

SHIRLEY MAILHOTTE, called by Appellant, duly sworn as a witness by Norman C. Davis, Personnel Director, and testifies as follows:

Direct examination by Mr. Dick

Q Will you please state your name?
A Shirley Mailhotte.

Q Miss Mailhotte, were you formerly a ward of the State at the Colony House?
A Yes, sir.

Q Will you please tell us when you went to the Colony House?
A July 24th, 1950.

Q Did there come a time when you received a full discharge?
A June 9th of 1955.

Q So that you were a ward of the State at the Colony House for about five years?
A Just about.

Q Now on December 31st was there a balance due you from the State, a balance due you on account of work you had performed?
A Yes, there was.

Q How much was that balance?
A I think it was \$54.00.

Q And from whom was that owed?
A Mt. St. Joseph's Convent.

Q And Miss Mailhotte, did you - do you know if Mt. St. Joseph's Convent has paid the amount due you?
A Yes, I do.

Q Do you know to whom they paid it?
A They paid it to Brandon State School.

Q Do you know when they paid it?
A December 31st.

Q Of 1955?
A Yes, sir.

Q Have you received any part of that fifty odd dollars since then?
A No, I have not.

MR. DICK:

Your witness.

Cross-examination by Mr. Mehlman

Q Miss Mailhotte, when were you discharged?
A June 9th, 1955.

Q Where have you been since then?
A I have my own apartment at 84 Park Avenue at Rutland.

Q Have you been staying at the Colony House any of that time?
A Yes, I have.

Q Are you staying there at the present time?
A I am staying as Miss Dolan's guest.

Q And how long has that arrangement been going on?
A Since the late part of November possibly after Thanksgiving.

Q Do you know why it was that the money was not collected from Mt. St. Joseph's until December 31st, '55?
A No, I don't.

MR. DICK: Objection. Now we are going beyond the issue here. Now we restricted this matter. Our tender to the Board was simply for the purpose of showing that there are discharges and that the money is subsequently paid. Now if we are going to go into the whys of it then we are getting into the charges themselves and we think this cross-examination should be restricted to the very point. We are going far beyond that.

MR. MEHLMAN: That places a burden, if the Commission please, on me and the people whom I represent. I have no assurance this witness will be available later.

MR. DICK: I will assure Mr. Mehlman, subject to the witness' approval, that the witness will be available at his request.

MR. MEHLMAN: Now Mr. Dale testified there had been discharges where the money was not collected and not paid until after the girl had been discharged and to bring the witness on at this time I still feel it was improper, but having brought her on, I think I am entitled to cross-examine her as to the circumstances of why that money hasn't been paid to her.

CHAIRMAN KING: The only point I have to raise, Mr. Mehlman, is are you asking a question which this girl can actually answer as to ~~when~~ why she was not paid. Does she know or should she know?

MR. MEHLMAN: That is what I was trying to find out. She did the work, claims something was due her and has come here and testified under oath she hasn't been paid.

CHAIRMAN KING: Would you repeat the question? Your objection is overruled. We are allowing the question.

MR. DICK: May we understand that after the reason why is explored we may go into the question of the religious society accounts, because that is what is being opened up right now.

CHAIRMAN KING: If we are straying too far afield, the answer, I can assure you, is no.

MR. DICK: I submit if my brother has opportunity to inquire on these things, I feel we are entitled to have opportunity to do the same thing, the burden being on my brother to establish them. That is precisely what this hearing is. The burden is upon the State to establish its case.

MR. MEHLMAN: Mr. Dick in his question first spoke of Mt. St. Joseph's and the fact this money hadn't been paid. He asked about this money, and having asked to produce her, we want to ask her about the money.

MR. DICK: We have already advised Mr. Mehlman and assure the Board at any time you want this witness if we do get to the merits of these specific charges, we will have this witness available at the call of Mr. Mehlman. I say that - I believe that - I first want to ask you, Miss Mailhotte, will you keep yourself available?

THE WITNESS: I certainly will.

CHAIRMAN KING: The Board has ruled the question is a proper one. If Mrs. Story will restate the question for the witness?

(Question and answer read by reporter)

Q From the years that you have been at St. Joseph's, you know, do you not, that it is Miss Dolan's responsibility to collect for the work the girls have done?

A Yes.

Q Since you have been at the Colony as guest of Miss Dolan you have observed auditors there auditing her accounts?

A No because I left the house at eight-thirty in the morning and don't return, don't come in until six o'clock at night.

AM

Q You haven't seen Mr. Mosher or Mr. Hamlin there?
A I have not seen them at all this year.

Q You don't know when their audit was completed?
A No, I don't. I know there was an audit going on in '55 when I was taken to the Brandon State School. I guess that was around April 25th. Those were the only times I saw any auditors there.

Q Now how do you know that \$54.00 is owed to you?
A I called Mother Gabrielle. I knew there was an account owed to me. I called Mother Gabrielle and asked what she was going to do about it. She said the account was paid to Brandon and she told me what it was.

Q You don't know where the money is now?
A She told me it was at the Brandon State School. That was included with the check that she paid.

Q Would it surprise you to know it is now in the treasurer's office of the State of Vermont?
A No, because I don't know anything about that.

Q You don't know actually what has been done since then?
A No.

Q You don't know that the audit has only recently been completed?
A No.

Re-direct examination by Mr. Dick

MR. DICK: I take it, though I am perfectly willing, we are not trying the auditor on holding up these discharges.

Q Now, as a matter of fact, did you also call Mr. Russell?
A Yes, I did.

Q About your account?
A Yes, sir.

Q What did he say to you?
A Gee, I can't quite remember. I think he told me something about the auditors were taking - were auditing the books at the time.

Q So that since December 31st your fifty-four dollars has been in the process of audit?
(No answer)

Re-cross examination by Mr. Mehlman

Q When did you first call Mother Gabrielle?

A I called Mother Gabrielle I think the second week in January.

Q And it is only since then you knew this money was owed to you?

A I knew it was in Brandon the 3rd of January because it was in the press that Mother Gabrielle had paid her account to the school.

Q When you were discharged did you know there was anything due you?

A Yes, but I thought it was as safe there as it was if it was in the bank.

Q You were satisfied?

A First I talked it over with Miss Dolan that I would forget they owed it to me and Miss Dolan told me that starting out I needed every penny I could get.

Q And you never bothered calling Mother Gabrielle until January?

A No, because Mother Gabrielle knew she owed it.

courtesy of letting us put this on.
9:12 P. M.

CHAIRMAN KING:

Consistent with the Personnel Board's broad interpretation of the Personnel Rules, it has been determined that the purported written notice of dismissal of Miss Katherine Dolan dated December 28, 1955 does not specifically set forth in writing the alleged cause for dismissal. Further, there appears to be an absence of good faith shown in the attitude of the Board of Mental Health and Institutions as expressed in minutes of joint board meeting held in Brandon, Vermont December

12, 1955. The minutes expressly state that "You are going to know what our next step will be. You are going to have every protection under every conceivable action we might take".

The Personnel Board in its considered judgment regards the defective letter of dismissal as both a breach of good faith as well as failure to fulfill the letter and spirit of Section 12.01 of the Rules and Regulations for Personnel Administration.

The motion to sustain the appeal and find in favor of Katherine Dolan is unanimously approved by the Personnel Board. As required by Section 16.06 of the said Regulations, the appellant Miss Katherine Dolan is to be restored to her position within five days and shall not lose the benefits of pay, annual leave, sick leave and retirement.

MR. MEHLMAN: Well, if the Commission please, may I have an exception to the Board's ruling? And so that

And at some time convenient to the Board and to myself, I shall file those petitions. I think it would be proper for me to give the caption of them so the Board will have in mind what it is:

'We, the undersigned Vermonters, protest against the summary dismissal of Miss Katherine Dolan, as Matron of the Colony House in the City of Rutland. For years, we have known of the wonderful work she has done and the high praise given her by State officials.

Now, after over thirty years of faithful service to the State of Vermont, to have her thus dismissed on one day's notice, seems arrogant and uncalled for and we join in a petition for the respectable treatment of this faithful public servant."

There are nine hundred twenty-seven names, and we can probably get double that number easily - probably treble that number if necessary, and I do want my appearance noted in my capacity - and I express the desire that if I could be of any legal or any other way of any assistance to Judge Dick or Judge Black, who has appeared for the State Association, I should be glad to do so.

MR. MEHLMAN: If the Commission please, I should like to object to all the statements made by Senator Bloomer and his interjecting this petition into this hearing. We feel that it has no relevancy to the merits of the specific

"The Board of Institutions accordingly directed me 'in the best interests of the Rutland Colony house, Brandon Training School - the parent institution, and the State of Vermont' to effect your separation for cause."

Now I do not understand, and it is hard for me to believe that brother Mehlman or anyone else who was capable of understanding English, capable of understanding plain one and two syllable English, can misunderstand what this says: "The Board of Institutions has directed me to effect your separation for cause".

Now that doesn't mean the Commissioner of Institutions. It doesn't mean that this was Russell himself. It means simply this: that he was acting under the orders of the Board of Institutions. They are the ones that decided it. They are the ones that directed it.

Now is the Board of Institutions an appointive authority?

Now I ask the Board to take judicial notice of its own records.

In response to a letter directed by me to the Personnel Director - if I can find it - . I will make it available to the Board, but in response to a letter directed to the Personnel Director by me in January of this year, I specifically requested of the Personnel Director information as to who or whom are the appointing authorities of the Department of Institutions, and I was advised that the

Board of Institutions through the Superintendent of the Brandon State School.

Now to summarize the law as I understand it and as I feel this Board is required to follow it: This notice of dismissal and the purported dismissal contained therein is a nullity and it is void. It is absolutely a nullity and of no effect because it shows affirmatively in it that the determination to dismiss is the determination of someone other than the appointing authority. It shows that the determination of the cause that is assigned for the dismissal was not the determination of the appointing authority. It shows that the determination and decision to remove her is not the determination of her appointing authority. It does not show that the decision and determination to dismiss her is that of the appointing authority. And furthermore, the Institution's Exhibit No. 1, which is a notice, reflects that the notice is not the notice of a delegee of the appointing authority and that it does not reflect that it is a notice issued by the appointing authority. And lastly on this point, the notice is of no force or effect because it does not reflect that it is notice by the delegee of her appointing authority acting for and in behalf of the appointing authority. And wherever I have used the word "appointing authority" in my summary, I refer to the Commissioner of Institutions, who by law and under these

matter of great substance. This isn't a case of an automobile lawsuit where somebody is hurt. This isn't a contract case. This is a case, gentlemen, where a woman who has spent the best part of her life, thirty-four years of her life, devoted every minute of every hour of every day of every year to the welfare of her charges. Now, if after thirty-four years the Department of Institutions, or if the Commissioner of Institutions, or if the Superintendent of the Brandon State School or their attorney feel that it is too much to ask that they at least, while they were attempting to guillotine her, show her the decency of sitting down and doing it according to law, then we admit that our position is not well taken. On the other hand, if this is a matter in which not only Miss Dolan but any employee of the State is entitled to have serious consideration given as to whether or not she should be dismissed, then we say that the least we can require of any executive or any department, no matter how long he has been in office or how long he has not been in office, is not too much to require that such an executive sit down and find out what he is trying to do and do it right, and this hasn't been done.

I say to you gentlemen, that if it is your decision that a notice need not show that it comes from a proper authority, that from now on in anybody can sit down and write a letter and say "By authority of so and so, you are fired." Now I say to you that if you do not construe

this as the law requires, you do not construe it with your appellate regulations, your dismissal regulations are going to be destroyed, are going to be chaotic. There will be no orderly presentation of cases for your presentation.

Just a note on this business of amendment which my brother does not chose to make but says if he wanted to make he could make it. You cannot breathe life into a corpse. In order to amend, you have to have something to amend by. Institution's Exhibit No. 1 is a nullity. I agree with my brother - he wishes it weren't there, shouldn't be there, but the fact remains that it is, it is in there and you can't get away from it. "The Board of Institutions", it says, "directed me" in the best interests of the Rutland Colony House, Brandon Training School - the parent institution, and the State of Vermont" to effect your separation for cause."

CHAIRMAN KING: Mr. Dick, it is your contention that Mr. Francis Russell is not the appointing authority, is that correct?

MR. DICK: That is right.

CHAIRMAN KING: And Mr. Mehlman and you, as far as this part is concerned, want to say anything of the delegation of authority as provided by the statute making Mr. Russell the appointing authority?

MR. MEHLMAN: Not thus far, if the Commission please. I am prepared to do it and will offer to do it.

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MR. DICK: May we have exception?

CHAIRMAN KING: Yes.

EXCEPTION BY APPELLANT

Q Yes or no, Mr. Dale.

A Yes.

Q What is that Board or Boards?

A Board of Institutions and the Board of Mental Health.

Q Are you familiar with the Colony House in Rutland, Vermont?

A I am.

Q Is that a part of the Brandon Training School?

A It is. I am not clear - I would like again to get that question re-read. I would like to answer that question as to jurisdiction of the boards. I don't know as I quite understood it.

(Question "Is there some Board or Commission which has some powers over you as Commissioner" and answer given by witness read by reporter)

A It is difficult to answer either yes or no. The Board of Institutions is a policy making board. The Board of Mental Health functions by and through the Commissioner.

Q And you are that Commissioner?

A Yes.

MR. MEHLMAN: Now I think there is a pending question.

(Question and answer as given read by reporter)

Q Will you describe just very briefly what the physical property known as the Colony House consists of?

A The physical property consists of the building, is composed of two houses joined together which has been used over the years as a stepping stone for the girls from the school back into society.

Q What school do you refer to?

A Brandon Training School.

Q Is the Brandon Training School a part of the Department of Institutions?

A It is.

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Q Is it within your jurisdiction as Commissioner of Institutions?

A It is.

Q And is the Colony House within your department and under your control?

A Yes, it is.

Q Do you know Miss Katherine Dolan?

A I do.

Q For approximately how long have you known her?

A I have known Miss Dolan for a period of twenty years or better.

Q Does she hold some position in the Department of Institutions?

A She does.

Q What is that position?

A She is Supervisor of the Colony - Colony House.

Q For approximately how long has she held that position?

A I would say about twenty-five or twenty-seven years.

Q Did there come a time some time the latter part of the year 1955 when you made certain determinations concerning whether or not Miss Dolan should be discharged?

MR. DICK: Objection.

Q Just answer yes or no.

CHAIRMAN KING: There is an objection on the question.

MR. DICK: We object on the ground the record speaks for itself; the Institution's Exhibit 1 speaks for itself as to what determinations were made and who made them, and anything else, any determination by anyone else, is immaterial and irrelevant.

CHAIRMAN KING: Objection overruled.

MR. DICK: May my exception be noted?

CHAIRMAN KING: Yes.

EXCEPTION BY APPELLANT

(Pending question read by reporter)

A Yes.

Q Who is the Superintendent of the Brandon Training School?
A Francis Russell.

Q For how long has he held that position?
A It will be two years April, April 16th.

Q Following this determination which you have said you made some time the latter part of 1955 did you address a letter to Mr. Russell pertaining to this determination?
A I did.

(Institution's No. 2 marked for identification)

Q I show you a piece of paper marked Institution's No. 2 for identification and ask you to look at it and tell the Commission whether or not that is the letter to which you refer?

A That is it. That is the one.

Q And is that your signature which appears on it?
A It is.

MR. MEHLMAN: At this time we offer Institution's No. 2.

MR. DICK: For what purpose?

MR. MEHLMAN: We offer it as showing the delegation of authority by Mr. Dale to Mr. Russell in which in the final sentence he directs Mr. Russell to affect the discharge of Miss Dolan.

MR. DICK: Well, maybe the Board can make head or tail out of this, but I can't.

Please the Board, we object to the admission of Institution's No. 2 on the ground that the Exhibit 1 speaks for itself and insofar as the motion now under consideration of this Board is concerned, it is confined to consideration of Exhibit 1 and the appeal and the law.

We further object to the admission of Institution's No. 2 on the grounds that it is ambiguous, and on the additional ground that Institution's No. 2 contradicts Institution's No. 1, Exhibit No. 1, and on the further ground that even if we assume that by Institution's No. 2 that in it there is a delegation of authority by the Commission to Mr. Russell to discharge Miss Dolan, that nevertheless Mr. Russell did not from Exhibit 1, Institution's Exhibit 1, act under that authority and as the delegee of the Commission but as conclusively appears in Institution's No. 1 he

A Yes, I did see this.

CHAIRMAN KING: To go further on that, did you see that document as you now have it before you, Mr. Dale?

THE WITNESS: Yes.

Q What explanation can you give for the inclusion of the first two paragraphs of that document referring to the joint boards?

MR. DICK: Objection. The instrument speaks for itself and whatever Mr. Dale's private thoughts about the matter, whatever his private opinion is about the matter, is immaterial and irrelevant.

MR. MEHLMAN: I merely offer to show, Your Honor, the circumstances under which this was prepared and approved by Mr. Dale.

CHAIRMAN KING: We will call a short recess of five minutes of the Board to rule on that objection.

(Recess 11:00 to 11:10 A. M.)

CHAIRMAN KING: You may proceed, Mr. Mehlman.

MR. MEHLMAN: I think there is a pending question on which the Commission is going to rule.

(Pending question read by reporter)

CHAIRMAN KING: The objection is overruled and exception noted.

EXCEPTION BY APPELLANT

A The decision was unanimous, the two boards and the Commission - the Commissioner. We were all there together when the decision was made. I didn't pay particular attention as to just how the letter was worded.

Q Was it your decision?

MR. DICK: Just a moment. May I have the question to which Mr. Dale's answer is the response?

(Question read by reporter)

MR. DICK: I object to so much of the answer as

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is not in response to the question, and may that part as to what Mr. Dale claims the Board did or did not do and that part about - of his testimony in which he states that the decision of the Board was unanimous, on the grounds that it is a violation of the hearsay rule, and in addition that it isn't the best evidence of what the Board did.

CHAIRMAN KING: Mr. Dale, you were in attendance?

THE WITNESS: Yes. I meant to say the meeting was unanimous.

MR. DICK: Assuming it was stated as you wish it to stand now, we object on the same grounds.

CHAIRMAN KING: You were in attendance at the meeting between these two boards?

THE WITNESS: Yes.

CHAIRMAN KING: At the time - was there a vote taken on the matter?

THE WITNESS: Well, everybody was unanimous. There was no ballot taken.

MR. DICK: We object to this line of questioning and certainly object to the testimony of this witness. For goodness sake, if that isn't a violation of the hearsay rule, if that isn't a violation of the best evidence rule, I don't know a better example.

CHAIRMAN KING: All right. Were there minutes of this meeting?

MR. DICK: May that testimony be stricken or ruling made on my objection?

MR. MEHLMAN: If the Commission please, I think this is merely an explanation of what transpired at the joint boards meeting was included in the note so Miss Dolan could be apprised of it. She was told she would be apprised of it and this was the manner the Commission chose to do it.

CHAIRMAN KING: Mr. Dick, did you have something?

MR. DICK: I believe I have stated my grounds, thank you.

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that at the proper time we are prepared to introduce the minutes of the joint meeting and a copy has been furnished previously to Mr. Dick. I don't propose to introduce them at this time. I think it would perhaps add something to the procedure that is not needed. If the Commission wishes they be introduced, I will do so.

MR. DICK: By my silence it might be inferred we have been furnished with all that was done at these meetings. I emphatically state we have not.

CHAIRMAN KING: The objection is overruled and exception noted.

EXCEPTION BY APPELLANT

CHAIRMAN KING: Was the express purpose of the joint meeting of the two boards to discuss with Miss Dolan her position in the Brandon Colony House?

THE WITNESS: Yes, and to hear her side of the question and in her presence hear what she had to say about it.

CHAIRMAN KING: I have no further questions.

Cross-examination by Mr. Dick

Q You sent Miss Dolan a notice of that meeting?

A Yes, I did.

Q Do you have a copy of it here?

(Paper produced and marked Appellant's A for identification)

Q I show you Appellant's A, Mr. Commissioner, and ask you whether that is a true copy of a letter of December 7, 1955 addressed to Miss Dolan?

A Yes, that is.

Q Now this meeting you are talking about, that was to decide whether or not Miss Dolan ought to be fired or not?

A Well, the original hope was that there might be some other solution.

Q You say there was some discussion before this meeting about holding the meeting?

A There was, with the board, with both boards, yes.

that Appellant's B is a true copy of everything that transpired, of everything that was said at the joint meeting of the Boards. Now I ask you whether prior to Mr. Adams' questioning Miss Dolan, she was advised that she could have an attorney present to represent her since the Boards had designated Attorney Charles Adams to represent them?

A Well, he was just a member of the Board. Because he was attorney they asked him to act as spokesman. He is also a member of the Board.

Q He is no longer. He quit right after this, didn't he?

A His resignation had been in a long time before that.

Q He acted as attorney for the joint Board right through, is that correct?

A No, the others all participated there, but I think he did most of the questioning.

Q Now in taking this up before the Board, presenting this before the Board, I take it you presented it to the Board because you wanted them to consider whether or not Miss Dolan should be dismissed, is that correct?

A Well, the Board of Mental Health had discussed this question many times before with me and I felt they should be there to participate in anything of this kind that came up.

Q Now, Commissioner, I will ask you to think before you answer the next question. Had the Board of Mental Health discussed with you the things set forth in the charges or were they interested in another thing entirely?

A They were very much interested in the Colony House, if that is what you mean.

Q No, I don't mean the Colony House. Was not their concern a question of whether or not Miss Dolan was competent mentally to run the Colony House?

A The word you injected "mental" - I don't think that was ever discussed.

Q State it in your way. What were they interested in from that aspect?

A They were interested, when they discharged a person, which authority they had, from the Colony House, they were interested in having the girl's pay collected and her bills paid at the stores so that her discharge wouldn't be held up for weeks at a time.

Q Are you now testifying that a condition precedent to discharge was that bills be paid up?

A That is right.

Q Now, Commissioner, you know, don't you, in your twenty years or more connected with the Colony House that isn't the situation, don't you, and hasn't been the situation?

A I don't think - yes, there has been girls that have been discharged and were notified later they owed money for bills in Rutland.

Q As a matter of fact, since the attempted dismissal of Miss Dolan, an inmate has been discharged and the money hasn't been paid to her, isn't that correct?

A That might be. I am not sure of that.

Q So that whether or not her bills are paid, whether or not there is money owing her or not, isn't a prerequisite to discharge, is it?

A No.

Q Now getting back to this meeting of the Board, it was the determination of the Board that Miss Dolan be dismissed, of the joint Board, is that correct?

A That is right.

Q And acting under that authority you directed Mr. Russell to send the letter, you said?

A It was a joint decision. The Commissioner was there and participated and agreed.

Q It was a joint decision?

A There was no dissenting vote by anyone.

Q Let us assume that at this joint meeting there had been an adverse vote of the Board and the Board decided to go along with it, would you have fired her then?

CHAIRMAN KING: I don't believe that question is proper. That is an assumption you are making. I think that question is out of order.

MR. DICK: I think I have a perfect right to make an assumption to test this witness, to find out something that is in issue here.

CHAIRMAN KING: Will you read that question, please?

(Pending question read by reporter)

A I think there would have been another meeting. I think we would have discussed it further.

Q In other words, you would not have fired her unless

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the Board or majority of the Board went along with you, is that correct?

A Yes, I think that is substantially correct.

Q Now you say that Mr. Russell sent up Institution's Exhibit No. 1 to you for your inspection?

A Yes, that was given to me by the personnel officer and I read it over before it was mailed.

Q Now read the first paragraph of that Institution's 1, out loud, if you will, please?

A "The conclusions reached by the Board of Institutions, following their joint meeting with the Board of Mental Health at which you were present in my office on December 12, 1955, were in part that you had repeatedly failed and refused to recognize and obey orders given by your superiors."

Q Now you say you checked this?

A I read it over, yes.

Q Now that doesn't speak the truth, does it?

A Maybe it should have been elaborated on, but that is true as far as it goes.

Q It is? Now when was this - according to your testimony you have testified that it was a joint decision at a joint meeting of the Board of Health and the Board of Institutions, correct?

A It was a unanimous decision.

Q Now when this statement "Conclusions reached by the Board of Institutions following their joint meeting with the Board of Health" - now does that indicate that was a joint meeting or does that indicate that was a meeting solely of the Board of Institutions?

A That was the executive session which was held immediately after this meeting.

Q That was an executive session of the joint boards?

A That is right, while there at that meeting.

Q Does this indicate that was executive session of the joint boards or executive session of the Board of Institutions?

A Conclusions reached by Board of Institutions following their joint meeting with the Board of Mental Health. They were all present. By both boards.

Q And the Boards reached that conclusion, is that correct?

A That is right.

\$1500.00 a year according to figures given us through the Board." (That is the Retirement Board - do you want that last?) "If you will write me your wishes in this matter, I will do what I can to father it through for you."

Q Now calling your attention to this statement that you make in Appellant's C that you realize the stress and strain she has been under twenty-four hours a day for many years has been terrific - and has it been terrific?

A I think it has, yes.

Q As a matter of fact you once made a statement that when the day came for the retirement of Miss Dolan you would have to have three people?

A I have made that statement.

Q So you felt that by reason of this terrific stress and strain she was entitled to a medical retirement?

A That is correct.

Q She wrote back on October 31, '55 and told you she wasn't interested in retiring, is that right?

A That is right, she said "I am not interested."

Q Now I take it that you felt that she was in a bad - in bad shape medically to continue her duties? Strike that. I take it that you felt that her work has suffered by reason of her health, is that it?

A Yes.

Q And that was the reason - if there were any complaints about her work, the reason was that she was medically in poor health, is that correct, due to the stress and strain?

A In part, yes.

Q That is what you say - it is stress and strain that entitles her to retirement?

A Right.

Q So that is the reason for it?

A I would say in part that was the reason she wasn't able to keep up with the situation there.

Q And so you felt that you would give her a choice, you would let her retire or you would fire her, is that it?

A Well, I always hoped and prayed it never would come to the point where her services would have to be discontinued that way, any other way than by retirement.

Q Now, Commissioner, you wanted the easy way out of this thing?

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A No, I wanted the best way out for her.

Q You wanted -

A If she retired and had an opportunity to rest and receive \$1500.00 a year, I thought it would be better than fighting along as we had been the last several months or years.

Q For how long - several months or years, did you say?

A This began to get serious about 1950.

Q Now let me ask you this: When you wrote this letter to her, did you also talk with somebody else about suggesting that she have psychiatric treatment and if she would undergo this psychiatric treatment she would probably get reinstated?

A I don't remember talking with anybody about that.

Q You didn't say anything about that?

A Not to my knowledge, no.

Q Could it have been that you did say that to someone?

A I might have said that under that type of retirement when a person regained their health they would be eligible to go back to work.

Q Now are you ready, Commissioner, on oath to say you never told anyone that if she would take off for a year and undergo psychiatric treatment and if the results were favorable that it might be she would be reinstated, or words to that effect?

A I don't think I ever mentioned any psychiatric treatment for a year, no.

Q Did you ever mention psychiatric treatment to anybody for her?

A I think I did with the psychiatrist, yes.

Q You felt she needed psychiatric treatment?

A I think I asked that question, whether it would be profitable.

Q Now, Commissioner, I ask you this: Did you ever ask Miss Dolan to submit to psychiatric treatment to determine whether or not she is capable of holding on to her job at the Colony House?

A No.

(Recess at 12:30 to 1:30 P. M.)

TIMOTHY C. DALE resumes stand.

Cross-examination continued by Mr. Dick

Q Did you ever within the last, oh since 1955, ever suggest that she have additional assistance at the Colony House with respect to her bookkeeping?

A Yes, I have.

Q Do you have anything in writing on that?

A I don't think so. I think it has all been verbal.

Q Now would it have been within your authority to send a full-time bookkeeper to take care of the arithmetic down at the Colony House?

A Yes, I think it would have been within my authority to have initiated it. It might not have gone through.

Q You never did initiate anything like that?

A No.

Q Now, from the nature of these charges, they are all predicated upon - apparently, upon her bookkeeping, is that right?

A I wouldn't say altogether.

CHAIRMAN KING: Mr. Dick, may I interrupt? Are we still on this ground 1?

MR. DICK: Yes, sir.

CHAIRMAN KING: O. K.

Q Well now, would it be a fair thing to say that most of the matters complained of in Institution's Exhibit No. 1 pertained to her handling of accounts down at the Colony House?

A I would say largely, yes.

Q As a matter of fact I think fifteen of the seventeen charges pertain to that, do they not?

A Yes, I think they do.

Q So that the complaint was about her keeping - in substance about her keeping of the accounts?

A Yes.

Q And you are the same person who was Commissioner at the time you stated when Miss Dolan retired that you would have to replace her with three people?

A That is right.

Mr. Dale Cr. Ex.

Q Now so that as far as you are concerned as to her work there was one, her medical condition, and the other was the matters set forth in the complaint about her bookkeeping, those are the two things?

A Yes.

Q Now actually didn't you give out to the press on the date that you announced her discharge that Dr. Brooks refused to certify people to her down at Colony House?

A Yes.

Q Now was that what she was being fired for?

A Why no, I wouldn't say so, no.

Q And you are the person who testified that you had prayed that the time would come or hoped that the time would come - that the time would never come that you would have to let her go, is that right?

A That is right.

Q And you were the one who gratuitously advertised to the State at large through the newspapers that Dr. Brooks would not certify people to the Colony House, is that correct?

A I think it is. I don't just remember what that publication wrote. I told the reporter that, I am quite sure, but don't remember reading it in the paper.

Q He didn't violate any confidence in publishing it?

A No.

Q So you did tell him that?

A I think that is right.

Q Now if your regard for Miss Dolan is as high as you state it is or had been, do you think that it was a proper thing to state for publication that Dr. Brooks would not certify people to her place?

A It was a fact.

Q But you didn't dare try to fire her on that ground, did you?

A Well, I didn't - No, I didn't even think of doing that.

Q You thought that - By the way, who is Dr. Brooks?

A He is the psychiatrist working at the State Hospital and acting as consulting psychiatrist at the Brandon School.

Q And that is a matter of public knowledge, isn't it?

A Yes.

Q So in giving for publication a statement of that sort, did you want the public to believe that Dr. Brooks felt

that Miss Dolan was the sort of person to whom could not be entrusted the care of wards of the State?

A No, I just simply told the reporters - I gave them an established fact. I didn't go into it any.

Q That is right. You just let it set right there and you decided letting the people draw the conclusions they wanted to from it, is that right?

A That is one of the reasons the whole project had been stymied at the Colony House.

Q "Stymied" - you think the project had been stymied by whom?

A By Dr. Brooks acting, by the fact it became difficult to discharge the girls who were there at the Colony.

Q It became difficult to discharge them or became difficult to get them down to the Colony House?

A Both ways, stymied both ways.

Q What was that about discharging them?

A When discharged by the Board they were discharged on condition their accounts were to be paid to them, their salaries, and also that they pay their bills.

Q Mr. Dale, in the twenty years you have been Miss Dolan's superior, have you ever known one of the wards sent down to her care who has ever lost one cent, one solitary cent, by reason thereof?

A I don't know of any such case, no.

Q And how many girls would you think in the last thirty years have been discharged from Colony House?

A Oh, I would guess on the average of half a dozen a year.

Q And not one of them to your knowledge has ever lost a cent?

A Not to my knowledge.

Q And I will ask you something else. How many of those girls would you say had been discharged before they received their pay?

A That I don't know.

Q Now, Commissioner, how many years have you known that at the Colony House charge accounts have been acceptable for the services of these girls?

A I think it has always been acceptable.

Q It has always been acceptable. Now hasn't it also been

the situation that girls have been discharged while their money has been due them and not paid in on account of charge accounts?

A I don't quite get that question.

Q I will put it another way. Isn't it a fact, Commissioner, don't you know this of your own knowledge, that there have been discharges from the Colony House before the girls have been paid in full?

A Their discharge was on condition of their receiving their pay and paying their bills.

Q Before they would get discharged?

A Yes.

Q There is no rule of law, there is nothing that says they may not be discharged and pay subsequently as soon as possible from amounts due them?

A No. That has been the trouble, the hold-up.

Q As a matter of fact, if a girl is liable to discharge, whether or not they are paid, you are chargeable?

MR. MEHLMAN: I object.

MR. DICK: He is Commissioner of Institutions and of mental health and he ought to know what his rights are under the law.

A I think that is why the Board made the discharge condition upon the cleaning up of their accounts.

Q They have been discharged without that right along; as a matter of fact that has been the custom.

A To have that condition in their discharge.

Q That girls have been discharged and their accounts cleaned up as soon as possible by the collection of monies outstanding owed to them?

A I didn't know that existed.

Q It exists today, doesn't it, Commissioner?

A That is the trouble.

Q It exists in your department since Miss Dolan has received her notice, has it not?

A I don't know whether any girls have been discharged since then or not, since January and February.

Q Would you say you have money in your hands, you or your

subordinates have money in your hands belonging to a discharged girl that hasn't been paid for quite a while?
A I should say so.

Q So whoever has charge of that in your department is doing exactly what you charge Miss Dolan with doing?

A We can't give the girl full discharge until she receives her full pay and we can't give her her full pay until Miss Dolan gives it to the school.

Q Now do you have any girl you have had discharged who has money with your department and haven't paid the money to her?

A Repeat that. I don't quite get it.

Q Let me reframe that. I may be able to make it clearer. Do you have any girl to whom all the money that could be paid has been collected that is in your possession or the possession of your department and although she has been discharged has not been paid to her?

A I don't know of any such case.

Q Would it surprise you greatly to know you have it in your department?

A Yes.

Q Would it surprise you greatly to know this has happened since Miss Dolan's receipt of the letter of dismissal?

A It would surprise me, yes.

Q Now you have stated that as to this dismissal that you regretted so much that it had come to that. Was your regret so great that you could restrain yourself from giving it to the press of the State of Vermont until such time as Miss Dolan had received the notice?

A I assumed that Miss Dolan had received the notice and didn't know that she had not received the notice until someone told me about it a couple days later.

Q Mr. Commissioner, you knew the letter was going registered mail?

A Yes.

Q From your experience as an executive of the State of Vermont, what evidence when you send a letter by registered mail do you have as evidence of its receipt?

A I certainly thought the letter would be there the next day. Evidently it took all the next day and she didn't get it until the third day after the mailing. I think that is rather unusual.

Mr. Dale Cr. Ex.

Q There is no doubt in your mind as to when she got it?

A No, because we got the card that she received it.

Q Which showed she received it after you gave your announcement to the paper?

A That is right, according to the card.

Q Let me ask you something. Is it the custom of your department when an employee has been decided to be discharged, when one decides to discharge an employee - Strike that.

Q Is it your custom in your department when you decide to discharge an employee to give the news to the world at large?

MR. MEHLMAN: If the Commission please, I object solely on the basis that I think that is going far afield of the issues under consideration.

CHAIRMAN KING: Mr. Dick, would you explain to me how this is connected with the ground 1 or the first two paragraphs of the Institution's 1?

MR. DICK: Yes, Your Honor. I can only explain it this way: that unfortunately Mr. Mehlman, over my objection, was permitted to introduce Institution's No. 2, the last paragraph of which says that "I regret Miss Dolan's refusal to accept retirement - that her refusal to accept retirement leaves me no other choice than to direct her dismissal." Now we think that that has gone in that we have a right to show that the regard is a matter of crocodile tears and not fact and we propose to show that by doing this the Commissioner and his department not only didn't show regard, but by gosh, when they got that thing out they rushed to the papers to announce that Miss Dolan is fired, and to add to it to announce to the world at large that Dr. Brooks, who is a psychiatrist, refused to allow people to be certified to her, and I think it is very important to show that the motives of this department are not what are stated in those charges and bear directly on the issues of what is behind all this. They opened that up.

CHAIRMAN KING: The objection is overruled. Proceed, Mr. Dick.

(Pending question read by reporter)

A That news was given in the paper before I gave it.

Q Who gave it to them?

A I assume Miss Dolan. It was in the paper the previous day.

Will you tell the Commission, please, where the trouble lay with respect to the clearing of the girls' accounts?

A Well, the trouble was that it was impossible - it seemed to be impossible to get the accounts from the Colony House. They just weren't collected there at the Colony House. The accounts weren't collected and we had girls discharged who didn't know they owed a couple hundred dollars until they had been discharged for two years. Then we tried to collect from them to pay their bills in Rutland.

Q Where did the information come that they did owe these accounts, where did it originate?

A You mean in the final analysis? It came through the auditors when they audited.

Q Audited what?

A Audited the Colony House accounts.

Q And is it the failure to collect accounts and pay bills that is a part of the basis of this proceeding?

A That is right, it is.

Q You have been asked as to the time in which it took Mr. Russell to execute your direction to to discharge Miss Dolan. Of your own knowledge, was anything done during that approximate two weeks' period by Mr. Russell in the execution of your direction to him?

A Yes, not by Mr. Russell. Mr. Russell drafted the charges in letter form and they were turned over to the personnel officer, who went over them. They came to my attention and went back to Mr. Russell. He and the personnel officer worked on them some more. So something was being done during that time.

Q Did you make any effort to see that Miss Dolan had actual notice of the specific charges against her prior to the time that you released that to the newspapers?

A Yes, that is why -

Q What efforts did you make?

A That is why the personnel officer and Mr. Mills, the auditor, went down to visit with Miss Dolan, to talk with her and try to prevail upon her to accept her retirement.

Q And did you have any intention to release anything in the paper before she knew of it?

A No, I didn't. I regret very much that it did get in the paper, before she received that notice, but that was entirely mistiming and not realizing how long it took to get a letter down there.

Q You regret your statement to the press, which was published, that there had been a refusal to certify inmates to the Colony House, is that correct?

MR. MEHLMAN: I can't understand -

A It is a fact. I mean it was a fact. I wasn't releasing anything that wasn't true.

Q You felt that that had something to do with her discharge?

A Yes, I think it did. The whole Colony was stymied. We couldn't operate.

Q Now you testified that - let me see - We start off with Mr. Russell working on these things, these charges, Institution's No. 1; then we have Mr. Russell and Mr. Douglas working on them; then they went to you and you checked them; then they went to Douglas again and he checked them; then they went to Russell again and he checked them; then they went back to you in final form and then they were sent out, is that right?

A Yes, Mr. Douglas and Mr. Mills took them down to Miss Dolan.

MR. DICK: No, will you -

THE WITNESS: I meant there is one more - go ahead. Excuse me.

(Question read by reporter)

A Yes.

Q And with all that checking by Douglas, by Russell, by you, you start off with the first two paragraphs not saying what you intended to say, is that correct?

A Yes, having in mind that my letter took care of it.

Q Will you show me anything in the seventeen charges that say anything about that by reason of any act of Miss Dolan that any inmates of the Brandon - of the Colony House, couldn't be discharged? Is there anything in there that says anything like that?

A Well, I don't know. I will have to read this all over and study them to answer that.

MR. DICK: All right, sir. I will ask the Board for you to take a short recess so that Mr. Dale can read these charges.

MR. BLOOMER: I would be very glad to.

Q Mr. Dale, Mr. Adams is an attorney?

A He is.

Q Recognized by you as such?

A Yes.

Q Once you had made your pronouncement that Mr. Adams would represent the joint Boards, practically the entire questioning was done by Mr. Adams?

A That is true.

Q In the form of an attorney?

A Well, since he was a member of the Bar we felt - at least I felt he would be better qualified to do it than anyone else.

Q More skilled in the examination of this lady?

A Most lawyers are pretty well skilled in it.

Q You recognized that fact when you designated him to question Miss Dolan?

A Yes.

Q Starting out on the premise that you were to talk about the Colony House, but what you really had in mind was the future of Katherine Dolan, wasn't it? Isn't that right?

A Well, it is pretty well tied together. Miss Dolan was the Colony House.

Q Yes. At no time did you give her any notice that this meeting to which she was summoned was a meeting to decide upon whether she was to be retained or fired?

MR. MEHLMAN: I object, if the Commission please. There is no requirement of law or procedure that she be given notice of the purpose of the meeting. We think this is irrelevant to the matter here under consideration. Under the law this Board could have met without her and made certain determinations and Mr. Dale could have in his own mind without Miss Dolan's presence have made the determination and it would not have affected the legality or propriety of these proceedings in this respect.

MR. BLOOMER: May I say something?

CHAIRMAN KING: Yes.

MR. BLOOMER: I am surprised that that is the attitude to be taken where some thirty year old employee

Q I don't want to let it go at that, Mr. Dale. I want the facts. I think we owe it to Miss Dolan to have the facts. Now is there anything in here that in any way contradicts her statement in here that she will do her best - "I will do my best. I will close as many accounts as I can between now and December 31st" - now there isn't, is there?

A I don't think so.

Q Now despite all this, despite the fact that you must have made up your mind that if she would cooperate it wouldn't come to firing, you were one of the body that unanimously decided that she would be separated, is that right?

A That is right.

Q By the way, you have testified that you don't know of any employee or any ward of the Colony House that has ever lost a cent. Now I will ask you this: From time to time in the discussion of these accounts, isn't it a fact that Miss Dolan told you that if the Department of Institutions was worried about any of these accounts that she had vacation time running into over one thousand dollars that if you desired you could have that to apply or if you desired you could hold that as a guaranty against these accounts?

MR. MEHLMAN: I object, if the Commission please. That is irrelevant. She isn't charged with misappropriating funds. It has nothing to do with the charge that she refused to obey orders. The mere fact she may have made some statement that if anything was lost she would repay it has nothing to do with the issues in this case.

MR. DICK: We claim she offered the Commissioner to permit him to apply any of the amount held by the State to her credit in payment of the accounts if they were worried about the accounts. Now I think that is mighty important because if Miss Dolan has a failing in the Colony House, it is a devotion to the wards of the State and it is a pretty serious charge to imply that because of her failure these wards had not received their discharge and we think it is mighty pertinent to know right here that she never in any way did anything to hold up the discharge of any girl.

The objection is overruled and Mr.

CHAIRMAN KING:
Dale may answer.

A If you strike out the sum of one thousand dollars - Miss Dolan never named any monetary sum to me - the rest of it is substantially right.

Q Without going into the arithmetic of the sum, then you do know as her superior over twenty years that she never took any vacation time and had accumulated leave time for twenty years?

MR. MEHLMAN:

The regulations of this personnel board and statutes speak for themselves as to how much annual leave time may be accumulated. If the Commission please, I object.

CHAIRMAN KING:

However, we feel we are straying from the point at question. If you would in your questioning come back to ground 1. The Board will allow this question.

MR. DICK:

I think I shall leave after this question for my side.

A All I can say is that under the conditions of employment nobody kept any track of whether she was ill today or went today. That was up to her under the conditions of her employment.

Q Now, Tim, you know, don't you, that she never drew a day's vacation pay? Don't you know that?

A I think that is right.

was

Q And that/in the twenty years that you have been her boss man?

A Never was classified as vacation pay, that is right.

Q I don't know. I assure you if I was an employee of the State I would know something about it. I don't. All I know there is such a thing and she has a right to it and doesn't have to take it.

A Yes.

Q And that went on for twenty years?

A Yes.

Q And what is that, two weeks' vacation pay each year? Is that the way it goes, or three weeks?

A Well, it depends upon the length of service. When Miss Dolan took a vacation she took the girls with her.

Q That is right, she would take the girls with her on vacation, take the girls on a vacation.

A Anything classified as a vacation.

Q And of course whether or not she took vacations was a matter that would be within your sphere, would it not?

A Yes, although under the terms of her employment she could

take a vacation just by setting the day or not setting the day.

Q So far as you know she took no time away from that place except wherever she went during the three hundred sixty-five days a year with I think two exceptions she had her wards with her, is that correct, as far as you know?

A Yes.

MR. DICK:

Thank you.

CHAIRMAN KING:

The Board will declare a recess, to reconvene, at which time we will have a decision on ground 1 of the appeal of Miss Dolan.

MR. DICK:

I should like to put on a short witness for the purpose of establishing that since Miss Dolan has received her notice that there have been, there has been a discharge and money not paid, money has been collected and has not been paid to the discharged ward.

CHAIRMAN KING:

Is that relative to the first question you have raised on ground 1?

MR. DICK:

It is relative, Mr. Chairman, to the extent there has been testimony over here that she was holding up, that wards could not be discharged because the money had not been collected; and I propose to put in evidence that wards are discharged and the money has been collected and the money isn't paid to the ward.

CHAIRMAN KING:

.... We have strayed from the field a bit. I will have to take that up with the Board.

If you feel it is relevant to the question ground 1, would you introduce your witness?

MR. MEHLMAN:

May I object, if the Commission please, on the basis of Mr. Dick's statement as to what this witness will testify to because we say it is not relevant to the issue now under consideration.

CHAIRMAN KING:

May we discuss that just a bit more. Mr. Dick, will you be more explicit as to why you feel it is relevant to ground 1?

MR. DICK:

Yes, Your Honor. I feel it is relevant to ground 1 as this case has developed because the Board permitted Mr. Mehlman to put in evidence to the effect that because of Miss Dolan's failure to collect

accounts that there were wards at the Colony House who couldn't be discharged, and because in examination by Mr. Mehlman it was sought to justify the participation of Mental Health on the ground that the Board of Mental Health were concerned because a ward could not be discharged unless she was paid the money due her. We propose to show through this witness that the witness was discharged; that the Department of Institutions through one of its representatives collected the money and although this young lady has been discharged nearly two months, since June, and although the Department of Institutions has had the money since December 31st, that the Department of Institutions has not yet gotten around to pay her the money that is due her. Now we think that we are entitled to make that point and we think it will be a very short one.

CHAIRMAN KING: The objection of Mr. Mehlman is overruled and would Mr. Davis swear the witness?

MR. MEHLMAN: May I say something, Your Honor. I can't recall everything that transpires but I think it was Mr. Dick who first started questions about girls being discharged without having been paid. Later I did cross-examine on that part because I felt obligated to, but I think that phase of it was first brought into this hearing by Mr. Dick.

CHAIRMAN KING: Your point may be very well taken. I can't remember the evidence as to who brought it in, but we will grant Mr. Dick's motion to produce the witness.