

200. It would appear that members of the jury also perceived Judge Paul as biased against Mr. Zeigler, and were infected by his view. Dr. Stephen Robertson, a trained psychologist who had assisted Zeigler's defense counsel in jury selection, observed that Judge Paul,

"was hostile toward Mr. Zeigler and defense counsel and appeared to be disgusted by the case. It is my perception that Judge Paul was not impartial and that Mr. Zeigler did not get a fair trial." (App. 21, Affidavit of Stephen J. Robertson, sworn to on May 27, 1987, ¶ 3.)

As a result of his subsequent interview with Juror Dollinger, Dr. Robertson reports that,

"Mrs. Dollinger was bothered by Judge Paul's attitude from the very beginning of the trial. She got the impression that he thought it was an 'open and shut' case. She felt that Judge Paul was implying that Mr. Zeigler was guilty, and that defense counsel was wasting everyone's time." (App. 21, Affidavit of Stephen J. Robertson, ¶ 5.)

201. Four and one-half years after the trial was completed, and about five months before the Florida Supreme Court's affirmance, the former Chief Deputy Sheriff of Orange County, Mr. Leigh McEachern, came forward with information, subsequently put in affidavit form, that he had attended a meeting, shortly before the Zeigler trial began, with Judge Paul, Robert Eagan (the State's attorney who prosecuted the case), and Donald Frye (the principal investigator on the case), at which the evidence was discussed and Judge Paul assured Mr. Eagan,

"Okay, Bob, if you can get me just one first degree [murder] conviction I'll fry the son-of-a-bitch."
(3.850 Hearing, TT at 19-20.)

Mr. McEachern repeated his charges at his deposition by the State on August 23, 1984 and in his testimony at the evidentiary hearing held in the Duval County Circuit Court before Honorable R. James Stroker on August 30, 1984.* Judge Paul, Mr. Eagan and Mr. Frye also testified at that hearing and denied that any such meeting had ever occurred. Judge Stroker found that,

"the testimony of the sole source of the allegation, Leigh McEachern, is not credible and therefore Petitioner has not proven his claim. The Court finds as a matter of fact that the alleged statement was not made." (Opinion App. at 6.)

C. Legal Basis for the Claim

202. Having especially in mind his recent appearance as a character witness in a case in which Zeigler's lawyer had represented the other side and Zeigler had himself given opposing character testimony, Judge Paul should have recused himself as soon as he was asked to do so. "[J]ustice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14 (1954). Here, with Zeigler's life at stake, it was incumbent on the trial judge to step down when he was

* Mr. McEachern acknowledged in his testimony that he had been indicted for embezzlement in 1977 and convicted and sentenced to prison in 1978. (3.850 Hearing TR at 20-21.)