month of June, 1941, at the house of the plaintiff and cross defendant and defendant and cross complainant, located at Azusa, California, the plaintiff and cross defendant was seen in bed with Max de la Fuente by Julian McKee minor child

of the defendant and cross complainant.

That it is true that during the spring of 1941, at the house of the plaintiff and cross defendant and defendant and cross complainant, located at Azusa, California, the plaintiff and cross defendant was seen in bed with Max de la Fuente by Muir McKee, a minor child of the defendant and cross complainant.

That it is true that during the month of June, 1941, at the house of the plaintiff and cross defendant and defendant and cross complainant, located at Azusa, California, the plaintiff and cross defendant was seen in bed by Charles Watt, that at said time and place the minor child of the parties hereto, to wit, Terry Alexander McKee, was in the bed with the plaintiff and cross defendant and Max de la Fuente.

That it is true that during the month of May, 1941, plaintiff and cross defendant was seen kissing Max de la Fuente.

That it is true that Max de la Fuente stayed overnight in the residence of the plaintiff and cross defendant almost every night between April 9, 1942 and May 20, 1942.

That it is true that during the month of September, 1938, plaintiff and cross defendant was found in the room of a man other than the defendant and cross complainant, and that at said time and place the man said to defendant and cross complainant, "that if it was necessary to make it right he would secure a divorce and marry Mrs. McKee."

X.

That it is not true that defendant and cross complainant had conducted himself with extreme cruelty, or with cruelty, towards plaintiff and cross defendant, or has wrongfully inflicted grievous mental and physical suffering, humiliation or embarrassment upon her; and that it is not true that the defendant and cross complainant committed any acts, omissions or conduct that caused the plaintiff and cross defendant to become distressed, nervous, or physically or mentally ill, or

caused her great mental or physical suffering, anguish, humiliation or embarrassment to any degree or to the degree that the bonds of matrimony have been destroyed, or that the bonds of matrimony have been destroyed by any conduct of the defendant and cross complainant.

XI.

That it is true that on or about the 10th day of January, 1938, the defendant and cross complainant with a woman other than his daughter registered at the Pennsylvania Hotel in the City of Washington, District of Columbia, as father and daughter; that said woman was a sister of the plaintiff and cross defendant; and that it is true that the defendant and cross complainant told the plaintiff and cross defendant that defendant and cross complainant and the sister of the plaintiff and cross defendant had so registered.

That it is not true that the said defendant and cross complainant spent the night, or any night, with said sister of the plaintiff and cross defendant in the City of Washington, District of Columbia, or at any other place; and that it is not true that the plaintiff and cross defendant in the presence of the defendant and cross complainant, or otherwise, was told by her sister that her sister and the defendant and cross complainant had registered at the Pennsylvania Hotel as father and daughter; and that it is not true that the defendant and cross complainant admitted that he had spent the night of the 10th of January, 1938, or any other night, with the sister of the plaintiff and cross defendant or had excused himself upon the grounds of intoxication or in any other way.

XII.

That it is true that on or about the 6th day of July, 1938, defendant and cross complainant furnished transportation for the sister of the plaintiff and cross defendant from an eastern state to the State of California and brought her to the home of the parties located at 940 E. Foothill Boulevard, County of Los Angeles, near the City of Azusa; and the Court finds that this was done at the instance and request of the plaintiff and cross defendant.

That it is not true that the defendant and cross

complainant paid or renewed any attentions to the sister of the plaintiff and cross defendant at the home of the parties near the City of Azusa or elsewhere, or at any time.

XIII.

That it is not true that on or about the 1st day of October, 1938, the defendant openly, notoriously or otherwise associated with a woman other than the plaintiff and cross defendant, or entered a room with her, or spent considerable time with her at the Biltmore Hotel in the City of Los Angeles, or elsewhere, or that the defendant and cross complainant was seen in the company of her, on or about the 2nd day of October, 1938, or at any other time at the Brown Derby Cafe or elsewhere.

XIV.

That it is not true that on or about the 15th day of October, 1938, or at any other time, the defendant and cross complainant used force or violence upon the body of the plaintiff and cross defendant; and that it is not true that the defendant and cross complainant struck, kicked, beat or choked the plaintiff and cross defendant.

XV.

That it is not true that the defendant and cross complainant on or about the 6th day of February, 1939, or on any other date, informed the plaintiff and cross defendant that plaintiff and cross defendant's doctor had advised him that plaintiff and cross defendant was going to die, or that plaintiff and cross defendant's body was "one large carcenoma"; and that it is not true that defendant and cross complainant on or about the 6th day of February, 1939, or on any other date, laughed at plaintiff and cross defendant or made any statements, false or otherwise to her as "a good joke", or lied to the plaintiff and cross defendant for the purpose of inflicting fear or suffering upon her, or for any other reason.

XVI.

That it is not true that defendant and cross complainant on or about June 16, 1939, or at any other

time, associated openly, or notoriously with any other women other than the plaintiff and cross defendant or communicated with any woman other than plaintiff and cross defendant by letter or telegram in terms of affection.

XVII.

That it is not true that during the early part of 1940, or at any time, while plaintiff and cross defendant was pregnant, or otherwise, the defendant and cross complainant on many occasions slapped or violently pushed plaintiff and cross defendant, or that it was necessary at any time for the daughter of defendant and cross complainant to interfere to protect the plaintiff and cross defendant.

XVIII.

That it is not true that on or about April 7, 1940, or at any other time, the defendant and cross complainant openly or notoriously associated with a young woman, or any other woman, at the Roosevelt Hotel in New Orleans, Louisiana, or any other place, or that the defendant and cross complainant related to the plaintiff and cross defendant, with great pride, or otherwise, while she was ill, or at any other time, how lovely this young woman, or any other woman, was.

XIX.

That it is not true that on July 14, 1940, defendant and cross complainant told plaintiff and cross defendant that he must leave her, or that he had another young woman, or any other woman, waiting for him, or that he accompanied a young woman, or any other woman other than the plaintiff and cross defendant, by plane or otherwise on that day, or any other day to New Orleans, Louisiana, or to any other place; and that it is not true that defendant and cross complainant admitted to, or told plaintiff and cross defendant that he loved another woman, or any woman other than plaintiff and cross defendant.

XX.

That it is not true that defendant and cross complainant on or about July 18, 1940, or on any other date, wired moneys to any woman other than plaintiff and cross defendant at Port Austin, Michigan, or any other place; and that it is not true that defendant and cross complainant stayed at the Union League Club, City of Chicago, State of Illinois, with any woman other than plaintiff and cross defendant, and that it is not true that defendant and cross complainant and any woman other than plaintiff and cross defendant went to the parties' summer cottage at Port Austin, Michigan or elsewhere.

XXI.

That it is true that during the Labor Day holiday of 1940 defendant and cross complainant, in the company of all of the members of his family who where then residing in Michigan had a house party at defendant and cross complainant's summer cottage and that at said affair several school friends of the children of the defendant and cross complainant spent the week end.

That it is not true that on or about the 15th day of August, 1940, the defendant and cross complainant spent any week end in the company of three, or any girls, in the absence of the plaintiff and cross defendant, or otherwise, at the summer cottage of the parties at Port Austin, Michigan, or at any other place.

XXII.

That it is not true that on or about the 5th day of September, 1940, or at any other time, at the home of the parties hereto in Azusa, California, or at any other place, the defendant struck or beat the plaintiff and cross defendant about the head, face or body, or in any way, or knocked her down.

XXIII.

That it is true that the defendant and cross complainant on or about the 7th day of September, 1940, at the request of one of the children of the defendant and cross complainant, arranged for transportation for a girl

friend of one of the children of the defendant and cross complainant to come to California with said child.

That it is not true that on or about the 7th day of September, 1940, or at any other time, the defendant and cross complainant invited any girl to stay at the home of the parties at Azusa, or that defendant and cross complainant showered gifts or moneys upon any girl or woman other than his family; and that it is not true that the defendant and cross complainant on or about the 10th day of September, 1940, embraced or fondled any girl or any woman other than plaintiff and cross defendant, or that defendant and cross complainant admitted doing so, or excused himself by stating that he did not know what he was doing.

XXIV.

That it is not true that the defendant and cross complainant on or about the 15th day of April, 1941, or at any other time, in the ballroom of the Vista Del Arroyo Hotel, in the City of Pasadena, California, or at any other place, struck or beat plaintiff and cross defendant about the head, face or body, or otherwise, or that it was necessary for strangers to interfere in the defense of plaintiff and cross defendant.

XXV.

That it is not true that defendant and cross complainant on occasions too numerous to mention, or on any occasion, associated openly or notoriously, or in any other way, with any other woman other than the plaintiff and cross defendant, or has corresponded with any woman other than plaintiff and cross defendant disclosing his love or affection; and it is not true that defendant and cross complainant received communications in terms of endearment from any woman other than the plaintiff and cross defendant.

XXVI.

That it is not true that defendant and cross complainant on many, or any, occasions associated openly or notoriously or other wise with a woman known as "Irma", or any other woman, or openly or notoriously corresponded

with said woman, or received any correspondence in endearing terms from said woman; and that it is not true that defendant and cross complainant did cause air and railway travelling passes, bearing the name of the plaintiff and cross defendant, or bearing any other name, to be issued to any woman known as "Irma", or to any woman other than plaintiff and cross defendant.

XXVII.

That it is not true that the defendant and cross complainant on numerous, or any occasions, associated openly or notoriously with any woman other than plaintiff and cross defendant, or communicated his love and affection by letter, telegram or otherwise to any woman other than plaintiff and cross defendant; and that it is not true that any woman other than plaintiff and cross defendant expressed love and affection for defendant and cross complainant.

XXVIII.

That it is not true that the defendant and cross complainant on numerous occasions, or on any occasion, informed the plaintiff and cross defendant that he was in love with another girl, or that he desired to marry a girl known as "Irma," or any girl or woman other than plaintiff and cross defendant, or that he suggested and endeavored to persuade plaintiff and cross defendant to proceed to the State of Nevada or elsewhere in order to secure "a quiet divorce" or any divorce and that it is not true that defendant and cross complainant informed plaintiff and cross defendant that any girl or woman other than the plaintiff and cross defendant was "young, beautiful, handsome, and the dream of his heart."

XXIX.

That it is true that upon numerous occasions defendant and cross complainant brought to the home of the parties in Azusa, California, friends of the defendant and cross complainant, some of whom were of international prominence in connection with his business as an official of Pan American Airways, and that defendant and cross complainant solicited the plaintiff and cross defendant to be sociable and amiable towards said guests.

That it is not true that after such occasions defendant and cross complainant without provocation charged plaintiff and cross defendant of having been guilty of indiscretions with said persons, or without provocation charged her with having improper relations with said persons in the home of the parties at Azusa, California.

XXX.

That it is true that one of the defendant and cross complainant's daughters by a former marriage is residing with plaintiff and cross defendant; that said daughter is twenty (20) years of age; that said defendant and cross complainant has repeatedly suggested and offered to his said daughter the privilege of coming to Milwaukee and residing in the home place of the defendant and cross complainant, where the brothers and sisters of said daughter now reside, but that said daughter has refused and failed to accept said offer; that he has not contributed to the support and maintenance of said aforementioned daughter because he informed said daughter that he would not contribute to her support as long as she was residing with plaintiff and cross defendant, and said plaintiff and cross defendant was living in sin; that said children were further advised that they were welcome at the home place of the defendant and cross complainant either in Michigan or in Milwaukee, that at Christmas time in the year 1941 said child was given a written invitation to come home to Milwaukee and an offer was made to her to provide for her transportation that the sum of $100.00 was forwarded to said daughter as a Christmas present; that as soon as defendant and cross complainant ascertained that said plaintiff and cross defendant was unfaithful to him and had been indiscreet and had improper relations with men other than himself, he forthwith made arrangements to remove his children who were willing to leave the home place of the plaintiff and cross defendant.

That it is not true that the defendant and cross complainant during said time, or any other time, has failed or neglected or omitted or refused to contribute to the support and maintenance of his minor children by a previous marriage, other than the aforesaid minor

child, aged twenty (20), who refuses to leave the plaintiff and cross defendant; that it is not true that the plaintiff and cross defendant has supported any minor child of the defendant and cross complainant by a previous marriage, other than the aforesaid minor child, aged twenty (20).

XXXI.

That it is not true that defendant and cross complainant on occasions too numerous to mention, or on any occasion, used vile or filthy or foul language toward plaintiff and cross defendant.

XXXII.

That it is true that defendant and cross complainant is a fit and proper person to have the care, custody and control of Terry Alexander McKee, the minor child of the parties hereto, and that said Terry Alexander McKee is within the jurisdiction of this Court, that defendant and cross complainant has a well established, proper home in Milwaukee, Wisconsin and also in Port Austin, Michigan, and that defendant and cross complainant is able properly to care for said minor child at either of these two places, and that the defendant and cross complainant is better able to provide for the proper raising and education of said minor child than the plaintiff and cross defendant.

XXXIII.

That it is true that on the 4th day of September, 1941, plaintiff and cross defendant entered into an agreement with defendant and cross complainant, adjusting their respective property rights with relation to each other, and that said agreement is now in effect between the parties, and that a true copy of said property settlement agreement is attached to plaintiff's Second Amended Complaint as Exhibit "A", and that by virtue of said property settlement agreement the defendant and cross complainant, among other things, obligated himself to pay all outstanding bills contracted by either of the said parties prior to September 4, 1941.

XXXIV.

That it is true that the defendant and cross complainant has fully complied with the terms of the said property settlement agreement; that it is true that the defendant and cross complainant has paid any and all money obligations to be paid by him under the terms of said agreement, or has forwarded and paid to the plaintiff and cross defendant sufficient moneys for the purpose of paying said obligations.

That it is not true that defendant and cross complainant has failed or refused or neglected or omitted to comply with any term of said property settlement agreement, or to make any payment of money due thereunder.

XXXV.

That it is true that plaintiff and cross defendant signed a document indemnifying defendant and cross complainant against any items claimed due under said property settlement agreement, for which defendant and cross complainant had sent sufficient money to plaintiff and cross defendant to pay the same.

That it is not true that defendant and cross complainant made any false or fraudulent statements concerning or including the signing of said indemnifying agreement by the plaintiff and cross defendant.

XXXVI.

That it is true that said property settlement agreement makes a further provision for additional counsel fees in the event that it is necessary for the plaintiff and cross defendant to employ counsel to enforce the terms and conditions of the agreement; that plaintiff and cross defendant has engaged counsel pursuant to said agreement, and that counsel has rendered services pursuant thereto, and that the reasonable value of said services is $200.00.

XXXVII.

The Court finds untrue each and every allegation contained in paragraphs III-c, III-d, III-e,III-f, III-g,

III-h, III-i, III-j, III-k, III-l, III-n, III-o, III-p, III-q, III-r, III-u, of the first cause of action contained in plaintiff's Second Amended Complaint.

CONCLUSIONS OF LAW

AS CONCLUSIONS OF LAW from the foregoing facts, the Court finds:

I.

That the defendant and cross complainant has a good and sufficient cause of action for divorce against the plaintiff and cross defendant herein.

II.

That the defendant and cross complainant should be granted a decree of divorce from the plaintiff and cross defendant herein.

III.

That defendant and cross complainant should be awarded forthwith the care, custody and control of the minor child of the parties, to wit, Terry Alexander McKee, said Terry Alexander McKee, however, shall spend three months in the summer time with the plaintiff and cross defendant, but while said minor child is visiting plaintiff and cross defendant during said three month's period in the summer time, or any part thereof, said minor child is not to be taken out of, or leave, the State of California without the consent of the Court on motion.

IV.

That the parties hereto entered into and duly executed a proper settlement agreement on the 4th day of September, 1941, a duplicate original of said agreement having been introduced into evidence as plaintiff's Exhibit 9, and a true copy of which is attached to plaintiff's second amended complaint as Exhibit "A"; that said Agreement has been in full force and effect since September 4, 1941, and is fair and equitable.

V.

That the property settlement agreement entered into by and between the parties hereto dated September 4, 1941, shall be ratified and approved by the Court.

VI.

That the defendant and cross complainant has fully performed and fulfilled each and every terms of said property Settlement Agreement by him to be performed.

VII.

That the plaintiff and cross defendant should be awarded from the defendant and cross complainant the sum of Three Hundred Dollars ($300.00) per month, pursuant to the property settlement agreement dated September 4, 1941, for and on account of support and maintenance.

VIII.

That plaintiff and cross defendant should be awarded from the defendant and cross complainant the sum of One Hundred Dollars ($100.00) per month for the support and maintenance of the minor child of the parties hereto, during the three months of each year in the summer time while said minor child is with the plaintiff and cross defendant.

IX.

That Joseph L. Fainer and Thomas Connell attorneys for the plaintiff and cross defendant should be granted and allowed, and the defendant and cross complainant should be ordered to pay to Joseph L. Fainer and Thomas Connell the sum of Two Hundred Dollars ($200.00) on account of additional attorney's fees herein.

X.

That the plaintiff and cross defendant has not a good and sufficient cause of action for divorce against the defendant and cross complainant herein.

PART OF EXHIBITS 22 AND 23

XI.

That the plaintiff and cross defendant should not be granted a decree of divorce from the defendant and cross complainant herein, and should take nothing by reason of her complaint herein, or by reason of any amendments to her complaint.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Done in Open Court this 17th day of December, 1942.

THURMOND CLARKE
Judge of the Superior Court.

PART OF EXHIBIT 23 AT TRIAL

759

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

EVELYN McKEE,	)	MARK T. McKEE,
Plaintiff and Cross Defendant	vs)	Defendant and Cross Complainant
	)	No. D-211536
	)	JUDGMENT

This cause came on regularly for trial on the 28th day of October, 1942, in the Calender Department of the above entitled court, and was thereupon transferred to Department 6 of the above entitled court before Honourable Thurmond Clarke, Judge Presiding therein for trial; said cause was tried on October 28, 29, 30, November 2, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19 and 20. Plaintiff and cross defendant appearing in person and by her attorneys, E. G. Haumesch and Lee A. Solomon from the commencement of said trial until the 6th day of November, 1942, when Joseph L. Fainer and Thomas Connell were associated with E. G. Haumesch and Lee A. Solomon as attorneys for plaintiff and cross defendant; that E. G. Haumesch, Lee A. Solomon, Joseph L. Fainer and Thomas Connell appeared as attorneys for said plaintiff and cross defendant until November 10, 1942, when said E. G. Haumesch and Lee.A. Solomon, Joseph L. Fainer and Thomas Connell were substituted by Joseph L. Fainer and Thomas Connell, by Thomas Connell, and said Joseph Fainer and Thomas Connell appeared for plaintiff and cross defendant until the conclusion of said trial; and defendant and cross complainant appearing in person and by his attorneys Messrs. Joseph Scott and A. H. Risse.

Evidence both oral and documentary having been introduced on behalf of all parties to said action, both upon the Second Amended Complaint of plaintiff herein, and the Cross Complaint of the defendant herein, and the respective answers of the parties hereto, and said cause thereupon having been argued to the Court and submitted to the Court for its consideration and determination, and the Court having considered the matter and being fully advised in the premises and having

ordered Judgment in favor of the defendant and cross complainant for a divorce and having filed its decision in writing and findings of fact and conclusions of law herein;

NOW, THEREFORE, in accordance therewith it is hereby ORDERED, ADJUDGED AND DECREED that defendant and cross complainant is entitled to a divorce from the plaintiff and cross defendant; that when one year shall have expired after the entry of this Interlocutory Judgment of Divorce, A Final Judgment of divorce dissolving the marriage of the plaintiff and cross defendant and defendant and cross complainant be entered and that at that time the Court shall grant such other and further relief as may be necessary to the complete disposition of this action;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant and cross complainant be and he is hereby awarded forthwith the care, custody and control of the minor child of the parties hereto, to wit: Terry Alexander McKee. Said Terry Alexander McKee shall spend three months in the summer time with the plaintiff and cross defendant, and during the aforementioned three month period said minor child is not to be taken out of, or leave the State of California, without the consent of the Court on motion.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the property settlement agreement executed by and between the parties hereto as of the date of September 4, 1941, and offered and received in evidence be, and the same is hereby, affirmed and approved by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant and cross complainant pay to Joseph L. Fainer and Thomas Connell, the sum of Two Hundred Dollars ($200.00) as and for attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant and cross complainant pay to plaintiff and cross defendant the sum of One Hundred Dollars ($100.00) per month for the support and maintenance of the minor child of the parties hereto during the three months of each year in the summer time while said minor child is with the plaintiff and cross defendant.

PART OF EXHIBIT 23 AT TRIAL

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the property settlement agreement heretofore entered into by and between plaintiff and cross defendant and defendant and cross complainant, defendant and cross complainant is to pay to plaintiff and cross defendant the sum of Three Hundred Dollars, ($300.00) per month, commencing with the 1st day of December, 1942, and continuing thereafter until the plaintiff and cross defendant shall remarry or die.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the plaintiff and cross defendant have and recover nothing from the defendant and cross complainant on the Second Cause of Action of the plaintiff and cross defendant's Second Amended Complaint.

DONE IN OPEN COURT this 17th day of December, 1942.

THURMOND CLARKE
Judge of the Superior Court

NOTICE - CAUTION.

THIS IS NOT A JUDGMENT OF DIVORCE. The parties are still husband and wife, and will be such until a Final Judgment of Divorce is entered after one year from the entry of this Interlocutory Judgment. The Final Judgment of Divorce will not be entered unless requested by one of the parties.

PART OF EXHIBITS 22 AND 23 AT TRIAL
EXHIBIT "B" TO AFFIDAVIT MARK T. McKEE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF LOS ANGELES

EVELYN McKEE		MARK T. McKEE
Plaintiff and Cross Defendant	-vs-	Defendant and Cross Complainant

No. D. 211-536

ORDER FIXING PERIOD OF CUSTODY OF MINOR CHILD AND DENYING MODIFICATION OF AWARD OF CUSTODY

Filed July 7, 1944
Fred J. Jaeger, Clerk

The Order to show cause of plaintiff and cross defendant, Evelyn McKee, in re fixing period of custody of minor child and for order requiring the surrender and delivery of the minor child, Terry Alexander McKee, to plaintiff and cross defendant heretofore issued on the 31st day of May, 1943, coming on for hearing in the above entitled Court, Department 6 thereof, before Honorable Thurmond Clarke, Judge Presiding, on the 10th day of June, 1943, at the hour of 10:00 a.m. said matter having originally been set for the 27th day of May 1943, at the hour of 1:45 p.m. in Department 8 of the above entitled Court, but having been duly and regularly assigned to this Department and continued to the 10th day of June 1943, at the hour of 10:00 a.m.; and the order to show cause regarding Modification of Custody of Minor Child heretofore issued out of the above entitled Court, on the 27th day of May 1943, at the instance of Mark T. McKee, defendant and cross complainant, through his counsel, Joseph Scott, coming before the above entitled Court on said June 10th 1943, at the hour of 10:00 a.m. Honorable Thurmond Clarke, Judge Presiding, and the plaintiff and cross defendant, Evelyn McKee, appearing in person and by her attorney F. Millar Cloud, on the said 10th day of June 1943, at the hour of 10:00 a.m. and the defendant and cross complainant, Mark T. McKee, appearing in person and by his counsel, Joseph Scott and A.H. Risse, and plaintiff and cross defendant, Evelyn McKee, and defendant and cross complainant Mark

T. McKee, and other witnesses having been sworn and testified and evidence both oral and documentary having been introduced on behalf of the parties to said motion and Orders to Show Cause, and the Court having considered the testimony and evidence as well as the Affidavits heretofore filed in connection with said motion, and matters presented by the Orders to Show Cause having been argued and submitted to this Court for its consideration and determination and the Court having fully considered the matter and being fully advised in the premises,

NOW THEREFORE THE COURT ENTERS ITS ORDER AND JUDGMENT AS FOLLOWS:

That the motion of the plaintiff and cross defendant, Evelyn McKee, embodied in the Order to Show Cause heretofore issued and dated May 21st 1943, is GRANTED, and the Court does herewith fix the "three months period in the summer time" set forth in the Interlocutory Decree entered in the above entitled action on the 18th day of December 1942, for the year 1943, as that period from July 1st 1943, to the 30th day of September 1943, inclusive, and the Court herewith ORDERS AND DIRECTS that the defendant and cross complainant, Mark T. McKee, he at this time being before this Court and having possession of said minor child, Terry Alexander McKee, surrender said Terry Alexander McKee unto the plaintiff and cross defendant, Evelyn McKee, at her residence in the City of Los Angeles, County of Los Angeles, State of California, or in the Court room of Department 6 of the Superior Court of the State of California, in and for the County of Los Angeles, on or before the 1st day of July 1943.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the application and request of the defendant and cross complainant Mark T. McKee, as embodied in the Order to Show Cause re Modification of Custody of Minor Child, dated May 27, 1943, and requested in the Affidavit of the defendant and cross complainant, Mark T. McKee, on file herein, praying for modification, which affidavit is dated May 26, 1943, be, and the same is hereby denied, excepting as said decree and judgment is hereinafter modified.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the defendant and cross complainant, Mark T. McKee, shall have the care, custody and control of the minor child of the parties hereto, to wit, Terry Alexander McKee one day each and every week during the period from July 1, 1943 to September 30, 1943; that the said defendant and cross complainant Mark T. McKee shall advise the plaintiff and cross defendant which day he desires to take said child with him and shall give said plaintiff and cross defendant reasonable notice thereof.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that during each and every week from July 1, 1943 to and including September 30, 1943, the defendant and cross complainant shall have the right to have his designated agent and/or representative call at the residence of the plaintiff and cross defendant and obtain a report from plaintiff and cross defendant with respect to Terry Alexander McKee minor child of the parties hereto, and said agent and/or representative may also see and talk with said child and thereafter report the condition of said minor child to the defendant and cross complainant.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the plaintiff and cross defendant shall not remove or permit said child to be removed by anyone from the County of Los Angeles, State of California, without the permission first had and obtained from the above entitled Court.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that during the period from July 1, 1943 up to and including September 30, 1943 while plaintiff and cross defendant has the possession of the minor child of the parties hereto, to wit, Terry Alexander McKee, she shall not permit Max de la Fuente to call at the residence of plaintiff and cross defendant, nor shall she permit the said Max de la Fuente to be in her company at any time, or any place, or at all, when the said minor child is present.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the plaintiff and cross defendant forthwith notify the defendant and cross complainant, through his attorney Joseph Scott, Esq., of the present address of said plaintiff and cross defendant, and that in the event said plaintiff and cross defendant removes from her present address, or takes said minor child away from her

permanent home or permits said child to be taken away from said home, plaintiff and cross defendant shall forthwith notify Joseph Scott, Esq. the attorney for defendant and cross complainant, as to the whereabouts of said child.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Cynthia McKee, minor daughter of defendant and cross complainant is hereby prohibited from in any manner removing Terry Alexander McKee, minor child of the parties hereto, or causing said Terry Alexander McKee to be removed or taken away from the residence of the plaintiff and cross defendant.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that plaintiff and cross defendant shall not make or utter any defamatory or derogatory remarks of or concerning defendant and cross complainant to or in the presence of Terry Alexander McKee, minor child of the parties hereto, nor shall she permit any person whomsoever to make or utter any defamatory or derogatory remarks of or concerning defendant and cross complainant in the presence of said minor child.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that on or before five p.m. on the 30th day of September 1943, plaintiff and cross defendant shall, without further order of court, deliver and surrender the said Terry Alexander McKee, minor child of the parties hereto, unto the defendant and cross complainant, Mark T. McKee, at the office of his attorney, Joseph Scott, Esq., said office is located at 357 South Hill Street, Suite 1001-1012 Black Building, Los Angeles, California.

DATED: June 28, 1943.

THURMOND CLARKE
Judge.

PART OF EXHIBIT 23 AND EXHIBIT "C"
TO AFFIDAVIT MARK T. McKEE

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

EVELYN McKEE		MARK T. McKEE
Plaintiff and Cross Defendant	-vs-	Defendant and Cross Complainant

No. D. 211-536

ORDER FIXING PERIOD OF CUSTODY OF MINOR CHILD AND DENYING MODIFICATION OF AWARD OF CUSTODY

Filed July 7, 1944
Fred J. Jaeger, Clerk

The Order to Show Cause of plaintiff and cross defendant, EVELYN McKEE, requesting a modification of the award of custody of the minor child of the parties hereto, Terry Alexander McKee, which Order to Show Cause was dated August 20th, 1943 and the Order to Show Cause of the Defendant and cross-complainant, Mark T. McKee, requesting a modification of the award of the custody of the minor child, Terry Alexander McKee, which Order to show cause was dated the 15th day of September 1943, coming on for hearing before the above entitled Court, Department 37 thereof, on the 22nd day of September, 1943, at the hour of 10:00 a.m. o'clock, Honorable Stanley Mosk, Judge Presiding, pursuant to assignment on Order of the Presiding Judge of Department 1, of the above entitled Court, and the plaintiff and cross defendant, Evelyn McKee, appearing in person and by her attorney, J. Millar Cloud, and the defendant and cross complainant, Mark T. McKee, appearing in person and by his attorneys, Joseph Scott, and A. H. Risse, and the plaintiff and cross defendant and other witnesses and defendant and cross complainant and other witnesses having been sworn and testified and evidence both oral and documentary having been introduced on behalf of the motion for modification so made by the plaintiff and cross defendant as well as on behalf of the motion for modification so made by the defendant and cross complainant, and said matters having been heard on the said 22nd day of September, 1943, and on the 23rd day of September, 1943, and the Court being fully advised in the premises, and the issues raised by said Orders to Show Cause having been argued and submitted to this

Court for its consideration and determination, and the Court having fully considered the matter and having been fully advised in the premises,

NOW THEREFORE THE COURT ENTERS ITS ORDER AND JUDGMENT AS FOLLOWS:

That the application and request of the defendant and cross complainant as requested and as embodied in his Order to show cause and affidavit in re modification of custody of minor child issued out of the above entitled Court on the 15th day of September, 1943 to which is attached the affidavit of said Mark T. McKee, defendant and cross complainant, dated September 13th 1943, be and the same is hereby DENIED.

That the application and request of the plaintiff and cross defendant as requested and embodied in her Order to show cause and affidavit in re modification of custody of minor child issued out of the above entitled Court on the 20th day of August 1943, and to which is attached the said affidavit of Evelyn McKee and dated August 20th 1943, be and the same is hereby DENIED.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the plaintiff and cross defendant Evelyn McKee shall have the care, custody and control of the minor child of the parties hereto, to wit, Terry Alexander McKee, one (1) day each and every week during the period from October the 1st 1943 to June the 30th 1944. That the said plaintiff and cross defendant, Evelyn McKee, shall advise the defendant and cross complainant which day she desires to take said child with her and shall give said defendant and cross complainant reasonable notice thereof.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the defendant and cross complainant, Mark T. McKee, shall furnish to the plaintiff and cross defendant transportation from Los Angeles, California, to Milwaukee, Wisconsin, or any other place where said child shall be on three (3) occasions during the period from October the 1st 1943 to June the 30th 1944.

Done in open Court this 29th day of September 1943

STANLEY MOSK
Judge of the Superior Court

PART OF EXHIBIT 23

State of Wisconsin: Circuit Court: Milwaukee County

768

EVELYN McKEE, Plaintiff, -vs- MARK T. McKEE, Defendant

SUMMONS

COPY

FILED

Jan. 12, 1944

FRED J. JAEGER, Clerk

THE STATE OF WISCONSIN to the said Defendant:

You are hereby summoned to appear within twenty (20) days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

SHAW, MUSKAT & PAULSEN,

Attorneys for Plaintiff.

P.O. Address:

773 North Broadway,
Milwaukee 2, Wisconsin

COMPLAINT

COPY

FILED

Jan. 12, 1944

FRED J. JAEGER, Clerk

The above named plaintiff by her attorneys, Shaw, Muskat & Paulsen, as and for a complaint against the abovenamed defendant alleges as follows:

PART OF EXHIBIT 23

First: That the plaintiff is the mother and the defendant is the father of Terry Alexander McKee, a minor son, approximately three and one-half (3-1/2) years of age.

Second: That the said minor son of the parties is presently in the custody of the defendant and defendant refuses to surrender the custody of said child to the plaintiff.

Third: That the defendant and said minor child are domiciled in the Village of Whitefish Bay, County of Milwaukee, State of Wisconsin, and the plaintiff is domiciled in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Fourth: That the custody of said minor child has not been awarded to the defendant by the judgment or decree of any court of the State of Wisconsin.

Fifth: That the defendant is not a fit and proper person to have the custody of said child and has not properly cared for said child during the time said child has had its domicile in the State of Wisconsin; that the interests and welfare of said child require that that said child be removed from the custody of the defendant and that the custody of said child be awarded to the plaintiff, and that the defendant be required to pay to the plaintiff a reasonable sum for the support and maintenance of said child.

Sixth: That, pursuant to the provisions of Section 269 56 of the Statutes of the State of Wisconsin, the plaintiff is entitled to have a judicial declaration of her right to the custody of said child and of her right to compel the defendant to pay a reasonable sum for the support and maintenance of said child.

Seventh: Plaintiff further alleges that unless the defendant is enjoined and restrained he will remove the minor child of the parties from the jurisdiction of this court in an effort to render the court's judgment ineffectual.

WHEREFORE, plaintiff demands judgment as follows:

PART OF EXHIBIT 23

1. That the above-named court adjudge and determine (a) that defendant is not a fit and proper person to have the custody of the minor child of the parties; (b) that defendant has not properly cared for said child during the time it has had its domicile in the State of Wisconsin, and (c) that the interests and welfare of said child require that it be removed from the custody of the defendant and that its custody be awarded to the plaintiff.

2. That defendant be required to pay a reasonable sum for the support and maintenance of said child.

3. That defendant be required to pay to the plaintiff a reasonable sum for attorneys' fees and costs incident to commencing and maintaining this action.

4. That defendant be enjoined from removing or causing the removal of said minor child from the State of Wisconsin.

5. That plaintiff have her costs and disbursements of this action.

SHAW, MUSKAT & PAULSEN

Attorneys for Plaintiff.

PART OF EXHIBIT 23

EVELYN McKEE, Plaintiff, -vs- MARK T. McKEE, Defendant

COMPLAINT

COPY

FILED

July 7, 1944

FRED J. JAEGER, Clerk

Consolidated Action
No. 189-287

Now comes the above named plaintiff by her attorneys, Shaw, Muskat & Paulsen, and as and for a complaint against the above named defendant alleges as follows:

FIRST CAUSE OF ACTION

1. That the plaintiff is the mother and the defendant is the father of Terry Alexander McKee, a minor son, three years and ten months of age.

2. That the said minor son of the parties is presently in the custody of the defendant and defendant refuses to surrender the custody of said child to the plaintiff.

3. That the defendant and said minor child are living in the Village of Whitefish Bay, County of Milwaukee, State of Wisconsin, and the plaintiff is living in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

4. That the custody of said minor child has not been awarded to the defendant by the judgment or decree of any court of the State of Wisconsin.

5. That the defendant is not a fit and proper person to have the custody of said child; that defendant has not given proper attention to the physical welfare of said child; that the natural desire of a boy to emulate his father makes it necessary from the standpoint of the morals and ideals of Terry Alexander McKee that he

be removed from the custody of his father. Plaintiff further alleges upon information and belief that:

(1) Defendant leads, and for many years has led, an immoral life.

(2) Defendant has made illegal use of free passes issued to him and members of his family for passage over various transportation systems.

(3) Defendant has regularly evaded the payment of taxes due and owing by him.

(4) Defendant has lived in and maintained a home in the Village of Whitefish Bay, Wisconsin, for several years and has failed to file any income tax returns or to make any payment of income taxes to the State of Wisconsin.

(5) Defendant has caused his children to be enrolled as pupils in the public schools of the Village of Whitefish Bay, Wisconsin, and has failed to pay any non-resident tuition fees notwithstanding he contends and maintains that he is not a resident of Wisconsin but is a legal resident of the State of Michigan.

(6) Defendant has failed to file any intangible personal property tax returns pursuant to the laws of the State of Michigan, (which state does not have an income tax law but does tax intangible personal property) and defendant has failed to make payment of any intangible personal property taxes to the State of Michigan notwithstanding he claims all of the stocks and bonds owned by him have been kept in the State of Michigan.

(7) Defendant is dishonest in his business enterprises and in his dealings with other men.

(8) The employment of defendant is not open and forthright but is of a secret and tortuous nature; that defendant is engaged in lobbying and political activities and illegally collects, dispenses and expends large sums of money for political purposes and to improperly influence government officials

and representatives as well as persons engaged in private industry.

(9) Defendant has obstructed the administration of justice in concealing and removing witnesses from the jurisdiction of the court and defendant has been guilty of subornation of perjury in persuading certain of his children and an employe by the name of Charles Watt to testify falsely in his favor.

Plaintiff further alleges that defendant is guilty of hypocrisy in his religious activities; that defendant is of the Protestant faith and for the purpose of deceiving and currying favor with persons of the Roman Catholic faith defendant frequently and falsely pretends that he is a Roman Catholic.

6. That the interests and welfare of the minor child of the parties require that said child be removed from the custody of the defendant and placed in the custody of the plaintiff and the defendant be required to pay to the plaintiff a reasonable sum for the support and maintenance of said child.

7. That, pursuant to the provisions of Section 269.56 of the Statutes of the State of Wisconsin, the plaintiff is entitled to have a judicial declaration of her right to the custody of said child and of her right to compel the defendant to pay a reasonable sum for the support and maintenance of said child.

SECOND CAUSE OF ACTION

1. That on the 19th day of July, 1933, plaintiff and defendant were duly united in matrimony at St. Albans, Vermont.

2. That the issue of said marriage consists of one child, Terry Alexander McKee, age three years and ten months.

3. That on the 18th day of September, 1941, the plaintiff herein commenced an action against the defendant herein for divorce from the bonds of matrimony and to secure the custody of Terry Alexander McKee, the minor child of the parties, who was then one year and

one month of age; that said action was commenced in the Superior Court of the State of California in and for the County of Los Angeles.

4. That at the time of commencement of said action Section 128 of the Civil Code of the State of California, which was then in full force and effect, provided as follows:

> "A divorce must not be granted unless the plaintiff has been a resident of the state one year, and of the county in which the action is brought three months next preceding the commencement of the action; provided, that a cross-complainant in an action for divorce need not be or have been a resident of the state or of any county in which the action is brought or pending in order to entitle such cross-complainant to a divorce in such action; and provided further, that in an action for divorce a cross-complainant must personally verify the cross-complaint."

5. That under the law of the State of California the term "a resident" as used in such statute does not pertain to a mere factual place of abode within the limits of the state for one year before the commencement of such action and a person is not a resident of the State of California within the meaning of said statute unless the person, in addition to residing in the state, has an intention to make the state his permanent home and has no intention of having a permanent home elsewhere.

6. That at the time plaintiff commenced said action she alleged in her complaint as follows:

> "That for more than one year immediately preceding the commencement of this action plaintiff has been, and now is, a resident of the County of Los Angeles, and of the State of California."

7. That in signing said complaint plaintiff assumed that the term "a resident" as used therein referred to

the fact that she had been physically present and dwelling in the State of California for one year before the commencement of the action and plaintiff had no knowledge or information concerning the facts that constitute a legal residence within the meaning of Section 128 of the Civil Code of the State of California.

8. Plaintiff further alleges upon information and belief that the testimony given by her upon the trial of said action in the State of California did not in any manner disclose that she had acquired a legal residence in the State of California for one year before the commencement of said action, as required by the provisions of Section 128 of the Civil Code of the State of California as above mentioned. That upon said trial plaintiff testified that on September 10, 1940, at the primary election in the State of Michigan, and on November 5, 1940, at the general election in the State of Michigan, plaintiff voted by absent voter's ballot in the State of Michigan, and plaintiff further testified that she went to California at the instance of the defendant and that he had been insistent that plaintiff should go to California to live in the home established by him in the State of California in 1935.

9. Plaintiff further alleges that in the complaint filed in said action in California plaintiff alleged as follows:

> "That the date of separation of the parties was the 22nd day of December, 1940",

and that in the cross-complaint filed by defendant in said action defendant alleged as follows:

> "That the date of separation of the parties was the 22nd day of December, 1940",

10. That after the trial of said action the said California court made findings of fact, which among other provisions contained the following:

"II.

That it is true that the plaintiff and

cross defendant and defendant and cross complainant since on or about the 22nd day of December, 1940, have not been living together as husband and wife.

III.

That it is true that plaintiff and cross-defendant is now a resident of the State of California and that for more than one year immediately preceding the commencement of this action she has been a resident of the County of Los Angeles, State of California.

IV.

That it is true that the defendant and cross complainant is a resident of the State of Michigan, and that at all times during the married life of the parties hereto he was a resident of the State of Michigan, and has never during said period of time been a resident of the State of California."

That said court also made findings of fact to the effect that prior to the commencement of said action plaintiff had treated the defendant in a cruel and inhuman manner without justification or provocation and that the defendant was entirely free from fault and that plaintiff was not entitled to secure a divorce from the defendant and that defendant was entitled to secure a judgment of divorce severing the bonds of matrimony between the plaintiff and defendant; that pursuant to said findings of fact a judgment of divorce was in form entered in said California court on the 17th day of December, 1942, which judgment upon its face purports to grant a divorce to the defendant upon a cross complaint in form filed by him in said action, and said judgment also awarded to the defendant the custody of Terry Alexander McKee, the minor child of the parties, for nine months of each year and said judgment awarded the custody of said child for the remaining three months of each year to plaintiff; that a copy of said judgment is annexed hereto, marked Exhibit "A" and made a part hereof; that subsequent to the entry of such judgment said California court made and entered two supplemental

orders in said action which are annexed hereto as Exhibits "B" and "C" and made a part hereof.

11. Plaintiff further alleges that prior to the commencement of said action she at no time intended to have a domicile or legal residence different than the residence of her husband, Mark T. McKee, and prior to that date plaintiff had at all times subsequent to her marriage to the defendant lived in the home selected, established and maintained by the defendant as the home of the defendant and his family.

12. Plaintiff further alleges that she did not have a domicile or legal residence in the State of California within the meaning of Section 128 of the Civil Code of the State of California as above set forth for a period of one year prior to September 18, 1941, the date upon which said divorce action was commenced in said California court.

13. Plaintiff further alleges that under the law of the State of California said Superior Court of the State of California in and for the County of Los Angeles did not have the jurisdiction or power to enter a valid decree of divorce in the action commenced by the plaintiff on said 18th day of September, 1941. That said judgment is, under the law of California, null and void because the court entering the same did not have jurisdiction of the cause of action or subject matter before the court in said action.

14. Plaintiff further alleges that on or about the 28th day of September, 1942, defendant filed a cross complaint in said California action, a copy of which is annexed hereto, marked Exhibit "D" and made a part hereof, That the defendant makes the following, among other allegations, in said cross complaint, towit:

> "That defendant and cross complainant is a resident of the State of Michigan, and the plaintiff and cross defendant is <u>now</u> a resident of the County of Los Angeles, State of California."

That said allegation does not comply with the law of the

State of California; that to entitle the defendant to secure a divorce from the plaintiff on the cross complaint filed by him it was necessary for the defendant to prove that plaintiff had been a legal resident of the State of California for at least one year prior to the commencement of said action; that defendant neither alleged said fact nor proved said fact upon the trial of said action wholly fails to establish that the plaintiff was a legal resident within the meaning of Section 128 of the Civil Code of the State of California for one year prior to the commencement of said action. That upon the trial of said action neither the plaintiff nor the defendant claimed or contended that plaintiff was a legal resident of the State of California within the meaning of said Section 128 of the Civil Code of the State of California for a period of one year immediately preceding the commencement of said action. That pursuant to the law of California the courts of the state are without jurisdiction to enter a judgment of divorce upon a cross complaint of a non-resident defendant unless the plaintiff in said action has been a resident for at least one year immediately preceding the commencement of said action, and any judgment entered without such residence is a nullity.

15. Plaintiff further alleges that under the law of California the act of the plaintiff in commencing an action in a California court for the purpose of securing a divorce does not bar or estop the plaintiff from now asserting that the court did not have jurisdiction of the subject-matter before it. That under the law as announced by the courts of that state no act of the parties in the nature of waiver, stipulation, appearance, consent or estoppel can confer upon a court in a divorce action a jurisdiction which it does not possess when the subject-matter of the controversy is beyond its limitations. That Section 1916 of the Civil Code of the State of California provides as follows:

> "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial offices, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceeding."

Section 1917 of said Code provides:

> "The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment."

16. That annexed hereto, marked Exhibit "E" and made a part hereof, are various extracts of decisions of California courts which constitute the law of California and which establish that California courts do not have jurisdiction of the subject matter involved in a divorce action where the plaintiff has not been a legal resident of California for at least one year immediately preceding the commencement of such action and which decisions also establish that under the law of California any person who has not been a legal resident for such statutory period and who has attempted to invoke the jurisdiction of the courts for the purpose of securing a divorce is not thereby estopped from later attacking by an independent suit in equity the validity of any divorce decree entered in such divorce action.

17. That under the California law an independent suit in equity for the purpose of enjoining or restraining a party from asserting or using a judgment entered as a result of extrinsic fraud, mistake or lack of jurisdiction of a court entering the same, constitutes a direct attack upon such judgment and is not deemed to be a collateral attack.

18. Plaintiff further alleges that said judgment violates the constitutional provisions contained in the Fourteenth Amendment to the Constitution of the United States, and said judgment does not come within the terms of Section 1 of Article IV of the United States Constitution which requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state", and is not entitled to any faith or credit in the courts of the State of Wisconsin.

19. That under and pursuant to the provisions of Section 269.56 of the Statutes of the State of Wisconsin the plaintiff is entitled to secure a

declaration of her rights, status and legal relations as the same may exist under and by virtue of said California judgment and is entitled to have the court wherein this action is pending determine whether said California judgment had the legal force and effect of severing the bonds of matrimony existing between plaintiff and defendant and whether said judgment created in the defendant any rights to the custody of Terry Alexander McKee, the minor child of the parties.

20. Plaintiff further alleges that in the event it is judicially determined herein that said California court was without jurisdiction to enter the judgment which was in form entered by it and that said judgment is null and void, plaintiff is entitled to enjoin and restrain the defendant from using said judgment for the purpose of asserting any rights as against the plaintiff herein.

THIRD CAUSE OF ACTION

1. Plaintiff repeats and realleges by reference each and all of the allegations contained in paragraphs numbered 1,2,3,4,10,11,12,13,15,17,18,19 and 20 of plaintiff's second alleged cause of action as above set forth, and in addition thereto plaintiff alleges as follows:

2. That annexed hereto, marked Exhibit "D" and made a part hereof, is a true and correct copy of the cross complaint filed by defendant in said California action.

3. That said cross complaint was verified by A. H. Risse, an attorney associated with Joseph Scott, Esq., the attorney of record for defendant in said action.

4. That Section 128 of the Civil Code of the State of California as set forth in paragraph numbered 4 of the second alleged cause of action above mentioned, authorizes a non-resident defendant to file a cross complaint for divorce where the plaintiff has been a legal resident for the required statutory period, subject to the following condition as therein expressed, viz. :

". . .and provided further, that in an action for divorce a cross-complainant must personally verify the cross-complaint."

5. That under the law of the State of California the jurisdiction of the courts of that state in divorce actions comes only from the statute under which the court acts and its powers are limited to those prescribed in the statute, and although the court is a court of general jurisdiction yet, in the exercise of its powers in divorce actions, its jurisdiction is limited and special and whenever its acts are in excess of the power conferred upon such court or without the limits of such special jurisdiction, such acts are nugatory and have no binding effect upon those who have invoked its authority or submitted to its decision. In a divorce action under the law of the State of California it is essential to jurisdiction that there be some proper application invoking the judicial power of the court in respect to the matter sought to be litigated. Jurisdiction of the subject-matter is attained by the filing of such pleading or petition as will bring the action within the authority of the court as conferred by statute and under the law of said state the Superior Court of the State of California in and for the County of Los Angeles had no authority or jurisdiction to act upon defendant's request for a divorce because the court did not have before it any cross complaint or petition properly invoking the jurisdiction of said court and the decree of the court granting the divorce to the defendant and awarding the custody of the minor child or the parties hereto to the defendant upon application of the defendant is a nullity.

6. That annexed hereto, marked Exhibit "F" and made a part hereof, are various extracts of decisions of California courts which constitute the law of California and which establish that the failure of the defendant to present to the said Superior Court of the State of California in and for the County of Los Angeles a cross complaint personally verified by him deprived that court of any jurisdiction to enter a valid divorce in his favor, and by reason thereof the judgment as entered in said court purporting to decree a divorce in favor of the defendant is totally null and void.

PART OF EXHIBIT 23

FOURTH CAUSE OF ACTION

1. Plaintiff repeats and realleges by reference each and all of the allegations contained in paragraphs 1, 2,3,4,5,7,8,10,11,12,14,16,17 and 18 of the second alleged cause of action above set forth, and in addition thereto plaintiff alleges that said California court in form made and entered certain findings of fact and conclusions of law upon which said judgment and supplemental orders were predicated.

2. That said findings of fact and conclusions of law, judgment, and supplemental orders were secured by the defendant by collusion, fraud and perjury.

3. That the acts and conduct of defendant, Mark T. McKee, prevented a fair submission of the controversy between the parties to said California court in the following respects, to wit:

(1) That after Joseph Scott, an attorney at law, had, been engaged to represent the plaintiff in the controversy existing between plaintiff and defendant concerning their marital affairs, and after plaintiff had conferred with said Joseph Scott and confided in him various matters pertaining to said controversy, the defendant employed said Joseph Scott to represent him as his attorney in said controversy, and thereafter said Joseph Scott violated said confidences and did appear for and represent defendant Mark T. McKee throught the pendency of the divorce action which was instituted in said California court,

(2) Plaintiff alleges upon information and belief that while said Joseph Scott was representing defendant in said action and prior to the trial thereof, said Joseph Scott caused said action to be assigned for trial before Honorable Thurmond Clarke, a judge of said court, and plaintiff also alleges upon information and belief that said Honorable Thurmond Clarke secured his appointment as a judge to the Bench of said court through the efforts of said Joseph Scott and that a very close relationship had existed between the families of said Joseph Scott and Honorable Thurmond Clarke for many years prior to the trial of said action. That said Joseph Scott

is a person of much political influence in the County of Los Angeles, State of California, and in addition to securing the appointment of Honorable Thurmond Clarke, he also succeeded in securing the appointment of his son, A. Scott, as a judge of said Superior Court of the State of California in and for the County of Los Angeles, and plaintiff further alleges upon information and belief that during the trial of said action said Honorable Thurmond Clarke frequently conferred concerning said case with Honorable A. Scott, judge of said court, and son of attorney Joseph Scott.

(3) That the trial of said action was commenced in said California court on the 28th day of October, 1942, and was completed on the 20th day of November, 1942.

(4) That prior to the 6th day of November, 1942, E. G. Haumesch and Lee A. Solomon, attorneys for the plaintiff in said action, withheld evidence and failed to properly represent the plaintiff in said action and it became necessary for plaintiff Evelyn McKee to discharge said attorneys during the trial of said action on the 6th day of November, 1942; that after the discharge of said attorneys they refused to surrender to the plaintiff certain documentary evidence which she had placed in the custody of attorney E. G. Haumesch prior to the commencement of said trial; that on said 6th day of November, 1942, plaintiff employed attorney Thomas Connell to represent her in said action and upon application of the plaintiff, acting by and through said Thomas Connell, Honorable Thurmond Clarke, the presiding judge, upon the suggestion of Joseph Scott, attorney for the defendant, refused to adjourn or continue the trial of said action for any period of time to permit said Thomas Connell to familiarize himself with the facts of the case so that he might properly examine and cross-examine witnesses, and as soon as request was made for the continuance of said trial and immediately after the refusal of a continuance by said Honorable Thurmond Clarke, the defendant, acting by by and through his attorney, Joseph Scott, caused certain witnesses to be immediately placed upon the witness stand to give testimony at a time when

defendant well knew that attorney Thomas Connell was not sufficiently familiar with the case to properly cross-examine said witnesses; that the testimony of said witnesses was false and untrue and the court purported to rely upon said testimony in making its findings of fact in said case; and during the course of said trial said Honorable Thurmond Clarke failed and refused to adjourn the trial of said case when plaintiff became too ill to attend court during the trial, and during plaintiff's absence from the court it was impossible for plaintiff's attorneys to properly examine and cross-examine witnesses upon said trial because they were not sufficiently familiar with the facts and circumstances.

(4) Plaintiff alleges upon information and belief that during the trial of said action of prior thereto, the exact date of which plaintiff does not have sufficient knowledge or information to form a belief, the defendant secretly entered into collusion with attorneys E. G. Haumesch and Lee A. Solomon for the purpose of defeating the rights of the plaintiff in said action, and plaintiff also alleges upon information and belief that during said trial or prior thereto, the exact date of which plaintiff does not have sufficient knowledge or information to form a belief, defendant secretly entered into collusion with the trial judge, Honorable Thurmond Clarke, for the purpose of defeating the rights of the plaintiff in said action, and that as a result of the collusion thus practiced by defendant the plaintiff's rights were defeated and said Honorable Thurmond Clarke decided said action against the plaintiff and entered judgment therein in favor of the defendant in form granting the defendant a divorce and awarding the custody of the minor child of the parties to the defendant for a period of nine (9) months each year.

(5) Plaintiff further alleges upon information and belief that defendant, during the course or said trial or prior thereto, the exact date of which plaintiff does not have sufficient knowledge or information to form a belief, made certain substantial

payments of money to defendant's attorneys, E. G. Haumesch and Lee A. Solomon, which payments were made during the trial of said action or prior to the commencement thereof; that said payments were made for the purpose of securing the assistance and cooperation of said attorneys in conniving at the defeat of the plaintiff in said action; that plaintiff does not have knowledge or information sufficient to form a belief concerning the extent or the amount of such payments.

(6) That the findings of fact as made by said California court wherein the court found that plaintiff had been guilty of wrongful conduct and that defendant had been free from wrongful conduct are each and all based upon perjured testimony, and plaintiff alleges upon information and belief that defendant was guilty of subornation of perjury in securing such testimony.

(7) That the defendant committed a fraud upon the Superior Court of the State of California in and for the County of Los Angeles concerning the jurisdiction of that court over the subject matter of the action. That the defendant is an attorney at law and has at all times been aware of the facts that constitute a person a resident of the State of California within the meaning of Section 128 of the Civil Code of the State of California as set forth in paragraph numbered 4 of plaintiff's alleged second cause of action.

That in an answer filed on May 16, 1942, by the defendant to plaintiff's second amended complaint in said California action defendant made the following denial:

> "....defendant denies that for more than one year immediately preceding the commencement of this action plaintiff was a resident of the County of Los Angeles and of the State of California",

and in the cross complaint in said action filed by defendant in said California court on the 28th day of September, 1942, defendant alleged:

"That defendant and cross complainant is a resident of the State of Michigan and the plaintiff and cross defendant is now a resident of the County of Los Angeles, State of California",

and plaintiff further alleges upon information and belief that defendant subjected Honorable Thurmond Clarke, the trial judge, to his domination and control and after having secured such domination and control the defendant prevailed upon said Honorable Thurmond Clarke as trial Judge and caused him to make the following finding of fact:

"That it is true that plaintiff and cross defendant is now a resident of the State of California, and that for more than one year immediately preceding the commencement of this action she has been a resident of the County of Los Angeles, State of California."

That at the time defendant secured said finding of fact defendant well knew that plaintiff had not been a legal resident of the State of California for one year immediately preceding the commencement of said action; that at said time defendant knew that from the time of the marriage of the parties on July 19, 1933, until the commencement of said action, the plaintiff had continued to live in the home established by the defendant for himself and his family, and that plaintiff's legal residence had been the same as defendant's legal residence.

(8) Plaintiff further alleges that for many months after the entry of said judgment in the California court on the 17th day of December, 1942, plaintiff was extremely ill and unable to properly manage her affairs and did not have sufficient funds to carry an appeal from said judgment to the Supreme Court of the State of California. That application by the plaintiff, which was opposed by defendant, was made to Honorable Thurmond Clarke, presiding judge, for an adequate allowance for attorney

fees and expenses incident to a proposed appeal, and plaintiff alleges upon information and belief that as a result of the collusion between defendant and said judge, plaintiff's allowance was limited to One Thousand ($1,000.00) Dollars. That owing to the extended trial of said action, which was commenced on the 28th day of October, 1942, and was completed on the 20th day of November, 1942, said allowance was wholly inadequate to finance such appeal and because of such inadequacy and because of plaintiff's ill healtheand inability to secure the necessary funds to carry said appeal through to the Supreme Court of California it became necessary for the plaintiff to abandon her proposed appeal.

4. Plaintiff further alleges that defendant asserts rights under the findings of fact and conclusions of law, judgment, and orders supplemental to judgment as entered in said California case, and defendant threatens to continue to assert rights under and by virtue of the same; that plaintiff does not have an adequate remedy at law and it is necessary for the plaintiff to secure equitable relief by enjoining and restraining the defendant from asserting in this action or in any other action between the parties any rights that he may claim by virtue of such findings of fact and conclusions of law, judgment, and orders supplemental to judgment as made and entered in said California case.

FIFTH CAUSE OF ACTION

1. That on or about the 4th day of September, 1941, plaintiff and defendant entered into a certain agreement commonly referred to as a "property settlement agreement", a copy of which agreement is annexed hereto, marked Exhibit "G" and made a part hereof. That prior to the execution of said agreement defendant represented to the plaintiff that on or about the 16th day of December, 1940, the defendant had created a trust estate of the value of Fifty Thousand ($50,000) Dollars for the benefit of Terry Alexander McKee, a minor child of the parties hereto, That plaintiff relied upon said representation of the defendant in entering into said property settlement agreement. That paragraphs

numbered (7) and (8) of said property settlement agreement are as follows:

"(7) It is further understood and agreed that the Party of the Second Part, as Trustee for TERRY ALEXANDER McKEE, agrees to pay or cause to be paid to the Party of the First Part the sum of One Hundred Twenty-five ($125.00) Dollars on the 1st day of September, 1941, and One Hundred Twenty-five ($125.00) Dollars on the first day of each and every month thereafter until the said TERRY ALEXANDER McKEE reaches his twenty-first (21) birthday, for his use and benefit; said payments shall be made out of the Trust heretofore created on December 16, 1940 for the said TERRY ALEXANDER McKEE.

It is further understood and agreed, however, that in no event shall the Party of the Second Part be personally responsible for the payments mentioned in this paragraph.

(8) It is further understood and agreed that the Party of the Second Part is insured by the AMERICAN MUTUAL LIFE INSURANCE COMPANY OF DES MOINES, IOWA, and the COLUMBIA NATIONAL LIFE INSURANCE COMPANY OF BOSTON, MASSACHUSETTS, in the total sum of Fifty Thousand ($50,000.00) Dollars.

That upon the signing of this agreement the the Party of the First Part and MILES F. McKEE, eldest son of the Party of the Second Part, or in the event of his death or inability to act, HUGH McKEE, second son of the Party of the Second Part, or in the event of his death or inability to act, MARK McKEE II, third son, shall agree upon a responsible Bank or Trust Company to form a Trust for the purpose of being named as beneficiary of the aforementioned policies of insurance; that said named Trustees shall be entitled to receive upon the death of the Party of the Second Part the full proceeds of said insurance policies for the benefit of said Trust to be

created for and on behalf of TERRY ALEXANDER McKEE, and the premiums on said insurance policies shall be paid out of that certain Trust heretofore created for and on behalf of TERRY ALEXANDER McKEE on December 16, 1940.

A copy of this Agreement shall constitute sufficient authority for changing said beneficiary to such nominated company, and the present trustee therein mentioned shall notify the Party of the First Part forthwith of his acceptance of said agreement to pay said premiums."

2. Plaintiff further alleges that defendant's representation that he had created a trust estate of the value of Fifty Thousand ($50,000) Dollars for the benefit of Terry Alexander McKee is wholly false and untrue and defendant now claims that said trust estate consists of forty (40) shares of common, non-par capital stock of Sand Products Company, a Michigan corporation, which stock on September 4, 1941, had a value of approximately One Hundred ($100.00) Dollars per share.

3. Plaintiff further alleges that in the trust created by defendant for Terry Alexander McKee on the 16th day of December, 1940, defendent named himself as trustee of said trust estate and until the commencement of this action the defendant has not made known to the plaintiff or to any other person or persons representing Terry Alexander McKee the property included in said trust estate, and defendant has maintained the control of the trust instrument and has made it possible to shift or transfer property from or to said trust estate without the knowledge of the plaintiff and without the knowledge of any other person or persons representing said Terry Alexander McKee.

4. That plaintiff does not have an adequate legal remedy to compel the defendant to establish such trust fund to the same extent that such trust fund would exist had it been created and established as respresented by defendant, and plaintiff is entitled to secure such equitable relief as may be necessary to compel defendant to add to the existing trust fund a sum sufficient

to establish a trust fund of Fifty Thousand ($50,000) Dollars in addition to the amount of accumulations that such a trust fund would have reasonably produced had such fund been established on December 16, 1940 as represented by defendant.

SIXTH CAUSE OF ACTION

1. Plaintiff alleges that on September 4, 1941, plaintiff and defendant entered into a contract, a true copy of which is annexed hereto, marked Exhibit "G" and made a part hereof.

2. Plaintiff further alleges upon information and belief that as a means of inducing the plaintiff to enter into such contract defendant concealed from plaintiff the extend of his assets and the extent and sources of his income.

3. That to induce the plaintiff to execute said contract defendant misrepresented to the plaintiff the extent of his assets.

4. That plaintiff relied upon the representations as made by defendant and by reason thereof executed said contract.

5. Plaintiff further alleges upon information and belief that the representations made by defendant were false and untrue and that defendant at said time owned other and additional property which he did not disclose to the plaintiff, the nature and extent of which plaintiff does not have sufficient knowledge or information to form a belief.

6. That plaintiff has been damaged by said misrepresentations, the extent of which damage is presently unknown to the plaintiff.

SEVENTH CAUSE OF ACTION

1. Repeats by reference each and all of the allegations contained in paragraph numbered 1 of the sixth alleged cause of action.

2. Alleges that defendant has failed and neglected

to pay to the plaintiff from said trust fund the sum of One Hundred Twenty-five ($125.00) Dollars each and every month since the execution of said contract for the use and benefit of Terry Alexander McKee, as defendant agreed to do under the terms of the seventh paragraph of said contract; that in December, 1942 defendant discontinued making said monthly payments and has not made any such payments subsequent to December, 1942, except that during the months of July, August and September of 1943 defendant did make monthly payments to the plaintiff in the sum of One Hundred Twenty-five ($125.00) Dollars per month, but plaintiff does not have sufficient knowledge or information to form a belief as to whether said payments were made from the trust fund above described.

3. That the plaintiff does not have an adequate legal remedy whereby she can secure a judgment against the defendant for the aggregate of the monthly payments of One Hundred Twenty-five ($125.00) Dollars each, which defendant has failed and neglected to pay and plaintiff is entitled to an equitable decree directing defendant to pay from said trust fund the arrearage now existing and directing that defendant continue to make payments from said fund in accordance with the terms of the agreement between the parties hereto as above mentioned.

EIGHTH CAUSE OF ACTION

1. Plaintiff alleges that on September 4, 1941, plaintiff and defendant entered into a contract, a copy of which is annexed hereto, marked Exhibit "G" and made a part hereof.

2. That at the time of making said contract, as shown by the terms thereof when considered as a whole, it was the understanding and agreement of the parties that the minor child of the parties, Terry Alexander McKee, should remain in the custody of the plaintiff until said child attains his majority and it was for that reason that the provision was inserted in said contract that defendant should pay to the plaintiff for the use and benefit of the said child the sum of One Hundred Twenty-five ($125.00) Dollars each and every month until said child should become twenty-one year of age; that the defendant in attempting to remove said

child from the custody of the plaintiff has violated the terms of said contract; that paragraph numbered (15) of said contract provides as follows:

> "(15) The Party of the Second Part agrees to pay or cause to paid unto the said Party of the First Part the sum of One Thousand Two Hundred ($1200.00) Dollars for counsel fees and costs of court, payable upon the signing of this agreement.
>
> It is further understood and agreed that the Party of the Second Part shall not be liable for any further costs of court or attorney's fees in any action that may be brought by the party of the First Part, save and except, however, that said Party of the Second Part shall hold himself liable for any attorney's fees or costs of court, should it be necessary for the Party of the First Part to employ counsel to enforce the terms of this agreement."

3. That under the foregoing terms of said contract defendant is obligated to pay to the plaintiff reasonable attorney fees and other expenses incurred by plaintiff in connection with legal proceedings instituted and maintained for the purpose of securing the custody of said child.

WHEREFORE, the plaintiff demands judgment in respect to each of the alleged causes of action as follows:

1. First Cause of Action

1. That the above-named court adjudge and determine (a) that defendant is not a fit and proper person to have the custody of the minor child of the parties, and (b) that the interests and welfare of said child require that it be removed from the custody of the defendant and that its custody be awarded to the plaintiff.

2. That defendant be required to pay reasonable sum for the support and maintenance of said child.

3. That defendant be required to pay to the plaintiff a reasonable sum for attorney's fees and costs incident to commencing and maintaining this action.

2. Second and Third Causes of Action

That the judgment as entered in the Superior Court of the State of California in and for the County of Los Angeles purporting to decree a divorce in favor of the defendant and to award defendant the custody of minor child of the parties, be declared null and void, and that defendant be enjoined and restrained from asserting any rights by virtue of said judgment.

3. Fourth Cause of Action

That the court adjudge and determine that said California judgment was secured by fraud and that defendant be enjoined and restrained from asserting any rights by virtue of said judgment.

4. Fifth Cause of Action

That the court adjudge and determine that defendant fraudulently represented to the plaintiff before she signed the contract on September 4, 1941, that defendant had created a trust fund on December 22, 1940 in the sum of Fifty Thousand ($50.000) Dollars for Terry Alexander McKee, and that defendant be directed to add to such trust fund such sum as may be necessary to create a fund of Fifty Thousand ($50,000) Dollars, together with an amount equal to the income that would reasonably have been accumulated by such fund subsequent to September 4, 1941.

5. Sixth Cause of Action

That the court adjudge and determine that plaintiff has been damaged by fraudulent representations made by defendant and that plaintiff have judgment for the amount of the damage sustained by her.

6. Seventh Cause of Action

That the court adjudge and determine that defendant

has violated the terms of the agreement made by him on September 4, 1941, and that the court enter a decree directing the defendant to make payments from the trust fund in compliance with the terms of the contract of September 4, 1941.

7. Eighth Cause of Action

That the court award judgment in favor of the plaintiff and against the defendant for the amount of attorneys' fees and other expenses necessarily incurred by the plaintiff in securing the enforcement of the contract made between the parties hereto on September 4, 1941.

8. That plaintiff be awarded her costs and disbursements in this action.

9. That plaintiff be awarded such other and additional relief as may be just and equitable.

SHAW, MUSKAT & PAULSEN,

Attorneys for Plaintiff.

PART OF EXHIBIT 23

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

EVELYN McKEE being first duly sworn on oath deposes and says: that she is the plaintiff in the within entitled action; that she has read the foregoing complaint, knows the contents thereof and that the same is true to her own knowledge, except as to those matters therin stated to be upon information and belief, and as to those matters she believes it to be true.

(Signed) EVELYN McKEE

Subscribed and sworn to before me this 12th day of May, 1944.

(Signed) Catherine L. Casey

Notary Public, Milwaukee County, Wisconsin.
My commission expires: Sept. 24, 1944.

(SEAL)

COPY

F I L E D

July 7, 1944

FRED J. JAEGER, Clerk

PART OF EXHIBIT 23
State of Wisconsin: Circuit Court; Milwaukee County

796

EVELYN McKEE

-vs-

Plaintiff

MARK T. McKEE

Defendant

Consolidated Action
No. 189-287

ORDER

Filed
June 30, 1944
Fred J. Jaeger, Clerk

The application of the defendant to modify the order of this court entered in the above entitled action on the 2nd day of February 1944, in such manner as to permit defendant to deliver the minor child, Terry Alexander McKee, to the plaintiff in the City of Los Angeles, California, on July 1, 1944, and the application of the plaintiff for leave to take said minor child from the State of Wisconsin to the State of Michigan during a portion of the summer months having come on for hearing before the court on the 23rd day of June, 1944, the plaintiff appearing by her attorneys, Shaw, Muskat & Paulsen represented by Martin R. Paulsen, and the defendant appearing by his attorneys, Benjamin Poss and H.W. Schuler represented by Benjamin Poss, and the court having heard the arguments of counsel and being advised in the matter, NOW, THEREFORE,

IT IS ORDERED that the application of the defendant is hereby denied and defendant is ordered and directed to make delivery of Terry Alexander McKee, the minor child of the parties, to the plaintiff in the City of Milwaukee, Wisconsin, on July 1, 1944.

IT IS FURTHER ORDERED that plaintiff shall have the possession and care of said minor child from July 1, 1944 to September 30, 1944, inclusive, and that the defendant shall have the possession and care of said child one (1) day each and every week during such period, and defendant shall advise the plaintiff which day he desires to have said child with him and shall give the plaintiff reasonable notice thereof.

PART OF EXHIBIT 23

IT IS FURTHER ORDERED THAT during each and every week from July 1, 1944 to and including September 30, 1944, the defendant, in the event he does not exercise the right to have the custody of said child one day in any particular week as above provided, shall have the right to have his designated agent or representative call at the residence of the plaintiff and obtain a report from the plaintiff with respect to Terry Alexander McKee, minor child of the parties hereto, in any such week, and said agent or representative may also see and talk with said child and thereafter report the condition of said child to the defendant.

IT IS FURTHER ORDERED that the application of the plaintiff for permission to take Terry Alexander McKee to the State of Michigan between July 1, 1944 and September 30, 1944, is hereby granted, provided, however, that prior to going to the State of Michigan with such child the plaintiff shall give to defendant or to defendant's attorneys reasonable notice as to the date upon which she proposes to go to the State of Michigan with such child, and shall also give reasonable notice as to her proposed location in the State of Michigan; and in the event the plaintiff with such child moves from one location to another within the State of Michigan, reasonable notice concerning such change of location shall be given to defendant or to his attorneys.

IT IS FURTHER ORDERED that plaintiff shall not take said child, or permit any other person or persons to take said child, outside the limits of the State of Wisconsin or the State of Michigan, except that if plaintiff so desires she may travel with such child from Wisconsin to Michigan and from Michigan to Wisconsin over the regularly traveled route via the City of Chicago, Illinois.

IT IS FURTHER ORDERED that on the first day of October 1944, at 10:00 o'clock in the morning of such day, plaintiff shall, without further order of the Court, deliver and surrender said Terry Alexander McKee to the defendant at defendant's home in the Village of Whitefish Bay, Wisconsin, or if the defendant shall give plaintiff reasonable notice thereof, at the office of defendant's attorney, Benjamin Poss, 710 North Plankinton Avenue, Room 935 Empire Building, in the City of Milwaukee, Wisconsin.

DATED this 30th day of June 1944.

BY THE COURT: DANIEL W. SULLIVAN Circuit Judge

EXHIBIT 26

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY:

EVELYN McKEE,

Plaintiff,

vs. Case No. 189-287.

MARK T. McKEE,

Defendant.

Deposition of E. G. HAUMESCH, taken before me, P. S. Noon, a Notary Public within and for the County of Los Angeles and State of California, 477 I. W. Hellman Building, Los Angeles, 13, California, at 11:25 a.m., September 5, 1944, pursuant to the annexed notice and subpoena, on behalf of plaintiff, to be used in an action wherein Evelyn McKee is plaintiff and Mark T. McKee is defendant, now pending in the Circuit Court of Milwaukee County, State of Wisconsin.

APPEARANCES OF COUNSEL:

JEFFERSON K. STICKNEY, Esq., for plaintiff.

JOSEPH SCOTT, Esq., and J. HOWARD ZIEMANN, Esq., for defendant.

E. G. HAUMESCH: having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed and testified as follows:

DIRECT EXAMINATION

BY MR. STICKNEY:

Q. State your name.
A. Edward G. Haumesch.
Q. Where do you live, Mr. Haumesch?
A. 5002 West Boulevard, Los Angeles.

Q. You are an attorney at law?
A. I am.
Q. Engaged in active practice?
A. I am.
Q. Where?
A. State of California.
Q. Where is your office?
A. 712 Chester Williams Building, Los Angeles.
Q. When were you admitted to practice in California?
A. 1931.
Q. Did you practice prior to that time?
A. I did not.
Q. How old are you?
A. 49.
Q. Have you been engaged in the active practice of law since 1931?
A. I have.
Q. What was your occupation before 1931?
A. Deputy sheriff, Los Angeles County.
Q. Mr. Haumesch, did you represent Mrs. McKee in the divorce action in the California court of McKee versus McKee?
A. I represented Mrs. McKee through part of the divorce action.
Q. And in the matter of the preparation of the property settlement agreement?
A. I did.
Q. When were you first contacted by Mrs. McKee?
A. I believe it was the early part of August. The exact date I couldn't say.
Q. Of what year?
A. I believe it was 1942 offhand - 1941 or 1942.
Q. Was it before or after we got into the war?
A. I believe it was before. I wouldn't say for certain. Anyway it was at the beginning of the divorce action.
Q. Had the divorce action then been filed?
A. No, it had not.
Q. Where did you first meet her?
A. At her home.
Q. Where?
A. At Azusa, California.
Q. How did you happen to go there?
A. I was called by Mrs. McKee.
Q. She telephoned you?

EXHIBIT 26

A. She left word at the office in Azusa for me to call her.
Q. Did you have an office in Azusa?
A. I had a branch office in Azusa at the time.
Q. And an office here in Los Angeles?
A. That is correct.
Q. When you arrived at her home who was there?
A. Mrs. McKee, Cynthia McKee, Jo Ann McKee, Mr. Reese and Mrs. Hart and Mr. de la Fuente.
Q. Is Mr. Reese an attorney in Mr. Scott's office?
A. No, Mr. Reese was a workman around there; he did some work for her.
Q. There is a Mr. Reese in Mr. Scott's office, or was?
A. There is a Mr. Risse in Mr. Scott's office.
Q. Did you know anything about the case at the time you had this talk with Mrs. McKee?
A. I never knew anything about it until I had that conversation with Mrs. McKee.
Q. Who took part in this conversation ?
A. Mrs. McKee and Mrs. Hart and Mr. de la Fuente.
Q. Who is Mr. de la Fuente - or Mrs. Hart, rather?
A. A friend of Mrs. McKee's, staying there at the place.
Q. Who is Mr. de la Fuente?
A. Mr. de la Fuente was the Peruvian consul here in Los Angeles at the time.
Q. The four of you took part in this conversation?
A. That is correct.
Q. What was discussed?
MR. SCOTT: Object to that conversation on the ground that it is incompetent, irrelevant and immaterial, palpably hearsay, Mr. McKee not being present. May I ask the witness if Mr. McKee was present at this conversation?
THE WITNESS: He was not.
MR. SCOTT: Object to the question as incompetent, irrelevant and immaterial, calling purely for hearsay testimony, not binding in any way on the defendant.
MR. STICKNEY: If that was the rule of evidence you would never be able to prove any fraud case.
Q. Go ahead and answer, Mr. Haumesch. You have no objection to telling what occurred?
A. None whatsoever.
Q. All I want to know is what the facts are.
A. The course of conversation ran along the line as